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**ABSTRACT OF THE DOCTORAL DISSERTATION**  
**"The impact of tax law on entities generating electricity"**

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The subject of research in this doctoral dissertation are only legal acts referring directly to the concept of "tax", such as excise tax, value added tax, corporate income tax, personal income tax and real estate tax. In principle, the considerations are not conducted in the field of fees that may affect the legal and tax situation of electricity producers. The reasons for such a delineation of the research area are: the ambiguous nature of these fees due to the lack of a precise definition of the equivalent benefit in the case of fees in the field of environmental law (e.g. the fee for the use of the environment and the emission fee referred to in Article 272(1) and (4) of the Act – Environmental Protection Law) and the way in which the structural elements of the fees are included in a way that involves high technical knowledge in the field of energy. The inclusion of energy concepts in the regulations makes it impossible to enact regulations in a way that uses tax law to influence the legal and tax situation of the taxpayer. Examples of such fees are: capacity fee within the meaning of Article 69(1) of the Capacity Market Act or the RES fee referred to in Article 95(1) of the Renewable Energy Sources Act. However, fees may be mentioned in the context of this doctoral dissertation to the extent that the necessity to pay them may have certain legal and tax consequences.

The fact that the subject matter of the doctoral dissertation is limited to the process of electricity generation is dictated by the fact that it is at this stage that a specific good in the form of electricity is created. The generation of electricity enables the performance of other energy processes indicated in Article 3(7) of the Energy Law, i.e. processing, transmission, storage, distribution and use. As a consequence, it is the stage of electricity generation that results in the possibility of obtaining certain property acquisitions. In the future, this income may result in

the need to pay tax liabilities. The production of electricity should be assumed to be the subjecting of energy carriers to various physical and chemical processes, which result in the production of electricity. This research focuses both on the process of electricity generation as a business activity and on the generation of electricity for own needs. An electricity producer, within the meaning of this dissertation, should be considered any entity generating electricity, regardless of the reasons intended by the legislator. The catalogue of entities that can be considered as electricity producers within the meaning of this doctoral dissertation includes:

- entities generating electricity as part of their business activity for the purpose of its sale;
- entities generating electricity as part of their business activity for their own needs;
- non-business entities that consume the electricity generated for their own needs;
- entities partially selling electricity to energy companies as part of settlements in one of the prosumer settlement systems.

The first objective of this doctoral dissertation is to analyze the impact of tax law on entities generating electricity in Poland. The second objective of this doctoral dissertation is to formulate a general catalogue of principles of the legislator's influence on entities generating electricity by means of tax law. The third objective of this doctoral dissertation is to assess the currently applicable tax law provisions affecting electricity generation entities and to indicate possible further issues requiring the legislator to introduce further regulations on the basis of tax law.

1. The main objectives of the national legislator, pursued by tax law in the energy sector, are environmental protection, sustainable development and energy security, as well as the protection of the EU's internal market.
2. Tax law in Poland focuses more on using the stimulus function of taxes in an encouraging way than discouraging individual behaviours in the field of electricity generation.
3. The financial burden borne by electricity producers is partially offset by a system of tax incentives.
4. The Polish tax system provides for such tax incentives, the admissibility of which is determined by the conditions of operation of buildings used to generate electricity.
5. The national legislator supports the concept of green building and sustainable construction in order to promote the use of renewable energy sources for electricity generation using direct and indirect taxes, but does not use property tax for this purpose.

This doctoral dissertation consists of five chapters. The first chapter can be divided into two parts. The first part discusses the issues that make up the historical outline of the taxation

of electricity generation. This argument will serve the process of verifying the first and second hypotheses. At the beginning, considerations are made regarding the legal institution of the regalia, which concerns the primordial energy of nature. Another element of the first chapter is the presentation of the dispute between Arthur Pigou and Robert Coase regarding the model of the economic burden of conducting environmentally harmful activities. The last element of the outline of the history of taxation of electricity generation is the presentation of regulations in this matter from the times of the Second Republic of Poland, the People's Republic of Poland and the Third Republic of Poland. Such considerations make it possible to accentuate stimulation solutions along with the goals desired by the legislator in the period of the Second Republic of Poland, the People's Republic of Poland and the beginning of the existence of the Third Republic.

The second part of the first chapter consists of considerations relating to the construction of legal and financial relations affecting the legal situation of entities generating electricity, by means of which the first and second hypotheses will be verified. Within this part, the matter of the characteristics of legal and financial relations and legal and tax relations concerning the relations between the state acting through public authorities and entities generating electricity was discussed. In this part, the features of legal and tax relations are presented. First of all, the individual obligations of both public authorities and passive entities of the above-mentioned relationships are presented. In addition, considerations were carried out on the nature of electricity, fossil energy carriers and renewable energy sources on the basis of civil law and energy law.

The second chapter of the doctoral dissertation is devoted to the tax policy of the legislator in relation to the generation of electricity. As part of this, the relationship between the inclusion of the tax policy of the state and the financial policy of the state was outlined. The functions and principles of tax law that the legislator follows when establishing tax law regulations are also presented. The legal framework for conducting energy policy and tax policy in the sphere of electricity generation at the level of the Polish and EU legal order is also outlined. The main objectives of the EU and Polish tax policy towards entities generating electricity have been specified, which are:

- environmental protection and ensuring sustainable development,
- ensuring energy security and acting in the spirit of EU energy solidarity;
- distortions of competition and the internal market in the EU.

A significant limitation in the impact of tax law on entities conducting business activity in the production of electricity is the EU restrictions on unlawful state aid. The second chapter

of this doctoral dissertation also discusses the issue of state aid, with particular emphasis on the legal prerequisites for recognizing state aid as permissible in the case of granting it to electricity generating enterprises. The culmination of the second chapter is the presentation of the history of energy policy and tax policy regarding electricity generation in selected EU countries, such as:

- Germany – the choice of this country was motivated by the largest share of renewable energy sources in the energy mix in the EU;
- France – the choice of this country was motivated by the largest share of nuclear energy in the energy mix in the EU;
- Spain – the choice of this country was motivated by one of the largest shares of wind energy in the energy mix in the EU;
- Sweden – the choice of this country was motivated by the largest share of hydropower in the energy mix in the EU.

The third chapter concerns the issue of the impact of taxes on taxpayers generating electricity in the field of taxation of electricity generation with indirect taxes, i.e. excise duty and value added tax. In particular, the provisions relating to tax exemptions, tax exemptions and provisions governing the instrumental obligations of taxpayers were discussed. indirect taxes, i.e. excise duty and value added tax. As part of this chapter, the concept of a pro-environmental tax is presented as a tax aimed at implementing the principle of environmental protection law "polluter pays". As part of this chapter of the doctoral dissertation, it is proposed to distinguish between environmental tax and pro-environmental tax. The distinction between individual environmental and pro-environmental taxes indicated in the doctrine of financial law is also described. This chapter also contains an outline of the features of indirect taxes, within the meaning of EU law, with particular emphasis on the specificity of the nature of electricity as the subject of taxation. The manifestations of the stimulus function of taxes in relation to the production of electricity and the use of energy products for the production of electricity are also indicated.

The fourth chapter consists of considerations on the manifestations of the impact of tax law on entities generating electricity in income taxes, i.e. in corporate income tax and personal income tax. In particular, an argument was made regarding the provisions governing the making of depreciation write-offs by taxpayers conducting business activity in the field of electricity generation. The legal and tax consequences of legal relationships occurring with entities generating electricity are also indicated and described.

The fifth chapter is devoted to the matter of the impact of tax regulations on entities generating electricity in real estate tax. In particular, provisions imposing the right for municipal councils to establish resolutions regulating rates and exemptions in real estate tax have been taken into account. The provisions concerning the scope of real estate tax were also analysed. This chapter describes the issue of the tax authority of municipalities and the legal structure of the right of municipalities to establish additional tax exemptions than those expressed in the Act on Local Taxes and Fees in the resolutions of the municipal council.

As part of this doctoral dissertation, such research methods as the dogmatic legal method, the historical-legal method and the comparative method were used. The dogmatic legal method was used to analyse the texts of legal acts of both national and Community law, as well as foreign legal systems. The historical-legal method was used due to the derivation of the prototype of taxation of electricity generation from the legal institution of the ruling regalia and in order to compare the current state of tax regulations regarding electricity generation with regulations from the times of the Second Republic of Poland and the People's Republic of Poland. The comparative method was used to compare the Polish tax policy with regard to the taxation of electricity generation with other legal systems of European countries.

On the basis of the above argument as part of the doctoral dissertation, the following principles of influence by the legislator by means of tax law on entities generating electricity should be listed:

- the principle of primacy of using the stimulus function of taxes to encourage taxpayers to take certain actions to discourage taxpayers – The primacy of encouraging taxpayers to certain behaviours rather than discouraging them is manifested in the significant quantitative advantage of tax law institutions aimed at encouraging taxpayers to take actions intended by the legislator over the number of tax law institutions intended to discourage taxpayers from taking certain actions in the field of Polish tax legislation affecting the taxation of electricity generators in the field of indirect taxes and income taxes.
- the principle of encouraging taxpayers to use zero-emission and low-carbon energy sources – Promoting environmentally friendly or low-impact technological solutions in the field of electricity generation is able to ensure environmental security for current and future generations. The implementation of this principle is visible on the basis of indirect and income taxes affecting electricity producers.
- the principle of discouraging taxpayers from generating electricity using high-emission energy sources – The proposed amendments to Directive 2003/96 contain a new catalogue

of minimum rates of excise duty on individual energy products in the EU. For example, energy products applicable to motor fuels, petrol or diesel are subject to a minimum rate of EUR 10.75/GJ. On the other hand, low-emission fuels or renewable fuels of non-biological origin are subject to a rate of 0.15 EUR/GJ.

- the principle of supplementing the state's energy policy with the help of the state's tax policy – This principle is embodied by indicating both in national and EU soft law acts. Those acts argue that the introduction of various types of tax incentives may make it possible to achieve the objectives pursued by promoting the use of a particular type of energy source, for example in the case of considering tax incentives for the uptake of hydrogen technologies or the pursuit of the promotion of zero-emission and sustainable energy sources in the context of the proposed amendments to Directive 2003/96.
- the principle of a common tax policy in the EU with regard to indirect taxes on electricity and energy products – Under Article 113 TFEU, the REU may adopt rules aimed at harmonising the rules relating to turnover taxes, excise duties and other indirect taxes in the EU Member States. However, it is necessary to bear in mind Article 113 TFEU *in fine*, which limits the delegation to harmonise the abovementioned taxes only to the extent that harmonisation is necessary to safeguard the internal market and avoid distortions of competition.
- the principle of taxing the consumption of electricity and energy products with indirect taxes instead of taxing pollution – The current and proposed versions of Directive 2003/96 contain a list of energy products the use of which is subject to excise duty. Hence, it is not the pollution that is caused, but the energy product used becomes subject to taxation. In the case of pollution, the EU and Polish legislators decide to introduce various types of fees charging the emission of pollutants into the environment.
- the principle of taxation of energy producers at the stage of construction of infrastructure necessary for the production of electricity, consumption of electricity and energy products for the production of electricity, as well as income generated in connection with the sale of generated electricity as part of business activity conducted in this area – As the legislator does not specify in detail the type of liability for the state of the environment within the meaning of Article 86 of the Constitution, such liability should be considered in a broad sense. Thus, the legislator is entitled to enact tax law provisions in a way that satisfies the "polluter pays" principle by taxing each stage of activity that may potentially deteriorate the state of the natural environment.

As part of this doctoral dissertation, the following postulates are put forward *de lege ferenda*:

- adoption of solutions similar to the "thermo-modernisation relief" in the Corporate Income Tax Act. Such a provision could apply to corporate income tax payers who generate electricity using renewable energy sources for their own needs;
- extension of the catalogue of revenues excluded from the catalogue of income from capital gains in the Corporate Income Tax Act to include such contributions that are related to financial instruments that are part of the concept of "green finance" or "sustainable finance";
- the need to introduce into the Act on Local Taxes and Fees an explicit reference to the provisions of the Act – the Civil Code in terms of determining the person of the taxpayer for structures and buildings located on the leased area;
- The introduction of a tax exemption in the provisions of the Act on Local Taxes and Fees for all buildings used to generate electricity for own needs, as Article 5(1) of the Regulation on excise duty exemptions covers the consumption of electricity generated from generators with a total capacity not exceeding 1 MW, if its producer consumes electricity for its own needs.
- regulation in the provisions of the Act on Local Taxes and Fees tax exemptions concerning direct lines and tax exemptions concerning the use of land with poor soil quality for business activity.
- introduction of a lower maximum real estate tax rate in relation to buildings for which a project aimed at improving energy efficiency within the meaning of Article 19(1) of the Energy Efficiency Act has been implemented.