

Commercial Flash

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Controversial Slovak Act on Special Levy on Retail Chains will come into effect on 1 January 2019 and will affect particularly large foreign chains

The National Council of the Slovak Republic has adopted a very controversial bill on the special levy on retail chains proposed by the coalition deputy members, even despite the President's previous veto. The Act will come into effect on 1 January 2019.

Under the Act, certain retail chains, part of the turnover of which comes from the sale of food, shall be obliged to pay a tax (levy) of **2.5% of their net turnover** in Slovakia.

Who will be obliged to pay the special levy?

The special levy is to apply only to certain retail chains, while the Act defines them according to certain criteria.

In the light of the Act, a **retail chain** is a grouping of commercial establishments with the same or interchangeable business name, operated by one undertaking or more related undertakings, which must meet all four of the following conditions:

- It is a food business operator (with any stage of production, processing or distribution of food);
- It has operations at least in 19 districts of the Slovak Republic;
- At least 25% of its net turnover comes from selling food to the final consumer; and
- The operations have a unified design, joint communication and joint marketing activities.

Business alliances have been finally excluded from the scope of the bill, and thus the definition of a retail chain, and hence the levy obligation, will not apply to them.

At the same time, however, the Act introduces **exceptions** to which entities the levy obligation shall not apply:

- mass catering facilities;
- small and medium-sized enterprises¹;
- retail chains that are food producers and sell food to the final consumer, with at least 80% of their net turnover coming from the sale of the food they produce, as well as the retail chains that are proprietary related to such chains; or
- retail chains with at least 80% of net turnover coming from the sale of one class food.

What is the basis and amount of the levy?

The levy rate is set at **2.5%**, the basis of the levy being **the net turnover** (not the profit) of a retail chain for the relevant levy period which is the three consecutive calendar months of a respective accounting period.

The levy applies to **the total net turnover** of the retail chain, and hence also to the one that mostly does not have to come from the sale of food. For example, even if only 25% of the net turnover comes from the sale of food to the final consumer, under the Act the levy is to be applied to the total net turnover. In such a case, the levy may also actually burden goods or services other than the sale of food to consumers - this appears to be rather a legislative error than the legislator's intention, unfortunately the text of the Act is unambiguous in this respect.

Finally, the legislator removed from the bill the obligation to pay levies by operations in the least developed districts²,

¹ Undertakings that employ less than 250 people and their annual turnover does not exceed EUR 50 mil. and/or the total annual balance sheet does not exceed EUR 43 mil.

² According to the data valid as at 19 October 2018 published on the website of the Central Office of Labour, Social Affairs and Family of the Slovak Republic, the list of the least developed districts includes the districts of: Lučenec, Poltár, Revúca, Rimavská Sobota, Veľký Krtíš, Kežmarok, Sabinov, Svidník, Vranov nad Topľou, Gelnica, Rožňava, Sobrance, Trebišov, Bardejov, Medzilaborce, Košice – okolie, Levoča, Snina, Stropkov, and Michalovce.

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namely operations with less than 10 employees in such a district, and municipalities with a maximum of 3 operations selling food to the final consumer.

Risk of discrimination

The introduced “sectorial” levy on net turnover is in fact an additional selective tax, which will affect only some undertakings within the given sector, mostly the largest foreign retail chains operating in Slovakia.

At first sight the measure appears to be discriminatory, as it puts some undertakings within a single market at a disadvantage – and in practice it will affect, in particular, foreign undertakings operating in Slovakia. Therefore, the compliance of the adopted Act with EU law is highly questionable.

The possible actions of the European Union authorities, or also the affected business entities, aimed at repealing or changing the Act can be expected.

Effectiveness of the Act

The Act is to come into effect as early as 1 January 2019. Store chains will thus have an obligation to pay the special levy already starting with the first three-month levy period beginning after 31 December 2018.

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