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**EXCISE TAX AND THE ACTIVITY OF COMPANIES  
IN THE SECTOR OF ALCOHOLIC SPIRITS  
IN POLAND. THE CASE STUDY  
OF FABRYKA COPERNICUS SP. Z O.O. IN NIESZAWA**

**Summary:** The Excise Tax Act of 6 December 2008 (Journal of Laws 2014 item 752) is not adjusted to the modern market reality and does not help, but is even detrimental to, producers of spirits in Poland. It causes a decrease in the flexibility of operations and inhibits the response to rapidly changing market conditions. The study is based on a single case study of Fabryka Copernicus Sp. z o. o. in Nieszawa in order to evaluate critically one of the major consumption taxes and determine its impact on the functioning of a spirits producer.

**Keywords:** Law and Economics, Excise Tax, Sector of Alcoholic Spirits in Poland.

**Introduction**

Excise tax is a form of consumption tax, and one of the most important segments of the tax system. It is a selective indirect tax. It is levied on products whose sales revenues far outweigh the real costs of production. This surplus, through excise, becomes a huge source of Polish budget revenues, but also of the revenues of highly developed countries – the members of the European Union. Nevertheless the advantages for fiscal policy should not distract from the numerous allegations directed at it by the legal doctrine, entrepreneurs, and final consumers, who must not be underestimated. The gradually increasing rates of excise tax which, contrary to appearances, do not always result in an increase in

government revenues, but often cause them to collapse, are a frequent topic of discussion appearing in the Polish legal and economic literature. These activities adversely affect the entrepreneurship and the economic growth of the country.

The purpose of this article is, however, to look more deeply at the problem from the perspective of the spirits industry participant. Pragmatics significantly differs from the intention of the legislator. Owing to the subsequent increase in excise tax on spirits in Poland, in force since 1 January 2014, it was decided to narrow down the analysis and show the influence of the Excise Tax Act of 6 December 2008 (JoL 2014 item 752) on the activity of one of the domestic producers of spirits. This objective is correlated with the main research questions identified by the author:

1. Why does the Excise Tax Act hinder the business activity of producers of alcoholic spirits in Poland?
2. How do Polish companies cope in the increase in excise tax, unfavorable to their business?

It is also worth noting that the paper raises important issues and represents only a fraction of a wider problem.

## **1. The methodology of research**

In economic sciences very little space has so far been devoted to qualitative methods. They aspire to be considered equal social science methods, and not without reason. Extension of the research tools catalogue should be perceived as a positive phenomenon. In K. Konecki's opinion, the methods and tools of scientific inquiry depend on the research aim, and gain meaning only after they are given a proper context, in the form of their location within a given paradigm and particular research philosophy. The use of the method of inquiry whether qualitative or quantitative, is tantamount to acceptance of a specific paradigmatic perspective [Konecki, 2000, pp. 16-23].

The qualitative approach is focused on working practices and the local context of the analyzed case, in contrast to quantitative research which focuses on aggregation of the data which qualify for generalization of a phenomenon. It is not, however, devoid of scientific nature [Jemielniak, 2012, pp. X-XIII].

Furthermore, qualitative research does not require the complete reduction of the collected data. Further generalization incurs the risk of blurring the context in which a given process takes place [Miles, Huberman, 2000, p. 11]. The obtained results can be extrapolated to other populations, not through the implementation of a given interpretative model, but through the discovery of similarities, relationships, and analogies between them [Jemielniak, 2012, pp. XII-XIII].

As a leading method of the research undertaken in the context of the issue, subordinated to further considerations, the case study has been selected from the catalogue of qualitative methods. It is based on an indepth, yet holistic analysis, of a Polish company, specializing in the production of alcoholic spirits, Fabryka Copernicus Sp. z o. o. in Nieszawa [Jemielniak, 2012, p. 2]. The author has decided to conduct an analysis of a single case, in a descriptive form. The aim of the case study is to verify and analyze critically the existing legal regulation, the Excise Tax Act of December 6, 2008, and to determine its impact on the daily operations of one of the producers of strong spirits.

Triangulation is a useful method to apply in confirming the results of the research using independent measurements. Thanks to the use during the analysis as part of the case study of other methods, autonomous against one another, the application of triangulation has become possible. It is triangulation of methods [Koniecki, 2000, pp. 85-86; Miles, Huberman, pp. 276-277]. Scientific observation, a freeform interview, and document analysis, as well as an analysis of literature the Excise Tax Act of 6 December 2008 have been used in this paper.

The observation proved to be particularly helpful in the early stage of the research. It helped to clarify the subject of the paper, and was the basis of the expression of general propositions. The author assumed the role of a participating observer. She was able to observe the facts of interest to her, bearing the aim of the research in mind, but did not participate in the activities of the company. This made it possible to maintain an objective attitude [Stachak, 2006, pp. 158-163].

The observation was closely connected with the freeform interview method. This interview is a kind of conversation. It is not standardized, which means that the researcher is free to choose the order of the questions, and it is unstructured, as it takes the form of openended questions. The purpose of such methods was to explore the issues under analysis from the perspective of the members of the researched organization, Mariusz Pawłowski, President of the Company, and Michał Umerli, Commercial Director [Jemielniak, 2012, pp. 111-120].

In turn, the method of documentation is a method of subjectively indirect observation. Therefore, factual information, taking the form of formal or informal documents drawn up for the purpose of doing business [Stachak, 2006, pp. 168-173] in the analyzed vodka factory, was used in the research. The data contained in them were a valuable source of scientific information [Sulek, 1998, p. 137]. As part of the research, documents addressed to the company by the Customs Office in Toruń, accounting documents, and part of the contracts and correspondence with trading partners were analysed.

## **2. The economic approach to excise tax on alcoholic beverages**

Taxation of consumption through excise tax consists in extracting money from taxpayers as a result of their doing shopping or using a certain type of services [Weralski (ed.), 1985, p. 392]. Proceeds from this tax rise in direct proportion to consumer spending. Its amount is a significant percentage of the final price of the goods purchased and is completely independent of other taxes, such as the goods and services tax [Owsiak, 2005, p. 510]. Depending on the adopted criterion of taxation, excise tax may include: necessities, luxuries, and unnecessary items [Rybarski, 1935, pp. 328-332].

Necessities comprise both items necessary for life and items of mass consumption whose acquisition is necessary because of the level of social development. Constructing an exhaustive list of necessities poses great difficulty as a result of their relative nature. Depending on the analyzed community, it may vary. The taxation of necessary consumption entails the risk of negative consequences in the socioeconomic dimension. Therefore, from time to time, voices are raised in opposition to the imposition of excise tax on these items. Fiscal reasons prevent the implementation of similar demands [Maćzyński, 2004, pp. 109-110]. The most popular necessities include motor fuels and electricity.

The taxation of luxury goods is a distinguishing feature of developed societies. It meets with higher support from the public because only wealthy people are taxed. The list of luxury goods subject to excise tax is also not strictly defined, but, for example, furs, boats, and yachts can be found in it. Despite public support, this kind of fiscal burden does not bring excessively high budget revenues. Hence, there are proposals to increase the tax rate on this account, which would create the risk that wealthy citizens would refrain from consumption in their own country and purchase luxury products abroad [Maćzyński, 2004, pp. 109-110].

In contrast, tax on superfluous consumption is levied mainly on the purchase of tobacco and alcoholic products, and it is the segment of consumption, subject to excise tax, which will be the subject of further consideration. The official reason for the taxation of these goods is their harmful effect on health. The state, however, for some reason does not prohibit their production. High budget revenues from excise tax are the reason. Noting the fiscal dimension of the discussed tax, R. Rybarski argues that “it is difficult to imagine in how much despair would the treasury minister [finance minister today] be, if the entire population suddenly renounced the use of alcohol and tobacco” [1935, p. 209]. Although the taxation of superfluous goods meets with much less resistance on the part of potential taxpayers, increasing the rate of excise tax on alcoholic spir-

its poses the risk of widening the shadow economy. This means, of course, not higher, but lower revenue, but also an increase in the consumption by the citizens of contaminated alcohol, of unknown origin. Counteracting this threat calls for the need to step up inspections and incurs greater outlays by the state in the fight against smuggling and illegal production.

A view also dominates the literature that an increase in the prices of superfluous goods entails no drop in consumer demand owing to the fact that the demand for these items is not very flexible, on the contrary – quite rigid [Mączyński, 2004, p. 110; Wnorowski, 2010, p. 122]. This theoretical concept is worth confronting with the practice of economic life. Is it true that the increase in the rate of excise tax in 2014 on alcoholic spirits remained without effect on the demand for these products?

Excise tax belongs to a group of indirect taxes. The design of this type of tax causes the entrepreneur, that is a taxpayer in formal terms, not to be saddled with its burden, owing to its shift to the final consumer. Excise tax has a single-phase nature. It should be collected on one and usually the first stage of the introduction of goods into the market, and the next transaction, made with its participation, is free from taxation [Stanisławiszyn, Nowak, 2012, p. 33; Ksieniewicz, Kałka, 2013, p. 33].

Running a business whose subject is excise goods is associated with the initiation of a series of complex procedures. For example, the taxpayer is required to file a registration statement to the competent customs office before the first taxable operation (see Article 16 paragraph 1 of the Excise Tax Act). In addition, when a taxpayer ceases to carry out those transactions, it will have an additional duty to report this event within seven days to the authority indicated earlier (see Article 19, paragraph E.T.A.). This is a fact which is the basis for the removal of the taxpayer from the register. Excise tax also necessarily entails the excise security institution, granted for a period of time or indefinitely. It makes it possible to use the tax suspension procedure when operating a bonded warehouse and is a safeguard for the tax authorities in the event the taxpayer is in default of the obligation to pay excise tax [Mączyński, 2004, pp. 149-151]. How do the manufacturers of spirits approach this type of activity? Do they not feel these procedures are too complex and financially too painful?

Therefore, the production itself, that is the manufacturing, packaging, bottling, and processing of alcoholic spirits does not necessarily give rise to an obligation to pay excise tax, even though it is a taxable activity. Because of the obligation imposed by the legislator on excise goods manufacturers to produce them in bonded warehouses, if excise tax has not been paid on them, excise tax

collection is suspended. The obligation to pay tax arises upon removal of excise goods from the warehouse outside the excise tax suspension procedure [Ksieniewicz, Kalka, 2013, pp. 45, 426-428]. In accordance with Article 23 Paragraph 2 of the Excise Tax Act, the initial payments of excise tax for daily periods must be made no later than the 25<sup>th</sup> day after the date on which the tax liability arose, whereas in the case of an entity operating a bonded warehouse – after the date on which the cessation of suspension of the excise tax collection procedure occurred and on which the tax obligation arose. In addition, in accordance with Article 21 Paragraphs 1 and 2 of this Act, the taxpayer is required to file a tax return to the competent customs office, as well as the calculation and payment of excise tax to the account of the competent customs chamber – for monthly tax periods, no later than the 25<sup>th</sup> day of the month following the month in which cessation of suspension of the tax procedure occurred, resulting in the arising of tax liability. When the suspending of the tax collection process does not take place, this period expires on the 25<sup>th</sup> of the month following the month in which the tax liability arose. Here again there is a practical problem. What if a contractor is late with a payment? And what if this is not an isolated incident? Producers wishing to compete in a highly competitive market must offer contractors more convenient conditions of purchase, including extended payment terms which, nonetheless, may not always be observed. Therefore, it is often the manufacturer's responsibility to cover upfront the costs of manufacture of the product, and also the payment of excise tax. This may cause a loss of liquidity and, consequently, liquidation of the company. It is also worth noting that the penalties for failure to comply with tax obligations are very severe. They may significantly hit the taxpayer in the pocket, but may also take him to jail.

Excise tax is among the group of the least stable taxes which burdens entrepreneurs. The only certain thing is that the rate will not fall lower than the minimum level set out in the Council Directives of the European Union [Wnorowski, 2010, p. 123]. Since 1st January, 2014 a new excise tax rate on ethyl alcohol has been in force. It is PLN 5704 per 1 hectolitre of alcohol of 100% vol. in the final product (see Article 93, Paragraph 4 E.T.A.) and is 15% higher compared to the year preceding the change, when the rate was fixed at the level of PLN 4960. For a 0.5 litre bottle of 40% spirit now you have to pay a consumer has to pay around PLN 1.50 more (PLN 1.80 inclusive of VAT) [Ministerstwo Finansów, 2013, p. 23].

According to the estimates of the Ministry of Finance, budget revenues after the excise tax increase, compared to the year 2012, were expected higher by as much as PLN 780 million [Ministerstwo Finansów, 2013, p. 23]. However,

the increase has not occurred. On the contrary there has been a serious decline in production of spirits by as much as 24% [Wasilewicz, 2015, p. 1], owing to a significant slowdown in their sales.

This phenomenon is explained by the Laffer curve, defining the interdependence between the tax rate and the income of the state budget. The theoretical concept formulated by the American economist in 1974 indicates that a certain level of increase in the rate of taxation is equivalent to higher budget resources beyond which these resources begin to decrease [Wnorowski, 2010, p. 9]. Unfortunately, the government is considering an increase in the rate of excise tax, and it does not take into account this theory. The costs of the mistake are borne, not only by the state, but mainly by all manufactures of spirits.

Unprecedented was the decision of 2002 of the then Minister of Finance to reduce the excise tax on spirits by 30% (from PLN 6278 to PLN 4400 on 1 hectolitre of 100% alcohol vol. contained in the finished product). It was a very wise move. It not only resulted in higher budget receipts, but also in a significant decrease in the illicit production and trafficking of alcohol owing to consumers being discouraged through lower prices from the consumption of alcoholic products of unknown origin [Wnorowski, 2010, pp. 199-201]. Despite the favorable assessments of the situation described, Poland's excise policy has not changed course and is still guided by excessive fiscalism. The short-term and narrow perspective of the government is the main source of economic problems in the spirits sector.

### **3. The history and characteristics of the activity of Fabryka Copernicus**

The production plant in Nieszawa, near Toruń, was established in 1921. The red brick building underwent extensive revitalization work at the beginning of this century. Formerly it housed a spirit distillery. When the company was taken over by the Pomorska Fabryka Wódek Sp. z o. o. (Pomeranian Vodka Factory) in 2011, it expanded production by bottling pure and flavored vodkas. 2014 was a breakthrough year for the factory, because it found an important strategic investor. A new entity, Fabryka Copernicus Sp. z o.o. was also established. The necessary financial and intellectual resources, modern equipment, and the acquisition of brands which were once owned by Polmos Toruń, made manufactory production of high quality alcoholic beverage possible.

Currently, the factory is a manufacturer, distributor, and bottling services provider. It is gradually expanding its activities in Poland and abroad. The entity began operating again at the beginning of 2014, so it had no opportunity to pre-

pare itself for the increase in the rate of excise tax. This fact determined the author's choice of this particular entity as a subject of research, hoping to obtain interesting scientific conclusions.

#### **4. The impact of the excise tax act on the activity of Fabryka Copernicus**

In the international markets Poland is considered an important producer of spirits of which pure vodkas are an essential part. The sector is facing a number of problems. High saturation of the product range and market dominance by the top five players (Stock Poland, CEDC Grupa Sobieski, Brown-Forman and Diageo), is a major barrier to entry for new entities wishing to do business in this sector.

Currently, the Polish alcohol market is the most strongly affected by the observed change in consumer preferences towards flavored vodkas, which is heightened by the increased rate in the excise tax on spirits. This situation was also commented on by Leszek Wiwala, President of the Polish Spirits Industry Employers' Union. In his view, "the increase in excise tax on only one category of alcohol has deepened inequalities in the market. The CSO data also show that alcoholic beverages are not complementary. The decrease in the production of vodka is not compensated for by increases in other beverages. It seems that the worstcase scenario has come true and the collapse of legal production is compensated for by the increase in the supply from the informal economy. Today the Treasury is losing more than PLN 1 thousand million per year" [Wasilewicz, 2015, p. 1].

Fabryka Copernicus, which has resumed production and which has released the dormant potential of the brands acquired from the former Polmos Toruń, such as Copernicus and the Biała Wytrawna, as a new entity, occupied a weaker negotiating position in relation to the competition, in talks with potential partners. Customers accustomed to the prices in force before the increase in excise tax were cautious about buying new products. The contractors' approach to the Fabryka's products is changing. A qualified team of sales representatives, led by regional managers and the Commercial Director, Michał Umerli, covered the entire country with its products. Discussions are also progressing with foreign partners. Brands have become recognizable, there is a rotation of goods in warehouses, and the company has obtained renewed orders from retail shops, making it possible to negotiate better purchasing conditions with current and future customers.

Following the increase in excise tax in the first and second quarters of 2014, the price increase was not substantially noticeable for customers of retail chains. In late 2013, stocking of spirit products took place, that is purchases for storing were made. Smaller sellers who did not have the means to finance such projects

were forced to purchase goods at higher prices, thus weakening their already strained competitive position. For them the cessation of a devastating price competition in favour of high quality products was salvation.

“The consumer mass products are very sensitive to the price. A 40% spirit product, after exceeding the price of PLN 20 per bottle with a capacity of 0.5 litres, becomes a product which it is difficult to sell”, comments Michał Umerli, Sales Director of Fabryka Copernicus. Vodkas priced up to PLN 20 per bottle are offered by the Fabryka and are selling. Its main activity is, however, the production of premium spirits, which have a high value for money and are still available to the mass consumer, and also the production of ultra premium spirits.

Following the increase in excise tax, the consumers’ trend towards flavored 32% vodkas, and beer and wine, it is even more evident.

For this simple reason these products are much cheaper. Excise tax on a 0.5 litre of 40% alcoholic beverage is PLN 11.41 net, while on 32%, only PLN 9.13. Flavored vodka prices reach PLN 20 per bottle, but there are known cases of this type of product on the shelf for about PLN 22, probably dictated by the desire to make up for the losses incurred by producers on other products.

The Sales Director of the Fabryka also notes that “the increase in excise tax introduced on 1st January, 2014 was not justified, and also does not serve anyone – it does not serve either the increase in the inflow of funds to the state budget, or the increase in the volume of production and sales of the manufacturer, or the volume of sales of distributors (in wholesale and retail channels), commercial networks, and most importantly, is not attractive to the final consumers, depleting their wallet and reducing the amount of resources allocated to consumption” (from author’s interview).

The complicated procedures imposed by Excise Tax Act of 6 December 2008 are a major barrier to the entry of new players into the spirits sector. The plant in Nieszawa was taken over by new investors in January 2014, while the formal legal procedures themselves, making it possible, among other things, to open a bonded warehouse, so as to be able to sell alcohol in the excise tax suspension arrangement, lasted about five months. It took the company less than half a year, with the goodwill of the officials, therefore, to launch and carry out all the official procedures, allowing for the legitimate production of alcohol. This project was associated with sizeable costs incurred for salaries for office staff workers, repair work carried out in the facility, and technical maintenance in the non-earning and non-prospering plant.

Starting a business in the production of spirits in a bonded warehouse is also associated with the need to raise capital for excise tax guarantee. It may take, in accordance with the Law on Excise Tax Act, several forms (Article 67

Paragraph 1 E.T.A.) a cash deposit, bank or insurance guarantee, certified cheque, promissory note, another document having a payment value, or a mixture of forms. It is not difficult to guess that the simplest and quickest form procedurally is a cash deposit, but not all companies can afford it. Excise tax guarantee may not always be accepted by the tax authority. A refusal happens, for example, if the proper amount of tax liability coverage is not ascertained (Article 71 Paragraph 1 E.T.A.). In such a case, the relevant head of the customs office will request the submission of a new or additional security.

In the opinion of the President of the Company, Mariusz Pawlowski, it is primarily “the interest of the state that calls for shortening tedious administrative procedures provided for in the current Excise Tax Act” (from author’s interview). The longer the official procedure, the more delayed is the inflow of revenues by way of excise tax and VAT.

In the opinion of the company’s Commercial Director, payment of excise tax should be made upon receipt of receivables from customers, which generally would not cause any difficulty to customs officers in their verification. In addition, for companies starting production in the spirits sector, a reduction of the excise tax rate in the first year of operation in the market is proposed, together with a ban on the use of predatory pricing. The new proposals may give rise to abuse, but gains from such solutions far outweigh the potential risks. These solutions would not only deliver greater receipts to the budget from excise tax and VAT, but would also create the possibility of employing more workers, while inhibiting unemployment, reducing spending on benefits for people out of work, especially in the vicinity of the plant, and increasing domestic consumption.

## **Conclusions**

Excise tax should act as an additional tax, but it is a substantial source of Polish budgetary receipts. Despite this, the government has decided to increase the excise tax, which has affected native manufacturers and final consumers the most. Five major players in the spirits sector are likely to come out of this test unscathed, while smaller, manufacturer remain at a disadvantage. Owing to its qualified staff of professionals, Fabryka Copernicus Sp. z o.o. in Nieszawa has been able to survive in this difficult time for the spirits market. However, the company’s situation would be much better if it were not for the complicated official procedures imposed by the Excise Tax Act of 6 December 2008 (JoL No. 2014, item 752). Hence, it is believed that this act is not adapted to modern mar-

ket realities. It is an inhibitor that prevents response to rapidly changing market conditions. Therefore, a number of changes in this piece of legislation is proposed to make it more friendly to business and consequently, to bring greater revenues to the state budget.

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**PODATEK AKCYZOWY A DZIAŁALNOŚĆ PRZEDSIĘBIORSTW  
W SEKTORZE ALKOHOLI MOCNYCH W POLSCE. STUDIUM PRZYPADKU  
FABRYKI COPERNICUS SP. Z O. O. W NIESZAWIE**

**Streszczenie:** Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym (Dz.U. 2014 poz. 752) nie jest dostosowana do współczesnych realiów rynkowych i utrudnia prowadzenie działalności w sektorze alkoholi mocnych w Polsce. To powoduje zmniejszenie elastyczności działania przedsiębiorców z tego sektora i hamuje ich reakcje na dynamicznie zmieniające się warunki rynkowe. Badanie opiera się na pojedynczej analizie przypadku Fabryki Copernicus Sp. z o.o. w Nieszawie, aby ocenić krytycznie jeden z głównych podatków konsumpcyjnych i określić jego wpływ na funkcjonowanie producenta alkoholi.

**Słowa kluczowe:** ekonomiczna analiza prawa, podatek akcyzowy, sektor alkoholi mocnych w Polsce.