



” A special drought act - changes  
in the Water Law and in rules  
of calculating the ‘rain tax’

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AMRON CENTRE ANALYSIS

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Public consultations on the draft Act on investments in the field of drought prevention dated August 12, 2020 are completed. The comprehensive draft act prepared by Ministry of Maritime Economy and Inland Navigation resulted from work of the inter-ministerial team dealing with drought in Poland and was consulted in all voivodeships under the 'Stop Drought Program'. According to the justification, the amendments are intended to *'(...) introduce solutions to the legal system that will simplify and accelerate work related to preparation for implementation of retention projects aimed at reducing consequences of drought in Poland'*. The draft is another so-called special act, in this case the special drought act, including a package of solutions, which according to the legislator: *'(...) will facilitate water retention and improve the availability of water resources in Poland in order to mitigate the negative effects of prolonged periods of drought'*.

The draft provides for an amendment to, inter alia, the Water Law of July 20, 2017, regulating the currently applicable rules for calculating the so-called 'rain tax'.

In Poland, the 'rain tax', also known as the 'concrete tax', has been applicable since January 2018 as a fee for reduction of natural field retention as a consequence of works or construction objects permanently connected with land on real estate with an area of more than 3500 sqm, which reduce this retention by excluding more than 70 percent of the real estate area from the biologically-active surface in areas deprived of sink or sewage systems. In accordance with the current legal order, real estate must fulfil three conditions to be subject to the 'rain tax':

1. the surface area of the real estate must exceed 3500 sqm,
2. real estate must be developed in such a way that more than 70 percent of its surface is excluded from biologically-active area,
3. real estate must be located in areas deprived of sewage systems.

Currently, the tax is not widely known, especially among the owners of plots of land developed with single-family housing, due to the area and development ratio. Parameters defined in this way mean that mainly owners of commercial buildings, industrial buildings and storage facilities are obliged to submit the fee.

Draft amendment provides for tightening of these requirements. When changes come into forces, the obligation to pay the fee will apply also to owners of real estate with an area of more than 600 sqm, which are built-up in more than 50 percent. The third criterion will no longer be applicable. As a result, according to the estimations of the project's authors, the number of plots subject to the 'rain tax' will increase approximately 20 times. An increase in the tax amounts is also expected. So far, in accordance with the Water Law Act tax rates have been calculated as follows:

- a) in case of plots without water retention devices from sealed surfaces permanently connected to the ground – PLN 1.00 per year for 1 sqm,
- b) in case of plots with devices for water retention from sealed surfaces with a capacity of up to 10 percent of the annual runoff from sealed surfaces permanently connected to the ground – PLN 0.60 per year for 1 sqm,
- c) in case of plots with devices for water retention from sealed surfaces with a capacity of 10 to 30 percent of the annual runoff from sealed surfaces permanently connected to the ground – PLN 0.30 per year for 1 sqm,



- d) in case of plots with devices for water retention from sealed surfaces with a capacity of over 30 percent of the annual runoff from sealed surfaces permanently connected to the ground – PLN 0.10 per year for 1 sqm.

After the amendments come into force, the upper tax rates will be:

- a) PLN 1.50 per year for 1 sqm, in case of plots without water retention devices from sealed surfaces permanently connected to the ground,
- b) PLN 0.90 per year for 1 sqm, in case of plots with devices for water retention from sealed surfaces with a capacity of up to 10 percent of the annual runoff from sealed surfaces permanently connected to the ground,
- c) PLN 0.45 per year for 1 sqm, in case of plots with devices for water retention from sealed surfaces with a capacity of 10 to 30 percent of the annual runoff from sealed surfaces permanently connected to the ground.

The charge depends on the area of the developed land excluded from biologically active surface and use of retention compensation, i.e. the more retention infrastructure on the property or the higher efficiency of this infrastructure, the lower the fee will be. The aim of the tax growth is to encourage property owners to increase the amount of water retained on properties, as well as to maintain the highest possible share of biologically active area, which in a broader context is to contribute to reorientation of Polish cities development from concrete to urban greenery. According to the legislator's intention : *'(...) The measures to increase the retention will also improve safety level by more effective flood prevention arising from intensive rainfall, which, apart from droughts, are a consequence of climate changes'*.

In accordance with current legislation, fee for reduction of natural field retention is not charged for public roads and railways, if rainwater or snowmelt are drained into waters or into the ground by water devices enabling retention or infiltration of these waters. Churches and other religious associations are also exempted from this fee. When new regulations come into force, also agricultural land will be excluded from the 'rain tax' payment obligation.

The act will introduce a change in distribution of the collected funds: 75% of the tax revenue will be allocated to State Water Holding Polish Waters and 25% to the budget of the relevant commune, with a minimum of 80% of this income earmarked to the development of rainwater retention in the catchment area of the commune. The legislator proposes an increase in revenues for communes, as the rainwater management is the communes own task. Growth in the amount of revenues from current 10% to 25% is to increase retention as a result of the activities of municipalities that will receive an additional source of financing.

According to data from the Institute of Meteorology and Water Management, Poland is one of the least water-rich countries in Europe. The average annual surface water runoff per capita is 1600 cubic meters, which is almost three times lower than the European average. Recently, periods of water deficit alternate with periods of elevated levels of water in rivers caused by heavy rainfall, therefore taking measures aimed at reducing negative effects caused by extreme weather events by enhancing the retention is assessed positively. However, it is unfortunate that instead of introducing tax reliefs for property owners depending



on the unsealed area, ponds or the number of plantings, the legislator introduces another fee. Nevertheless, Poland is not a precursor in this area - similar charges are already present in other countries, such as the United States or Germany.

The final date of entry into force of amendments to the Act on investments in the field of drought prevention is still uncertain, but according to the legislator announcements January 1, 2022 is expected to be that date.



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