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PIOTR GAJEWSKI*

SELECTED ASPECTS OF THE GENERATION OF TAX LIABILITY IN THE FIELD OF MARITIME ACTIVITIES OF TAXABLE PERSONS

Abstract

This article deals with the issue of tax liability arising when taxpayers undertake economic activity in maritime areas. The research was conducted both on the grounds of direct taxes, indirect taxes and property taxes. The article verifies the hypothesis that the current provisions of Polish tax law do not fully comply with the tax authority granted to Poland as a coastal state in its maritime areas. The research method used in this study was a critical analysis, including a linguistic analysis of the provisions of tax acts and international agreements to which the Republic of Poland is a party. In addition, the research used the analysis of views of doctrine and jurisprudence of administrative courts and tax authorities.

Key words: international tax law, sea law, tax law, comprehensive service, exclusive economic zone, maritime areas, offshore wind farms, concession fee.

JEL Classification: K33, K34

1. Introduction

The matter of the arise of tax liability at sea is of considerable doubt, because the tax law acts cannot arbitrarily establish provisions for the taxation of offshore activities. Coastal

* PhD student at Doctoral School of Humanities and Social Sciences, University of Gdansk, Poland. Author specializes in tax law, especially in the matters of energy taxes and guarantees for the protection of taxpayers' rights. Contact: piotr.gajewski@phdstud.ug.edu.pl, https://orcid.org/0000-0002-5745-0446.

states are limited in their legislative activity in this respect by the United Nations Convention on the Law of the Sea, signed on 10 February 1982 in Montego Bay. That convention regulated the legal status of maritime areas worldwide and, in particular, regulated the assignment of a certain type of maritime area to a coastal State, as well as the rights of coastal States in certain maritime areas. The United Nations Convention on the Law of the Sea affects the possibility of taxing the activities of taxpayers in maritime areas, since the parties to the United Nations Convention on the Law of the Sea do not have the power to tax activities in maritime areas in which they have not been granted taxing authority under this United Nations Convention on the Law of the Sea.

The aim of this article will be to demonstrate the occurrence of an event that gives rise to a tax obligation, when the taxpayer conducts his business activity in the maritime areas of the Republic of Poland. Moreover, the current regulations concerning taxation of business activities of taxpayers in maritime areas in the tax law will be analysed from the point of view of the provisions of the United Nations Convention on the Law of the Sea. During the conducted research, the thesis that the current provisions of Polish tax law do not entirely comply with the tax authority granted to Poland as a coastal state in its maritime areas will be verified.

The research method used in this study was a critical analysis, including a linguistic analysis of the provisions of tax acts and international agreements to which the Republic of Poland is a party. In addition, in the course of research, the analysis of doctrinal views and case law of administrative courts and tax authorities was used.

2. Exclusive economic zone in the context of corporate income tax

The most significant issue from the perspective of Polish corporate income tax regulations is Article 4 of the Corporate Income Tax Act, which delineates the territory of the Republic of Poland for the purposes of the Corporate Income Tax Act. According to which, the territory of the Republic of Poland is, inter alia, "the exclusive economic zone located outside the territorial sea, in which the Republic of Poland, pursuant to domestic law and in accordance with international law, exercises rights relating to the exploration and exploitation of the seabed and its subsoil, and of their natural resources" [Corporate Income Tax Act, Art. 4].

While the legislator underlines that part of the territory of the Republic of Poland will be the exclusive economic zone, in the further part of the provision the legislator describes Polish jurisdiction in the exclusive economic zone. However, the legislator does not directly

specify the purpose of describing Polish jurisdiction in the exclusive economic zone. It might seem that the description of jurisdiction is meant to be a kind of interpretative guideline, which implies that it is the taxpayers' activity based on exploration and exploitation of the seabed and its subsoil as well as natural resources that could constitute the only activity in the exclusive economic zone, the performance of which would lead to corporate income tax liability.

In the view of the United Nations Convention on the Law of the Sea, this view is inappropriate, because the coastal state has sovereign rights in the exclusive economic zone in relation to other undertakings for the economic exploration and exploitation of the zone, such as energy production through the use of water, currents and winds, and jurisdiction to build and use artificial islands, installations and structures [United Nations Convention on the Law of the Sea, Art. 56]. This means that also these competences of the coastal state in the exclusive economic zone should be mentioned in the wording of Article 4 of the Corporate Income Tax Act, if the wording of Article 4 of the Corporate Income Tax Act in relation to the exclusive economic zone were to be of a nature expressing the activities of taxpayers in the exclusive economic zone that would lead to tax liability.

The failure to specify additional competences of the coastal state in the exclusive economic zone in the wording of Article 4 of the Corporate Income Tax Act leads to the conclusion that there was a legislative defect in the wording of Article 4 of the Corporate Income Tax Act in the form of a partial legislative omission, i.e. a situation where the scope of regulation is too narrow [Stefanicki 2017: 47-60]. This is determined by the United Nations Convention on the Law of the Sea, according to which it is the coastal state of the exclusive economic zone that has exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction to enact laws and other regulations on fiscal matters related to these artificial islands, installations and structures [United Nations Convention on the Law of the Sea, Art. 60(1) and 60(2)].

It means that the coastal State has the competence to enact tax laws that condition the taxation of artificial islands, installations and structures. The United Nations Convention on the Law of the Sea does not prejudge what type of taxes could be imposed under Article 60(2) of the United Nations Convention on the Law of the Sea. It means that activities in the exclusive economic zone may be taxed with any tax, but the tax obligation in relation to the activities of a taxpayer in the exclusive economic zone may arise only in relation to those activities for which the United Nations Convention on the Law of the Sea grants exclusive jurisdiction to coastal states.

The finding of legislative omission in Article 4 of the Corporate Income Tax Act is significant, as the Constitutional Tribunal does not have jurisdiction, if, in its opinion, there is a legislative omission in the content of a given legal regulation, as the Constitutional Tribunal, acting in the role of a "negative legislator" is not able to order the enactment of specific amendments to legal regulations [Wronkowska 2008: 9]. On the other hand, the literature admits the possibility of the Constitutional Tribunal reviewing a relative omission of the legislator, if the given provisions "from the point of view of constitutional principles have too narrow a scope of application, or due to the aim and object of regulation, omit important contents" [Pyziak-Szafnicka 2017: LEX/el.].

The second view should be followed, as the current wording of Article 4 of the Corporate Income Tax Act leads to too narrow application of this provision, which infringes the constitutional principles of tax law, as the principle of definiteness of tax law, understood as legibility and unambiguity of an individual's legal situation [Celińska-Grzegorczyk 2011: 19-25], that was insufficiently implemented in this article. A taxpayer cannot clearly conclude that his activity in the exclusive economic zone will lead to tax liability, which consequently endangers his awareness of his legal and tax situation as a taxpayer.

The considerations regarding the arising of tax obligation in the exclusive economic zone are significant from the point of view of the arising of a permanent establishment in a situation where the business activity in the Polish exclusive economic zone will be conducted by a CIT taxpayer who is not a taxpayer with the registered office in Poland. In particular, there should be mentioned Model Tax Convention on Income and Capital, according to which a mine, an oil or gas source, a quarry or any other place where natural resources are extracted shall be deemed to be a tax permanent establishment [Model Tax Convention on Income and Capital, Art. 5(2)(f)]. The Commentary to the Model Tax Convention on Income and Capital does not prejudge what should be considered as "any other place of extraction of natural resources", but only formulates the directive that this concept should be understood broadly, and refers to activities carried out in maritime areas where the coastal State has tax jurisdiction [Commentary to the Model Tax Convention on Income and Capital to Article 5, par. 47].

Despite the fact that the Commentary to the Model Tax Convention on Income and Capital is not of a binding nature, and the Model Tax Convention on Income and Capital itself does not instruct the parties to harmonise their domestic law in a manner that would require courts and tax authorities to take the Commentary to the Model Tax Convention on Income and Capital into account [Avery Jones 1999-2000: 19], the Commentary should be used auxiliary to interpreting the provisions of double tax treaties [Hill 2003: 325].

However, one cannot agree with the view that the contracting parties may not raise as an argument for the application of the Commentary to the Model Tax Convention on Income and Capital the Article 31(3)(a) of the Vienna Convention on the Law of Treaties, since in its view the Commentary to the OECD Model Convention is not a subsequent agreement on treaty interpretation [Kobetsky 2011: 168]. The Commentary to the Model Tax Convention on Income and Capital, although being produced in connection with the Model Tax Convention on Income and Capital, is produced as part of work other than on the Convention itself, with the result that the Commentary to the Model Tax Convention on Income and Capital has the character of a subsequent agreement and may be applied. Nevertheless, according to the OECD opinion, the Contracting States in a double tax treaty that have the power to determine in detail what activities will give rise to a tax permanent establishment [Commentary to the Model Tax Convention on Income and Capital to Article 5, par. 48].

In the case of no deviation from the provisions included in the Model Tax Convention on Income and Capital between the Republic of Poland and the other contracting state, such international agreement should be interpreted in compliance with the provisions of the Commentary to the Model Tax Convention on Income and Capital. This is indicated by Article 9 of the Constitution of the Republic of Poland, in accordance with which the Republic of Poland shall observe international law binding upon it, which means, inter alia, the necessity to observe not only international agreements, but all legal facts of international law [Ruczkowski 2017: 34-41], which in the light of Article 31(3)(a) of the Vienna Convention on the Law of Treaties shall be the Commentary to the Model Tax Convention on Income and Capital.

In the view of the above, it should be recognised that in the absence of different regulations in the wording of double taxation treaties between the Republic of Poland and other countries, any activity undertaken in the exclusive economic zone with the use of artificial islands, installations and structures will result in the creation of a taxable permanent establishment.

3. The arising of tax liability for value added tax in the exclusive economic zone

The provisions of both Directive 2006/112/EC on the common system of value added tax and the Polish Value Added Tax Act do not directly regulate the principles of taxation of supplies of goods and services when they will be used for the taxpayer's activity conducted in maritime areas. The only indication for interpretation is that, according to Directive

2006/112/EC [Directive 2006/112/EC on the common system of value added tax, Art. 47] and the Value Added Tax Act [Value Added Tax Act, Art. 28e], the place of supply of services connected with immovable property is considered to be the place where the property is located.

According to the Provincial Administrative Court in Warsaw, taxation of services rendered at the place of location of the real property applies only to services that are related to a specific real property, because only then can taxation at the place of location of the real property be applied in practice [WSA in Warszawa, III SA/Wa 2007/08]. The view of the Provincial Administrative Court in Warsaw should be positively assessed as Article 28e of the Value Added Tax Act constitutes an exception to the general rule of determining the place of providing services. This means that the exception should not be interpreted broadly, and only the establishment of the specific real property allows for determining the place of rendering services pursuant to Article 28e of the Value Added Tax Act.

However, this provision, both at the level of national law and European Union law, does not directly regulate the situation when services are provided in the exclusive economic zone, which in accordance with Article 55 of the United Nations Convention on the Law of the Sea does not constitute the territory of coastal states. This could mean that if it is not the territory of any state, no tax obligation can arise, because states would not be able to treat the exclusive economic zone as state territory for the purposes of particular taxes. However, the Contracting States under the United Nations Convention on the Law of the Sea have agreed that, the coastal State will have the power, inter alia, to make fiscal provisions regarding artificial islands, installations and structures [United Nations Convention on the Law of the Sea, Art. 60(2)]. It means that coastal states have the power to establish tax laws relating to the above-mentioned types of buildings which would be located within the exclusive economic zone.

As Article 28e of the Value Added Tax Act is an implementation of Article 47 of Directive 2006/112/EC, interpretation guidelines should be searched for in the case law of the Court of Justice of the European Union. The Supreme Administrative Court ordered that European Union law be applied by both administrative courts and tax authorities in a manner which takes into account the content and objective of the given provisions [NSA, I FSK 4/08].

In the view of the Court of Justice of the European Union, it is possible to consider a sea area as immovable property for the purpose of the Directive 2006/112/EC, to which Article 47 of the Directive 2006/112/EC on the recognition of the location of immovable

property as the place of supply of services connected with immovable property could be applied [CJEU, C-428/02]. The Court of Justice of the European Union explained its view by stating that it is not possible to relocate in any way the part of the maritime area where the taxable person's activities will be carried out, and therefore part of the maritime area can be considered as immovable property. In another judgment, the Court of Justice of the European Union held that one of the essential characteristics of immovable property is its connection to a specific part of the earth's surface [CJEU, C-166/05]. Furthermore, Article 47 of the Directive 2006/112/EC only concerns services connected with immovable property in a strict and necessary manner, i.e. such services whose object of supply is a specific immovable property in relation to which the service is provided [Varga: LEX/el.].

Despite the above judgment, tax authorities, when issuing individual interpretations, did not agree with the above CJEU judgment. The Director of the National Fiscal Information was deriving the opposite view from the content of Council of European Union Implementing Regulation No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax as regards the place of supply of services [Director of National Fiscal Information, 0114-KDIP1-2.4012.31.2017.1.PC]. The guidelines to that regulation provided that the wording of the provision in Article 13b(a) of Implementing Regulation No 1042/2013 should be understood as the fact of possession in an economic sense and not in accordance with the law of the Member State concerned. What is relevant is whether the taxpayer in question has possession of the property in question as owner and not whether he holds a title. Furthermore, the conjunction "ownership and possession" should not be interpreted strictly according to the Guidelines as, due to linguistic differences, the phrase will be translated as "ownership and possession" in some countries and as "ownership or possession" in others. This means that ownership and possession of property does not necessarily have to occur in one entity, but can be split between two entities.

However, the new Council of European Union Implementing Regulation 1042/2013 of 7 October 2013 amending Implementing Regulation No 282/2011 as regards the place of supply of services made a change in the definition of the place of supply of services in the case of immovable property, which forced the tax authorities to change this view. The new definition has now been enriched to also include any installed element forming an integral part of a building or structure without which the building or structure is incomplete, as well as any element, equipment or machinery permanently installed in a building or structure which cannot be moved without destroying or altering the building or structure.

According to the United Nations Convention on the Law of the Sea, the coastal State has exclusive jurisdiction over artificial islands, installations and structures situated in the exclusive economic zone, including jurisdiction to enact laws and regulations in customs, fiscal, sanitary and immigration matters, as well as in security matters [United Nations Convention on the Law of the Sea, Art. 60(2)]. It means that the coastal State has the power to collect taxes related to the installation of artificial islands, installations and structures in the exclusive economic zone. The realization of the taxing authority of the coastal state in the exclusive economic zone in relation to the tax on goods and services is the Article 28e of the Value Added Tax Act.

A significant role in determining the tax status of the exclusive economic zone under the Value Added Tax Act is played by the judgment of the Court of Justice of the European Union of 29 March 2007 [CJEU, C-111/05]. It follows from this judgment that sovereignty of a coastal state in the exclusive economic zone and in relation to the continental shelf is of a merely functional character and as such is limited to the right to conduct research and exploitation activities referred to in Articles 56 and 77 of the United Nations Convention on the Law of the Sea. This means that where a supply of goods related to activities to which a Member State has a sovereign right under the United Nations Convention on the Law of the Sea takes place in the exclusive economic zone, it will be subject to value added tax as a supply of goods taking place in the coastal Member State to which the zone belongs. This rule also applies to supplies of services the place of which is determined on the basis of a particular location (e.g. real estate services) if that location is within the exclusive economic zone.

This judgement leads to the conclusion that, for the purposes of supplies and services directly related to the activities referred to in the United Nations Convention on the Law of the Sea, to which Member States of European Union have a sovereign right, the exclusive economic zone is considered part of their territory.

It means that the exclusive economic zone adjacent to the territorial sea of a Member State is recognised only for the exercise of activities for which the Member State has sovereign right under Article 56 of the United Nations Convention on the Law of the Sea. It follows from this that, with regard to activities concerning the construction and use of, inter alia, wind power plants, exercise of jurisdiction is based on regulations applicable under national law, and thus with regard to these activities the exclusive economic zone should be considered part of the territory of the Republic of Poland.

Moreover, in the opinion of the Polish tax authorities, the reasoning presented with respect to Article 47 of Directive 2006/112/EC should also be applied with regard to the occurrence of a supply of goods within the meaning of the vat directive [Director of National Fiscal Information, 0114-KDIP1-2.4012.841.2018.1.WH] - a supply of goods within the meaning of the directive will occur only if the goods are used only for activities for which the United Nations Convention on the Law of the Sea grants exclusive jurisdiction to coastal states.

In relation to the provision of services in the exclusive economic zone, taxpayers should take into account whether their service activities in the spheres covered by the United Nations Convention on the Law of the Sea will lead to the so-called comprehensive service. The concept of a comprehensive service originated in the jurisprudence of the Court of Justice of the European Union. It implies that several services provided by a single supplier may be deemed to be one service, if the constituent services would have no economic justification if provided in isolation from each other [CJEU, C-349/96]. In the case of a comprehensive service, a taxable person has the right to tax it at the rate corresponding to the principal service to which the other services have been supplied [CJEU, C-41/04].

While each case of the possible existence of a comprehensive service should be considered individually, in view of the wording of Article 60(2) of the United Nations Convention on the Law of the Sea, the general conclusion is that several services provided in the exclusive economic zone will constitute a comprehensive service, as they will lead to the construction of a specific type of artificial island, installation or structure, making it possible to tax such an activity. It would mean that the character of the principal service should be that service which contributes most to the construction of an artificial island, installation or structure in the exclusive economic zone.

This statement is justified by the fact that none of the services or goods supplied in the exclusive economic zone would be provided if it were not to lead eventually to the construction of a type of structure stipulated in Article 60 (2) of the United Nations Convention on the Law of the Sea. In such a situation, a comprehensive service will consist of all services which together lead to the realisation of a project aimed at constructing a specific work in the exclusive economic zone.

4. Maritime areas of the Republic of Poland in relation to real estate tax

In relation to the property tax on taxpayers carrying out their activities in the maritime territory, it is necessary to begin with an attempt to determine the impact of the location of the property in the maritime territory on the emergence of the tax liability - if any area could be considered as a municipality, the result will be the possibility of the emergence of the tax liability.

The lawmaker has defined that the territorial sea is to be considered as "an area of marine waters 12 nautical miles (22,224 m) wide, measured from the baseline of that sea" [Maritime Areas of the Republic of Poland and Maritime Administration Act, Art. 5(1)]. Moreover, the Convention on the Law of the Sea only contains directives for the determination of the territorial sea area, and does not prejudge its status. The normative act that may give an answer to the question whether the territorial sea is part of a municipality may be the Regulation of the Minister of Transport and Maritime Economy of 7 October 1991 on the establishment of maritime offices, determination of their seats and the territorial scope of activities of directors of maritime offices. In determining the territorial scope of the given activity of the directors of maritime offices, the minister in charge of maritime economy does not refer to the administrative division of the Republic of Poland into communes, but only to the appropriate categories of maritime areas.

Moreover, also the Municipal Self-Government Act does not contain any provision that would explicitly allow for the recognition or non-recognition of the territorial sea as part of a municipality. From reading the Regulations of the Council of Ministers concerning determination of the borders of communes it does not follow that any part of the sea constitutes a part of a municipality. Moreover, it also follows from the wording of the Municipal Self-Government Act that it would be impossible to include a part of the sea in the area of a municipality, since the Council of Ministers should be guided by the following directives when establishing the boundaries of municipalities: "a territory as homogeneous as possible with regard to its settlement and spatial arrangement, taking into account social, economic and cultural ties and ensuring the ability to perform public tasks" [Municipal Self-Government Act, Art. 4(3)]. It would appear that it is not possible to assign any maritime area to a particular municipality in such a way as to ensure homogeneity in terms of the settlement pattern and spatial arrangement, since it is impossible to speak of any settlement pattern or spatial arrangement in relation to the municipality.

In view of the above, no maritime area is part of any municipality of the Republic of Poland. This view is, in a way, also shared by the Minister of Development and Finance,

who, in the text of the Regulation of 24 February 2017 on the territorial range of activities and seats of directors of tax administration chambers, heads of tax offices and heads of customs and fiscal offices as well as the seat of the director of the National Fiscal Information when determining the jurisdiction of the Director of the Tax Administration Chamber in Gdansk, decided to delimit the area of the Pomorskie Voivodeship from maritime areas, taking the relevant meridians as the criterion for the borders of maritime areas. If the territorial part of the voivodeship includes administrative areas comprising counties with municipalities, it should be acknowledged that if maritime areas are excluded from the area of the voivodeship, such areas cannot constitute areas of municipalities.

In view of the fact that the territorial sea does not belong to any municipality, it should also be concluded that the exclusive economic zone does not belong to any municipality. Firstly, the exclusive economic zone lies outside the territorial sea of the Republic of Poland. If the territory of the Republic of Poland is not the territorial sea, then neither can the exclusive economic zone situated further away from that territorial sea be the territory of Poland. Secondly, also the Law of the Sea Convention stipulates that the coastal state has limited rights and limited jurisdiction in its exclusive economic zone [United Nations Convention on the Law of the Sea, Art. 55]. Furthermore, in the Convention on the Law of the Sea, which designates the jurisdictional rights of the coastal State in its exclusive economic zone, it is not possible to find any direct authorisation for the coastal State to collect a tax relating to the installation or construction of a structure in its exclusive economic zone [United Nations Convention on the Law of the Sea, Art. 56(1)(b)].

It means that currently no tax authority is entitled to collect real estate tax from any installation or structure used for energy generation, which would be located in the maritime area of the Republic of Poland. A similar view is repeated in the doctrine - it would be impossible to determine the competent municipal council, whose resolution on property tax rates would be locally competent with respect to wind power plants located in Polish maritime areas [Pahl 2013: 40-44].

The Polish lawmaker noticed a legal loophole in the taxation of offshore wind farms located in the exclusive economic zone in the form of not subjecting these facts to property tax. This legal state led to a violation of the principle of equality of taxation, as only onshore wind farms were taxed. The difference in taxation was caused only by the different location of wind power plants, although the subject matter was the same for both onshore and offshore wind power plants.

The following legal loophole was planned to be closed by the legislator under the provisions of the Promotion of Electricity Generation at Offshore Wind Farms Act. The first model, which was to end the unequal treatment of wind power plants located in the exclusive economic zone, was a tax on offshore wind farms. The basis for taxation was to be the installed capacity of an offshore wind farm resulting from the concession granted. The amount of tax liability was to be determined on the basis of the product of the installed capacity and the amount of PLN 23 000. So far, as the lawmaker pointed out in the justification to the draft act, the only country where the tax on offshore wind farms functions is France, where the amount of the tax on electricity generation depends on the area occupied by the connection and the power of such a wind power plant [Government bill of Promotion of Electricity Generation in Offshore Wind Farms Act, print No. 809: 191].

In such a legal situation, the unity of tax subject, which would lead to compliance with the principle of equality of taxation, would not be achieved, because, despite the apparent identity of the tax subject as the property belonging to the taxpayer, in the case of tax on offshore wind farms, it is not the property itself that is subject to taxation, as in the case of real estate tax, but the energy generated by the property owned by the taxpayer. It means that a tax on offshore wind farms would be neither a property tax nor an income tax, but a hybrid form of these two types of taxes [Ruta 2020: 55-59]. This view should be supported because the proposed tax on offshore wind farms is not a wealth tax since the mere fact of owning by a taxpayer the infrastructure for generating electricity in the exclusive economic zone is not subject to taxation. Neither is it an income tax, because the amount of the tax liability was to be determined independently of the gains of the taxpayer arising in connection with his business activity. In the light of the equality of taxation understood as similar treatment of entities in a similar factual situation [Brzeziński 2001: 87], it would be unacceptable to formulate two different models of taxation of entities generating electricity using wind energy because, despite the fact that they carry out the same type of economic activity, the amount of the tax liability could be different, affected only by the location of the wind power plant.

Another proposal by the Polish legislator to regulate the burdening of offshore wind farms in a way that is more burdensome for onshore wind farms is the draft of an additional concession fee to be paid by energy enterprises in connection with the conduct of economic activity in the production of electricity in an offshore wind farm, which imposes on producers of electricity from an offshore wind farm the obligation to pay an annual concession fee.

Moreover, the amendment of the Energy Law on the basis of the Promotion of Electricity Generation in Offshore Wind Farms Act would result in the appropriate application of the provisions of the Tax Ordinance Act to the concession fee, which would guarantee that the entities charged with the fee benefit from the guarantees of protection of their rights as passive subjects of the legal-financial relationship, which are provided for in the provisions of the Tax Ordinance Act.

5. Conclusion

On the basis of the present study, it should be stated that the Polish tax law provisions do not fully correspond to the taxing authority granted to Poland as a coastal State in its maritime areas. First of all, the Polish legislator has not provided for provisions which would enable it to exercise the taxing authority granted under Article 60(2) of the United Nations Convention on the Law of the Sea. Coastal states are entitled to tax artificial islands, installations and structures located in the exclusive economic zone. The United Nations Convention on the Law of the Sea does not regulate in detail which structures located in the exclusive economic zone could be taxed, nor does it indicate what type of taxes they could be subjected to. It means that the United Nations Convention on the Law of the Sea grants coastal states the freedom to choose how to tax structures in the exclusive economic zone.

Moreover, one has to agree with the earlier quoted decision of the Court of Justice of the European Union, according to which granting taxing authority in the exclusive economic zone means that the coastal state has the power to tax any activity over which the United Nations Convention on the Law of the Sea gives exclusive jurisdiction to the coastal state. Indeed, if the Convention confers any exclusive rights or jurisdiction on the coastal State, this should mean that the coastal State is also entitled to the benefits thereof. However, under the United Nations Convention on the Law of the Sea, the coastal state should not exercise its rights in such a way as to prevent third States from using the exclusive economic zone concerned to the extent granted by that Convention [United Nations Convention on the Law of the Sea, Art. 56(2)].

The definition of the territory of the Republic of Poland indicated in Article 4 of the Corporate Income Tax Act also requires improvement. Although the current definition mentions that the exclusive economic zone constitutes a part of the territory of the state for tax purposes, the description of the exercise of rights granted under international agreements leads to interpretation doubts, as this interpretation cannot be made in the

process of interpreting the law by omitting any part of the provision. Moreover, placing in Article 4 of the Corporate Income Tax Act the phrase on the exercise of rights in compliance with international law constitutes a statutory superfluity, since in Article 9 of the Constitution of the Republic of Poland, the legislator decided that the Republic of Poland shall observe international law. The current wording of art. 4 of the Corporate Income Tax Act breaches § 4 sec. 2 of the Regulation of the Prime Minister of 20 June 2002 on "Principles of Legislative Techniques", because in the current definition of the territory of the Republic of Poland on the grounds of the Corporate Income Tax Act, the provisions of the ratified international agreement are repeated, since the legislator lists what rights the Republic of Poland may exercise in the exclusive economic zone, which has already been indicated in the text of the United Nations Convention on the Law of the Sea. Moreover, Article 4 of the Corporate Income Tax Act infringes § 11 of the Regulation on Principles of Legislative Techniques, because the legislator in the Corporate Income Tax Act makes, as it were, an attempt to justify the inclusion of the exclusive economic zone in the territory of the Republic of Poland for the purposes of the Corporate Income Tax Act, and the Regulation on Principles of Legislative Techniques prohibits justifying formulated legal norms in the wording of the Act [Regulation on Principles of Legislative Techniques, § 11].

The change by the lawmaker of the model of levying the generators of electric energy from offshore wind farms from a tax on offshore wind farms to a concession fee should be appreciated. The proposed tax on offshore wind farms was to take the form of a levy paid by taxpayers for the possibility to carry out economic activity in the area of generating electric energy covered by the concession, which, in fact, would mean that this tax would have a somewhat equivalent character. This would lead to the conclusion that ultimately the tax on offshore wind farms would be a form of a concession fee. The lawgiver seems to have noticed this problem and decided to include offshore wind farms in the concession fee, which in fact is equivalent to the expected model of taxation of offshore wind farms.

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