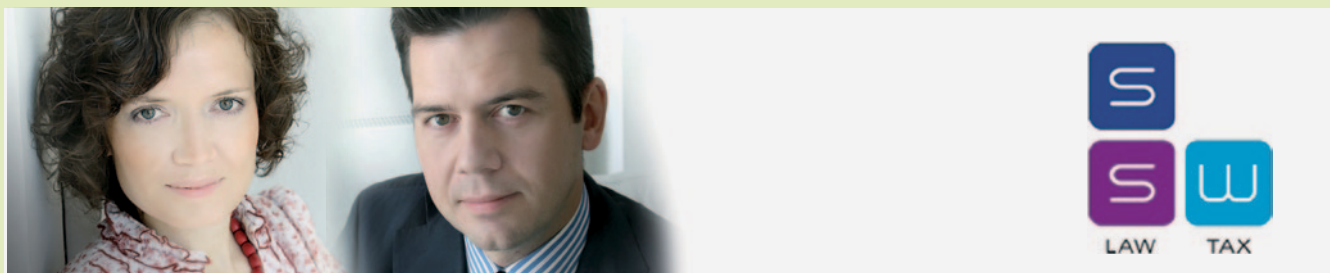


# Not the Promised “El Dorado”

One of the key elements in the draft law prepared by the Polish Ministry of Finance is the special hydrocarbons tax (SHT). How the SHT is going to function is hardly straightforward.

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In February, the Ministry of the Environment published a draft amendment to the Geological and Mining Law (“Amendment”). The intended objectives of the proposed amendments were the modernization and improvement of the system for managing concessions, leading to faster development of unconventional gas exploration and production in Poland.

Our analysis of the proposed solutions leads, however, to the opposite conclusion: the amendment will rather stop investment. A number of new features are being introduced, including a procedure for assessing competing concession applications (the ‘settlement procedure’).

Although the idea is good, its implementation is not reasonably thought out and causes a lot of doubts. Another two-step concession procedure relates to hydrocarbon concessions (granted jointly for exploration and production) which envisages a prequalification mechanism for entities interested in participating in the bidding procedure, which itself is merely the second stage.

A need for such a tendering procedure was underlined by entrepreneurs many times since the current provisions do not foresee any competitive procedure. It may seem like a good solution except the fact that the selected winner shall be obliged to enter into a cooperation agreement with the National Energy Resource

Operator (NOKE), meaning that NOKE will be a mandatory participant in such concessions.

## WORK SCHEDULE

A controversial provision is a novel element to the concession decision - a ‘work schedule’. Concession holders shall be obliged to provide mandatory quarterly and annual reports on the progress and results of the concession works. They are also obligated to communicate the results of geological works to the concession authority, along with the interpretation of such data, which is often regarded

succession or other ownership changes within the structure of the concession holder, such as division, merger and acquisition of a bankrupt company, will only be possible following the approval of the concession authority. Moreover, the entities holding concessions shall be transformed into joint stock companies (Spółka Akcyjna). Such an obligation results from another Act referring to hydrocarbons i.e. the Act on special tax on hydrocarbons.

No doubt that the current GML shall be reconsidered, but the presented Amendment together with the planned

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as the know-how of a given company.

Non-compliance within time limits specified in the work schedule and failure to abide by reporting obligations shall constitute new reasons for revoking a concession. If any amendments to the work program are planned, such changes could be done only once.

Another obstruction is that any concession transfers, including universal

new tax on hydrocarbons will for sure not pave the Polish way to the promised “shale gas Eldorado”.

**SSW law firm coordinated public consultations process to improve the concession system. The comments were submitted to the Ministry of Environment in March and can be made available on request from Maja Tobiasz at [maja.tobiasz@ssw.pl](mailto:maja.tobiasz@ssw.pl)**