

# Legal Alert

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## NSA judgment on sugar tax

*"Sugars occurring naturally in beverages are not subject to the fee on foodstuffs and, as a result, their quantity (content) cannot affect the amount of the fee"* ruled the NSA in a judgment dated 22 November 2022.

The case concerned the sugar tax<sup>1</sup> in power in Poland as of 1 January 2021 which covered, among others, artificially sweetened beverages. Due to numerous doubts about how it should be calculated, one of the entities operating in the beer industry applied to the Tax Office for an individual interpretation regarding the calculation of the fee for non-alcoholic flavoured beer.

The company pointed out that the production of the final product is preceded by the production of beer concentrate or base beer. One of the stages of its production is the fermentation process, as a result of which, simple sugars (mainly glucose, fructose, sucrose, and maltose) are formed naturally. Sugars and other sweeteners or substances containing sugar are added only at the stage of producing the final product, i.e. the non-alcoholic flavoured beer.

According to the company, the amount of sugar from fermentation should not be taken into account when determining the sugar tax, and the fee should be calculated only on the amount of sugars added in the further production process. The Tax Office disagreed with this position and decided that the fee should also be charged on natural sugars produced during the production process. In the preamble to the decision, the authority stated that since the beverage, in addition to sugars derived from malt (natural sugars), will also contain sugars and other sweeteners added to the beverage during the production process, the fee should be calculated on the entire content of sugars present in the beverage. The company appealed against the interpretation to the Supreme Administrative Court.

According to the Supreme Administrative Court (III FSK 934/22), the Director of National Tax Information (and the court of first instance) incorrectly drew conclusions as to the basis for calculating the fee. In the court's view, the legislator clearly decided to exclude naturally occurring sugars in beverages from the fee. As they are not subject to the tax on foodstuffs, their quantity (content) cannot affect the amount of this tax. Consequently, it was concluded that the fee should only be charged on sugars added in the further production process, and the view emerging in the jurisprudence of administrative courts that the concept of "sugar content" (Article 12f sec. 1 Act on public health<sup>2</sup>) should refer to the total sum of all sugars in the beverage, i.e. both of natural origin and the additives listed in Art. 12a sec. 1 point 1 Act on public health, was incorrect.

The above judgment, which is favourable to the beer industry, may provide an important argument in disputes between producers of other categories of beverages and the tax authorities.



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<sup>1</sup> i.e. the tax on foodstuffs

<sup>2</sup> The Act of 11 September 2015 on public health (Journal of Laws 2022.1608 "Act on public health")