

Indirect Tax Alert

Poland announces consultation period for regulations on premium to be imposed on advertising activity

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Executive summary

On 2 February 2021, the Polish Government issued a draft of the *Act on additional revenues of the National Health Fund, the National Monuments Protection Fund and the establishment of the Fund for Supporting Culture and National Heritage in the Media* (the Bill).

The objective of the Bill is to generate additional funds to address the long-term health, economic and social consequences of the COVID-19 pandemic. The source of the funds will be revenue from a premium imposed on online advertising and traditional media.

The online advertising premium rate will be 5%. It will apply to advertisers whose global revenues reach €750 million and revenues from online advertising in Poland of €5 million.

Comments on the proposed legislation can be submitted to the following address: sekretariat.ps@mf.gov.pl. Comments must be submitted by 16 February 2021.

Detailed discussion

Conventional advertising premiums

- ▶ The entities obliged to pay the premium for conventional advertising will be media service providers, broadcasters, cinemas entities placing advertisements on an external advertising medium and publishers providing advertising services in Poland.
- ▶ The advertising premium will apply to advertising placed on television and radio, displayed in cinemas, in external settings (such as billboards) and placed in the press. The premium will be paid by entities that generate total revenues on this account in excess of PLN1 million in the case of broadcasting an advertisement on TV and radio, displaying an advertisement in the cinema, and placing an advertisement on an external advertising medium and over PLN15 million in the case of placing an advertisement in the press.
- ▶ The income subject to the premium will be everything that is the payment for broadcasting advertising services on television and on the radio, for displaying advertisements in the cinema, placing advertisements on an external medium advertising and placing an advertisement in the press, regardless of the subject of the advertisement, less value-added tax (VAT).
- ▶ The premium rates are defined as a percentage, calculated based on the amount of all advertising revenue received by the entity.
- ▶ For publishers providing advertising in the press, the basic premium for conventional advertising will be 2% on income amounts up to PLN30 million and 6% on income above this amount. In the case of other entities obliged to pay advertising premiums, in principle, the basic premium will be 7.5%, if the income does not exceed PLN50 million and 10% if it exceeds that amount. Additional fees may apply to the advertising of certain goods and services including medicinal products, dietary supplements, medical devices and sweetened beverages.

Digital advertising

- ▶ The online advertising premium will be determined based on the income derived from internet advertising aimed at recipients in Poland.

- ▶ An internet advertising service is understood to be a digital service, that is, a service provided using minimal human participation and broadcast, received or transmitted entirely by means of a telecommunications network. A key element is the data-dependent targeting of advertising based on data collected about the recipient.
- ▶ Digital advertising can take any form, including banner, pop-up, sponsored article, advertising video, audio ad, sponsored podcast, sponsored link, product suggestion on a shopping website, suggestions for a specific accommodation or means of transport, a sponsored tweet or post.
- ▶ Online advertising premium payers will be entities or groups of entities, if they jointly meet the following conditions:
 - The service provider's revenues or the consolidated revenues of the group regardless of where they are achieved, exceeded the equivalent of €750 million in the financial year
 - The service provider's revenues or the consolidated revenues of the group for the provision of services of internet advertising in Poland exceeded the equivalent of €5 million in the financial year
- ▶ An internet advertising service will be considered as provided in Poland, if the recipient at the time of receipt of the advertisement resides in Poland. To determine the recipient's location, it will be necessary to locate the device which was used to receive the advertisement.
- ▶ The premium for internet advertising will be 5% of the premium assessment basis.

Compliance obligations

- ▶ Nonresident entities with no registered office or permanent establishment in Poland must appoint a Polish resident fiscal representative to meet their advertising premium obligations, including filing returns and paying the premium due.
- ▶ The law provides for joint and several liability for the advertising premiums due from entities that form a corporate group.
- ▶ Groups of companies may designate a single entity as the one responsible for payment of all the advertising premiums due from the group. However, the responsible entity must be resident or have a registered office or permanent establishment in Poland.

For additional information with respect to this Alert, please contact the following:

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EYG no. 000977-21Gbl

1508-1600216 NY
ED None

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