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New Definition of a Building in Property Tax and the Requirement of Specificity of the Object of Taxation

Nowa definicja budynku w podatku od nieruchomości a wymóg określoności przedmiotu opodatkowania

ABSTRACT

The article analyses a new legislative solution introduced by the legislator as part of the real estate tax, which concerns the legal definition of a building. This definition specifies the object of taxation in real estate tax. As such, it is necessary to analyse it from the point of view of meeting the statutory requirement of specificity of the object of taxation, which is the purpose of this article. Achieving this goal requires, first and foremost, demonstrating a certain degree of autonomy on the part of the tax legislator within the new framework of this definition. Next, it was necessary to analyse the elements of the definition of a building from the point of view of fulfilling the statutory requirement of specificity of the object of taxation. The analysis confirms that, in the new definition of a building, the legislator has largely fulfilled the requirement to define the object of taxation in statutory terms. This is confirmed not only by the legislative technique used in the form of a legal definition, but above all by its normative form. In the new definition, the legislator refers to the Construction Law to a much lesser extent and, in addition, indicates two scopes of this definition, which significantly clarifies the object of taxation.

Keywords: real estate tax; legal definition; building; object of taxation

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INTRODUCTION

Expressing the object as an element of the legal structure of tax at the statutory level is not only one of the most important tasks for the legislator in tax law solutions. This issue is also directly related to the relationship between the development of socio-economic reality and the development of tax law. To put it simply, it is about properly recognizing the effects of the dynamically developing socio-economic reality in tax law.

The specification of situations fulfilling the initial element of the legal structure of the tax should meet the requirement of statutory definition, and therefore, at the same time, correspond to what results from the Regulation of the Prime Minister of 20 June 2002 on the "Principles of Legislative Technique".[1] Legal commentators and authors also mention the principle of the depth of statutory regulation of tax,[2] which has a direct reference to the regulation of the object of taxation, and therefore to that element of the legal structure of tax which is of a primary nature. Its normative shape determines what area of behaviour of entities and objects of this behaviour will be subject to regulation.[3] Incorrect classification of the object of taxation may lead to numerous disputes in the practical application of tax law, resulting in a significant number of individual interpretations of tax law provisions, as well as administrative court rulings.[4]

Hence, it is important not only for the legislator to choose the area to be included within the object of taxation, but also to use appropriate legislative techniques to express it. Both the choice of the area subject to regulation in this element of the legal structure of the tax and its legislative approach should be related to a given type of tax benefit, qualified by its object.

One characteristic example in this respect is the definition of the object of taxation in real estate tax in relation to buildings and structures. The legislator, when choosing the area to be included within this element of the legal structure of tax, decided to clarify it by introducing a legislative technique, which is a legal definition. Using a legal definition to express the object of taxation in real estate tax,

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[1] Consolidated text, Journal of Laws 2016, item 283, as amended. Pursuant to § 5 of this Regulation, the provisions of the Act are drafted concisely and synthetically, avoiding excessive detail, and at the same time in a way that describes typical situations taking place in the field of matters regulated thereby. It is therefore worth noting that excessive detail should be avoided when defining the object as an element of the legal structure of tax.

[2] R. Mastalski, E. Fojcik-Mastalska, *Zasada zupełności ustawowej w prawie podatkowym*, [in:] *Konstytucja – ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl*, eds. T. Dębowska-Romanowska, A. Jankiewicz, Warszawa 1999, p. 390.

[3] R. Mastalski, *Prawo podatkowe*, Warszawa 2019, p. 53.

[4] W. Miemiec, P. Borszowski, [in:] *Prawo podatkowe z kazusami i pytaniami*, ed. P. Borszowski, Warszawa 2023, p. 28.

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Data: 24/11/2026 09:10:10

which is essentially a property tax,[5] is a correct legislative solution that allows for defining the framework for the normative recognition of a property component that is a building or a structure, respectively. It should be noted that the use of a legal definition by the national legislator is one of the important ways of expressing the object of taxation, which should be assessed not only in terms of the implementation of Article 84 of the Polish Constitution,[6] but above all in terms of the requirement of statutory definition of the object of taxation listed in Article 217 of the Polish Constitution.

The use of legal definitions to express the object of taxation should be double-specific, firstly by defining the area of regulation for the selected legal definition, and secondly by the function that this definition performs and its consequences for the interpretation process.

However, when choosing this typical legislative technique, it is important to use a conceptual framework appropriate to express the object of taxation in property tax, with limited application of statutory regulations from branches of law other than tax law. It should be borne in mind in particular that the use of solutions from other branches of law when constructing the object of taxation, which *de facto* further define this initial element of the legal structure of tax, may cause significant problems in tax practice due to the different objectives of the regulations. This state of affairs was confirmed by the doubts that existed in the previous legal situation regarding the qualification of a building or structure as the object of taxation in real estate tax, despite the existing legal definitions of these concepts.[7]

Confirmation of these doubts, and above all the difficulties that legal definitions specifying the object of taxation in real estate tax caused for the process of applying tax law, was the judgment of the Constitutional Tribunal of 4 July 2023 (SK 14/21), in which the Tribunal found the provision formulating the legal definition

[5] R. Mastalski (*Prawo…*, p. 583) points out that this tax, being a property tax, also contains elements of income tax in its structure.

[6] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 23.12.2025).

[7] A clear example is a resolution of the seven-judge panel of the Supreme Administrative Court of 29 September 2021 (III FPS 1/21, ONSAiWSA 2021, no. 6, item 89), in which a conceptual qualification of a building was made due to its distinctive feature, i.e. usable area. In the said resolution, the Supreme Administrative Court found that "A civil structure, being a structure within the meaning of Article 3 (3) of the Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws 2010, no. 243, item 1623, as amended) in conjunction with Article 1a (1) (2) of the Act of 12 January 1991 on local taxes and fees (consolidated text, Journal of Laws 2010, no. 63, item 613, as amended), may, for the purposes of real estate taxation, be deemed to be a building within the meaning of Article 1a (1) (1) of the Local Taxes and Fees Act, if it meets the criteria for being a building set out therein, and its distinguishing feature is the usable area referred to in Article 4 (1) (2) of the Local Taxes and Fees Act".

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Data: 24/11/2026 09:10:10

of a structure in real estate tax to be inconsistent with the Polish Constitution.[8] As a consequence of this judgment, new definitions of a building and structure in real estate tax were introduced as of 1 January 2025.[9] This means that the legislator not only once again noticed the need to express the object of taxation in real estate tax through a legal definition, but at the same time it puts forward an additional argument for using this typical legislative technique as a means of meeting the statutory requirement of specificity of the object of taxation.[10]

The aim of this article is therefore to assess the implementation of this requirement in the new legal definition of a building in real estate tax. The choice of this definition for consideration was dictated by the principle of priority of a building over a structure, maintained by the legislator. This principle results not only from the location of this legislative solution in Article 1a (1) (1) of the Act of 12 January 1991 on local taxes and fees,[11] but also from the very definition of the initial scope of the definition of a structure and, above all, from the regulation of the object of taxation.[12]

ENSURING A CERTAIN DEGREE OF AUTONOMY IN THE TAX DEFINITION OF A BUILDING

The analysis of the definition of a building under Article 1a (1) (1) of the Construction Law allows us to clearly state that the legislator has implemented a certain degree of autonomy, comparing the solution that was in effect in this respect until the

[8] In this judgment, the Constitutional Tribunal found that "I. Article 1a (1) (2) of the Act of 12 January 1991 on local taxes and fees (Journal of Laws 2023, item 70) is inconsistent with Articles 84 and 217 of the Constitution of the Republic of Poland. II. The provision mentioned in Part I shall cease to apply after 18 (eighteen) months from the date of publication of the judgment in the Journal of Laws of the Republic of Poland".

[9] Pursuant to Article 2 (1) (a) first indent of the Act of 19 November 2024 amending the Agricultural Tax Act, Local Taxes and Fees Act, and the Stamp Duty Act (Journal of Laws 2024, item 1757).

[10] It should be noted that the tax law doctrine points to the need to ensure an increased standard of specificity of tax law provisions. See H. Kisilowska, *Określoność prawa podatkowego a bezpieczeństwo prawne przedsiębiorców*, "Doradztwo Podatkowe. Biuletyn Instytutu Studiów Podatkowych" 2003, vol. 4(320), p. 5, as well as the case law of the Constitutional Tribunal and the literature cited therein. This increased standard of specificity should be applied in particular to the regulation of the object of taxation.

[11] Consolidated text, Journal of Laws 2025, item 707, as amended.

[12] In Article 2 (1) of the Local Taxes and Fees Act, the legislator lists buildings or parts thereof as the object of taxation (point 2), and only then buildings or parts thereof related to conducting business activity (point 3). Consequently, in Article 1a (1) of the Local Taxes and Fees Act, first of all, it indicates the legal definition of a building, also in the new legal status (point 1), and within the definition of a legal structure, in its initial part, it indicates that a structure is an object other than a building.

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Data: 24/11/2026 09:10:10

end of 2024.[13] It should be noted that in the current definition, the legislator has given it a normative shape that differs from that under the Construction Law.[14] Ensuring a certain degree of autonomy should be perceived on two levels, i.e. on the one hand, due to the "detachment" from the provisions of the Construction Law when it comes to abandoning the criterion of a civil structure, and on the other hand, taking into account the new normative shape of this definition introduced. Therefore, the two levels of analysis indicated above allow for the assessment of this definition from the point of view of ensuring the specificity of the object of taxation in real estate tax.

In the new definition of a building, the legislator therefore refers first and foremost to a structure erected as a result of construction works. This normative wording differs significantly from the corresponding expression used in the initial part of the definition, which was in effect until the end of 2024. In the previous legal regime, the legislator indicated in this regard that it is a civil structure within the meaning of the provisions of construction law. In practice, this meant that the tax classification of a structure as a building had to be made dependent on the fulfilment of a criterion resulting from regulations outside the scope of tax law and simultaneously having other normative objectives. Therefore, it is impossible to consider that the increased standard of specificity required for the object of taxation has been met, since the legislator introduced the criterion of a civil structure within the meaning of the Construction Law already in this initial area of the definition.

In the current normative form, the legislator first mentions a structure erected as a result of construction works. This solution therefore represents a certain degree of autonomy, as the legislator no longer refers to the concept of a civil structure, limiting itself to a reference to a structure, while at the same time classifying that structure as having been erected as a result of construction works. This does not, therefore, ensure complete detachment from the provisions of the Construction Law, which should not be assessed in negative terms. It should be emphasized that when introducing one's own (and as such autonomous) definitions of specific concepts that are technical terms, as in the case under consideration, it is possible to some extent to use terms that are used in other normative areas outside tax law, which corresponds to the relationship between the autonomy of tax law and the principle of consistency

[13] According to which the term "building" means a civil structure within the meaning of the provisions of the Construction Law, which is permanently attached to the land, separated from the surrounding space by space dividing elements, and which has foundations and a roof. In turn, according to Article 3 (2) of the Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws 2025, item 418, as amended) the term "building" should be understood as a civil structure that is permanently attached to the land, separated from the surrounding space by space dividing elements, and which has foundations and a roof.

[14] This is confirmed by the wording used in the initial part of the new definition of a building in real estate tax, where the legislator indicates that a building is a structure erected as a result of construction works.

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Data: 24/11/2026 09:10:10

and completeness of the legal system as postulated in the doctrine.[15] It is also a matter of striving to avoid casuistic regulations already formulated within the framework of this legislative measure, i.e. the legal definition, which would not be appropriate given its application to the object of taxation, with the consequence of ensuring a higher standard of certainty of this element of the legal structure of the tax. From this point of view, the component of this definition, included in its initial part, meets this standard, as it refers to a structure that is the result of construction works, which are also specified in the catalogue of definitions set out in Article 1a (1) (2b) of the Local Taxes and Fees Act.[16] The reference in the definition of construction works to specific concepts, such as construction, reconstruction, or extension, to which the provisions of the Construction Law apply, allows for the identification of the result of specific categories of construction works that form part of the definition in the form of a structure within the meaning of Article 1a (1) (1) of the Local Taxes and Fees Act.

The applied legislative solution should therefore be assessed positively from the point of view of a certain degree of autonomy in the tax definition of a building, and thus ensuring a higher standard of specificity of the provisions defining the object of taxation in real estate tax. The legislator, already in the initial part of this definition, gives it a tax form consistent with the purpose of tax law regulation, while at the same time taking into account the specific nature of the object of real estate tax regulation, and therefore relating to a specific asset. The tax aspect in this regard is contained in the term "result", which must first be applied to construction works.

EXPRESSION OF ELEMENTS OF THE DEFINITION OF A BUILDING AS A MEANS OF IMPLEMENTING THE SPECIFICITY OF THE OBJECT OF TAXATION

As part of the second level of analysis, it is necessary to point out the entirety of the normative shape of the legal definition of a building, which differs significantly from the previously applicable one. The legislator introduces two scopes of definition, which can be conventionally described as positive and negative. The first one covers those elements whose fulfilment determines the existence of a building category within the meaning of tax law, while the second one lists situations excluded from this definition. The adoption of this method of regulation deserves approval, given that it ensures a higher standard of certainty in tax law with regard

[15] See R. Mastalski, *Autonomia prawa podatkowego a spójność i zupełność systemu prawa*, "Przegląd Podatkowy" 2003, no. 10, pp. 12–17.

[16] The term "construction works" should be understood as works involving construction, reconstruction, extension, superstructure, conversion, or assembly, to which the provisions of the Construction Law apply.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 24/11/2026 09:10:10

to the object of taxation. However, consideration of each of these areas points to the need to take into account the consequences of adopting a higher standard of specificity of the object of taxation.

Within the positive scope, apart from the already mentioned element of the structure erected as a result of construction works, the legislator adds systems ensuring the possibility of using the structure in accordance with its intended purpose. The introduction of this element, also in the initial part of this legal definition, results in a certain broadening of its scope, which stems from the use of a legislative technique involving vague wording. Therefore, taking into account the context of ensuring a higher standard of certainty, it is necessary to propose an interpretation of the adopted expression that does not lead to an extension of the scope of the definition of a building by including systems and covering every case related to such systems.

It is therefore necessary to accept the need to understand this expression in such a way as to take into account its dual specificity, i.e., firstly, it refers to systems that enable the use of a given structure, serving its functioning, and secondly, systems that serve the use of the specific structure exclusively in accordance with its intended purpose. As such, the intended use of this particular structure should be a key factor. From this point of view, the definition of a building should not cover situations where systems have been installed in a given structure that cannot be directly related to the purpose of that specific structure. This interpretation of the aforementioned element of the definition corresponds to the legislator's intention in implementing the requirement for a higher standard of specificity of the provisions defining the object of taxation, and at the same time directly serves to ensure the discharge of a tax liability.

The other elements of the positive scope, i.e., permanent attachment to the land, separation from space by means of space dividing elements, and having foundations and a roof, are copied from the previous definition of a building. The fact of including them in the definition means that, under the new legal regime, their meaning should also be determined taking into account the practice established to date in the case law of administrative courts, apart from the element of permanent attachment to the land, for which the legislator has introduced a legal definition. This understanding of these elements is also consistent with the requirement of certainty of the object of taxation, while allowing the existing case law practice to be maintained.[17]

[17] For example, the judgment of the Supreme Administrative Court of 30 November 2003 (III FSK 831/22, LEX no. 3649673), concerning the separation of space by means of space dividing elements, remains valid under the current legal regime. In this judgment, it is therefore rightly assumed that the term "separated from the space by means of space dividing elements" has two characteristics: separation from the space and a space dividing element. The function of a space dividing element is to separate the building from the external space in such a way that, in principle, it would be possible

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 24/11/2026 09:10:10

A new feature is the definition of permanent attachment to the land.[18] This undoubtedly confirms a certain degree of autonomy in the tax definition of a building, serving to ensure a higher standard of certainty regarding the object of taxation. Consequently, the introduction of this definition means that it is not possible to take into account the existing case law of administrative courts concerning permanent attachment to the land.[19] The key factors will be those resulting from the legal definition of this concept, i.e., the specific classification of a civil structure as being attached to the land by ensuring its stability and ability to withstand external factors beyond human control that are likely to destroy or cause the civil structure to shift or move.

The positive scope was clarified by excluding structures where loose materials, materials in pieces, or materials in liquid or gaseous form are or may be stored, whose basic technical parameter determining their purpose is capacity. It should be acknowledged that the manner in which the negative scope of the definition of a building is expressed is characterized by a significant degree of specificity when it comes to ensuring conceptual precision in general. Such identification of structures, i.e., those in which the aforementioned materials, such as loose materials, may be stored, and the addition of a qualification based on a basic technical parameter de-

to describe which part of the general space belongs to the structure and which is external to the same. A space dividing element does not have to be a wall, although a wall (as a structural element) is a space dividing element. The separation of space by means of space dividing elements should be approached functionally, while also taking into account the effects of this functional approach, considering the socio-economic understanding of the regulations. As such, cases where separation is illusory cannot be classified as separation from space by means of space dividing elements". Similarly, when it comes to the characteristics of a roof, it is worth referring to the judgment of the Supreme Administrative Court of 12 January 2023 (III FSK 1775/21), where it was ruled that "Temporary, short-term deprivation of space dividing elements or a roof resulting from renovation works (reconstruction, extension, superstructure) cannot be equated with the non-existence of a building".

[18] Pursuant to Article 1a (1) (2) (c) of the Local Taxes and Fees Act, the term "permanent attachment to the land" should be understood as a connection between a civil structure and the land that ensures the stability of the structure and its ability to withstand external factors beyond human control that are likely to destroy or cause the civil structure to move or shift to another location.

[19] For example, it is impossible to take into account the interpretation of this concept indicated in the judgment of the Supreme Administrative Court of 30 November 2023 (III FSK 831/22). In the aforementioned judgment, the Supreme Administrative Court stated that "1. The concept of 'permanent attachment to the land' means both that the building has foundations that are located below ground level (buried in the ground) and that the building has a permanent (rigid, stable, continuous, unchanging) connection to those foundations. A civil structure is not permanently attached to the land if the lower surface of its base (foundation) is at ground level and its relocation or demolition does not require earthworks. Detaching a civil structure from its foundations, leading to a significant change to the whole and sometimes also to damage or destruction of the part of the building located above the foundations, negates the possibility of treating the detached part (without the foundations forming part of the civil structure) as a building. As a result, a temporary civil structure which is not permanently attached to the land or which is intended to be moved is not considered a building. A temporary civil structure intended for demolition until such time as this is carried out may be a building".

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 24/11/2026 09:10:10

termining their purpose in the form of capacity, means that the legislator has taken into account the effects of socio-economic developments that are so important for the entire tax law, the consequences of which can also be seen in the area of real estate taxation.[20]

The statutory indication of situations which, despite meeting the elements of the definition of a building, are characterized by the features listed in the negative scope means that the legislator, by narrowing the scope of this definition, simultaneously fulfils the requirement of statutory determination of the object of taxation.

CONCLUSIONS

The new legislative solution regarding the definition of a building in real estate tax deserves approval from the point of view of fulfilling the statutory requirement to define the object of taxation. Particular emphasis should be placed on the legislator's use of this legislative measure in formulating the object of taxation, and as such one of the basic elements of the legal structure of the tax. The use of this definition should be clearly postulated by tax legislators as a means of implementing the requirement arising from Article 217 of the Polish Constitution.

It should therefore be noted that in the case of expressing the object of taxation in relation to a building in real estate tax, the legislator used the initial definition of a building, which was then clarified using further definitions that can be described as clarifying the initial concepts at a second level of detail. It is therefore a question of defining permanent attachment to the land and construction works. This undoubtedly confirms compliance with the statutory requirement to specify the object of taxation.

[20] It should also be noted that the negative scope of the definition of a building takes into account, in a sense, the case law of the Supreme Administrative Court, including, in particular, the resolution of the seven-judge panel of 29 September 2021 (III FPS 1/21), where it was accepted that "A civil structure, which is a structure within the meaning of Article 3 (3) of the Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws 2010, no. 243, item 1623, as amended) in conjunction with Article 1a (1) (2) of the Act of 12 January 1991 on local taxes and fees (consolidated text, Journal of Laws 2010, no. 63, item 613, as amended), may be considered a building within the meaning of Article 1a (1) (1) of the Local Taxes and Fees Act for the purposes of real estate tax if it meets the criteria for being a building set out therein and its distinguishing feature is the usable area referred to in Article 4 (1) (2) of the Local Taxes and Fees Act".

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Data: 24/11/2026 09:10:10

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ABSTRAKT

W artykule poddano analizie nowe rozwiązanie legislacyjne, jakie wprowadził ustawodawca w ramach podatku od nieruchomości, które dotyczy definicji legalnej budynku. Definicja ta precyzuje przedmiot opodatkowania w podatku od nieruchomości. Dlatego też konieczne jest dokonanie jej analizy z punktu widzenia spełnienia ustawowego wymogu określoności przedmiotu opodatkowania, co jest celem niniejszego opracowania. Realizacja tego celu wymaga w pierwszej kolejności wykazania pewnej autonomii ustawodawcy podatkowego w ramach nowego kształtu tej definicji.

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Data: 24/11/2026 09:10:10

W dalszej kolejności należało dokonać analizy elementów definicji budynku z punktu widzenia realizacji ustawowego wymogu określoności przedmiotu opodatkowania. Przeprowadzona analiza stanowi potwierdzenie tego, że prawodawca w nowej definicji budynku w znacznym stopniu zrealizował wymóg ustawowego określenia przedmiotu opodatkowania. Potwierdzeniem tego jest nie tylko zastosowany środek techniki prawodawczej w postaci definicji legalnej, ale przede wszystkim jej kształt normatywny. W nowej definicji w znacznie mniejszym stopniu ustawodawca odwołuje się do ustawy Prawo budowlane, a ponadto wskazuje dwa zakresy tej definicji, co w istotny sposób stanowi doprecyzowanie przedmiotu opodatkowania.

Słowa kluczowe: podatek od nieruchomości; definicja legalna; budynek; przedmiot opodatkowania

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