

EXCISE TAX ON ALCOHOL ACCORDING TO LEGAL LAW OF SLOVAK REPUBLIC IN TERMS OF EU SECONDARY LAW TRANSPOSITION

SPOTREBNÁ DAŇ Z LIEHU V PRÁVNOM PORIADKU SLOVENSKEJ REPUBLIKY Z HĽADISKA TRANSPOZÍCIE SEKUNDÁRNEHO PRÁVA EÚ

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I. Introduction

Alcoholic beverages, spirits especially, represent the field that attracts broad interest of different parties. On one hand, there are interests of producers and on the other hand, those of society. Socio-economic impact of distilling industry sets the role of government. Therefore, the shape and conditions of this branch are dictated by legal regulation. Governments typically focus their attention on two main objectives, health risk of excessive drinking and tax incomes. The health risk of excessive drinking is the primary objective of research in social and medical field. The taxation system representing the regulation system of spirits consumption is by no means less important and creates interesting field of legal and economic research.

Excise taxes on alcohol are currently the hot topic debated even on the ground of the European Commission (further Commission). The attempt is to create an open discussion with stakeholders about the freshness of Council Directive 92/83/EEC of 19. October 1992 on the harmonisation of the

structures of excise taxes on ethanol and alcoholic beverages. The initiative launched by the Commission, in particular, answers a question, whether the discussed Directive continues to fulfil their purpose and corresponds to current needs. Any changes to the above mentioned Directive would have a major impact also on the legislation at the national level in individual member states.

II. Material and Methods

The present article is focused primarily on the analysis of the current legal regulation of excise taxes on alcoholic beverages (with a focus on the excise tax on alcohol) under the Act No. 530/2011 Coll. on excise tax on alcoholic beverages, as amended, and its conformity covert with secondary EU law in the form of Council Directive 92/83/EEC of 19. October 1992 on the harmonisation of the structures of excise taxes on ethanol and alcoholic beverages, Council Directive 92/84/EEC of 19. October 1992 on the approximation of the rates of excise tax on alcohol and alcoholic beverages and

Abstract (EN)

Distilling industry is among the traditional sectors of the food industry. It is a significant producers of agricultural primary production and the most stable component of demand in the labour market. Among all the sectors of the food industry, however, it is subject to the greatest extent of the regulation of the business by state, when a crucial component of regulation is the legal regulation of the selection of the excise tax on alcohol. Given the considerable degree of regulation of excise taxes on alcoholic beverages by one of the secondary law of the EU, it is considered appropriate to assess the level of transposition of basic elements of excise tax on alcohol, as defined by literature, into the legal order of the Slovak Republic.

Keywords (EN)

tax on alcohol, taxpayer of alcohol, the subject of the tax on alcohol, the tax base on alcohol and the tax rate on alcohol

Abstrakt (SK)

Liehovarnícky priemysel patrí medzi tradičné odvetvia potravinárskeho priemyslu. Je významným spracovateľom poľnohospodárskej prvovýroby a stabilnou zložkou dopytu na trhu práce. Z pomedzi všetkých odvetví potravinárskeho priemyslu však podlieha najvyššej miere regulácie podnikania zo strany štátu, keď rozhodujúcou zložkou regulácie je právna úprava výberu spotrebnej dane z liehu. Vzhľadom na značnú mieru regulácie spotrebných daní z alkoholických nápojov sekundárnym právom EÚ považujeme za vhodné zhodnotiť úroveň transpozície základných prvkov spotrebnej dane z liehu, tak ako ich vymedzuje odborná literatúra, do právneho poriadku SR

Kľúčové slová (SK)

daň z liehu, platiteľ dane z liehu, predmet dane z liehu, základ dane z liehu a sadzba dane z liehu

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Council Directive 2008/118/EC of 16. December 2008 concerning the general arrangements for consumer taxes and repealing Directive 92/12/EEC.

Due to the economic effects of excise tax on business conditions in the sector and its competitiveness on the market of alcoholic beverages we choose also the basic statistical indicators identifying the position and role of the distillery industry in the framework of the area of Slovak Republic and the European Union.

Basic theoretical view on the issue of excise taxes (focusing on alcohol) mediates the available literature focused mainly on the financial laws. We take of it in particular, information on the basic tax structure and characteristics of the basic elements in general.

Given the need to examine further the overall intention of the legislature we use the explanatory memorandum to the Act on excise tax on alcoholic beverages and Act on Excise Duty on spirit⁽¹⁾, effective until 1 January 2012.

Based on the comparison of the provisions of the given Directives and provisions of the act on excise tax on alcoholic beverages we verified the level of their transposition into Slovak law.

III. Results and Discussion

1. Economic background of alcohol production

Distilling (in terms of the statistical classification of economic activities SK NACE Rev. 2, code 11.01.0: Distilling, rectifying and blending of spirits) has an irreplaceable role in the field of employment, state budget revenues and export base, however, not denying the social and health impacts on society.

Liquor drinks industry in the European Union has the status of a world leader for a long period of time. Within the EU, the year production is nearly 40 million hectolitres of spirits⁽²⁾, with almost two thirds of the production ending up in third country markets. As a result the share of exports to EU countries is amounting to almost 10 billion EUR⁽³⁾. When we speak of employment it is up to one million jobs formed directly by spirits producers or indirectly by employees in sales. In 2013, it was only in the selection of indirect taxes collected to the public budgets of the twenty-seven Member States⁽⁴⁾ 21.4 billion EUR (14.7 billion of which was obtained by collecting excise tax on alcohol and 6.7 billion EUR by selection of value added tax⁽⁵⁾). This is the amount of funding that with reserve of five billion could offset expenditures planned within the state budget of the Slovak Republic for 2015⁽⁶⁾. The distilling industry as well as manufacturing

industry has undeniable importance to the disposal of the production of primary agricultural production. In fact, about 32% of expenditure of distillery industry is determined right to purchase agricultural primary commodities⁽⁷⁾.

In the case of the Slovak Republic the significance of this industry is at least at the level of the European average. Distilling industry recorded within the time period from 2008 to 2012 the highest employment growth in all sectors of the food industry amounting to 24.2%⁽⁸⁾. The course of the collection of tax on alcoholic drinks, which is alcohol, in the case of the Slovak Republic is relatively stable and within the time period from 2008 to 2014 has fluctuated from about 192 million to nearly 208 million EUR⁽⁹⁾. We can say that the collection of tax on alcoholic beverages, which is alcohol, features a stable income the state budget.

Changes of collection of excise taxes on alcoholic beverages based on data available for the last six years were of peace and reflected a combination of economic and legislative impacts. Negative impact of the overall decline in economic growth leads to decrease in the collection of the tax in particular between 2009 and 2010. These particular effects, however, were a manifestation of external influences which were not possible in national level influence. The second group influencing the choice of a tax on alcoholic beverages, which is alcohol, constitute legislative changes.

Legislation issues of production, marketing and collection of excise tax on alcoholic drinks, which is alcohol, is a crucial factor affecting the performance of the distilling industry (at world, European or national level).

The reason is the undeniable impact on the end price of the product type, as in some countries of the European Union (France, for example) makes up 86% of the selling price in retail combination of indirect taxes in the form of excise tax and VAT value⁽¹⁰⁾. In case of the Slovak Republic it says that the consumer tax on alcoholic beverages, which is alcohol, belongs in absolute terms on hl of absolute alcohol to the lowest in the EU.

2. Definition of the taxpayer on alcohol within the meaning of Council Directive 2008/118 /EC on the general arrangements for excise tax repealing Directive 92/12/EEC following the transposition into Slovak law.

As regards to the tax definition the scientific literature is rarely matched in its essential lines. So we can defined it as „non-refundable cash payment , which is imposed by law or under the law in order to meet government or other public needs, generally at a pre-set amount and maturity“⁽¹¹⁾. Basic

⁽¹⁾ Act No. 105/2014 Coll. on the Excise Duty on Spirit and on amendment and supplement of Act No. 467/2002 Coll., as amended.

⁽²⁾ Ernst&Young. (2010). The contribution of the spirits industry to the EU economy. [Brochure]. Amsterdam, ON: Author.

⁽³⁾ Spirits Europe. (2015). Tax - a brake on European Spirits Growth, Spirits Europe. [Brochure]. Brussels: ON: Author.

⁽⁴⁾ Croatia not included.

⁽⁵⁾ Spirits Europe. (2015). Tax - a brake on European Spirits Growth, Spirits Europe. Brochure . Brussels: ON: Author.

⁽⁶⁾ Act No. 385/2014 Coll., on state budget for the year 2015

⁽⁷⁾ Ernst&Young. (2010). The contribution of the spirits industry to the EU economy. [Brochure]. Amsterdam, ON: Author.

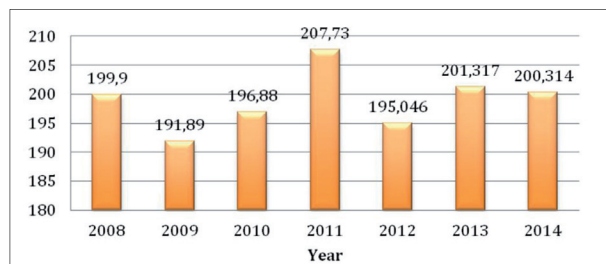
⁽⁸⁾ Ministry of Agriculture and Rural Development. (2014). The concept of the development of the food industry 2014-2020. [Brochure]. Brussels: ON: Author. (The data of the enterprises with number of employees above 20),

⁽⁹⁾ Ministry of Agriculture and Rural Development. (2014). The concept of the development of the food industry 2014-2020. [Brochure]. Brussels: ON: Author.

⁽¹⁰⁾ Spirits Europe. (2015). Tax - a brake on European Spirits Growth, Spirits Europe. [Brochure]. Brussels: ON: Author.

⁽¹¹⁾ Babčák, V. *Daňové právo na Slovensku*. Bratislava: EPOS, 2015,

Graph 1: The annual collection of taxes from alcohol in the Slovak Republic



Source: European Commission (2015). Excise Duty tables. [Brochure]. Brussels: ON: Author, modified by author

elements of the tax form the:

- Entity tax,
- Matter of tax,
- The tax base,
- Tax rate⁽¹²⁾.

Entity tax is most commonly defined from two perspectives in literature. In the first case we can speak of compulsory entity, which in the case of excise taxes on alcoholic drinks, which is alcohol, is the state. On the other hand obligated entity is a person legally obliged to pay the state tax at a specified fixed amount⁽¹³⁾. In most cases, the compulsory subject is a taxpayer. Unlike direct taxation, compulsory subject is different from the person paying the tax. For that reason, we are focused in the following text to the taxpayer as defined in the Directive, and we monitor the transposition of this Directive into national law by the Slovak Republic.

Taxpayer

Article 8 of Council Directive 2008/118/EC defines the entity tax quite widely. A taxpayer is in particular the authorised warehouse keeper, the registered consignee or any other person releasing the excise goods or on whose behalf the excise goods are released from the duty suspension arrangement and, in the case of irregular departure from the tax warehouse, any other person involved in that departure; the person holding the excise goods and any other person involved in the holding of the excise goods; person producing the excise goods and, in the case of irregular productions, any other person involved in their production; person who declares the excise goods or on whose behalf they are declared upon importation, any other person involved in the importation.

The person liable to pay the tax in accordance with article 8 of Council Directive 2008/118/EC is transposed by §11 of the act on needed tax on alcoholic beverages. Explanatory memorandum to the draft act on the excise tax on al-

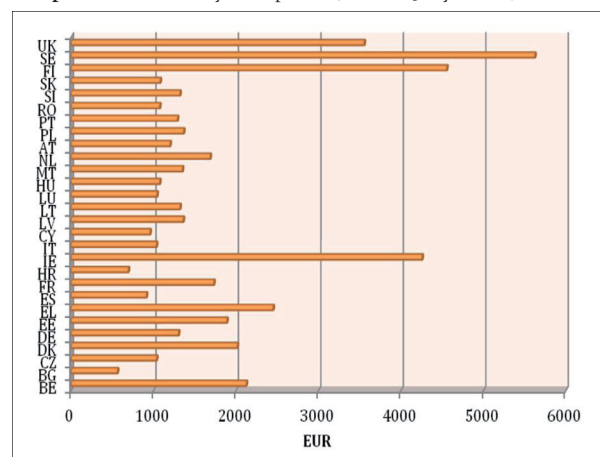
752 p. ISBN: 978-80-562-0091-9.

⁽¹²⁾ Replaced the legal treatment of the excise tax on alcohol revised by:

- Act No. 104/2004 Coll. on excise tax on wine as amended,
- Act No. 105/2004xs Coll. on excise tax on spirit and on amendment and supplementation of act no 467/2002 Coll., on the production and placing of alcohol on the market, as amended,
- Act No. 107/2004 Coll. on the excise tax on beer, as amended.

⁽¹³⁾ Babčák, V. *Daňové právo na Slovensku*. Bratislava: EPOS, 2015, 752 p. ISBN: 978-80-562-0091-9.

Graph 2: Excise duty on spirits (as at 1. July 2015)



Source: European Commission (2015). Excise Duty tables. [Brochure]. Brussels: ON: Author

coholic beverages states that “a taxpayer is any person who has a tax according to the relevant provisions of the act. The act exhaustively defines the cases when the taxpayer is obliged to the tax deal.” The legislator decided to expand and make precise the definition of the persons liable to pay the tax in the transposition of that Directive into the national legal order⁽¹⁴⁾. Monitored provision of the Act on excise tax on alcoholic drinks in terms of content largely corresponds with the definition of a taxpayer in the Act No. 105/2004 Coll., as amended (although the law does not completely happily label a taxpayer as a tax debtor), which is hereby partially repealed. In the case of the legislation the explanatory memorandum to the draft law determined a taxpayer (tax debtor) in the form of generalising as “legal persons or natural persons, who produce alcohol, import or export or only on the basis of the relevant provisions of the act apply a claim for refund of excise taxes, and the Administration of state material reserves of the Slovak Republic”. However, even the law⁽¹⁵⁾ governing the excise tax on spirits valid until 1. May 2004 defined the payer of tax even the most clearly in the form of a manufacturer, the buyer, exporter or importer. From the genesis of understanding the taxpayer in the eyes of the legislator it can be stated the direction to the most detailed (taxative) definition of a taxpayer (of alcoholic drinks), but which can cause the load on the eventual necessity of frequent amendments to legal regulation with regard to the changing conditions in the field of economy and decrease of any options of compensation of the occurrence of any excesses from the financial report in the position of authority applying the right.

⁽¹⁴⁾ Babčák (2015) states that a taxpayer in the act is primarily „a-person who issued an alcoholic beverage to a person who is not authorised to take alcoholic drink in the suspension of the tax, further the operator of the tax warehouse, in which there has been the use of alcoholic drink for own consumption, but also entitled to the beneficiary, who has received an alcoholic drink transported to the tax territory under tax suspension”.

⁽¹⁵⁾ Act No. 229/1995 Coll. on excise tax on spirit, as amended.

3. The definition of the matter of the tax on alcohol and fixing the base of the excise tax on alcohol in the meaning of Council Directive 92/83/EEC on the harmonisation of the structures of excise taxes on ethanol and alcoholic beverages in relation to the transposition into the legal order of the Slovak Republic.

The Directive consists of eight sections and thirty articles. Within the first five sections defines a range of alcoholic beverages in the form of:

- Beer (1. section),
- Wine (2. section),
- Fermented beverages, except wine and beer (3. section),
- Intermediate (4. section),
- Ethyl alcohol (5. section).

Below according to the object of the selected topic we will focus only on the alcoholic beverage as defined in 5. section of Council Directive 92/83/EEC.

The Directive lays down directly the matter of tax and the tax base on alcoholic drink, which is alcohol. Indirectly defines also the tax rate, when reference is made to the content of Council Directive 92/83/EEC on the approximation of the rates of excise tax on alcohol and alcoholic beverages. Also in this case, the transposition of Directive is found in the act on the production of alcoholic beverages.

The matter of tax

A matter of tax consists of “an economic fact, economic reality, on the basis of which can be given a tax obligation to a taxpayer⁽¹⁶⁾. In the article 20 of the Council Directive 92/83/EEC is matter of tax in the case of ethyl alcohol, defined as follows:

1. For the purposes of this Directive the term ‘ethyl alcohol’ covers all products with an actual alcoholic strength should volume exceeding 1,2% volume which falls within CN codes 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN.

Transposition into the legal order of the Slovak Republic is defined in §4 par. 2 a) and c) of the act about the excise tax on alcoholic beverages. In the meaning of the mentioned provisions alcohol are industrial alcohol products falling within combined nomenclature codes 2207⁽¹⁷⁾ and 2208⁽¹⁸⁾, with an actual alcoholic strength by volume exceeding 1,2% vol. and other than those under Chapter 22, with an actual alcoholic strength by volume exceeding 1.2% vol.

2. For the purposes of this Directive the term ‘ethyl alcohol’ covers products of CN codes 2204, 2205 and 2206 which have an actual alcoholic strength by volume exceeding 22% vol.

Council Directive 92/83/EEC in this case is transposed in the framework of §4 par. 2 b) of the act on excise tax on alco-

⁽¹⁶⁾ Králik, J - Jakubovič, D. *Finančné právo*. Bratislava: Veda, 2004, 725 p. ISBN 80-224-0804-2

⁽¹⁷⁾ Under code 2207 we categorize undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol and other spirits, denatured, of any strength.

⁽¹⁸⁾ Under the code 2208 we identify undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages.

holic drinks, according to which industrial alcohol and products falling within combined nomenclature codes 2204⁽¹⁹⁾, 2205⁽²⁰⁾ and 2206⁽²¹⁾, with an actual alcoholic strength by volume exceeding 22% vol.

3. For the purposes of this Directive the term ‘ethyl alcohol’ covers potable spirits containing products, whether in solution or not.

In this case, the Slovak legislator decided to incorporate the studied text, when already in the framework of the above mentioned §4 par. 2 c) refers to products other than those under Chapter 22, with an actual alcoholic strength by volume exceeding 1,2% vol.

The tax base

The expression of the tax base must be tied to a unit of measurement, which can meet quantificative function in the determination of the extent of matter of the tax. Due to the specific chemical properties the tax base on alcohol is regulated in article 21 of Council Directive 92/83/EEC, within the meaning of that the excise tax on ethyl alcohol shall be fixed per hectolitre of pure alcohol at 20 C, and shall be calculated by reference to the number of hectolitres of pure alcohol. Subject to the provisions of Article 22, Member States shall charge the same rate of duty on all products chargeable with the duty on ethyl alcohol.

§5 par. 1 a) of the Act on excise tax on alcoholic drinks contains a determination of the basis of the excise tax on alcoholic drink, which is alcohol, in the form of quantity of spirit expressed in hectolitres of 100% alcohol at the temperature of 20 C, the quantity of spirit may also be expressed in litres of 100% alcohol at the temperature of 20 C. In comparison with the wording of article 21 of Council Directive 92/83/EEC, the act on excise tax on alcoholic beverages in the case of the definition of the tax base of alcoholic drink, which is alcohol, adds to the quantitative definition of absolute alcohol in hectolitres beyond the framework of the Directive, the taxable amount expressed in liters.

4. The determination of the rates of excise tax on ethyl alcohol within the meaning of Council Directive 92/84/EEC on the harmonisation of the structures of excise taxes on ethanol and alcoholic beverages and its transposition into the legal order of the Slovak republic.

In this case, we follow the tax rate, which determines the „scope of the obligation under the tax law relations“⁽²²⁾.

This Directive sets (in addition to the exceptions) in article 3 (1), that the minimum rate of excise tax on alcohol and

⁽¹⁹⁾ Combined nomenclature under code 2204 includes wine of fresh grapes, including fortified wines; grape must other than that of heading 2009.

⁽²⁰⁾ Combined nomenclature under code 2205 includes vermouth and other wine of fresh grapes flavoured with plants or aromatic substances.

⁽²¹⁾ Combined nomenclature under code 2206 includes other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.

⁽²²⁾ Králik, J - Jakubovič, D. *Finančné právo*. Bratislava: Veda, 2004, 725 p. ISBN 80-224-0804-2

alcohol contained in beverages other than those referred to in Articles 4⁽²³⁾, 5⁽²⁴⁾ and 6⁽²⁵⁾ shall be fixed at 550 ECU per hectolitre of pure alcohol. The given minimum rate of excise tax on alcoholic drink, which is alcohol, in the amount of 550 ECU is modified in two cases:

- member states applying the tax rate per hectolitre of alcohol of less than 1 000 ECU may not further reduce this rate,
- member states applying the tax rate per hectolitre of alcohol of more than 1 000 ECU must not reduce the rate below 1 000 ECU.

The transposition of the Council Directive 92/84/EEC is included in the §6 par. 1 of the act on excise tax on alcoholic drinks, according to which the tax rate for alcoholic beverages is fixed in the amount of 1 080 EUR. For the Slovak legal adjustment, the setting of basic tax rate on alcohol on 1 080 EUR means that it is subject to limit the possibilities of reducing the relevant tax rate according to article 3 (1) of Council Directive 92/84/EEC only to the level of minimum 1 000 EUR.

IV. Conclusion

Distilling industry as a sector of the food industry has its stable position in the national economy of our country and other member countries of the EU. It is an important element of the demand side of the labour market and an important processor of domestic production of agricultural primary production in the member states. For this reason, we wanted to point out the system and the potential complexity of the legal regulation of tax collection from alcohol as one of the factors of competitiveness of this sector on the market with alcohol. We focused on the four basic elements of the tax⁽²⁶⁾. Because of the relatively strict modification of the elements of taxes by the secondary law of the EU in the form of guidelines, we assess in particular the status of their transposition into the legal order of the Slovak Republic. Based on a comparison of the wording of the investigated Directives and their transposition into the legal order of the Slovak Republic (in the particular case, Act No. 530/2011 Coll. on excise tax on alcoholic beverages, as amended) we can assess the full transposition. In the case of the definition of a taxpayer and partially describe the pressure on the legal regulation of the selection of the excise tax on alcohol transposition of observed Directives. In the framework of the article the most discussed is the Council Directive 92/83/EEC with regard to the process of its review by the Commission. This set as main objective to determine whether the Directive still re-

flects the needs of practice. Because of the focus on the basic elements of the tax we can note in particular the apparent consistency of the definition of the matter of the tax and the tax base on spirit of the Directive and of the applicable legal regulations in the Slovak Republic. Part of the problem also in the case of the Slovak Republic can be indirectly the issue of the tax rate regulated in Council Directive 92/84/EEC. The nontransparency at first glance represents the duplication of two directives regulating the fundamental elements of the tax on alcoholic beverages, which were adopted in the immediate time sequence⁽²⁷⁾. The nontransparency can produce a dual system of rates of tax on alcohol⁽²⁸⁾. In this area it would be appropriate to set for all member countries the single base rate (minimum rate) taxes. Also an extensive system of exceptions of the individual countries on some (the traditional) products as subject to excise tax on alcohol supports the complexity of tax collection from alcohol and makes it difficult to ensure freedom of movement of goods. These facts can be taken into account as well in the case of the revision of Council Directive 92/83/EEC. In any case it is not, however, to forget the overall condition of the distilling industry today⁽²⁹⁾ and its importance as a sector of the food industry. Last but not least, the possible revision of the mentioned Directive should remember a fair system of taxation of alcoholic beverages.

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Legislation

1. Act No. 530/2011 Coll. on excise tax on alcoholic beverages, as amended.

⁽²⁷⁾ With the time lapse to the following two guidelines added to in Council Directive 2008/118/EC.

⁽²⁸⁾ In fact, there are two basic rates of 550 ECU and 1000 ECU.

⁽²⁹⁾ In Slovakia also because of changes in legislation regulating system and the amount of the tax from alcohol today the distilleries in Slovakia in the production of the spirits use only 36,5% of its actual capacity.

⁽²³⁾ Minimum rate of excise tax on intermediate products shall be fixed at 45 ECU per hectolitre of product.

⁽²⁴⁾ Minimum rate of excise tax on wine shall be fixed at 0 ECU for still wine and at 0 ECU for sparkling wine per hectolitre of product.

⁽²⁵⁾ Minimum rate of excise tax on beer shall be fixed at 0,748 ECU per hectolitre/degree Plato or 1,87 ECU per hectolitre/degree of alcohol of finished product.

⁽²⁶⁾ The meaning of the entity tax, the subject of the tax, the tax base and tax rates.

2. Council Directive 92/83/EEC of 19. October 1992 on the harmonisation of the structures of excise taxes on ethanol and alcoholic beverages.
3. Council Directive 92/84/EEC of 19. October 1992 on the approximation of the rates of excise tax on alcohol and alcoholic beverages.
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7. Act No. 104/2004 Coll. on excise tax on wine as amended.
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9. Act No. 107/2004 Coll. on the excise tax on beer, as amended.

10. Act No. 229/1995 Coll. on excise tax on spirit, as amended.

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