

JUDGMENT OF THE VOIVODESHIP ADMINISTRATIVE COURT ON REAL ESTATE TAX CONCERNING WIND FARMS FOR 2017

On 20 March 2019, the Voivodeship Administrative Court in Olsztyn rendered a judgment on the taxation of the technical parts of wind farms with real estate tax in a case led by Clifford Chance Warsaw. This is the first such decision issued after the Supreme Administrative Court set aside the judgment in the case concerning real estate tax for wind farms for the year 2017 (by way of the judgment of 30 November 2018, case file ref. II FSK 1567/18 – in this case the Supreme Administrative Court set aside the judgment in whole and remitted the case for re-examination to the Voivodeship Administrative Court in Olsztyn).

As a result of the re-examination, the Voivodeship Administrative Court (hereinafter the "**Court**") set aside the decision on the tax obligations with respect to real estate tax for 2017 and ordered the authority to re-examine the case taking into account the guidelines set out in the justification.

In its judgment, the Court considered the raised argument concerning the granting of unlawful public aid (i.e. awarded without a prior notification thereof to the European Commission) by the State. The Court indicated that pursuant to the settled case-law of the European Court of Justice the recognition of a specific national measure as "State aid" within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union requires that all of the following conditions be satisfied:

- there has to be an intervention by the State or through State resources;
- the intervention is likely to affect trade between Member States;
- it must give the recipient an advantage on a selective basis;
- competition has been or may be distorted.

Moreover, interventions which, whatever their form, are likely directly or indirectly to favour certain undertakings, or which fall to be regarded as an economic advantage that the recipient undertaking would not have obtained under normal market conditions, are regarded as "State aid."

Judgment of the Voivodeship Administrative Court in Olsztyn of 20 March 2019, case file ref. ISA/OI 144/19

In its decision the Court ordered the authority to re-take evidence and establish the facts, based on the considerations referred to above and legal assessments with regard to the interpretation and application of the indicated provisions of law. The authority will, therefore, examine whether the four conditions determining whether "State aid" has been granted and whether a national measure has been applied which could be recognised as being "State aid," have been satisfied.

<http://orzeczenia.nsa.gov.pl/doc/53D8BBAF08>

CONTACT

Tomasz Szymura
Counsel

T +48 22 627 11 77
E tomasz.szymura
@cliffordchance.com

Pawel Puacz
Counsel

T +48 22 627 11 77
E pawel.puacz
@cliffordchance.com

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www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660
Warsaw, Poland

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