

Unofficial translation

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NEW ACT ON END-OF-LIFE PRODUCTS **METHODOLOGICAL SUPPORTING DOCUMENT**

METHODOLOGICAL GUIDELINE

Of the Waste Management Department of the Ministry of the Environment on the fulfilment of the following obligation under the new Act on End-of-Life Products with effect from 1 January 2021

On the obligation of the producer of electrical equipment, tyre producer, distributor, and last seller to separately indicate the costs of the take-back, treatment, recovery, and disposal of the end-of-life product in accordance with Section 73 and Section 99 of Act No. 542/2020 Coll.

This methodological guideline serves to clarify the procedure of producers, distributors and last sellers of electrical equipment or tyres, who are obliged, after the effective date of the new Act No. 542/2020 Coll., on End-of-Life Products (hereinafter referred to as the "AELP"), to indicate on the tax document separately from the price of electrical equipment or tyres, the cost of take-back, treatment, recovery (and disposal) of end-of-life products (hereinafter referred to as the "visible recycling fee") that is attributable to one piece or kilogram of new product, with effect from 1 January 2021.

1. Purpose of the visible fee and interlinkage with previous legislation

1.1 Purpose

The importance of the indication of the recycling fee on the tax document separately from the price is intended primarily to facilitate the review of compliance of producers and distributors, as the case may be, with the obligations laid down by the AELP. As a result of the obligation to separately display the recycling fee, those producers who do not comply with the legal obligations at all, the so-called "free-riders", are "visible" in the distribution chain, as they cannot report any costs of take-back. This is also

important for downstream distributors, as they would be in the position of producers and would have identical obligations as producers and could be sanctioned by the supervisory authorities (see Section 10 of the AELP).

Another important function of the visible fee is the facilitation of the review of the obligation as provided in Section 44 (2) of the AELP, according to which the collective systems must not discriminate against small producers, i.e. are obliged to charge to all producers the recycling fee in the same amount in relation to the same or similar products, based on publicly available tariffs (Section 44 (4) of the AELP). Another point of the visible fee is to inform consumers about the existence of a system for take-back and treatment of the products in question, specifically information that a used product does not belong in mixed municipal waste.

1.2 Link to previous legislation

The previous legislation¹ effective until the end of 2020 stipulated that the indication of the visible recycling fee was voluntary in relation to the sale of electrical equipment, specifically that it depended on a decision of a producer whether they would display the fee on a separate basis or not. Therefore, some of the abovementioned features of the function of the fee were significantly reduced.

In the case of tyres, the obligation to indicate the visible fee has been in place since 2015. However, in this case the AELP also lays down new obligations from 1 January 2021. Therefore, several previously used methods of displaying the visible recycling fee for tyres must now be adjusted in accordance with the requirements of the new legislation.

2. Selected aspects of the obligation to indicate the visible recycling fee

2.1. Method of indication of the fee on the tax document

The visible recycling fee may be communicated in various ways in connection with the sale of products according to the legitimate preferences of a seller (website presentation, leaflets, labels in stores, at cash desks, etc.), however pursuant to the AELP it is obligatory to display it on the tax document (invoice).

There are many graphic designs of invoices used, therefore the way in which the visible recycling fee is shown depends to some extent on a producer, distributor, and last seller.

However, in order to fulfil the purpose of this instrument and to comply with the legal obligations, it is important that the following elements be always clearly and evidently stated on the tax document: (i) what recycling fee (monetary amount) is invoiced for each product included in the invoice, (ii) what is the unit amount (rate) of the fee per 1 piece or 1 kg and (iii) what is the quantity (pieces) of the invoiced products or the weight (kg) of each of the invoiced products, which enable the use of the given fee rate. As a more suitable approach, we recommend indicating the price of the product without the fee and separately display the fee on each invoice line (for each item). However, if all the invoiced products are covered by the same fee rate, item (i) can be replaced by the overall amount of the recycling fee for the entire invoice, but in this case, it is also necessary to specify the fee rate (ii) and the quantity of all invoiced products, or the weight of each product (iii). Otherwise, the method of

¹ Section 37n (4), Section 37o (2) and Section 38a (5) of Act No. 185/2001 Coll., on Waste

displaying the visible fee would hinder the review of the fee calculation and would make it impossible for distributors and last sellers to comply with their legal obligation to display the visible recycling fee in the correct amount.

For example, a mere **statement at the end of the invoice that the price of the product includes a recycling fee of CZK X is insufficient in terms of fulfilling the legal obligation.**

2.2. Amount of fee

The determination of the amount of the visible recycling fee varies depending on whether a producer is fulfilling the obligations in a collective, or individual system.

Where a producer fulfils the obligations pursuant to Section 9 b) of the AELP, i.e. by the means of a collective system, the amount of the fee is identical to the fee paid by the producer to operator of the collective system when the product is placed on the market. In this context, it is not possible to exclude that when a tariff of fees of the collective system is changed (Section 44 (4) of the AELP), the products of the producers-participants of the collective system will temporarily circulate in the distribution network, sometimes with the indication of the old fee and sometimes with the new amount of the fee. This will be due to the different time of placement of the product on the market when applying the old and new tariff of fees. Products with a visible recycling fee according to the old tariff of fees will disappear from circulation after their final sale to end-users.

If a producer fulfils the obligations laid down in Section 9 b) of the AELP, i.e. through its individual system, the fee is established on the basis of the costs known at the time the product is placed on the market or a demonstrable estimate of the anticipated costs (if these costs are to be incurred only after this moment). In this context we remind that the cost of the take-back, treatment and recovery (and disposal) of waste products is included by the producer in the annual report (Section 28 of the AELP, implementing decree) and, in case of tyre producers also in the annual report according to the Act on Accounting. The amount of these costs determines both the amount of the guarantee (Section 31 of the AELP) and the visible recycling fee.

2.3. Indication of the fee

The cost of taking back, treatment, recovery (and disposal) of a waste product should be referred to as a “Fee for recycling” or “Recycling fee” (in English “Recycling fee”).

Examples of an inappropriate identification include “fee for disposal”, “waste disposal” or any phrase using the term “charge” (a charge is usually of a public nature, which is not the case of a recycling fee contributing to a system run by an individual producer or operated by producers within a collective system). Therefore, those examples of inappropriate fee identification should not be used on tax documents.

2.4. Number of decimal places of the fee

The number of decimal places of the recycling fee is not prescribed by the legislation, therefore it depends on the decision of a producer.

If a producer fulfils the obligations pursuant to Section 9 b) of the AELP, i.e. by the means of a collective system, on the basis of a written contract on the fulfilment of the obligations of take-back, treatment and recovery or disposal, then the tax document should indicate the recycling fee in the amount actually paid by the producer concerned in accordance with such contract (including decimal places, if any). When a producer fulfils the obligations laid down in Section 9 a) of the AELP, i.e. through the individual system, it depends on the decision of the producer whether the recycling fee will be indicated on the tax document rounded to one or two decimal places, which is generally considered sufficient.

2.5. Fee currency

During the distribution of products, there may be a situation where the product is sold in a currency different from CZK, but the recycling fee has been determined/paid in CZK. In this situation, the amount of the visible recycling fee can be converted into the invoicing currency (e.g., EUR), but the invoice must also include the exchange rate used and the original amount in CZK. Only such a method of indicating the visible recycling fee allows further distribution of the product in accordance with the AELP.

2.6. Indication of fee in the promotion of goods and in the sale in a “brick-and-mortar” or online store

As mentioned above, the visible recycling fee can be communicated in other methods in connection with the sale of products, alongside the indication on the invoice, however, it is not an obligation. In order to avoid consumers being misled in the promotion of goods in a “brick-and-mortar” or within an online store, the seller must inform the customer about the final (total) price of the product promoted, including the recycling fee. However, the seller does not have to indicate the recycling fee on a separate basis in the promotion (they can include it in the total price when promoting it). The recycling fee must be indicated separately on the issued tax document only when the product is sold.

2.7. Different amount of fees in the distribution of products from different producers

In the case of the distribution or sale of identical products originating from different producers, the visible recycling fees for each product will vary, possibly materially, when each producer fulfils their obligations through a different collective system or through the individual systems. In such a case, it is necessary that the distributor and the seller indicate on the tax document for each product the amount of the recycling fee actually paid by the producer into the collective system, or the amount which the producer calculated or demonstrably estimated within their individual system.

2.8. Individual obligation to indicate the visible recycling fee

All parties concerned in the customer and supply chain are individually obliged to indicate the visible recycling fee. Therefore, they have this obligation regardless of fulfilment of the obligation by producers placing the products on the market or by other distributors, in particular direct suppliers. In case of inconsistencies in the reporting of the visible recycling fee, we recommend that you properly communicate this issue with your supplier. First of all, and when the fee is not indicated at all, it is necessary to verify that the product does not originate from a free-rider by verifying the registration of the producer placing product on the market or its authorised representative in the register of producers. In the event of the acceptance and further distribution of such product, the distributor

would be the bearer of all the obligations of the producer (Section 10 of the AELP). If this is not the case and the product does not originate from a free-rider, it is necessary to ensure that the supplier provides the cooperation necessary to fulfil the obligation to properly indicate the visible recycling fee by the customer (i.e. that the invoice contains all the information, see above), because if the cooperation is not provided, the customer, who continued to distribute or sell the product, would bear the risk of penalties of up to CZK 500,000 (Section 12(2), i) of the AELP).

2.9. Fee and its relationship to the forthcoming decree on the details of the management of certain end-of-life products

The obligation to indicate the visible recycling fee will not be further specified by the decree. The provisions of the AELP do not include an authorisation to issue a decree specifying the details regarding the indication of the recycling fee. Therefore, all requirements (obligations) are defined by the AELP, namely Section 73 for electrical equipment and Section 99 for tyres.

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