A new plastic packaging tax came into force in April 2022

Indirect Tax | Large Corporate | OMB



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As the plastic packaging tax came into force on 1 April 2022, we examine the developments, challenges and the way forwards.

Key Points

What is the issue?

The plastic packaging tax, which came into force on 1 April 2022, is chargeable on plastic packaging imported into the UK or manufactured in the UK, which contains less than 30% recycled content.

What does it mean for me?

Quarterly returns are required to be submitted to HMRC detailing weights of plastic packaging components which are in the scope of the tax, those containing 30% or

more recycled content, and those which are exempt, imported quantities, manufactured quantities and exports amongst other things.

What can I take away?

In particular, the data and information needs present a significant burden to be overcome and require a much deeper analysis of supply chains and products than was previously the case.

Aligned with the global focus on environmental, social and governance (ESG) issues, and with the aim of stimulating the market in recycled plastic, the plastic packaging tax came into force in the UK on 1 April 2022.

The plastic packaging tax is chargeable on plastic packaging imported into the UK or manufactured in the UK, which contains less than 30% recycled content. The tax presents the estimated 20,000 businesses due to be affected, and their advisers, with the unique challenges associated with the implementation and operation of a new tax. These arise from both the new data and information needs of the plastic packaging tax regime, and the usual difficulties of interpretation that arise when new provisions are introduced.

In this article, we will explore the relevant legislative developments, the requirements presented by the plastic packaging tax for businesses and tax advisers, and where solutions might be found to address what will be the first of many such developments across Europe and the world.

Legislation

The primary legislation implementing the plastic packaging tax is in the Finance Act 2021 and the compliance and reporting obligations are detailed in the Plastic Packaging Tax (General) Regulations 2022 (the General Regulations). Specific exclusions and inclusions in relation to the tax are set out in The Plastic Packaging Tax (Descriptions of Products) Regulations 2021.

The primary and secondary provisions leave a lot of the operational detail to be prescribed by HMRC in Public Notices. Whilst HMRC has released a number of pieces of guidance on these operational details, there are areas where further details may be forthcoming and where details may develop as the operation of the plastic

packaging tax continues.

Scope and application

The plastic packaging tax applies at the individual packaging component level, rather than product level. A packaging component is defined as:

> ‘a product that is designed to be suitable for use, whether alone or in combination with other products, in the containment, protection, handling, delivery or presentation of goods at any stage in the supply chain of the goods, from the producer of the goods to the user or consumer’.

A plastic packaging component is defined as a packaging component where plastic is the single heaviest material by weight. The plastic packaging tax regime requires a determination to be made of the materials within a single component and the respective weights of the materials. If plastic is the heaviest material by weight, then the entire component is considered to be a plastic packaging component and the weight of all the materials is included on the return and subject to the plastic packaging tax, subject to normal rules on whether the component is taxed which are discussed below.

Businesses which manufacture or import more than 10 tonnes of plastic packaging components annually are required to register and account for the plastic packaging tax due to HMRC. There are two tests for determining whether this threshold is met:

- the look-forward test, which considers whether 10 tonnes or more of plastic packaging is expected to be manufactured or imported in the next 30 days; and
- the look-back test, which requires a business to consider at the start of each month whether the threshold has been met in the past 12 months.

Both tests apply and/or look back to 1 April 2022, and registration is required within 30 days of one of the tests being met.

So, what packaging counts towards determining whether the threshold is met?

Three categories of products are specifically excluded from the scope of the tax and do not count towards the 10 tonne threshold:

- plastic packaging that is designed to perform a storage function for the end consumer (e.g. toolboxes);

- plastic packaging that is designed to be an integral part of the goods (e.g. inhalers and printer cartridges); and
- plastic packaging primarily designed to be reused for the presentation of goods (e.g. shop fittings and presentation stands).

There is a specific inclusion for products that perform a packaging function after they have been sold to the consumer, for example bin bags and party cups, and these products count towards the threshold.

The Finance Act 2021 also provides for exemptions from the tax. Transport/tertiary packaging such as shrink wrap on pallets of goods imported into the UK is exempt and does not count towards the 10 tonne threshold, whereas the immediate contact packaging for licensed human medicines is exempt from the tax but does count towards the 10 tonne threshold. Given the tests, a process of monitoring the respective weights will be required. Further, there will need to be an analysis of the respective components within products and a determination as to whether these are within scope. For finance and tax professionals, there will be a new focus on operations, supply chains and manufacturing/material information and data.

Information needs and returns

The General Regulations and HMRC guidance set out the details of the information and data required for the plastic packaging tax regime.

In particular, quarterly returns are required to be submitted to HMRC detailing weights of plastic packaging components which are in the scope of the tax, those containing 30% or more recycled content and those which are exempt, imported quantities, manufactured quantities and exports amongst other things. The due date for filing and payment of the first quarterly return is 29 July 2022.

The apparent simplicity of the return belies the complexities associated with collecting and verifying the granular data and information that is required to arrive at the return figures.

All of the information needs to be backed up by evidence of material composition, weight, recycled content, and intended use if exemptions or deferrals are to be applied. This evidence needs to be at individual component level rather than product level. The challenge arising for tax and finance professionals and advisers is not just gathering the information in the first place, but ensuring that the level of evidence is

understood and is robust.

Data challenges

As with all taxes, registration, reporting and declaring the correct amount of tax is fundamental.

Businesses may already hold packaging information which has been used for compliance with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) (commonly known as the Packaging Waste Regulations). The Packaging Waste Regulations are a regulatory regime and regulated by the Environment Agency. The information requirements are different, less granular, and the approach to accuracy and regulation of compliance is also different to tax administration.

The existing data held by businesses for compliance with the Packaging Waste Regulations commonly needs work to meet the compliance requirements of the plastic packaging tax regime. HMRC has been clear that data gaps are expected to be filled and there is no room for estimation or inaccuracies in returns.

The plastic packaging tax regime is underpinned by administrative penalties for a failure to register, file returns or make payment, and the normal tax-geared penalties for under-declarations and failure to register, as set out in the Finance Act 2007 Sch 24 and the Finance Act 2008 Sch 41 respectively. This reinforces the need for accuracy.

There is an increased complexity for importers of plastic packaging due to the fact that the requisite data and information will be sited abroad and may well be held a number of steps up the supply chain. Importers are, however, subject to the same requirements as manufacturers, irrespective of where the data sits.

Joint and several liability

The Finance Act 2021 puts in place joint and several, and secondary, liability provisions in respect of plastic packaging tax for the whole supply chain. Therefore, an entity which is not registrable still has responsibilities for plastic packaging tax.

Businesses should already be carrying out due diligence checks at regular intervals, although the joint and several, and secondary, liability provisions have highlighted

the need for these checks to be robust and also to include information that was previously not required. Practically, communications will be required with suppliers to ensure that the plastic packaging tax obligations are understood and will be complied with. A failure to address these issues in the supply chain and/or to build in appropriate processes and checks has the potential to result in serious financial and reputational consequences for a business.

Particular areas of focus

There are a number of areas of focus that have been identified in our work with affected business and which should be drawn out.

For example, whilst a firm date for implementation has not yet been set, the person paying the plastic packaging tax through their return will be required to include a ‘PPT statement’ on their invoices when making business to business supplies. More detail is expected, but as a minimum the amount of plastic packaging tax paid and declared through the tax return in relation to the plastic packaging components supplied will need to be shown. This will necessitate systems, master data and IT changes.

HMRC’s guidance sets out examples of packaging within and outside the scope of plastic packaging tax but this list is evolving and will no doubt be updated regularly. Whilst such lists are not intended to be exhaustive, it is apparent that there may be product variations that are not accounted for or have not been considered. As with any tax therefore, interaction and communication with HMRC will be necessary to get clarity on scope and application, and should be borne in mind by businesses and advisers when considering the plastic packaging tax.

Potential solutions and means to address plastic packaging tax challenges

Whilst the plastic packaging tax compliance and information requirements will evidently require businesses to take extensive actions, there are solutions that can be considered to ensure that this can be managed effectively.

It is anticipated that technology will play a significant role for businesses when it comes to the plastic packaging tax. This might arise through automation of liability determination, developing consistent information gathering processes for non-tax

specialists or even processes for supporting due diligence.

As an operational tax, reliant on operational data, much of the information required is generated and controlled within the business and will not sit with finance and tax professionals.

To successfully prepare for compliance therefore, finance and tax teams need to be engaged in and have oversight of the processes and controls, but engagement with the wider business stakeholders is fundamental. In order to function effectively, the plastic packaging tax requires a multidisciplinary project team.

Conclusion

It is clear that the plastic packaging tax presents various novel challenges for businesses and their advisers, and input from various different stakeholders in a business will be required to ensure compliance. In particular, the data and information needs present a significant burden to be overcome and require a much deeper analysis of supply chains and products than was previously the case.

The challenges are, however, not insurmountable. The collaboration of multidisciplinary teams within businesses, full and frank interaction with HMRC, and the use of technology will feature heavily in dealing with the plastic packaging tax.