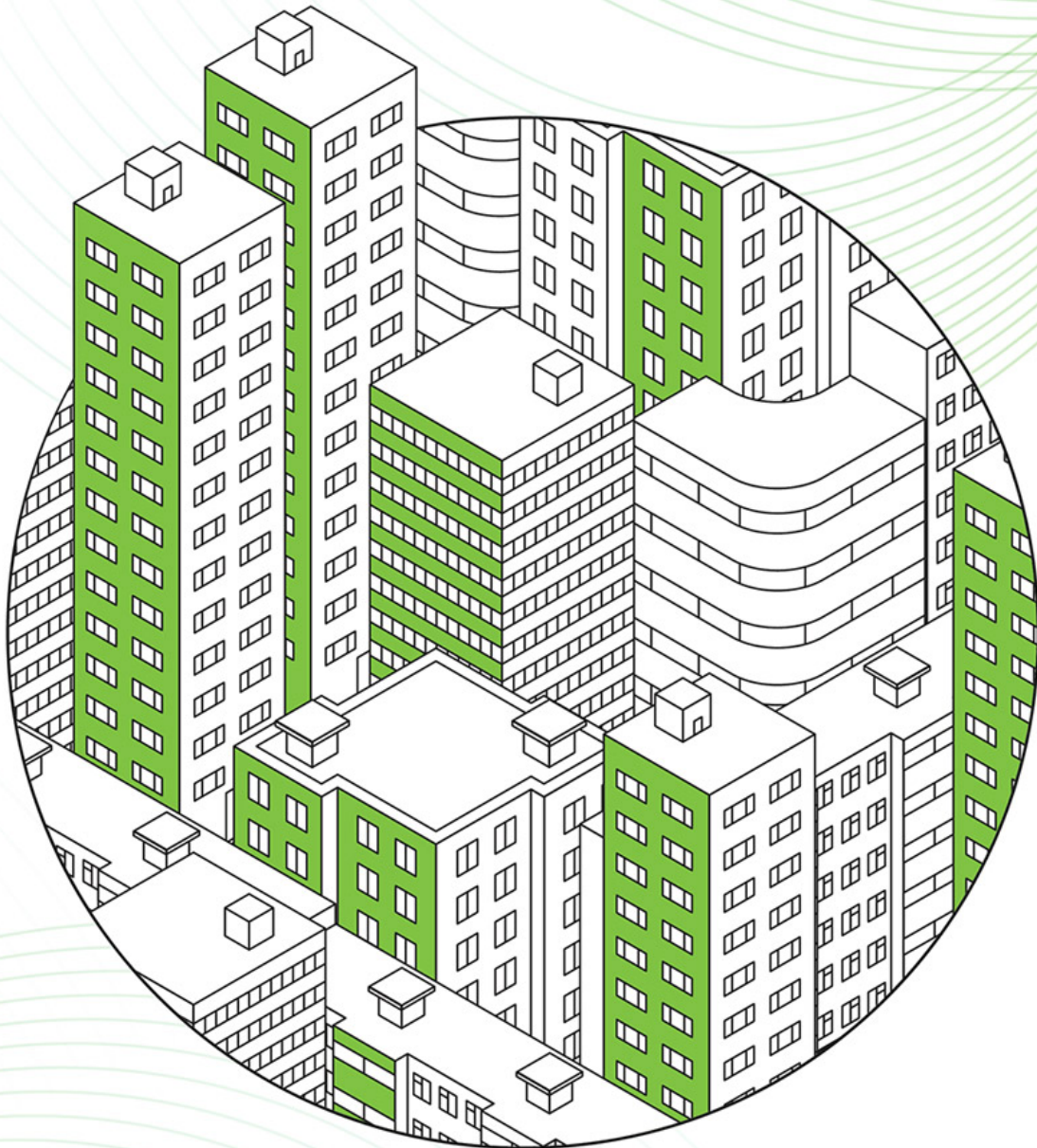


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Maximum electricity prices for SME / entities that reinvoice costs of energy

In November 2022, the Act of 27th October 2022 on Special Measures Aimed at Limitation of Electrical Energy Prices and Supporting Some Recipients in 2023 (henceforth: "Act") came into effect. According to the Act, in the period from 1st December 2022 to 31st December 2023, electricity sellers are obliged to apply the statutory maximum price of PLN 785/MWh (no VAT and excise duty included) to selected electricity recipients (in particular SME).

Following the amendment to the Act which became effective on 1st January 2023, the entitlement to the maximum energy prices has been extended to entities that reinvoice the costs of electricity to their tenants on terms specified in the Act (the above may apply i.a. to owners of trade malls, office buildings or warehouses; henceforth: "Reinvoicing Entities").

In practice, the Act generates numerous interpretation concerns, both for the energy recipients, and sellers.

Formal requirements

The maximum prices apply only to selected classes of entities included on a fixed list. In principle, in order to be entitled to the maximum price, an entity must file an appropriate statement with the energy seller (this does not apply to certain cases, e.g. recipients in households).

Please note that the provisions regarding the maximum price for Reinvoicing Entities were introduced on 1st January 2023, and on certain conditions could be applied retrospectively to the electricity purchased after 1st December 2022. Bearing in mind the interpretation doubts referred to above, the filing of a statement regarding the entitlement to the maximum price has not been in the past and still is not free of certain legal risks (in particular with regard to Reinvoicing Entities).

Maximum price vs electricity purchased in 2022

In certain cases, the maximum prices apply to electricity purchased by the recipients prior to 1st December 2022.

In such cases, referred to by the Act, sellers of electricity, who after 23rd February 2022 concluded with entitled recipients energy sale agreements / energy sale and distribution agreements regarding supplying energy in the period until 3rd November 2022, should settle the accounts resulting from application of the maximum price proportionally, in monthly instalments, until 31st December 2023.

In connection with the above regulation, electricity sellers often offer energy recipients (entitled to maximum prices) settling the maximum price (in relation to energy supplied up until 3rd November 2022) with the current invoices.

Practical problems

Since the provisions of the Act are sometimes ambiguous, entities are recommended to consider using legal advice regarding their entitlement to the maximum prices.

Owners of commercial space may have doubts regarding both the entitlement of their tenants to the maximum prices (and the manner of assessment of such entitlement) and the appropriate settlement approach. In practice, these problems may significantly affect landlord-tenant relations.

Furthermore, it is not always clear whether electricity sellers should settle the amounts overpaid prior to the application of the maximum prices on a one-off basis or offset them with the current invoices.

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In addition, the tax consequences in this regard should be thoroughly analyzed, particularly with regard to VAT and CIT settlements for corrective invoices received from the energy vendor, for direct re-invoices to tenants and also the settlement of energy price adjustments under the annual service charge payments.

If you need legal or tax advice regarding the effects of the Act on your business, our multidisciplinary team is ready to help you.

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