

RocaJunyent Informs

Tax Law Department
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Law 7/2022, of 8 April, on Waste and Contaminated Soils for a Circular Economy

Special Tax on non-reusable plastic packaging

On 1 January, the new *Special Tax on non-reusable plastic packaging* shall come into force in Spain. After its approval with the publication of Law 7/2022, of 8 April, on *Waste and Contaminated Soils for a Circular Economy* (BOE 9/4/2022), it has been found that it shall affect many more companies than it might seem at first. It is important to give it the attention it deserves, since the formal obligations that come with its entry into force are relevant, perhaps more burdensome, in many cases, than the obligation to join.

Without being exhaustive, remember the fundamental outlines of the tax:

- ☐ It is an indirect tax that aims to tax the consumption of non-reusable, unrecycled plastic containers.
- ☐ It shall affect the entire territory of the Spanish State, including places traditionally not subject to general indirect taxation, such as the Canary Islands, Ceuta and Melilla.

- ☞ It is a non-harmonised tax at the European level.
- ☞ It is taxed in a single phase of the production-distribution process, the manufacturing phase, but, due to territorial requirements, the intra-EU acquisition and importation of the goods subject to the tax are also taxed.
- ☞ Its object is non-reusable, unrecycled plastic containers, whether they are empty or full of the packaged product. Likewise, certain semi-finished products are taxed to obtain the containers and the elements necessary for their closure or packaging.
- ☞ The concept of packaging is obtained from its special regulations, which leads to including not only packaging, in its most common meaning, but also, for example, packaging or plastic rolls required to fulfil said function.
- ☞ The required tax is equal to €0.45 per kilogram of unrecycled plastic, requiring that the recycled plastic part be put aside, since it is not subject to taxation.
- ☞ Its declaration shall be quarterly or monthly, with the same frequency that the company has to apply VAT.
- ☞ Possibility of obtaining returns if the containers finally leave Spain.
- ☞ The formal obligations associated with the tax are analogous to those of a special tax: registration in the specific census of each of the company's establishments; keeping special records; controlling inventory; tracking physical units; etc.

Regulatory development

At this time, less than three months after its entry into force, there are still no development regulations that allow us to know exactly what the formal obligations associated with the tax shall be, although, as we said, these shall be important. Only a draft published by the Ministry of Treasury and Public Administration is [currently available](#).

Despite this, the AEAT [Agencia Estatal de Administración Tributaria (State Agency for Tax Administration)] and the Ministry have already made available to taxpayers the usual FAQs, a testing platform for carrying out specific registration books and other information of interest in order to be able to meet the obligations linked to the tax. All of this can be found at the [following link](#).

Taxpayers

It is important to determine who is required to address the consequences of the new regulations. Individuals, legal entities or entities without legal personality (joint ownership, civil companies, etc.) that carry out the operations subject to the tax shall be subject to this tax. Here are three of them:

- ☒ Manufacturing: includes the manufacture of the three types of products subject to the tax:
 - ☞ Non-reusable containers that contain plastic.
 - ☞ Semi-finished products intended for obtaining containers, such as preforms or thermoplastic sheets.
 - ☞ Products that contain plastic intended to permit closure, marketing or presentation of non-reusable packaging.
- ☒ Intracommunity acquisition of any of the products referred to in the previous section. This is an assumption that makes the intracommunity purchaser a taxpayer, even if its activity has nothing to do with the manufacture of containers, so it significantly widens the subjective scope of the tax.
- ☒ Import of any of the products subject to the tax.

Intracommunity manufacturers and purchasers, with a different degree of intensity, are subject to the formal tax obligations. This is not the case for importers, since in this case the tax shall be settled at Customs, without the control obligations imposed on the other two types of taxpayers being derived from it.

Formal obligations

As we said, given the importance of the formal burden associated with the tax, it must be taken into account prior to its entry into force. Let's review the formal obligations contained in the Law:

- ☒ Obligation to register in the Census of taxpayers of this tax, obtaining the CIP [Código de Identificación Personal (Personal ID Code)] card, prior to the start of the activity (before 01/01/2023). This obligation is incumbent on each taxpayer for each of their establishments and for each of the taxpayer modalities. Such modalities are:
 - ☞ Manufacturer.
 - ☞ Intracommunity purchaser.
 - ☞ Representative in Spain for unestablished taxpayers.
- ☒ Obligation to appoint a representative in Spain, for the sole purpose of this tax, which concerns unestablished taxpayers who incur in the taxable event. This will affect, among others, unestablished ones that make intracommunity acquisitions or transfers of products packaged in plastic from any other Member State of the European Union for dispatch to Spain.
- ☒ Obligation to carry out a specific logbook that allows tracking of the kilograms of plastic subject to taxation. This obligation only affects manufacturers and intracommunity purchasers, with a different degree of intensity:

8 Manufacturers.

This is the sheet with fields that must contain the special record according to the OM [Orden Ministerial (Ministerial Order)] draft:

Entry number (1)	Item (2)	Product code (3)	Product description (4)	Date (5)	Receipt (6)	Kilograms (7)	Kilograms not recycled (8)	Tax system (9)	Recipient or Supplier (10)	Recipient or Supplier (11)

Point out that, as in the other special taxes subject to control of physical units, the loss of unregistered units is subject to taxation.

8 Intracommunity purchasers.

This is the field sheet:

Entry number (1)	Product code (2)	Product description (3)	Date (4)	Receipt (5)	Kilograms (6)	Kilograms not recycled (7)	Tax system (8)	Supplier (9)	Supplier (10)

8 Invoicing Obligations.

On their invoices, manufacturers must report the amount of unrecycled plastic contained in the products subject to delivery, the exemptions that may be applied, where appropriate, and obviously, the tax share that must be passed on to the customer.

As with other special taxes, the tax shall be part of the VAT tax base, assuming an increase in the VAT tax.

8 Obligations of Exemption Earners.

The Act provides for a number of exemption assumptions (medications, medical devices, food for special medical uses, infant formulas for hospital use and hazardous waste that result from healthcare; plastic rolls used in bale or bullets for silage of feed or cereals for agricultural or livestock use), whose application will require the purchasers of the products subject to the tax to express their destination to their suppliers of such products, so that they may apply the exemption. This pre-acquisition declaration is not regulated in the draft, but it must be prepared prior to 01/01/2023 in order to avoid the impact of the tax on taxpayers.

Assumptions and problems arising from the tax

As we said at the beginning, the subjective scope and the obligations concerning this new tax shall be much broader than it might first seem. Here are some examples of taxability that may guide us in this regard.

8 Intracommunity purchaser of products packaged or wrapped in plastic or empty packaging or packaging for the packaging or wrapping of its products.

This is a very common assumption, to purchase liquid or powder products from another EU Member State, which are inevitably supplied in non-reusable containers,

many of them made of plastic, or from other products that have been packaged with plastic items.

In this case, the company established in the territory of VAT application (the [Iberian] Peninsula and Balearic Islands) shall incur an intracommunity acquisition that will subject it to the Tax obligations: obligation to register in the census; register stock obligations; self-assessment of the tax.

This obligation shall only be exempted if the total weight of the unrecycled plastic contained in all containers does not exceed five kilograms per month.

 Intracommunity purchaser of semi-prepared products for the preparation of containers that are produced at the purchaser's facilities.

The same shall happen as in the previous case, without the application of the aforementioned exemption of five kilograms.

 Acquisition of products containing recycled and unrecycled plastic.

In this case, and in order to establish which part of the plastic is recycled, the Law requires having a certification issued by a certifying entity accredited by ENAC [Entidad Nacional de Acreditación (National Accreditation Entity)]. Perhaps the manufacturers of plastic packaging or semi-finished products established in Spain are interested in tackling the cost of this analysis and certification, but it seems an exaggerated effort to require it from someone who has only proceeded to purchase intracommunity or import this type of products. We will need to wait for OM approval to see what happens with a requirement that seems perhaps disproportionate to certain cases.

 Bookkeeping Log.

As we indicated, the Law requires that specific registration books be kept with content that is not insignificant, more forceful in the case of manufacturers, and less forceful in the case of intracommunity purchasers.

In any case, it is important to take into this obligation account, since its non-compliance is subject to the violation and sanction regulations regulated by the General Tax Law, being able to be sanctioned with a monetary penalty of 1% of the company's turnover in the event of its absolute non-compliance.

In addition, said bookkeeping logs must be submitted to the Electronic Headquarters of the AEAT during the month following the end of the declaration period.

📄 **Exemption assumptions requiring prior communication to the supplier of semi-finished packaging or products.**

This prior communication must be sent to the supplier. There is no legal indication of its content. We are aware that the affected sectors are having discussions with the Administrations to determine this, without there being any conclusion in this regard at this time. It seems clear that said prior declaration shall refer to the “exempt” destination of the products, the explanation of the claimed exemption and the identification of the affected products.

📄 **Impact on invoice or certification of the tax paid to facilitate obtaining its return by the customer.**

The non-taxable purchaser may obtain a refund of its fee if it allocates the purchased product for an exemption purpose. This would be the case of exemptions where the previous declaration to the supplier or the departure of the products from Spain has not been communicated. In such a case, the purchaser will require the supplier to indicate the quota corresponding to such products. If the supplier is not a manufacturer but merely an intracommunity purchaser, it may choose to include said information on a regular basis in its invoices or issue certificates to its customers when they are required to do so. In any case, it must be prepared to handle said requests.

Conclusion

It seems clear that the *Special Tax on non-reusable plastic packaging* has come to stay and that it shall be necessary to be able to meet all the types of obligations that shall derive from it.

It also seems clear that it shall not only be the manufacturers of plastic containers that are affected, covering their subjective scope to companies that manufacture or market products that are packaged or wrapped in plastic. Therefore, it is important to analyse its own production processes or the portfolio of marketed products to identify whether in some or all of them the use of plastic to package or wrap occurs, under what conditions, how the company obtains them and what the consequences are for it.

If it arises from the previous analysis that the company should become a taxpayer of this tax and is therefore subject to its obligations, both income and formal, it is advisable to work to have the appropriate information and control mechanisms that allow for its proper attention.