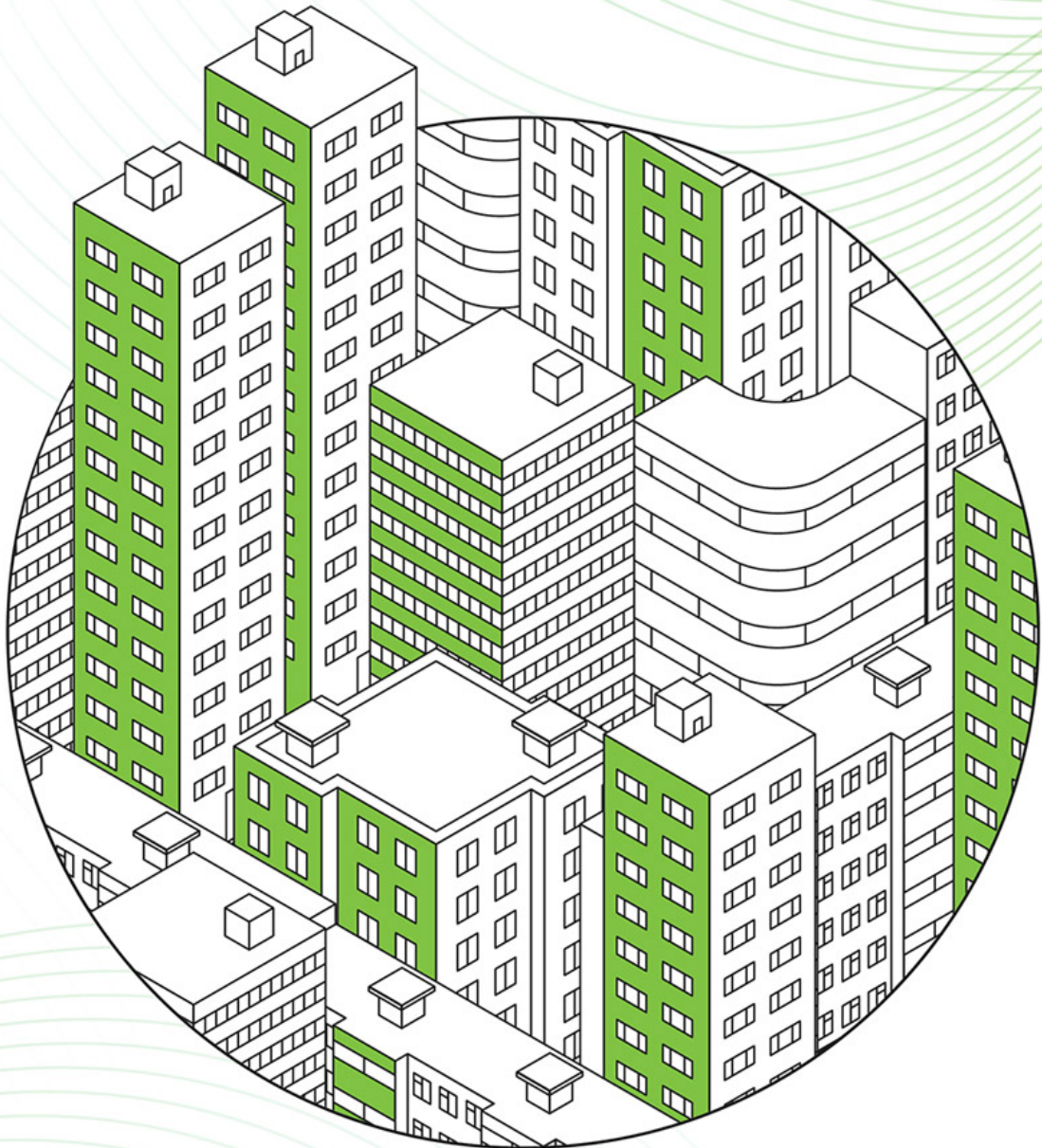


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Maximum electricity prices for SME / entities that reinvoice costs of energy

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.

TAX

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.

If you need more information, you are welcome to contact the authors of the article:

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PRS investment in Poland

Recently, the popularity of Polish Private Rented Sector (PRS) among investors has grown and they plan to invest more in this type of assets. Based on our experience, in order to ensure predictable returns on PRS investments, tax aspect should be properly handled as early as at the investment planning stage.

Below please find a brief presentation of PRS-specific tax aspects, which need to be considered in the course of a decision making process:

- Determining the appropriate VAT rate applicable to rental services. As no established practices exist, due to minor differences in business setup, rental services provided may be either subject to VAT, or VAT-exempt, which materially affects the ability to have VAT paid upon asset acquisition, construction or operation refunded. This issue is of particular importance in the context of PRS investments.
- According to information originating from government sources, there are plans to introduce an increased six-percent transfer tax on the acquisition of residential assets. No official draft act has been prepared in this respect yet. Importantly, the transfer tax will apply even to assets whose acquisition is taxed with VAT.

- Residential buildings will not undergo tax depreciation. The change, though, should not apply to fixed assets separated from such facilities or parts of buildings not intended for residential purposes.
- Using real estate tax rates applicable for commercial property, which are almost 30 times higher than those applicable to residential property.

If you need support in analyzing and addressing tax aspects of PRS projects, do not hesitate to contact us. We are ready to share our experience and discuss potential challenges and opportunities.

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Bill amending the Act on Spatial Planning and Development and their effects on investment processes

On 7 March 2023 the Council of Ministers of the Republic of Poland passed a bill act amending the Act on Spatial Planning and Development ("Bill"). New regulations are to simplify, accelerate and unify spatial planning procedures in municipalities. On 23 March the Bill was filed with the Parliament, where it shall be proceeded.

Projected changes

1. Master Zoning Plan as a new generally applicable law

In line with the spatial planning reform, the zoning study, which is a document used by municipalities, shall be eliminated, and replaced with a more concise and standardised Master Zoning Plan, to be prepared for the entire municipality area on an obligatory basis to allow easier access to comprehensive information on spatial development options available. Importantly, Master Zoning Plans will be the source of generally applicable law, qualifying as a local law. According to the Bill, Master Zoning Plans must contain arrangements regarding planning zones (spatial functions) and urban development standards, which will differ depending on a specific planning zone and will determine, among others, the maximum land development intensity, maximum height of buildings and the minimum biologically active zone ration. Prospective investors will be unable to affect the contents of Master Zoning Plans in the form of administrative procedures aimed at amendments thereto. The contents and conditions set in the Master Zoning Plans will be left to the discretion of municipalities.

2. Civic law-making initiative, Municipality Development Strategy and Urban Register

The Bill provides for more civic initiative while planning procedures in the form of consulting and law-making initiative. The law-making initiative will be granted to a group of local citizens holding voting rights.

Under the Bill, in 2026 a free-of-charge, publicly available Urban Register will be established and maintained in an IT system. It will contain social consulting reports, administrative decisions issued during investment processes and decisions of oversight bodies. Additionally, as of 2026, each municipality will have to develop a Municipality Development Strategy determining the local policy direction, including spatial planning. Guidance included in the Strategy will translate into specific regulations of the Master Zoning Plan, which in turn will provide foundations for local zoning plans and zoning permits.

From the investment viewpoint, though, the key change will involve the Integrated Investment Plan and new principles of issuing zoning permits.

3. Integrated Investment Plan: substantial changes for investors

Integrated Investment Plan (IIP) is a special type of local zoning plan, developed upon an investor's motion, when negotiations have been completed and an urban development agreement concluded between an investor and a municipality, determining investment terms and conditions, as well as obligations of the parties thereto. IIP may be prepared for any investment type, if there is no local zoning plan developed for a given location, or if such plan disallows the planned investment. Passing of IIP makes the existing local zoning plan invalid in whole or in part referring to the area included in the IIP. IIP assumptions must comply with provisions of the Master Zoning Plan. Regarding residential investments, as of 31 December 2025 IIP shall replace resolutions on the location of residential investments provided for by the Act on Simplified Preparation and Implementation of Residential and Auxiliary Investments of 5 July 2018 (Journal of Laws of 2018, item 1496).

IIP applies to the place where an investor wants to locate the main investment and auxiliary ones (such as access roads or other infrastructure the construction of which is expected by a given municipality). IIP may assume that a part of both the main investment and of the auxiliary ones shall be transferred to the municipality; that costs of the auxiliary ones are funded, or that other performances are provided by the investor. Only when the new regulations come into effect, we will be able to find out whether negotiations between municipalities and investors are practicable and whether they may discourage the latter from using IIP.

4. New regulations regarding the issue of land development conditions. What areas zoning permits apply to?

If the proposed spatial planning reform comes into effect, zoning permits will remain in force for areas where no local zoning plan has been developed. According to the Bill, Master Zoning Plans will determine specific planning zones in municipalities, such as multi-family and single-family residential zones, service zones, green and recreational areas, etc. Unlike now, land development conditions to be determined will not depend on the preservation of the existing land function. When issuing zoning permits, administration bodies will verify whether the function of the planned investment complies with the one determined in the Master Zoning Plan, but they will not analyse the function of the adjacent areas.

5. Expiry date of zoning permits in the context of those already issued

The spatial planning reform assumes the return of an expiry date for zoning permits. Under the Bill, such permits will remain binding for five years of their effective date in line with the administrative procedure applicable.

What does, therefore, the spatial planning reform mean for the existing and pending zoning permits?

Permits issued prior to the effective date of the reform will remain binding and provide the basis for construction permits to be obtained. When the reform comes into effect, until Master Zoning Plans are passed, investors may obtain zoning permits. If by 31 December 2025 no Master Zoning Plan is adopted, as of 1 January 2026 no zoning permits can be obtained in municipalities without such Master Zoning Plans. In such cases, investments may be carried out only based on formerly issued permits or binding local zoning plans. Therefore, investors who have prepared investment plans for locations where no local zoning plans exist, should attempt to obtain zoning permits as soon as possible to avoid substantial hurdles following the effective date of the amended law.

Will the proposed changes be adopted and introduced to the existing legal system?

The spatial planning reform is a milestone of the National Reconstruction Plan (Polish acronym: KPO). The Master Zoning Plan is the key change introduced as part of the reform as it changes the entire approach to spatial planning in municipalities. According to the Bill, Master Zoning Plans must be passed by the end of 2025, which gives a nearly three-year transition period from the current system to the new regulations. The broad scope of the planned changes requires time for everyone (local authorities, investors, urban planning specialists and industrial groups) to analyse the new regulations.

Those who plan new investments should keep in mind the planned law amendments and the resulting hindrances related to the necessity to pass Master Zoning Plans and modify the current regulations regarding zoning permits. The imminent spatial planning reform introduces new options, such as Integrated Investment Plans, which may provide an attractive alternative for prospective investors.

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