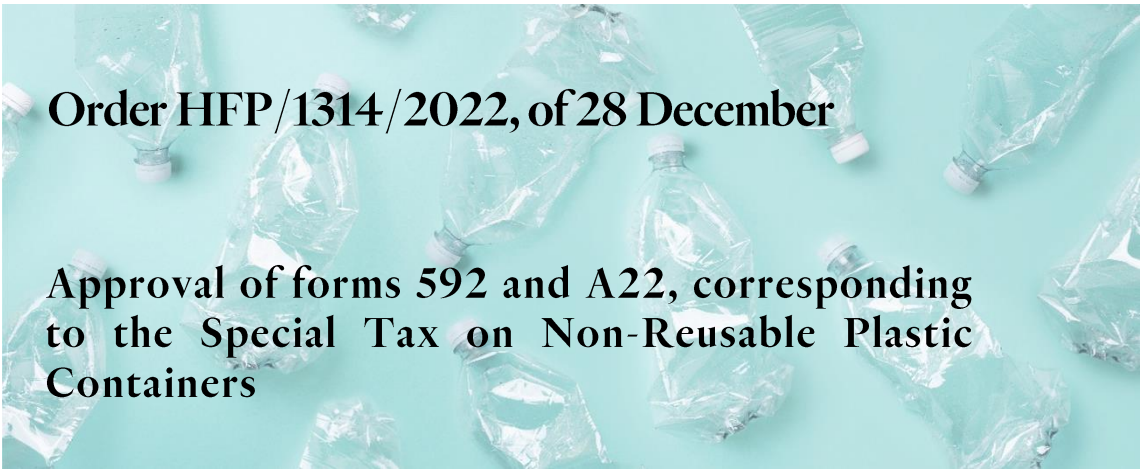


RocaJunyent

Informs

Tax Law Department
3 January 2023



Order HFP/1314/2022, of 28 December

Approval of forms 592 and A22, corresponding to the Special Tax on Non-Reusable Plastic Containers

Finally, almost at the stroke of the last bell at the end of the year, the Official State Gazette (BOE) of 30 December published the Order HFP/1314/2022, of 28 December, approving forms 592 and A22, corresponding to the [Special Tax on Non-Reusable Plastic Containers](#). This is a relevant regulation, since, apart from it, there is no regulatory development of Law 7/2002 regulating the tax.

We cannot say that the Order contains too many surprises with respect to the draft that was made public and which we had the opportunity to analyse in our [Information Alert](#) of 18 October. We will try to summarise the essential elements of the Order and the tax, ranking them from most to least urgent in their application:

- 📄 **Passing on the tax.** Any taxpayer of the tax who must pass it on to the purchasers of the products must do so from 01/01/2023. It should be remembered that the tax is also an integral part of the VAT taxable base, which will therefore also be affected.

- ☒ **Representatives of non-established taxpayers.** Non-established persons or entities that become taxpayers must designate, for the purposes of this tax, a representative before the Spanish tax authorities who is established in Spain and must do so before carrying out the first transaction subject to this tax. This means that, if taxable transactions are intended to be carried out at the beginning of 2023, it will be necessary to designate such a representative beforehand.
- ☒ **Prior declaration in the case of exemptions.** Purchasers from a manufacturer established in Spain who supplies them with plastic containers, packaging or wrapped or packaged products, or semi-finished products intended for the manufacture of packaging, which are exempt because of the nature of the wrapped or packaged product (medicinal products, medical devices, foodstuffs for special medical purposes, infant formulae for hospital use or hazardous waste of medical origin) or because of their intended use (semi-finished products and closures not intended for medical use), must inform the manufacturer in writing so that they can apply the exemption and not have the tax charged to them.
- ☒ **Registration in the Tax Census.** Manufacturers as well as Community purchasers and representatives of non-established purchasers who become taxpayers must register in the Special Register and obtain the corresponding CIP (Plastic Identification Code). To do so, they have 30 calendar days from the entry into force of the Order (01/01/2023), i.e., the deadline is next 30/01/2023. Please, remember:
 - A CIP must be obtained for each of the three activities that may be incurred: manufacturing, intra-Community acquisition and representation of non-established taxpayers.
 - Manufacturers must obtain a CIP for each establishment by registering in the Register corresponding to the province in which the establishment is located.
 - Intra-Community acquirers only need to obtain a CIP in the province of their tax domicile.
- ☒ **Self-assessment.** As planned, taxpayers of this tax must submit their self-assessment during the first 20 calendar days of the month following the end of the settlement period. This will coincide with that of VAT, being quarterly or monthly depending on the latter. Therefore, the first self-assessment to be submitted, where applicable, will be for the settlement period corresponding to January, to be submitted within the first 20 calendar days of February.
- ☒ **Special registers.** The Order establishes different degrees of registration obligations depending on the type of activity:
 - **Manufacturers.** They are required to keep “account records” of their plastic packaging operations with the following fields for each record:

Entry number (1)	Concept (2)	Product code (3)	Product description (4)	Date (5)	Justification (6)	Kilograms (7)	Non-recycled kilograms (8)	Tax regime (9)	Recipient or supplier (10)	Recipient or supplier (11)

The meaning and description of each field can be found in the Order itself.

Manufacturers shall also include in their “accounting records” the opening stocks of taxable products available to them on 01/01/2023.

- **Intra-Community acquirers.** They must keep a “stock record” of their transactions with plastic packaging with the following fields for each record:

Entry number (1)	Concept (2)	Product code (3)	Date (4)	Justification (5)	Kilograms (6)	Non-recycled kilograms (7)	Tax regime (8)	Recipient or supplier (9)	Recipient or supplier (10)

The meaning and description of each field can be found in the Order itself.

- ☐ **Uploading of the registers to the E-Office.** Both types of records must be uploaded to the Spanish Tax Agency (AEAT) E-Office during the month following each settlement period, with no such upload during the month of August (non-business month for these purposes). However, the Order itself exempts this obligation during the first semester of 2023, and the registry books corresponding to the first semester of 2023 must be uploaded during the following month of July. Attention, this does not mean that there is no obligation to keep them, but rather that it will not be obligatory to upload them to the E-Office until the aforementioned month of July. Likewise, intra-Community acquirers will not be obliged to upload their record books in those settlement periods in which the self-assessment of the tax is not paid.

☐ **Additional issues**

- Together with form 592 for self-assessment, form A22 is approved for obtaining refunds for input tax, by passing on the tax or including it within the price of the product, or at customs. This form shall be filed within the first 20 calendar days following the calendar quarter in which the tax has been paid. This form will essentially be used by acquirers or importers of products subject to the tax who are not taxpayers of the tax and, in the case of imports, by their taxpayers, when all of them incur any of the cases from which their refund is derived.
- The filing of self-assessments as well as the uploading of special registry books may be carried out by Corporate Partners.

📄 **Issues not resolved by the Order.** As we pointed out in our Alert of 18 October, the application of this tax generates many problems. Some of them are not solved by the Order. By way of example:

- Certification of plastic composition: recycled-non-recycled. The certification requirement contained in the Law is not mitigated or softened by the Order.
- Prior declaration for the application of exemptions. There is nothing in the Order about its content.
- Fully exempt taxpayers. Nothing in the Order indicates whether or not they are obliged to register, keep registers or file self-assessments.

Given the limited content of the Order and the lack of a Regulation implementing the Law, we fear that many doubts will arise from the application of this new tax. There will be no other option but to resolve them by applying the general criteria of tax law and a large dose of common sense.