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CULTURE-ORIENTED TAX INCENTIVES IN INCOME TAXATION – POLISH EXAMPLE

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Abstract

Art and culture are enormously important elements of the social life, which require however public support. The aim of the studies was a critical analysis of the structure and functioning of tax instruments that support the development of culture and protection of its heritage, applied in income taxation system in Poland. As a result of conducting the studies it was to be determined what instruments of indirect cultural support were introduced in the structure of the Polish income taxes, whether they are typical for modern fiscal systems, or peculiar to the Polish system, what are their social and economic effects, whether these instruments are adjusted to the needs and social beliefs, what enhancements should be introduced to them and whether they could be applied in other countries. The legal-dogmatic, comparative and statistical methods were used in this study.

Key words: law; culture; heritage; incentive; income; taxation.

JEL Classification: H20, H30, K34, Z18

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1. Introduction

Culture plays an important role in the life of every society. It can be said that, unlike many other goods, especially material goods, although not always indispensable to the individual, it is necessary for the well-being of the general public. Unfortunately, when facing hardships people are rather more inclined to renounce their cultural development than to reduce consumption in the purely material sphere¹. At the same time, it is difficult to react flexibly to changing economic conditions in cultural institutions – graphically speaking, it is difficult to reduce employment in a string quartet (Wilson, 1986: 6). Therefore, culture is a very sensitive sector of the economy. As a result, in many countries a system of culture support and its heritage protection through appropriate tax incentives was developed. The aim of this article is to present tax solutions, applied in the Polish income taxation system, characterized by several atypical and at the same time positively assessed incentives in this domain.

Support of culture by the state can be divided into indirect and direct. Direct support includes in particular various types of subsidies directed at bodies operating in the field of culture – in particular, cultural institutions and non-government organizations, but also other bodies conducting activities in the field of culture and protection of its heritage². This involves in particular non-profit-making activity, since if the cultural activity generates income, preferential treatment is not necessary (Sanjiao Otero, 2002: 363). Such subsidies do not have to be provided from the general budget (state or local-government), but also from special purpose funds created from public contributions made specifically for this purpose (Ernst & Young, 2011: 2).

Whereas, indirect support involves various types of tax reliefs and exemptions. This is therefore support of a more passive character. It mainly involves the introduction of income and wealth tax reliefs and exemptions, and reduced rates of consumption taxes with reference to cultural services and cultural goods. This may concern both entities operating in the cultural sector (including creators), as well as entities financing cultural institutions and cultural institutions themselves (Čopič et al., 2011: 9), also the art works and other cultural goods market, including in particular the secondary market.

¹ Increase of the VAT rate on services related to culture in 1979 in Great Britain from 8% to 15% resulted in smaller increase of income from that tax in the cultural sector than in the general scope – which signifies that people save more on culture than on other consumer goods (Wilson, 1986, 6).

² The concept of cultural activity is defined in the Polish law. In the light of the Act of 25 October 1991 on organizing and conducting cultural activity (consolidated text Journal of Laws 2001, No. 13, item 123 as amended), cultural activity is the creation, dissemination and protection of culture. Organizational forms of cultural activity within the meaning of this Act are in particular: theatres, operas, operettas, philharmonic hall, orchestras, film institutions, cinemas, museums, libraries, cultural centers, art center, art galleries and research and documentation centers in various fields of culture.

Such instruments of support are a derogation from the principle of fairness of taxation, thus, must be duly motivated. However, culture and protection of its heritage are such an important social good that it justifies this kind of derogation. It should be highlighted that culture and its heritage often utilise support instruments of general nature, intended for the achievement of all kinds of socially useful aims, including in particular those relating to charity (Schuster, 2006: 1266, Smith, 1992: 10). It is no different in the Polish tax system, which utilizes all the above mentioned forms of support.

This publication presents the indirect instruments of culture support, regulated in the Polish system of income taxes. Such instruments are in part very unconventional in nature, rarely encountered in the world – and therefore worth presenting. Poland utilizes also instruments that function in the system of indirect taxes, however, they do not constitute a unique solution, characteristic only for the Polish tax system. They are an element of the European Union's system of public levies (in particular this concerns reduced rates and exemptions in the value added tax and the customs tariff). Solutions for other taxes (inheritance and gift tax, property tax, tax on civil law transactions, which is a form of a transfer tax) are not particularly unusual, too.

2. Indirect support of culture and protection of its heritage – overview

In different legal cultures divergent trends in the choice of support methods, indirect or direct, can be observed. Less interventionist states utilize rather the first method – it is typical of Anglo-Saxon countries or countries with a tradition of approach to culture similar to the Anglo-Saxon one (Ernst & Young, 2011: 23). Support for culture as the exclusive domain of the state was present in the countries of the Eastern Block (Munnelly, 1986: 66; Kietlińska, 2013: 137) – the vestige of which in the form of direct support dominance can be observed to this day, among others, in Poland (Čopič et al., 2011: 14,15). To a large extent, this is also a pan-European trend (at least for continental Europe), resulting from a more interventionist continental approach to economic affairs (Trupiano, 2005:341)³. This difference can be clearly observed in Canada, where the attitude of French-speaking and English-speaking populations towards charitable activities (including those for the benefit of culture) is distinctly dissimilar, i.e. private support of culture is much more common in the English-speaking provinces. As a result, the authorities of the French-speaking province of Quebec were forced to utilize greater direct support (Schuster, 2006: 1286). Private support in the USA is exceptionally high, reaching more than ¾ of total support (Schuster, 1986-1987: 31). This support is not directly targeted at creators, but

³ An example of interventionism in the field of culture can be the obligation existing in Spain and France to allocate 1% of funds spent on public construction investments for cultural purposes (in France – for ordering art works on the premises of the building) (Ernst & Young, 2011: 12).

mainly at organisations carrying out or financing cultural activities (Feld et al., 1983: 10). Benefactors are usually natural persons⁴ (Schuster, 2006: 1277).

Indirect support has many advantages. It is safer for the public authorities, because it is not as visible and noticeable as indirect support (Schuster, 2006: 1257). It is also independent of political criteria, which not always take into account the public interest. This allows cultural institutions avoid the danger of becoming dependant on politicians, due to which the freedom of creators could suffer (Sanjiao Otero, 2002: 362). Indirect funding makes it possible to support what people like, and what, for example due to its excessive controversy, would not be supported officially (Rushton, 2008: 294). At the same time, this can be a disadvantage, as common tastes are not always highly sublime.

The main danger involving indirect support is however a large risk of uncontrolled and relatively rapid reduction of this kind of support, as a result of, for example, economic crisis. This risk can be counteracted, ensuring supplementary state support. Of course, support should not be limited only to indirect support, because the state should play a culture-forming role, not allowing the level of culture to decrease. Cultural policy should therefore provide for a reasonable compromise between the two ways in which culture is financed.

Various methods of indirect support are applied around the world, the more common types of which can be classified as follows:

1. Income tax reliefs and exemptions:
 - a. exemptions and reliefs in terms of income tax for creators of culture and cultural institutions,
 - b. deductions of amounts of cash or in-kind donations to culture from the income or tax of natural or legal persons,
 - c. possibility to allocate part of the tax amount to a cultural aim identified by the tax payer,
 - d. possibility to deduct expenditure on purchased cultural goods or services as tax deductible expenses or other deductions from income,
2. Reliefs and exemptions in terms of other direct taxes, in particular transfer taxes, inheritance taxes and property taxes related to the possession of cultural goods.
3. Reliefs and reduced rates of indirect taxes (VAT, sales taxes) and duties related to the trading of cultural goods and providing cultural services.

⁴ More than 75% of support in 2001.

3. Reliefs and exemptions in Polish income taxes

3.1. Overview of income taxes in Poland

The Polish system of income taxation is typical for the contemporary systems of public levies. Natural persons are subject to income tax pursuant to the Act on Personal Income Tax⁵, and legal persons and other organizational units (with some exceptions) – pursuant to the Act on Corporate Income Tax⁶.

In case of both acts, taxation based on residency (with reference to the entirety of income) and based on source (with reference to income obtained in Poland) is applied. As a rule, the subject of the tax is income, i.e. the surplus of revenue over tax deductible costs, generated in the tax year (in some cases, for example, revenue from dividends, the subject of taxation is the revenue). The method of tax calculation depends on the revenue qualification as one of the sources of revenues (schedules – e.g. from employment, non-agricultural business activity, rental, money capitals), since division of revenues as coming from different source determines in particular the principles of such revenues taxation (especially the definitions of revenues and the tax deductible costs). The tax basis is the income less the eligible deductions.

The basic Personal Income Tax rate is progressive. Income below the statutory minimum (PLN 8000 in 2019) is not subject to taxation at all, whereas above this threshold rates are 18% and 32% for income exceeding PLN 85,528. Since 2019, income exceeding PLN 1,000,000 has been burdened with an additional solidarity levy at the rate of 4%, which in fact constitutes another threshold (36%) of income tax. However, some categories of income (e.g. from equity investments, dividends) are subject to different rates. Taxpayers in strictly defined cases (especially concerning the running of business activity) can choose simplified taxation, for example a flat-rate form of income tax or revenue tax instead of income tax.

Corporate Income Tax, apart from other entities, differs from the Personal Income Tax mainly due to the smaller number of revenue sources (schedules) and alternative (flat) methods of taxation and the basic rate, which is 19% of income regardless of its amount. However, small taxpayers and taxpayers commencing business activity may benefit from a 9% rate on total income. The structure of tax on legal persons lacks the solidarity levy.

⁵ Act of 26 July 1991 on Personal Income Tax (i.e. Journal of Laws 2018, item 1509 as amended, hereafter “APIT”).

⁶ Act of 15 July 1992 on Corporate Income Tax (i.e. Journal of Laws 2018, item 1036 as amended, hereafter “ACIT”).

Polish income taxes are state taxes, binding on the territory of the whole country in an identical form. However, temporary tax exemptions may be granted to entities operating in special economic zones.

3.2. Exemptions and reliefs in terms of income tax for cultural institutions

One of the most significant indirect support instruments in the Polish tax system are exemptions and reliefs in terms of income tax for artists and cultural institutions.

Non-government organizations, including cultural institutions, public ones as well as private (as foundations, associations or even companies or partnerships) may utilize several alternative exemptions, provided for in the Act on Corporate Income Tax – both subjective, as well as objective.

Subjective exemption is regulated by Art. 6 para. 1 of ACIT, exempting all income of, among others, budgetary units from tax. Many cultural institutions are run in this legal form, intended in principle for performing non-profitable public tasks. However, such institutions often have forms specific to a given type of institution (e.g. public museums) or private-law forms, such as an association, foundation or company⁷.

From the practical point of view more crucial are objective exemptions, regulated in Art. 17 para. 1 of ACIT. These are in particular exemptions pursuant to:

- point 4 of said article, stipulating income tax exemption for, among others, taxpayers whose statutory objective is education, cultural activity, charity - but only in the part allocated for these objectives;

⁷ The Act does not explicitly indicate whether an organizationally separated museum run by a natural person should be considered a Corporate Income Tax payer or a form of natural person's activity. Meanwhile, Art. 1 of Act of 21 November 1996 on museums (i.e. of 2018, item 720 as amended) defines museums as a "non-profit organizational unit, the purpose of which is to collect and permanently protect the goods of natural and cultural, material and non-material heritage of mankind, inform about the values and contents of the collected resources, disseminate the basic values of the Polish and world history, science and culture, and shape the cognitive and aesthetic sensitivity and enable utilization of the collected resources". Art. 5 para. 1 of this Act directly permits the creation of museums by natural persons. Therefore, if a museum run by a natural person possesses the features of an organization (including having regulations agreed pursuant to Art. 6 para.7 of the Act on Museums), it should be treated as a Corporate Income Tax taxpayer. However, the practice in this scope is different and different interpretations are frequent and even prevailing (compare the interpretation of the Director of the Tax Chamber in Bydgoszcz of 14 November 2013 no. ITPP1/443-807/13/AJ and of 27 January 2012 no. ITPB1/415-1115b/11/WM), mistakenly indicating that the museum not being a private law entity cannot be subject to income tax on legal entities (despite the fact that this tax covers all organizational units, not only those that are private law entities). This is extremely important, because the structure of Personal Income Tax lacks income exemptions for statutory objectives.

- point 5 – income tax exemption for companies whose shareholders (stockholders) are exclusively organisations operating under the Act - Law on Associations, and whose statutory objective is the activity listed in point 4 - in the part intended for these objectives and transferred to those organisations;
- point 6c – tax exemption regarding the public benefit organizations income⁸ – in part intended for the statutory activity, excluding business activity;

Exemptions due to allocation of income to statutory objectives can apply, if the income is allocated and – regardless of the period – spent on the objectives specified in this provision (Art. 17 para. 1b of ACIT). Allocation to certain objectives before actual spending of means is validated on the basis of an appropriate decision of a governing body.

Exemptions of this kind, relating to income of organizations running or supporting cultural activity, to the extent that it is intended for this activity, are typical and common worldwide (Lidstone, 1979: 157, Feld et al., 1983: 54-56, Weinlein, 1982: 33 and the following). It should be underlined that preferential taxation does not refer to business activity related to culture (e.g. publishing activity, organization of cultural events), if income from such business activity is not intended for statutory objectives.

3.3. Exemptions and reliefs in terms of income tax for creators

Moreover, Poland utilizes instruments that support the culture creators themselves. This a relatively rare solution⁹. Poland in particular allows artists and performers to deduce lump-sum tax deductible costs amounting to 50% of the value of that revenue¹⁰, which in practice

⁸ Compare chapter 3.5.

⁹ The best known example is Ireland, which for many years has exempted artists from income tax if their activities are original, creative, of cultural or artistic value (Feld et al., 1983: 22). This exemption had an unexpected effect of attracting to Ireland recognized foreign artists, especially from Scandinavian countries applying high income tax rates. This fact contributed to the criticism of the above solution, as for most Irish low-income artists the level of the tax-free amount still ensured the lack of income tax (Schuster, 1986-1987: 45). The criticism concerned also the lack of exemption for performers, despite their significant impact on the promotion of culture. It is worth adding that the exemption is of broad nature and does not concern only artists, but all persons earning income from copyrights, for example, software developers (O'Connor et al., 2009: 1002-1006). The scope of exemption is currently limited – it concerns amounts not exceeding EUR 50,000.

¹⁰ Pursuant to Art. 22 para. 9 point 1-3 of APIT this applies to revenues:

1. from payments to creator for transfer of ownership rights to an invention, integrated circuit topography, utility model, trade mark or decorative pattern,
2. from licence fees for transfer of right to use an invention, integrated circuit topography, utility model, trade mark or decorative pattern, received in the first year of the license from the first unit, with which the licence agreement was concluded,
3. from creators using copyrights and performers using adjoining rights, or them disposing of such rights (such costs are calculated on the basis of income less social security contributions deducted from remuneration).

is often even a twofold reduction of income tax – the creator usually does not incur significant expenses that could be deducted as tax deductible costs in line with general principles. However, if the costs actually incurred and documented exceed the flat-rate costs, then the taxpayer can deduce the actual, instead of flat-rate costs (Art. 22 para. 10 of APIT). The discussed regulation seems to rationally solve the problem indicated in the American literature of high taxation of creators due to lack of significant tax deductible costs in case of sale of work by the creator (Feld et al., 1983: 222).

The solution more frequently applied in the world is income tax exemption for certain categories of artists' income, e.g. awards, grants or artistic scholarships (Gordon, 2012: 241). There are exemptions of this kind in Poland as well, but their scope is limited. They involve various types of scholarships, in particular scientific scholarships¹¹, as well as prizes won in competitions in the fields of science, culture, art and journalism, if the single value of the prizes does not exceed the amount of PLN 2,000 (Art. 21 para. 1 point 68 of APIT).

Due to interpretation problems regarding point 3, since 2018 the Act specifies in Art. 22 para. 9a of APIT that provision para. 9 point 3 is applied only to revenues generated from:

1. creative activity in the field of architecture, interior design, landscape architecture, construction engineering, urban planning, literature, fine arts, industrial design, music, photography, audio and audio-visual creation, computer programs, computer games, theatre, costume design, set design, directing, choreography, artistic violinmaking, folk art and journalism;
2. artistic activity in the field of acting, stage, dance and circus art as well as in the field of conducting, vocal art and instrumental performance;
3. audio and audio-visual production;
4. journalistic activity;
5. museum activity in the field of exhibitions, science, popularization, education and publishing;
6. conservatory activity;
7. derivative right to someone else's work in the form of translation;
8. research and development, scientific, scientific and didactic activity, research, research and didactic activity and didactic activity conducted at an university.

¹¹ These are scholarships awarded to students, doctoral students and academic staff members, among others, for scientific artistic achievements pursuant to Act of 20 July 2018 - Higher Education and Science Law (Art. 21 para. 1 point 39 of APIT, in case of scholarships awarded by entities which are not state or self-government legal persons, the exemption shall apply provided that the rules for awarding a given scholarship have been approved by the minister responsible for higher education and science), scholarships and other financial means awarded pursuant to Act of 7 July 2017 on the Polish National Agency for Academic Exchange (Art. 21 para. 1 point 39a of APIT), scholarships awarded by scientific institutes of the Polish Academy of Science and the research institutes from their scholarship funds (Art. 21 para. 1 point 39b of APIT), scholarships awarded pursuant to Act of 30 April 2010 on the Polish Academy of Science (Art. 21 para. 1 point 39c of APIT), scholarships and other benefits received under the Polish-American Fulbright Scholarship Exchange Program (Art. 21 para. 1 point 39d of APIT), material assistance benefits for students and persons participating in other forms of education from the state budget, budgets of local government units and own resources of schools awarded on the basis of the provisions on the education system and other scholarships for learning achievements, whose award rules have been approved by the minister competent for educational and pedagogical matters (Art. 21 para. 1 point 40 of APIT), scholarships for pupils and students awarded pursuant to the resolution issued by a local government unit body and awarded by public benefit organizations – up to the amount not exceeding PLN 3,800 in a tax year (Art. 21 para. 1 point 40b of APIT).

3.4. Deductions of amounts of donations to culture from the income or tax

Another common instrument is the mechanism of deducting amounts of donations to cultural (or charity in general) objectives from income or tax. The pioneer of this solution were the USA, where this possibility has been in force for natural persons since 1917, and for legal persons since 1935 (Feld et al., 1983: 26, 48). Today, it is applied mainly in the Anglo-Saxon countries – in the USA it is an absolute foundation of the cultural support system (Lidstone, 1979: 1) – although many countries with other legal cultures, including Poland, have implemented such solutions. Their aim is, of course, to increase the share of private support through tax benefits associated with gratuitous benefits to cultural operators. Most commonly such donations can be made to all or some entities, which at the same time also benefit from income tax exemptions¹².

Deductions in Poland involve reduction of income by the amount of donations made to organizations conducting a public benefit activity¹³ for the objectives of this activity¹⁴. However, deductions cannot exceed 6% of income in case of personal income tax and 10% in case of legal persons.

Statistics indicate that the use of this institution is relatively low.

¹² For example, in the USA (Lidstone, 1979: 157-158). Similar regulations apply in Poland (Golat, 2007: 83-89).

¹³ This concept is defined by a separate Act of 24 April 2003 on activities of public interest and voluntary work (i.e. Journal of Laws 2018 item 450 as amended). It is very broad, including, among others, the activity of maintaining and disseminating national tradition, cultivating the Polish character and development of national, civic and cultural awareness, activity in the field of science, higher education, education, school system and character education, in the field of culture, arts, protection of cultural goods and national heritage.

¹⁴ Art. 26 para. 1 point 9 of APIT. As a rule, donations subject to this regulation can be made not only to national organisations, but also to equivalent organisations as defined in the regulations governing public benefit activities in force in a Member State of the European Union other than the Republic of Poland or in another Member State of the European Economic Area. Pursuant to Art. 26 para. 5 of APIT, donations to natural persons and entities conducting business activity consisting in production of or trade in products of electronic, fuel, tobacco, alcohol industry and products of precious metals or with the participation of these metals are not deductible.

Table no. 1. Deductions of donations made to organizations conducting public benefit activity in personal income tax in the years 2013-2017.

	2017	2016	2015	2014	2013
percentage of taxpayers benefiting from the relief	0.68	0.6	0.54	0.47	0.44
number of taxpayers benefiting from the relief	169,622	147,535	131,646	114,140	108,276
total amount of deductions (in thousands of Polish zlotys)	148,121	157,559	113,884	100,366	90,276
average amount of deduction (PLN)	873	1.068	865	879	834

Source: Ministry of Finance¹⁵

Table no. 2. Deductions of donations made to organizations conducting public benefit activity in income tax on legal persons in the years 2006-2017

	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
percentage of taxpayers benefiting from the relief	0.99	1.03	1.12	1.13	1.18	1.3	1.51	1.69	1.64	2.01	2.39	2.46
number of taxpayers benefiting from the relief	5037	4957	5106	4907	4732	4946	5390	5804	5378	6293	6894	6805
total amount of deductions (in thousands of Polish zlotys)	353779	274457	272503	267813	258129	294346	248896	277336	251360	242289	298495	224445
average amount of deduction (PLN)	70,236	55,368	53,369	54,578	54,550	59,512	46,177	47,784	46,739	38,501	43,298	32,982

Source: Ministry of Finance¹⁶

It should be noted that the above figures refer to all donations made for public benefit purposes, i.e. not only for activities related to culture and its heritage¹⁷. As can be seen from the statistical data presented above, the deduction is used by a very small percentage of

¹⁵ Subject website of the Ministry of Finance – PIT statistics https://finanse-arch.mf.gov.pl/pit/statystyki/-/document_library_display/8Wpj/view/1182889 (access on 15/02/2019). Statistics for previous years do not include the data necessary for establishing the amount of donations made for public benefit activity purposes.

¹⁶ Subject website of the Ministry of Finance – CIT statistics <https://finanse-arch.mf.gov.pl/cit/statystyki> (access on 15/02/2019). Statistics for previous years do not include the data necessary for establishing the amount of donations made for public benefit activity purposes.

¹⁷ The Act on activities of public interest and voluntary work lists almost 40 different types of such activity.

taxpayers (more often by CIT taxpayers than PIT taxpayers)¹⁸. Total amounts of donations deducted under PIT and CIT in the last audited year (2017) amounted to about PLN 0.4 billion, which *prima facie* is not a small amount, but the potential of the support instrument under discussion is much greater¹⁹.

The Polish taxpayers perceive supporting culture rather as a task of the state, which is typical for the countries of our cultural, social and economic circle (Zeidler, 2007: 275, Kietlińska, 2013: 137). It would therefore be difficult to eliminate this cause without a long-term and systematic psychological impact (for example through social campaigns). However, another reason for limited use of the discussed institution can be seen in the structure of the relief itself. Namely, the incentive power in the form of an income deduction seems insufficient. Because such a deduction is the more beneficial, the higher is the tax rate in the income interval, for which the donation is deducted. For example, if the tax rate is 10% then deducting PLN 100 from income decreases income by PLN 10, and if the rate is 30%, then deducting the same amount results in a PLN 30 tax decrease. At 50% rate the cost of donation of PLN 100 to non-government organization is divided in half between the benefactor and the state. In Poland from 2009 to 2018, the highest marginal rate was 32% (from 2019 - 36%, including solidarity levy), but in 2017 only 3.46% of taxpayers (863,648 out of 25,316,221 in total) generated income allowing for taxation at the rate of 32%, i.e. above PLN 85,528. In addition, a significant proportion of people with high income are entrepreneurs, benefiting from a rate of 19% (from 2019 possibly increased by the solidarity levy to a total of 23%)²⁰.

The objection against deduction of donations from income can also be that it is a kind of discrimination against people with lower income. According to statistics for the year 2017, income at the 18% rate was paid by 96.54% of the entirety of Polish taxpayers – natural persons taxed in line with general principles of taxation. For them the profitability of making donations is lower than for persons subject to a higher rate.

¹⁸ Decreasing percentage of CIT taxpayers using the deduction is connected not so much to the decrease of entities benefiting from the deduction, but to the increase of the total number of taxpayers. CIT taxpayers are primarily capital companies, which are often established for purposes related to the construction of a proper organisational structure of a capital group, therefore their total number is not significant from the point of view of statistics on the use of deductions related to donations.

¹⁹ In the United States, in 2016, almost 37 million natural persons alone (24.6% of all personal income tax payers) declared that they had made donations of less than USD 24 billion (the source: Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report>, access on 28/02/2019). It should be noted these figures involve also donations for religious cult purposes, which are classified separately in Poland.

²⁰ The total income of all taxpayers after deduction of social security contributions (i.e. the one from which a donation can be effectively deducted) was in 2017: 120,044,334 thousand Polish zlotys – taxed at 32%, 136,128,411 thousand Polish zlotys taxed at 19%, 657,826,336 thousand Polish zlotys taxed at 18% or subject to tax-free amount. Source: Ministry of Finance (see footnote no. 15).

In view of the above, consideration should be given, instead of the current solution, to apply in Poland a relief based on the deduction of the amount of the donation from the tax (tax credit)²¹. This solution does not discriminate persons with lower income, utilizing lower tax rates. However, from the point of view of the Treasury's interest, its flaw is that the support cost in case of full donation amount deduction from tax is borne exclusively by the State²². Therefore, deduction can be limited to a specified part (for example 50%) of the donation's amount, possibly with an additional limit on the amount of the donation²³.

3.5. Possibility to allocate part of the tax amount to a cultural aim identified by the tax payer

Starting from 2004 in Poland it is possible to request the state to allocate 1% of the personal income tax amount to a selected public benefit organization, with a possible indication of a detailed aim of support (e.g. treatment of a specific person who is under the support of the organization, Art 45c of APIT). Therefore, from the economic point of view, this solution is in fact identical to deducing donation amount from tax – with the difference that the donation is made by the state on behalf of the taxpayer. It seems that such a structure of the discussed legal institution is strongly conducive to its use – since the taxpayer is strongly aware that the state bears the cost of supporting a given organisation (after all, no allocation of tax amount does not reduce its height). Public benefit organization is not every non-government organization conducting public benefit activity²⁴ – to obtain this status it is necessary to fulfil additional requirements (Art. 20-22 Act of 24 April 2003 on activities of public interest and voluntary work, i.e. Journal of Laws 2018 item 450 as amended). This status cannot be gained by state or local government institutions; it is available only to non-government organizations, the majority of which are associations and foundations. At the end of 2015, there were 8.8 thousand active public benefit organizations in Poland²⁵.

Solutions of this kind function also in other countries of the Eastern Europe (Hungary, Lithuania, Slovakia, Romania, Slovenia). They are rare in other countries, for example, in

²¹ Applied, for example, in Canada, Israel, Hungary, France (Schuster, 2006: 1280, 1290). It is worth noting that France has also previously applied a deduction from income.

²² And the local governments, which are entitled to receive part of income generated from income taxes.

²³ It is a typical solution, often utilized in the world (Schuster, 2006: 91, Rushton, 2008: 298. The same applies to the so-called superdeduction (deducing from income an amount greater than the donation itself), utilized, for example, in Singapore (amounting to 200% of the value of the donation), but its mechanism is much less understandable for the average taxpayer, which could have a negative impact on its popularity (Schuster, 2006: 1289).

²⁴ Compare footnote no. 1 **Błąd! Nie zdefiniowano zakładki.**

²⁵ Statistical data come from the study: Central Statistical Office, Public Benefit Organisations and 1%, Warszawa 2017.

Italy (Čopič et al., 2011: 12, Rutzen et al., 2009: 49). The overall assessment of the Polish solution should be positive: in the returns for 2017 almost 56% of taxpayers (14.1 million out of 25.3 million in total) donated PLN 761.3 million to public benefit organizations²⁶. The possibility to indicate a specific organization and the transparency of the procedure is a huge advantage of this solution, despite an often relatively small amount of benefit donated. A certain disadvantage is the unevenness of support: as much as 31.5% of the total allocated funds went to only three organisations, and 52.1% - to thirty²⁷.

Unfortunately, this support goes almost never to organisations dealing with culture and the protection of its heritage. As much as 52% of the funds went to organisations dealing with health care, 27% went to organisations dealing with social and humanitarian aid. 8% – dealing with schooling and education and scientific research. 5% went to organizations supporting environment protection. Entities involved in sport, tourism, recreation and hobbies, although they make up 19% of the total number of organisations receiving support, have obtained only 3% of the amounts. 1% received organizations supporting the non-governmental sector. 4% was allocated to the remaining fields of interest. It is not surprising, however, that taxpayers see a greater need for supporting, for example, children suffering from cancer than renovating a monument or financing artistic scholarships.

Support for cultural objectives could certainly be increased by allowing the allocation of 1% of the tax to public cultural institutions, which cannot have public benefit organization status, but can only indirectly benefit from the support of independent organisations of this kind. However, this solution will not eliminate the main problem, related to the hierarchy of values that require support. Another postulate could therefore be considered, namely the extension of the 1% tax mechanism to the 2x1% model, where the 1% of tax would be allocated to organisations dealing with health care, social and humanitarian aid (the distribution of the amounts transferred clearly illustrates the special treatment of this group of organisations by taxpayers), and a further 1% for other public benefit organisations, as well as public cultural institutions (and possibly other institutions requiring support, such as scientific institutions). This solution would not deprive the basic advantages of the 1% PIT allocation mechanism, which is very important for the idea of building civil society - i.e. freedom of choice of the taxpayer. Nor would it reduce (on the contrary) support for the organisations currently supported to the greatest extent, carrying out the charitable activities preferred by taxpayers in the field of health and social assistance. At the same time, it would allow significant increase of funds for other socially useful objectives.

²⁶ This amount has been increasing every year since 2004 (with the exception of 2010). Data on the basis of study by the Income Tax Department of the Ministry of Finance, Information on the amounts of 1% of the personal income tax due provided to public benefit organizations in 2018 (from the tax settlements for 2017), Warszawa 2018, p. 5.

²⁷ Data that are the basis for calculations (for 2017): *ibidem*, pp. 4-5.

3.6. Possibility to deduct from income expenditures related to the purchase of cultural goods or cultural services

In practice, cultural expenditure usually relates to sponsorship agreements and the purchase of works of art or other cultural goods (e.g. historic vehicles) for investment or decorative purposes. In case of sponsoring, the possibility of including expenses as tax deductible costs does not usually raise any major doubts (Golat, 2007: 88-89). In the case of professional trade of cultural goods, income is taxed in accordance with the general principles applicable to economic activity. Therefore, the cost of purchase, overhaul or enhancement of cultural goods can be tax deductible costs (Art. 22 para. 1 of APIT, Art. 15 par. 1 of ACIT). Similarly, in the case of the sale of cultural goods outside the economic activity, such expenditure is deductible, but it should be noted that the sale of movables outside the economic activity is not subject to taxation at all if 6 months have elapsed between the end of the month in which the purchase took place and the date of sale (5 years from the end of the year in the case of real estate, Art. 10 para. 1 point 8 of APIT).

On the other hand, problems with interpretation arise when a work of art is acquired for a purpose indirectly related to the conducted business activity - e.g. for the decoration of business premises. As a rule, expenditure of this kind is not considered by tax authorities and administrative courts as tax deductible costs, which artists, among other things, see as one of the causes of problems with the sale of works of art (Huszcz, 2005: 28). Therefore, it may be postulated to introduce in both Acts regulating income taxes a provision explicitly including the possibility of recognising such expenses as tax deductible costs. Introduction of a common relief allowing the deduction from income of expenses for purchase of (or overhaul, enhancement, etc.) cultural goods and services, not included in tax deductible costs, could be possibly considered. This solution would be unusual, even revolutionary, and would surely, even if it were limited in terms of amounts, contribute to the boost of art works market, artistic activity and would contribute to strengthening the cultural heritage protection.

4. Conclusions

Precise determination of the impact of tax solutions on the development of culture and its heritage is very difficult due to lack of complete statistics (Čopić et al., 2011: 7-8, Ernst & Young, 2011: 23). The example of the USA and other countries that utilize particular tax instruments of indirect support shows, however, that favourable tax solutions can significantly boost the development of culture. It is therefore necessary to create a favourable environment for the development of private forms of supporting entities that

carry out cultural activity, also in such countries as Poland, in which the burden of supporting culture rests mainly on public institutions²⁸.

The Polish system of income taxation to a great extent directly supports creators (this is not a common solution), enabling them to reduce the tax by taking into account increased tax deductible costs, as well as institutions, resigning from taxing income allocated to socially useful statutory objectives and allowing the reduction of benefactors' income by donations made for such objectives. It is a typical solution, which works well in Anglo-Saxon countries, but having very poor results in Poland. The Polish system also does not sufficiently support potential investors, making it difficult to identify expenditure on the acquisition of cultural goods in tax deductible costs. It should be supplemented in that scope, since this could largely contribute to the development of art market and simplify the activities related to monuments protection, especially those utilized commercially.

However, it should be remembered that tax instruments are not enough – because it is not only law, but also social customs and norms that influence the taxpayers' behaviour (Schuster, 1986-1987: 46-48). The confirmation of this thesis can be seen in the Polish indirect support system, in which, despite a relatively extensive system of reliefs for benefactors, the support of cultural organisations is marginal due to the higher priority of purely charitable needs. The changes in tax law proposed in this publication in this respect, concerning the extension of the "1% PIT" mechanism, must therefore be accompanied by an appropriate (friendly) attitude of the tax authorities, complemented by a broad awareness-raising, information and promotion campaign.

It can be shown in the summary that the Polish law system is characterized by relatively rich and modern solutions in terms of indirect support of culture through income tax solutions: there are, in particular, deductions from income on the basis of donations made, possibility to allocate 1% of personal income tax to cultural objectives, 50% tax deductible costs of creators, and as a rule, no tax on capital gains when selling works of art outside a business activity. However, the problem may be the awareness in society of such solutions and rare ability to utilize them appropriately (not mentioning insufficient promotion of the values of culture and art as such).

Moreover, it should be remembered that tax instruments that support culture should be introduced with caution, since not all their results are easy to predict, and at the same time beneficial²⁹. The bigger the indirect support, the greater caution will be required to modify

²⁸ Analogous conclusions have been extensively described in an expert report commissioned by the Committee on Culture and Education of the European Parliament (Čopič et al., 2011: 16-17).

²⁹ For example, in the USA the real estate tax exemption was cited as the factor favouring the unnecessary and at the same time costly building investments made by the cultural institutions (Schuster, 1986-1987: 36-37).

its principles (Feld, 2008: 277.). Precise statistical analysis should therefore be an appropriate tool to support possible changes in legislation.

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