

Prague, 19 January 2021

NEW ACT ON END-OF-LIFE PRODUCTS **METHODOLOGICAL BASIS**

METHODOLOGICAL INSTRUCTION

The Department of Waste of the Ministry of the Environment to fulfil the following obligations under the new Act on End-of-Life Products with effect from 1 January 2021

As regards the obligations of manufacturers of electrical equipment, manufacturers of tires, distributors and last sellers to separately state the costs of take-back, processing, use and disposal of end-of-life products in accordance with Section 73 or Section 99 of Act No. 542/2020 Coll.

This methodological instruction serves to clarify the procedure of manufacturers, distributors and last sellers of electrical equipment or tires, which upon the effectiveness of the new Act No. 542/2020 Coll., on End-of-Life Products (the "Products Act") are subject to the obligation to state the costs for the take-back, processing, recovery (and disposal) of end-of-life products ("visible recycling contribution fee") per piece or kilogram of new product on the tax document at the time of sale separately from the price of electrical equipment or tires, with effect from 1 January 2021.

1. Purpose of the visible contribution fee and connection with the previous regulation

1.1 Purpose

The significance of stating the recycling contribution fee on the tax document separately from the price is primarily to facilitate the control of the fulfilment of the obligations stipulated by the Products Act on the part of manufacturers and possibly also distributors. As a result of the obligation to state the recycling contribution fee separately, those manufacturers who do not comply with their legal obligations at all, so-called "free-riders", are "visible" in the distribution chain, as they cannot report any costs for ensuring take-back. This is then important for downstream distributors who would otherwise be in the position of manufacturers, i.e., they would be subject to identical obligations as manufacturers and would risk sanction by the control authorities (see Section 10 of the Products Act).

Another important function of the visible contribution fee is to facilitate the control of the obligation defined in Section 44 (2) of the Products Act, where collective systems must not discriminate against small manufacturers or are obliged to charge all manufacturers a uniform amount of recycling contribution fees in relation to the same or similar products based on public tariffs (Section 44 (4) of the Products Act). Another significance of the visible contribution fee lies in the provision of information to the

consumer about the existence of a system of collection and processing of the relevant products or information that the used product does not belong to mixed municipal waste.

1.2 Connection with previous legislation

The previous legislation¹ stipulated the indication of a visible recycling contribution fee as voluntary in the sale of electrical equipment by the end of 2020, i.e., it was at the discretion of the manufacturer whether to state the contribution fee separately or not. Some of the above-mentioned functions of the contribution fee have therefore been significantly reduced.

In the case of tires, the obligation to indicate the visible contribution fee has been in place since 2015. Here too, however, the Products Act sets out new obligations from 1 January 2021. Many earlier ways of stating the visible recycling contribution fee for tires must therefore be adapted to the requirements of the new legislation.

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

2.1. How the contribution fee is stated on the tax document

The visible recycling contribution fee can be communicated in connection with the sale of products in various other ways according to the seller's legitimate preferences (website, leaflets, labels in stores, at cash registers, etc.), but under the Products Act it is mandatory to state it on the tax document (invoice).

With the many graphic options available for processing invoices, the way the visible recycling contribution fee is displayed depends to some extent on the manufacturer, distributor and final seller.

However, in order to fulfil the purpose of this tool and to comply with the legal obligation, it is important that the tax document always clearly and unambiguously states (i) what recycling contribution fee (monetary amount) is invoiced for each product included in the invoice, (ii) what is the unit amount used (rate) of contribution fee per 1 piece of product or 1 kg, and (iii) what is the quantity (pieces of product) of invoiced products or the weight (kg) of each invoiced product for the application of the given contribution fee rate. As the most appropriate option, we recommend stating the price of the product without a contribution fee and, in addition, a separate contribution fee on each billing line (for each item). However, if all invoiced products bear the same contribution fee rate, point (i) may be replaced by the total amount of the recycling contribution fee on the whole invoice, but even in this case it is necessary to further indicate the contribution fee rate, and (ii) the quantity of all invoiced products or the weight of each product. Otherwise, the way the visible contribution fee is indicated will make it impossible to check the calculation of the contribution fee and will make it impossible for distributors and final sellers to comply with their legal obligation to indicate the visible recycling contribution fee in the correct amount.

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

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

2.2. Amount of the contribution fee

The determination of the amount of the visible recycling contribution fee varies according to whether the manufacturer fulfils its obligations in a collective or individual system.

If the manufacturer fulfils the obligations under Section 9 (b) of the Products Act, i.e., through a collective system, the amount of the contribution fee is identical to the contribution fee paid by the manufacturer to the administrator of the collective system when placing the product on the market. In this context, it cannot be ruled out that when changing the price list of the collective system (Section 44 (4) of the Products Act), the products of manufacturers-participants of the respective collective system will be active in the distribution network for some time, sometimes stating the old amount of the contribution fee and sometimes the new amount. This will be due to the different time of launching the product on the market when applying the old and new price list. Products with a visible recycling contribution fee according to the old price list will disappear from circulation after their sale to end users.

If the manufacturer fulfils the obligations under Section 9 (a) of the Products Act, i.e., through an individual system, the contribution fee in the amount of costs is known at the time of placement on the market or a demonstrable estimate of estimated costs (if the costs are incurred later). In this context, we point out that the amount of costs for take-back, processing, recovery (and disposal) of waste products is stated by the manufacturer in the annual report (Section 28 of the Products Act, implementing legislation) and in the case of tire manufacturers compiling an annual report under the Accounting Act, also in this annual report. The amount of these costs determines both the amount of the deposit (Section 31 of the Products Act) and the visible recycling contribution fee.

2.3. Designation of the contribution fee

The cost of take-back, processing, recovery (and disposal) of a waste product is to be marked as the "Recycling contribution fee" or "Recycling fee".

Examples of inappropriate designations include "disposal contribution", "waste disposal" or any phrase using the term "charge" (a charge is usually of a public law nature, which is not the case of the recycling contribution fee, which contributes to a system operated by an independent manufacturer or manufacturers within a collective system). These examples of inappropriate contribution fee designations should therefore not be used on tax documents.

2.4. Number of decimal places in the contribution fee

The number of decimal places for the recycling contribution fee is not set by law, so it is at the manufacturer's discretion how this will be set. If the manufacturer fulfils the obligations under Section 9 (b) of the Products Act, i.e., through a collective system, based on a written contract on ensuring the fulfilment of obligations of take-back, processing and recovery or disposal, then the tax document should state the recycling contribution fee in the amount that was actually paid by the manufacturer concerned based on this contract (including any decimal places). If the manufacturer fulfils the obligations under Section 9 (a) of the Products Act, i.e., through an individual system, it is up to the manufacturer itself to state the recycling contribution on the tax document rounded to one or two decimal places, which is generally considered sufficient.

2.5. Currency of the contribution fee

When distributing products, a situation may arise where the product is sold in a currency other than CZK, but the recycling contribution fee has been set/paid in CZK. In such a situation, it is possible to convert the amount of the visible recycling contribution fee into the invoicing currency (e.g., EUR), but the tax document must also contain the exchange rate used and the original amount in CZK. Only such a way of indicating the visible recycling contribution fee will enable further distribution of the product in accordance with the Products Act.

2.6. Stating the contribution fee when promoting goods and sale in bricks and mortar or online stores

As mentioned above, the visible recycling contribution fee may be communicated in other ways in connection with the sale of products in addition to the tax document, but this is not mandatory. In order to avoid misleading the consumer, the seller must inform the customer when promoting the goods in a bricks and mortar establishment or in an online store about the final (total) price of the promoted product, i.e., including the recycling contribution fee. However, it does not have to state the recycling contribution separately when promoting it (it can include it in the total price when promoting it). The recycling contribution fee must be stated separately only at the time of sale on the issued tax document.

2.7. Different contribution fees for the distribution of products from different manufacturers

In the case of distribution or sale of identical products from different manufacturers, the visible recycling contribution fees for each of the products will be different, even in principle when each of the manufacturers fulfils their obligations through a different collective system or through their own individual systems. In such a case, the distributor and the seller must state on the tax document for each product the amount of the recycling contribution fee that the manufacturer actually paid to the collective system or the amount calculated or demonstrably estimated by the manufacturer within its individual system.

2.8. Independence of the obligation to indicate a visible recycling contribution fee

All links in the supply and demand chain have the obligation to indicate the visible recycling contribution fee separately. They therefore have that obligation, irrespective of whether the manufacturers placing the products on the market and other distributors, in particular direct suppliers, comply with it. In case of discrepancies in the reporting of the visible recycling contribution fee, we recommend that you duly communicate this fact with your supplier. In the first place, and if the contribution is not stated at all, it is necessary to verify whether the product does not come from a free-rider by verifying the registration of the manufacturer who placed the product on the market, or its authorized representative, in the List of Manufacturers. In the event of the removal and further distribution of such a product, the distributor would become the bearer of all the manufacturer's obligations (Section 10 of the Products Act). If this is not the case and the product does not come from a free-rider, it must be ensured that the supplier provides the cooperation needed to meet the customer's obligation to duly indicate the visible recycling contribution fee (i.e. the invoice contains all information, see above), as failure to provide it will be fined up to CZK 500,000 (Section 125 (2) (i) of the Products Act) as well as the customer itself who would further distribute or sell the product.

2.9. The contribution fee and its relation to the forthcoming decree on the details of handling certain end-of-life products

The obligation to state the visible recycling contribution fee will not be specified in any further detail by decree. The wording of the Products Act does not contain an authorization to issue a decree specifying the details of stating the recycling contribution fee. All requirements (obligations) are therefore defined by the Products Act, namely Section 73 for electrical equipment and Section 99 for tires.

Prepared by: Department of Waste of the Ministry of the Environment

Approved by: Ing. Bc. Jan Maršák, Ph.D., Director of the Department of Waste