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Significant legal changes affecting trade and food industry: "sugar tax", the tax on alcoholic drinks of up to 300 ml in volume and other new regulations

On 14 February 2020, Poland's Parliament passed an act on the amendment of certain acts in connection with promotion of healthy consumer choices (hereinafter: the Act). According to the legislators' explanatory memorandum to the Act, the goal of the adopted solutions is to change Poles' eating habits, especially in the face of increasing health problems, attributable to the spread of overweight and obesity, through imposition of an additional fee on beverages containing substances used for their sweetening properties, caffeine and/or taurine, also targeting alcoholic drinks of up to 300 ml in volume.

Moreover, in order to combat food waste, on 18 September 2019, the Act of 19 July 2019 on Prevention of Food Waste (Polish Journal of Laws of 2019, item 1680), specifying the obligations of sellers to prevent food waste by, among others, introduction of the requirement of concluding contracts on food transfer with non-governmental organizations, as well as additional fees for wasting food, came into force.

Additionally, some of the passed amendments aim at extension of terms of statutory warranty under civil law regulations.

Amendment to the Act on Public Health introducing the so-called "sugar tax"

The Act passed by the Polish Parliament introduces to the Act of 11 September 2015 on Public

Health the requirement to impose additional fees on beverages containing sugars and other substances used for their sweetening properties, as well as caffeine and/or taurine in products ready for use.

In principle, the fees will be charged to entities placing on the domestic market beverages containing:

- sugars (monosaccharides and/or disaccharides) or foodstuffs containing these substances, including substances used for their sweetening properties, as per Regulation (EC) No. 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives; and/or
- caffeine or taurine.

Importantly, 'placing goods on the domestic market' shall mean selling beverages to the first point where retail sales take place or the very fact of carrying out retail sales of beverages by the producer as well as sales of beverages to an entity involved with both retail and wholesale trade.

At the same time, the provisions of the Act relating soft drinks subject to the new fee make reference to beverages and syrups being foodstuffs categorized under class 10.32 and 10.89 and section 11 of the Polish Classification of Goods and Services (PKWiU), containing the aforementioned substances used for their sweetening properties and/or caffeine and taurine, except for the substances occurring naturally. Thus, in practice, bearing in mind the PKWiU categories cited in the Act, the new

fee may be also imposed on sparkling and mineral waters, soft drinks, vegetable extracts or fruit juices (with some exceptions), if they contain sweetening agents, caffeine or taurine.

The new regulations provide for differentiation of the fee depending on the content of sugar in 100 ml of product. The fee has a fixed and variable component, i.e.:

- PLN 0.50 for the content of sugars in an amount equal to or less than 5 g in 100 ml of drink, or for the content of at least one sweetener referred to in the Regulation no.1333/2008 in any amount;
- PLN 0.05 for every gram of sugar above 5 g in 100 ml of beverage – per 1 litre of beverage.

The amount of fee imposed on beverages containing more than 5 g of sugars in 100 ml of beverage is a sum of the fixed and the variable component.

Beverages containing caffeine or taurine are subject to a fee of PLN 0.10 per litre.

If a given beverage contains more than one substance subject to the fee, i.e. sugar, sweetening substances and caffeine, the fees will add up and the maximum amount of fee will be PLN 1.2 per 1 litre of beverage.

In principle, the obligation to pay the fee will arise on the day of placing the beverage subject to the fee on the domestic market.

Under the new regulations, 96.5 percent of receipts from the fee will top up the budget of the Polish National Health Fund, while the remaining sum will contribute to the state budget.

Exemptions

The new fee will not cover beverages being:

- medical devices;
- dietary supplements;
- food for special medical purposes, infant formulas and follow-on formulas;
- excise goods;
- beverages in which the mass proportion of fruit, vegetable or fruit/vegetable juice constitutes not less than 20 percent of ingredients, and in which the sugar content is less than or equal to 5 g per 100 ml of beverage (i.e. beverages that meet both conditions relating to juice and sugar content simultaneously);
- carbohydrate electrolyte drinks, in which the content of sugars is lower or equal to 5 g per 100 ml of beverage.

Entities obliged to pay the fee

Under the new regulations, the group of entities charged with the fee includes natural persons, legal persons and organizational units without legal personality being

- an entity selling beverages to retail outlets or, in case of beverage producers, an entity carrying out retail sales; or
- an ordering party, where the composition of the drink covered by the fee constitutes part of the contract concluded with the producer to produce the beverage for the ordering party.

In situations where the fee shall be covered exclusively by the ordering party, the producer will be obliged to submit a written statement on concluding a contract with the ordering party to the relevant authority, no later than on the day of placing the beverage on the domestic market.

The body competent for handling fee-related matters will be the head of the tax office of the place of residence or the registered seat of the payer.

In principle, payers will be obliged to provide the head of the tax office with an electronic statement containing, inter alia, information on the entity obliged to pay the fee, the amount of the fee and information on the fee along the number of litres of beverages subject to the fee.

Moreover, under the new regulations, the payers will be obliged to pay the fee by the 25th day of the month following the month to which the aforementioned statement submitted to the head of the tax office related.

Penalties

The Act stipulates that in the case of failure to pay the fee within the provided period, the competent authority may, by way of decision, impose on the payer a sanction fee in the amount corresponding to 50 percent of the amount of the fee due.

Tax-related issues

The discussed Act introduces amendments to the Act of 26 July 1991 on Personal Income Tax and to the Act of 15 February 1992 on Corporate Income Tax within the scope of exclusion of the costs of sanction fees referred to in the provisions from tax-deductible costs, due to the nature of the fees.

Amendments to the Act on Upbringing in Sobriety and Counteracting Alcoholism

Additionally, the Act amends the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism by introducing additional fees on sales of alcoholic beverages of up to 300 ml in volume.

The amended provisions provide that the additional fee may be added to the fee for the license for the wholesale trade in alcoholic beverages paid by the entrepreneur supplying an entrepreneur holding a license for the retail sale of alcoholic beverages.

According to the provisions, the fee shall amount to PLN 25 for each litre of 100 percent alcohol sold in packages of up to 300 ml in volume, for instance:

- PLN 1 per one 100 ml bottle of vodka of 40 percent ABV;
- PLN 2 per one 200 ml bottle of vodka of 40 percent ABV;
- PLN 0.88 per one 250 ml bottle of wine of 14 percent ABV.

In principle, the obligation to pay the fee shall arise when the alcohol beverages sold in packages of up to 300 ml in volume are supplied.

Thus, the entrepreneur will be obliged to perform the following activities for each separate license:

- electronically submit relevant information on making the payment;
- calculate and pay the fee to the account of the competent tax office.

Under the newly introduced regulations, these activities shall be performed by the end of month following the end of the year's quarter.

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Penalties

In the event of failure to fulfil the obligations related to payment of fees on alcoholic beverages sold in packages of up to 300 ml in volume, the competent authorities shall impose an additional fee in the amount of:

- PLN 2,000 on an entrepreneur holding a license for the wholesale trade in alcoholic beverages of up to 18 percent of alcohol (including beer);
- PLN 11,250 on an entrepreneur holding a license for the wholesale trade in alcoholic beverages containing over 18 percent of alcohol.

Tax-related issues

As in the case of sanction fees resulting from failure to pay the so-called "sugar tax", enforcement measures imposed on entrepreneurs for failure to comply with obligations arising out of the amended provisions of the Act on Upbringing in Sobriety and Counteracting Alcoholism shall also be excluded from the tax-deductible costs.

Entry into force

The Act has been introduced to the Polish Senate. In principle, the new provisions shall enter into force on 1 April 2020.

Act on Prevention of Food Waste

As a matter of principle, the Act of 19 July 2019 on Prevention of Food Waste (Polish Journal of Laws of 2019, item 1680, hereinafter: the Food Waste Act) shall cover solely food sellers, meaning entities that meet jointly the following conditions:

- are food business operators within the meaning of Article 3(3) of the Regulation (EC) No. 178/2002;
- the scope of the operated food business covers sales of food in retail sales outlets or wholesale trade units;

- the sales area in a retail sale outlet or a wholesale trade unit exceeds 250 square meters within the meaning of Article 2(19) of the Act of 27 March 2003 on Spatial Planning and Management (consolidated text, Polish Journal of Laws of 2018, item 1945, hereinafter: the Spatial Planning and Management Act) or 400 square meters during the first two years following the implementation of the Food Waste Act;
- revenues from the sales of food account for at least 50 percent of the total revenues from sales.

Responsibilities of food business operators

As per the passed provisions, entrepreneurs acting as food business operators are required to:

- enter into an agreement with a non-governmental organization for food transfer;
- conduct educational and informational campaigns on rational management of food and prevention of food waste at the outlet; and
- pay charges for wasting food;
- file an annual report on food waste.

The fee imposed on the food sellers is calculated by the end of the calendar year as the product of the rate of the fee and the weight of food wasted. The base for calculating the fee is 90 percent of the mass of the food in kgs, while the rate amounts to PLN 0.1 per 1 kilogram of wasted food. The operator may deduct the fee by the costs of the conducted educational and informational campaigns along with the costs of performing the contract concluded with an NGO, with particular regard to the costs of food transport and distribution.

Sanctions for breaching the provisions of the Food Waste Act

In the event of breach of the provisions laid down in the Food Waste Act, two types of sanctions may be imposed:

- penal sanctions in the form of a fine imposed under the provisions of the Act of 24 August 2001 – Code of proceedings in misdemeanour cases, for failure to submit a written annual report on food waste by March 31 of the calendar year following the year to which the report relates; and
- administrative sanctions in the form of a financial penalty in the amount of PLN 5,000 for non-conclusion of a contract with an NGO on free transfer of food and/or a financial penalty in the amount ranging from PLN 500 to PLN 10,000 for a breach of the obligation to pay the fee for wasted food, payable to a selected NGO.

Entry into force

As a matter of principle, the provisions of the Food Waste Act entered into force on 18 September 2019, except the requirement to bear charges and penalties stipulated by Articles 5-14 of the Food Waste Act, which are to enter into force on 1 March 2020.

Under Article 17 of the Food Waste Act, during the first 2 years from the date of entry into force of the Act, a food business operator shall mean an entity operating a food business in the scope of selling food in a retail sales outlet or a wholesale trade unit with a sales area, within the meaning of Article 2(19) of the Act of 27 March 2003 on Spatial Planning and Management, above 400 square meters.

In addition, in the first year of application of the Act, the basis for calculating the fee shall be 80 percent of the weight of wasted food.

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The food seller shall enter into the first agreement with an NGO within the first 5 months from the moment of the Act's entry into force. This period expired on 18 February 2020.

Changes in civil law – extension of legal protection under statutory warranty

The Act of 31 July 2019 amending certain laws to reduce regulatory burdens introduced amendments to:

- the Act of 23 April 1964 – Civil Code, by granting the entrepreneurs being natural persons the right to use consumer entitlements while concluding certain types of contracts (within the scope of the use of abusive clauses and extended statutory warranty against product defects); and

- the Act of 30 May 2014 on consumer rights (within the scope of the right to withdraw from a distance or off-premises contract within 14 days).

Starting from 1 June 2020, natural persons being self-employed sole traders will be provided with a strong argument to be used when interpreting contract templates and when exercising statutory warranty rights. The content of the new provision explicitly indicates that such persons shall be covered with consumer provisions regarding the ban on the use of prohibited contractual clauses and the rights arising from the statutory warranty against defects.

Additional legal protection will be granted to individual entrepreneurs in the event of concluding a contract directly related to their business activity, provided that the contract indicates that it is not of a professional nature for the entrepreneur. However, the provisions do not specify how to verify whether the contract is 'of professional nature' to the entrepreneur.

If you are interested in discussing the possible impact of the above regulations on your business activities, please contact us.

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