‘Sugar levy’– this tax will do you good

Indirect Tax

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CIOT comments on the proposals to tax sugary beverages.

Background

The government published proposals for a levy on drinks that contain added sugar. Behind the tax is concern that drinks that are high in sugar content are leading to obesity. The proposed solution is to tax the drinks that contain in excess of certain levels of sugar in the expectation that higher prices will discourage consumers from buying sugary drinks, which will encourage the soft drinks industry to develop healthier, cheaper drinks that consumers would prefer to buy.

The consultation document contains questions regarding the scope of the tax, its administration and protection against avoidance, as well as technical questions on how best to determine the quantity of sugar and, therefore, the amount of the tax base.

Scope of the tax – the importance of clear definition

Anyone who is familiar with VAT, and even many who are not, will have been amused over the years at the way in which food subject to the zero-rate has been defined and the problems the legislation has caused in scoping out the definition. However, although not yet a model of clarity, the continued litigation around the legislative definition has provided a degree of certainty, which is a key objective of any tax.

We therefore suggest that the legislation in VATA 1994, Schedule 8, Group 1 is a good starting point for defining the scope of what beverages are within the scope of the tax, rather than using introducing new definitions in statutory instruments, which may not be applicable within all parts of the UK.

Probably almost everyone who will be subject to the levy will also be registered for VAT and, therefore, will already be dealing with that VAT legislation. And we would not discourage the government from taking the opportunity to look at the VAT legislative definitions and consider whether they can be improved at the same time.

Measurement of the tax base – Dilution ratios

Some drinks are sold as concentrates that have to be diluted before drinking. How it is decided what is an appropriate ratio is not an issue that we have any expertise on, but nevertheless it is clear that how this is done will affect the value of the tax base. Because the dilution ratios to be assumed in calculating the tax may to some extent be subjective, our submission draws attention to the need to ensure that the manner in which they are determined is also clearly defined.

Who should be registered?

Our view is that the system used for VAT works relatively well and that the system for the sugar levy should not depart too much from that model.

Relief for small operators

In our view the purpose of having de minimis limits in taxation is not usually to relieve a small operator from the tax, although there are some circumstances where that may be the case. It is instead to reduce the compliance burden both for small operators, who might otherwise incur disproportionate costs in accounting for the tax, and the relevant tax authority, who might otherwise incur significant costs of administration and enforcement.

Again we suggested that the UK VAT legislation provides a model that could be used to determine whether or not an operator should be required to register for the levy or not.

Other issues concerning taxable persons

We agreed that there needs to be legislation to prevent disaggregation, that is, splitting a business into different units to avoid the need to register. We also suggested that there may be a need for a simplified version of group registration in case there are operators who carry on business through several companies.

Territorial scope

The sugar levy is an excise tax and is therefore intended to apply only to goods that are consumed within the UK. Accordingly, the consultation raises questions on both how to deal with imports and how to deal with exports (whether from or to the EU or not).

The levy needs to be imposed on imports to ensure equal treatment with locally produced goods. Two main issues arise with imports: ease of administration and prevention of evasion. We have commented on some issues that arise with imports; for example, how to obtain the information about sugar content in order to assess the tax and who should pay the tax: the overseas exporter, an intermediary involved in the logistics of moving the goods or the purchaser in the UK.

To some extent, solutions adopted for VAT and other duties on importation may be appropriate; for example the low value consignment relief.

The UK does not usually impose transaction taxes on exports; it would be counter-productive and, in respect of some taxes, international agreements prohibit them. We have commented that relief should be available for indirect exports as well as direct exports, subject to proof of export.

Conclusion

There will undoubtedly be other issues to consider once draft legislation is published. In the meantime, we would be very interested to hear thoughts and comments from any members that have an interest in this tax. Our response can be found on the CIOT website. If you have any comments, please email indirecttax@ciot.org.uk