



Excise tax on non-reusable plastic packaging

Tax Alert



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Excise tax on non-reusable plastic packaging among the tax measures included in the Law on Waste and Contaminated Soil for the Promotion of a Circular Economy.

Eleven months after it began its passage through parliament, Saturday, 9 April saw the publication in the Official State Gazette of [Law 7/2022](#) of 8 April 2022, on the management of Waste and Contaminated Soil for the Promotion of a Circular Economy (“Law 7/2022”).

This new legislation transposes European Union Directives (EU) 2018/851, on Waste, and (EU) 2019/904, on Single-use Plastics, into Spanish Law. It also repeals Waste and Contaminated Soil Law 22/2011, the legislative framework that has governed waste in this country until now.

In its quest to promote the creation of a circular economy, Law 7/2022 introduces two new taxes: (i) the excise tax on non-reusable plastic packaging and (ii) the tax on landfill, incineration and co-incineration of waste, both of which are set to enter into force on **1 January 2023**. You can access our Legal Alert on the non-taxation related legal aspects of the measures introduced by Law 7/2022 [here](#).

New excise tax on non-reusable plastic packaging

➤ Background

Council Decision 2020/2053 on the system of own resources of the European Union - which seeks, among other manifestly environmental objectives, to foster recycling and promote the circular economy - introduces a new category of own resources of the European Union, based on national contributions calculated on the basis of non-recyclable plastic packaging waste. Generally speaking, for the purposes of this own resource, the uniform call rate will be EUR 0.80 per kilogram, although an annual lump sum reduction is envisaged for certain countries, including Spain.

Member States are free to adopt such measures as they see fit to enable them to achieve the environmental goals established in Decision 2020/2053 and, with this in mind, the Spanish government has opted to implement the new excise tax on non-reusable plastic packaging, approved by Law 7/2022, which is set to enter into force on 1 January 2023.

➤ Taxable event

This indirect tax is levied on the **manufacture, import or intra-Community acquisition** of non-reusable packaging, lids and caps, provided they contain plastic, and on semi-processed plastic products to be used to produce such packaging.

It should be noted that the tax is to be levied on packaging, regardless of whether it is empty, contains or protects or is used in the handling, distribution or trade dress of goods.

The tax will apply throughout Spain, notwithstanding the provincial tax regimes or the provisions of international treaties.

As is generally the case with excise taxes, which are levied on a long list of taxable events (albeit limited by certain scenarios for **non-applicability, exemption, deduction or refund**), the tax will not apply, inter alia, to packaging for medicinal products, healthcare products, foods for special medical uses, infant formulae for hospital use or hazardous medical waste, products that are to be, or have been, sent outside of the tax territory, products that have been returned for destruction or reincorporation into the manufacturing process, products that are no longer suitable for use or have been destroyed, or imports or intra-Community acquisitions of packaging, provided the total weight of the non-recycled plastic contained in such packaging does not exceed 5 kilograms in a month.

Neither will the tax be levied on paints, inks, lacquers and adhesives designed to be incorporated into products that are already subject to the tax.

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➤ Chargeability

- In the **case of manufacturing**, the tax generally becomes chargeable on the date on which the packaging in question is first delivered or made available to the acquirer in the tax territory.
- In the **case of imports**, it accrues when the import duties become chargeable.
- In the case of **intra-Community acquisitions**, it accrues on the 15th day of the month following the month in which dispatch or transportation to the acquirer commences, unless the invoice for such transactions is issued prior to such date, in which case the tax will become chargeable on the date of issue of the invoice.
- In cases of **unlawful introduction**, the tax becomes chargeable on the date of unlawful introduction into the tax territory of the taxable products and, where such date is not known, the unlawful introduction will be deemed to have taken place during the oldest of the non-statute-barred tax periods, unless the taxpayer can demonstrate otherwise.

➤ Taxpayers

The natural or legal persons engaged in the manufacture, import or intra-Community acquisition of the taxable products.

In cases of unlawful introduction, the person who owns, markets, transports or uses such products.

➤ How much is the tax charge?

The **tax base** for this tax is the amount of the non-recycled plastic, expressed in kilograms, contained in the taxable products and the **tax rate** is Euros 0.45 per kilogram.

To this end, the amount of recycled plastic (which reduces the tax base), contained in the taxable products must be certified by an entity authorised to do so.

In addition to fulfilling certain formal obligations specific to these kinds of taxes such as the accounting and registration obligations, manufacturers and intra-Community acquirers must file a self-

assessment for the tax on a quarterly or monthly basis (depending on how they file their VAT returns).

In the case of importers, the tax will be settled in the manner envisaged for the customs debt.

➤ Invoicing obligations

Manufacturers selling taxable products must include in the relevant invoice both the tax charges accruing or, as the case may be, reference to the relevant article where the products in question are exempt, and the kilograms of non-recycled plastic they contain.

Subject to request by the acquirer, the other taxable persons must include in the invoice or certificate issued for such purpose any tax paid in respect of the products or any applicable exemptions, as well as the kilograms of non-recycled plastic they contain.

➤ Accounting records and registration on the Territorial Register

Generally speaking, **manufacturers** must keep accounting records of the taxable products and, as the case may be, the raw materials required to manufacture them. The obligation to keep accounting records must be fulfilled using a **computerised accounting system, via the State Tax Agency website**, with accounting entries submitted electronically.

Taxpayers engaging in **intra-Community acquisitions** of taxable products must generally keep a record of stock, which they must submit to the relevant management office.

In the case of **imports** of taxable products, the amount of non-recycled plastic imported (expressed in kilograms) must be entered in the relevant section of the import customs declaration.

Taxpayers and natural or legal persons representing taxpayers not established in Spain are required to **register on the Territorial Register for the Excise Tax on Non-Reusable Plastic Packaging within thirty calendar days of the entry into force of the Order regulating such register.**

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➤ Infringements and penalties

Broadly speaking, the following shall be considered **serious tax infringements** for the purposes of this tax: failure to register on the Territorial Register, failure by non-established taxpayers to appoint a representative, false or incorrect certification by the duly accredited entity of the amount of recycled plastic, undue enjoyment of certain exemptions by the acquirers of taxable products, failure to include or incorrect inclusion in invoices of certain data such as the amount of non-recycled plastic, the amount of the tax accrued or any such exemptions as may apply.

➤ Other tax-related measures

In addition to the excise tax on non-reusable plastic packaging referred to in this alert, Law 7/2022 creates a tax on landfill, incineration and co-incineration of waste (dealt with in a separate Tax Alert), which is also set to enter into force on 1 January 2023.

Moreover, Law 7/2022 includes other tax-related measures that entered into force the day after the date of their publication, i.e. 10 April 2022, namely:

- Local authorities have a maximum of three years to introduce a **charge or, as the case may be, a public financial contribution of a non-tax**, specific, distinct and non-loss-triggering nature, that permits the implementation of “pay-as-you-throw” schemes and reflects the **actual, direct and indirect costs of waste collection, transport and processing operations**, including the supervision of these operations and the relevant after-care and supervision of disposal sites, awareness and communication campaigns and revenues from the implementation of extended producer responsibility for the sale of materials and energy.
- It is also now possible for local bodies to establish, through the relevant ordinance, an **allowance of up to 95%** of the gross amount payable in respect of the charges levied on solid urban waste collection services for companies in the food distribution and restaurant industry, subject to compliance with certain requirements.

- Article 112.bis of the Revised Water Law (“RWL”) is amended to reinstate the **“fee for the use of continental waters for electricity generation”** in the wake of the latest judgment of the Supreme Court.
- Lastly, an **amendment is introduced to the VAT regime applicable to donations of products** to not-for-profit entities subject to the special regime regulated in Law 49/2002 of 23 December 2002, discussed in this Tax Alert.

Please do not hesitate to contact KPMG Abogados’ Special Taxes, Foreign Trade and Customs team if you wish to discuss any of the above matters

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