

WINDFARMS LOSE IN COURT

We wish to alert you to a judgment of the Provincial Administrative Court in Bydgoszcz dated 21 February 2017 (case no. I SA/Bd 866/16) relating to the real estate tax on wind turbines (the judgment is not final and definitive yet).

The case commenced with an appeal from a private tax ruling where a local authority held that, as of 1 January 2017, real estate tax applies to the value of the entire wind turbine. The applicant, on the other hand, argued that the tax should apply only to the foundation and the tower, but not to any engineering equipment that is part of the turbine.

The court dealing with the appeal did not agree with the applicant's position (that, as of 1 January 2017, the tax applies only to structural parts of the turbine). According to the court, it is clear from Article 2(1) of the Wind Turbine Investment Projects Act of 20 May 2016 ("WTIPA") that the entire wind turbine is a built feature (structure) subject to real estate tax.

The court, which issued a lengthy statement of reasons for its judgment, engaged in a detailed review of the legislative intent (using also transcripts of Parliamentary sessions) and concluded that one of the purposes the legislator had in mind when drafting WTIPA was to change the tax treatment of wind turbines. According to the court, this taxpayer-unfriendly construal is supported by the wording of Article 17 WTIPA, which says that the real estate tax treatment of wind turbines was to remain unchanged until the end of 2016. Hence, the court reasoned, if the legislative intent were to not change the definition of a wind turbine and, hence, not to modify its tax treatment as of 1 January 2017, Article 17 would be unnecessary.

Note that this is one of the first court decisions on the tax treatment of wind farms under the new law (WTIPA).

As the issue is controversial, it is going to be finally resolved by the Supreme Administrative Court, which means there are about two more years ahead of us when the tax treatment of wind farms will remain uncertain.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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