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Possibly higher real estate tax for owners of wind power plants

Tax Alert

Dear Readers,

It is most likely that from 1 January 2017 the principles for taxing the real estate of wind power plants will be changed. The changes, although not articulated directly in the Tax Law provisions, are provided for in the Act of 20 May 2016 on wind power plant projects (the "Act"). At present, the legal act is awaiting the signature of the President of the Republic of Poland.

The main objective of the Act is to regulate the issues of construction and location of wind power plants. The adopted solutions are in fact designed to provide construction supervision for wind power plants. To achieve the desired effect, the legislator changed the definition of a "structure" in Article 3(3) of the Act of 7 July 1994 on Construction Law (Journal of Laws [Dz. U.] of 2016, item 290, as amended). The term "wind power plants" was deleted from the part of the definition listing sample technical facilities whose building elements may be considered a structure. Consequently, due to the fact that the Act on local taxes and fees (Journal of Laws [Dz. U.] of 2016, item 716, as amended) directly refers to the definition of a structure in terms of real estate tax, the legislative procedure may entail potentially far-reaching tax consequences. The new definition of a structure may in fact cause that the real estate tax of 2% will have to be calculated on the value of the entire wind power plant, and not only its building elements, as is the case at present. This means that the tax will be applied to the foundation, the mast and technical facilities of the wind power plant (rotor, drivetrain, generator, steering systems, nacelle with fastening and rotating mechanism), which form a significant part of the total value of a wind power plant.

Even though, as pointed out in the introduction, the new Act does not directly indicate that the said changes in real estate tax will take place, this approach is supported with the analysis of the transitional provisions of the Act. Article 17 of the Act stipulates that until 31 December 2016, the real estate tax for wind power plants will be calculated and collected under the provisions applicable before the date of entry into force of the Act. This gives base for the assumption that the changes made to the definition of a structure will also result in specific effects for the real estate tax. Unfortunately, the explanatory memorandum to the Act in no way relates to this issue.

In summary, the adopted solutions may cause, primarily, a significant increase in costs associated with maintaining wind power plants as well as numerous disputes with the tax authorities on the correct assessment of a tax base for real estate tax for wind power plants. The current regulations already form a basis for discrepancies between taxpayers and the tax authorities in this regard. The new regulations, due to their wording, seem to be even more problematic. Failure to include "wind power plant" in the sample list of technical facilities whose building elements may be considered a structure does not necessarily imply that they should be taxed as a whole.

Given the above, we encourage you to contact us to discuss changes and their consequences in the context of your business or investment in wind power plants.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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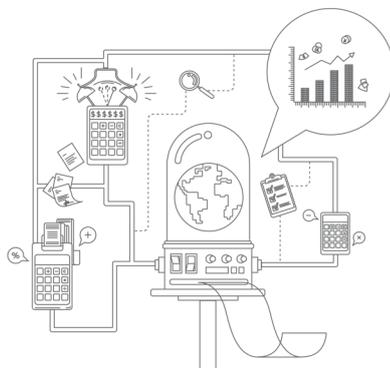
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