

Informative Note

Preliminary draft Law on Waste and Contaminated Soils

4th June 2020

On Tuesday, June 2, 2020, the Council of Ministers approved the draft of Law on Waste and Contaminated Soils, implementing the modifications introduced by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018, which amended Directive 2008/98 / EC on waste as well as the so-called Directive on single-use plastics, i.e. Directive (EU) 2019/904 of the European Parliament and the Council of 5 June 2019 on reducing the impact of certain plastic products on the environment.

In this draft, the Government proposes the approval of a new indirect tax to be levied upon the production, imports and/or intra-community acquisitions of reusable plastic packaging, all with effect from July 1, 2021.

On February 28, 2020, the Ministry of Finance opened a public consultation on this tax, although the proposal only affected single-use plastic containers/ packaging intended, in principle, to the food sector as defined in Directive (EU) 2019/904.

Thus, the creation of this tax was limited to the production, imports or intra-community acquisitions of food containers considered single-use plastic products such as fast food containers or food containers, sandwiches, sandwiches, or salads that contain hot or cold foods, or containers for fresh or processed foods that did not require further preparation, such as fruits, vegetables, or desserts. Single-use containers or containers intended for other types of industries or, where appropriate, other types of products that, not having the consideration of containers, that were used to wrap goods or food were excluded.

Although the text of the draft follows the same philosophy, the truth is that the scope of the tax has been considerably expanded, since in accordance with the provisions of the text, all plastic containers of a single use as well as any other type of single- use products that serve to contain solid or liquid products or to wrap goods or food products will be subject to this tax.

The tax is defined as an indirect tax with a presumed environmental purpose that, among other things, seeks to promote the recycling of this type of products and the reduction of its consumption based on the principles of the economy. circular and, specifically, the principle that the best waste is the one that is not generated.

Since the objective is to reduce the consumption of this type of products in our country, it is a local tax, which is not harmonized in the rest of the EU Member States, so if the products are manufactured for their subsequent export or intra-community delivery, said manufacturing activity will not be subject to payment of the tax.



1.- Scope of the tax

As mentioned previously, the tax applies to the manufacture, import and / or intra-community acquisition of single- use plastic packaging products as well as any other type of single- use products that serve to contain solid or liquid products or to wrap goods or food products.

The draft does not contain a specific definition of this concept, so to define the scope of the tax, it would be necessary to consult several definitions.

In accordance with the provisions of article 2.1 of this Law 11/1997, a "container" is any product manufactured with materials of any nature and used to contain, protect, manipulate, distribute and present merchandise, from raw materials to finished articles, at any stage of the manufacturing, distribution and consumption chain.

All disposable items used for this purpose will also be considered packaging. This concept only includes sales or primary packaging, collective or secondary packaging and transport or tertiary packaging.

As for the “**plastic**” concept, this would be the material made up of a polymer as defined in article 3.5 of Regulation (EC) No. 1907/2006, of the European Parliament and of the Council.

Finally, the concept of “**non-reusable**” does not appear as such defined in article 2 of the draft. However, article 62 of the draft defines “**reusable container**” as the container that has been conceived, designed or introduced on the market to complete, within its life span, multiple circuits or rotations by means of its return to a producer to be filled or reused for the same purpose for which it was conceived, having the consideration of “non-reusable container” as one that does not meet these conditions.

2.- Taxable base

The tax base of the tax is the quantity, expressed in kilograms, of plastic contained in the containers that are part of the objective scope of this tax.

Notwithstanding the foregoing, taxpayers who manufacture the containers subject to taxation may reduce the amount of plastic incorporated into the manufacturing process, expressed in kilograms, from recycled plastic from products used in the territory of the tax base of the tax. tax application.

3.- Tax rate and payment

The tax rate is 0,45 euros per kilogram.

This tax will be self-assessed on a quarterly basis, and payment will be made during the twenty days following the end of the quarterly period.

4.- Tax point and taxpayers

As a general rule, in manufacturing cases, the tax will accrue at the time of obtaining the containers subject to the tax and the manufacturer will qualify as taxpayer.

In import cases, the tax will be accrued in accordance with the provisions of the accrual and settlement of the customs debt and the importer will qualify as taxpayer.

In cases of intra-community acquisitions, the tax will be accrued by the time of the VAT accrual or, where appropriate, at the time of receipt of the containers subject to tax and the acquirer will qualify as taxpayer.

Finally, should the accrual occurs as a result of an irregular introduction of the products in the territory of application of the tax, it will be presumed that the tax accrues in the calendar quarter prior to the discovery of the irregular introduction, unless proven otherwise. In these cases, the person who makes the irregular introduction of the product will qualify as taxpayer.

5.- Exemptions

The draft foresees three sorts of exemption, although it refers to a regulatory development. These exemptions are as follows:

- Cases of manufacture, import or intra-community acquisition of single- use plastic containers, that will be shipped outside the territory of application of the tax.
- Cases of manufacture, import and intra-community acquisition of single- use plastic containers, which, prior to the end of the period established to carry out the self-assessment of the tax, have been destroyed, provided that their destruction is proven before the Administration, by any of the admissible means of evidence in law.
- Cases of manufacture, import or intra-community acquisition of single- use plastic containers destined for the primary packaging of medicines, provided that these circumstances are proven upon request of the Tax Administration.

6.- Deductions and refunds

Once the tax quota is calculated, the draft establishes deductions and a refund mechanism that will be subject to regulatory development. Taxpayers may reduce the amount to be paid by applying the following deductions:

- A deduction for the containers that have been shipped outside the territory of application of the tax. Said deduction is subject to proving the shipment of the containers outside the territory of application of the tax and the payment of the tax by means of filing the corresponding self-assessment.

- A deduction for containers that, prior to sale or delivery, have ceased to be suitable for use or have been destroyed, provided that the existence of said events has been proven before the Administration; and finally,
- A deduction when the containers that, once the corresponding tax has been paid, are destined to the primary packaging of medications, provided that said circumstances are proven upon request from the Tax Administration.

If as a result of the aforementioned deductions, the self-assessment gives a negative result, the remaining amount can be offset in future periods, or might be refunded, where appropriate, in the last period of the calendar year.

7.- Formal obligations

Due to its nature as indirect tax, there are a series of formal obligations established that are in line with those in force for products subject to excise duties. The draft sets forth the following obligations:

- On the one hand, the obligation to register in the Territorial Registry. Said registration shall be made for the purposes of maintaining a census of taxpayers in relation to this tax.
- The keeping of an accounting in electronic format that must be sent to the tax authorities by electronic means and that must reflect the movements of raw materials and packaging. In the case of intra-community acquisitions, there is also an obligation to keep a stock accounting recording these movements.
- In the case of waste managers, they will be obliged to certify the amount of plastic, expressed in kilograms, from recycled plastic from products used in the territory of application of the tax, which will be delivered to the manufacturers of packaging.
- Taxable persons not established in the EU, in accordance with the provisions for these purposes in the field of VAT, will be obliged to appoint a tax representative in Spain.

Finally, the draft includes a specific sanctioning regime applicable to cases of non-compliance with the formal norms previously exposed.

We hope that these comments are useful and, we remain at your entire disposal to clarify any doubts you may have related to this new tax.

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