

January 2021

The Act on promoting electricity generation by offshore wind farms signed by the President

On 21 January 2021, the Polish President signed the Act on promoting electricity generation by offshore wind farms.

The Act provides for a raft of measures facilitating the use of the wind energy potential, but also an additional concession fee applicable to offshore wind farms, presented as an equivalent to real estate tax.

Support for offshore wind power generation

The Act is in line with the assumptions of the EU Strategy for Offshore Renewable Energy Sources, supporting accelerated development of offshore renewable energy in the European Union. The Strategy calls for an increase in the installed capacity of offshore wind energy from the current 12 GW to 60 GW by 2030 and a 25-fold increase in the current capacity to 300 GW by 2050.

The Act is also to address the need of extending the share of renewable energy sources (RES) in the so-called national energy mix. In fact, one of the climate targets included in the Integrated National Energy and Climate Plan 2021-2030 is to achieve a 27 percent share of RES in final net energy by 2030. To attain this goal, the Act introduced the support scheme for offshore wind power generation along with simplified administrative and legal procedures, thereby contributing to a more effective investment process in the field of offshore wind farms.

Offshore wind farms electricity generators enrolled on the support scheme will be granted the right to cover the so-called negative balance – which practically means covering the difference between the market energy price and the price enabling generators to cover the offshore electricity generation costs.

During Phase 1 of the scheme operation, which can be entered into until 30 June 2021, support is to be granted by way of an administrative decision of the President of the Energy Regulatory Office, at the request of the energy generator. In the years to come, however, support will be granted in the formula of competitive tenders.

Importantly, participation in Phase 1 will be possible only for projects that are the most advanced in terms of the investment process, guarantee energy production before 2030, and are located in an area with the lowest average cost of generating and delivering electricity.

A total capacity of offshore wind farms eligible for participation in Phase 1 is determined by the Act and amounts to 5.9 GW. The right of negative balance coverage will not be granted to offshore wind farms, if their admission to the support scheme would result in exceeding this value. The order in which complete applications are submitted will decide on the priority of granting the right to negative balance coverage.

Later, during Phase 2 of the scheme operation, support will be granted by way of “Pay-as-Bid” auction.

During the auction, each generator will enter one offer, undisclosed to other auction participants. The auctions will be settled using the offer price, with the lowest winning. The auction mechanism designed in this way is to enable the minimization of the costs of development of offshore wind technologies on the Polish market for the end user and constitute a significant incentive to search for innovative technological solutions enabling the reduction of electricity production costs.

Fee on offshore wind farms

Furthermore, the Act introduces the obligation to pay an additional concession fee, which is to apply to energy sector companies engaged in the production of electricity via offshore wind farms.

Pursuant to the explanatory memorandum to the Act, the goal behind introducing a new fee is to ensure that the tax system in force will not influence decisions on the choice of RES-based power generation technology. Currently, offshore wind farms are not subject to real estate tax to the same extent as onshore renewable energy sources. The new fee is therefore to standardize the fiscal burdens on all RES facilities, regardless of their primary energy-generating product and place of electricity production.

According to the definition included in the Act, an offshore wind farm shall mean an installation constituting a separate set of energy generation facilities consisting of one or more offshore wind turbines and a medium voltage grid together with substations located in the sea, excluding equipment on the upper voltage side of a transformer or transformers located at this substation.

An energy sector company granted a license to generate electricity via offshore wind farm will be charged an additional fee on its operating costs, payable to the State budget annually.

The amount of the fee will be the product of the installed capacity of a wind farm expressed in MW and the appropriate ratio specified in a decree issued under the Polish Energy Law.

The cap set on the ratio by the Act may not exceed PLN 23k/MW.

The ratio was set in such a way to balance the fiscal burden on offshore and onshore wind technologies. It shall express the difference between the average real estate tax on onshore wind farms, amounting to PLN 36k/MW annually, less the average fee for issuing a permit for the construction and use of offshore wind farm artificial islands, structures and devices located in Polish maritime areas, under the Act on maritime areas of the Republic of Poland and maritime administration, calculated for a one year of project operation, amounting to PLN 5k PLN/MW/year and the average real estate tax, calculated as 2 percent of the estimated value of the land part of the offshore wind farm infrastructure, amounting to PLN 8k PLN/MW/year.

The new fee will directly fuel the State budget, with no participation of local communities.

The Act will enter into force 14 days after its publication in the Polish Journal of Laws.

If you would like to learn more about the issues discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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KPMG offices

Warsaw

ul. Inflancka 4a
00-189 Warsaw
Tel. : +48 22 528 11 00
Fax: +48 22 528 10 09
kpmg@kpmg.pl

Gdańsk

al. Zwycięstwa 13a
80-219 Gdańsk
Tel. : +48 58 772 95 00
Fax: +48 58 772 95 01
gdansk@kpmg.pl

Kraków

ul. Opolska 114
31-323 Kraków
Tel. : +48 12 424 94 00
Fax: +48 12 424 94 01
krakow@kpmg.pl

Katowice

ul. Francuska 36
40-028 Katowice
Tel. : +48 32 778 88 00
Fax: +48 32 778 88 10
katowice@kpmg.pl

Poznań

ul. Roosevelta 22
60-829 Poznań
Tel. : +48 61 845 46 00
Fax: +48 61 845 46 01
poznan@kpmg.pl

Łódź

ul. Składowa 35
90-127 Łódź
Tel. : +48 42 232 77 00
Fax: +48 42 232 77 01
lodz@kpmg.pl

Wrocław

ul. Szczytnicka 11
50-382 Wrocław
Tel. : +48 71 370 49 00
Fax: +48 71 370 49 01
wroclaw@kpmg.pl



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