

Environmental Fee: To Pay or Not to Pay?

Newsletter

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In late 2014, the legislator has introduced the obligation of companies to recycle product waste; as an alternative to recycling, the company can pay an environmental fee (Articles 24.2 and 24.5 of Federal Law No. 89-FZ dated 24 June 1998 “On Production and Consumption Waste”, hereinafter, the “**Law on Waste**”). However, the regulations setting forth the rates or the procedure for calculating the fee, etc. are yet to be adopted.

The appearance of a new “green” obligation brought about a multitude of questions and doubts, the key of them, until recently, being whether the companies are to pay the environmental fee for the first three quarters of 2015.

1. THE SUBSTANCE OF THE OBLIGATION

The manufacturers and importers (hereinafter, the “**manufacturers**”) **shall ensure the recycling of product waste** in accordance with the norms for recycling (Article 24.2(1) of the Law on Waste). The obligation covers only manufacturers of goods that are ready for consumption, and does not relate to raw materials and goods that need processing. The list of goods to be recycled was approved by Government Decree No. 1886-r dated 24 September 2015. The packaging must be recycled by the manufacturers of goods using it.

The companies may recycle waste themselves, through associations of manufacturers or by way of entering into contracts with waste handling providers or regional providers. It is important that for independent recycling of waste belonging to hazard classes I to IV the company will require a license.

In case of failure to comply with the recycling norms, the company will need to pay an environmental fee (Article 24.2(7) of the Law on Waste). The funds received from the payment of the environmental fee do not constitute a tax, but rather are special-purpose funds directed at the improvement of the waste recycling system.

2. FEE PAYMENT TERM

The law amending the Law on Waste provides that the environmental fee for the first nine months of 2015 shall be paid by 15 October 2015. At the same time, the regulations that would determine the rates and formulas for the calculation of the fee are yet to be adopted.

The ministries and businesses have been engaged in serious discussions concerning the

possibility of setting zero rates for the fee for the first several years of the obligation being in effect. Despite these efforts, Government Resolution No. 1073 dated 8 October 2015 “On the Procedure for Collection of the Environmental Fee” confirmed that the deadline for paying the fee was 15 October 2015, further increasing the confusion among manufacturers.

The situation is exacerbated by the fact that independent waste recycling is equally impossible until the norms and procedure for the recycling have been established. At present, the respective regulations exist only in draft form.

3. THE POSITION OF THE MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT

In the clarifications, published on 20 October 2015 on its website, the Ministry of Natural Resources and Environment presented the first official position of state authorities and made the situation clearer, explaining that:

- the fee is not payable due to the absence of a formula for its calculation;
- the manufacturers shall submit first calculations of the amount of the environmental fee for the reporting period during which the formulas for its calculation are approved.

4. CONCLUSION

The manufacturers have been granted a temporary grace period for the payment of the environmental fee, lasting until the formulas for its calculation are prescribed. However, we recommend monitoring the regulations being adopted, since after the system becomes operative, the environmental fee will become payable by all companies that do not comply with the recycling norms.

MOSGO & PARTNERS LAW FIRM

Tel.: +7 (495) 228 48 78
info@mosgolaw.com
www.mosgolaw.com

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