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## Plastic Packaging Tax Consultation

### Response by the Chartered Institute of Taxation

#### 1 Introduction

- 1.1 The Chartered Institute of Taxation is pleased to comment on the consultation concerning the introduction of a plastic packaging tax for plastic packaging manufactured in the UK and imported plastic packaging, both for use in the domestic market.
- 1.2 We do not have expertise and therefore do not comment on whether and by how much the proposed tax will be effective in changing behaviour of businesses that produce or import plastic packaging with insufficient recycled content.
- 1.3 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.4 Our stated objectives for the tax system include:
  - A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
  - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
  - Greater certainty, so businesses and individuals can plan ahead with confidence.
  - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
  - Responsive and competent tax administration, with a minimum of bureaucracy.

#### 2 Executive summary

- 2.1 We welcome a measured approach to the implementation of the tax, operating within the consultation framework. The effective date of implementation is April 2022, which provides a long lead in time to allow thorough consultation to take place.

- 2.2 We would be happy to meet with HM Treasury and/or HM Revenue and Customs to discuss our response.
- 2.3 We support a single rate, a single threshold and a flat rate per tonne so that the administration of the tax is as straightforward as possible. See our comments in sections 4 and 5.
- 2.4 We would like the rules on tax points for domestic sales to be simple to determine. For imports, wherever possible, we would like the tax point to follow the tax point for import VAT and customs duty. See our comments in section 6.
- 2.5 We remain cautious on the introduction of joint and several liability for businesses and agents, as this will bring additional administrative and financial burdens for businesses.
- 2.6 As the tax is intended to be levied on plastic packaging with insufficient recycled content used in the UK market, it is appropriate to relieve exported plastic packaging from the tax.
- 2.7 We support measures that exclude small businesses from the impact of the plastic packaging tax, and where a de minimis threshold is introduced, such measures should be simple to monitor and adhere to.
- 2.8 There will need to be measures to enforce compliance for the plastic packaging tax, but those measures should be proportionate and should not go beyond what is needed to enforce compliance.
- 2.9 We have only addressed the questions on which we have the awareness, evidence and experience to offer a substantive response. We have not responded to Chapters 3 and 11, and only responded to specific questions relating to the operation of the tax in the other chapters that are within our area of expertise. Further, we are not responding to the parallel consultation on reforming the UK packaging producer responsibility system.

### **3 Chapter 2: About You**

3.1 Q1: What is your name?

A: The Chartered Institute of Taxation ('CIOT')

3.2 Q2: What is your email address?

A: [technical@ciot.org.uk](mailto:technical@ciot.org.uk)

3.3 Q3: Which best describes you? Please provide the name of the organisation/business you represent and an approximate size/number of staff.

A: Other – The CIOT is a professional body, with <100 employed staff, c.400 volunteers on various technical and other committees and c.18,500 members.

3.4 Q4: Please provide any further information about your organisation or business activities that you think might help us put your answers in context.

A: The CIOT is an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation. Please also see paragraphs 1.3 and 1.4. We are not involved in the plastic packaging industry.

3.5 Q5: Would you like your response to be confidential? Why?

A: Our submission does not need to be kept confidential as our response will be published on our website: <https://www.tax.org.uk/policy-technical/submissions>

#### 4 Chapter 4: Driving recycled content

4.1 Q14: Do you agree with the government's preferred approach of a single threshold, and why? If not, what alternative would be better, and what are the risks associated with this? Please explain your answer and provide any supporting information and evidence.

A: We support the single threshold approach as opposed to multiple thresholds to keep the administrative steps required for compliance as simple as possible and avoid excessive burdens.

#### 5 Chapter 5 - Setting the tax rate

5.1 Q20: Do you agree with the government's suggested approach of setting a flat rate per tonne of a plastic packaging product? Why?

A: Whilst the CIOT would not normally comment on the level of the rate itself, a flat rate per tonne provides a straightforward calculation basis. We assume that plastic packaging manufacturers /importers will be able to reasonably calculate the weight at the time the liability to declare the tax occurs.

#### 6 Chapter 6 - Liability for the tax

6.1 Q21: Do you agree with the proposed points at which domestic or imported products would be liable for the tax? If not, at what point in the supply chain do you think the tax point should be and why?

A: For imported product, it would seem a natural alignment for the tax to be due at the same time as import VAT and/or customs duty. This would also protect the UK market as plastic packaging would be taxed before being in free circulation in the UK. We would like to see similar reliefs for delays to tax points available to imported plastic packaging as there are for VAT and customs/excise duties, for example, warehousing arrangements for holding stock for call off by the UK customer so that the tax is due when the product is removed from the warehousing status.

We note that if an inward processing relief ('IPR') was available which may defer the tax point (similar to the VAT IPR scheme), this may be a deterrent for UK businesses that fill plastic packaging to buy plastic packaging domestically, as filled packaging does not qualify for an export credit.

For domestic manufactured product where there is only one manufacturing process, we agree that the tax point should be at the time that the manufacturer commercially exploits the product to be packed or filled.

For domestic manufactured product where there are multiple manufacturers in the production of the product, there appear to be strengths and weaknesses for options 1 and 2.

In principle, option 2 would appear simpler as there is a single tax point at the point the product is ready to be packed/filled. However, the manufacturer at this stage would need to rely on recycled material content

information from manufacturers earlier in the supply chain where there may not be a direct relationship and there may be a penalty risk at the tax point if the wrong information or no information has been received.

Option 1 could create multiple tax points, but each manufacturer has all of the information about the packaging it produces/processes it performs so this should reduce the risk of relying on third party information.

- 6.2 Q22: Are there any situations where the proposed tax points would be administratively, practically or legally difficult? Please explain any adaptations that might be necessary.

A: For manufacturers at the early stages of a multiple manufacturer supply chain, it may not necessarily be clear if your product will end up in plastic packaging or not as it may have multiple uses.

- 6.3 Q25: Would you support extending joint and several liability for UK production, and for imports?

A: We support action to tackle the avoidance and evasion of tax. However, as this would be a new tax we would like to see the legislation and guidance provide the clear position for affected businesses, without deficiencies that could give rise to loopholes or unintended consequences for avoidance opportunities. The use of joint and several liability brings additional administrative burdens and possible financial risks to businesses/agents and it is not currently clear that this level of regulation will be required for the new tax. There would be resource, systems and administrative costs to HMRC if a register of manufacturers and/or agents is required.

- 6.4 Although we remain cautious on the introduction of joint and several liability, if it is to be introduced, it is not clear how businesses customers in the supply chain (retailers, manufacturers of product that uses plastic packaging etc) would know that their supplier of plastic packaging has accounted for the appropriate amount of tax. What reasonable steps would the customer take to evidence that the supplier had paid the tax and hence the customer would bear no joint and several liability?

- 6.5 Q27: Do you agree with the government's initial proposal that the tax at import should only apply to unfilled packaging? If not, what would the effects be? What alternative would you prefer and how would it work?

A: For the reasons set out in paragraph 6.14 of the consultation document, there will be circumstances where the UK importer has no relationship with the manufacturer of the plastic packaging used with the imported product itself and in these circumstances it would bring added administrative burdens for UK importers to obtain the necessary documentation to evidence the recycled plastic content, especially where there are multiple overseas manufacturers in the supply chain. There could also be difficulties in determining the weight of the packaging component of filled packaging.

It could be considered whether the tax should be applied to imported filled plastic packaging, where the packaging used originated in the UK and was relieved of the tax upon its export. This may discourage the scenario where businesses shift the location of assembly of the packaging and product from within the UK to outside of the UK, so that they obtain tax relief upon export of the packaging but are not subject to the tax when they import filled packaging, which could disadvantage the UK assembly businesses.

## **7 Chapter 7 - Treatment of exports**

- 7.1 Q28: Do you agree with the government's suggested approach for crediting exports?

A: The plastic packaging tax is to be imposed only where the product is manufactured in, or imported into, the UK for use in the domestic market, so it is logical to provide relief for tax on product that is exported. We support an export credit scheme. For periods where the export credit exceeds the plastic packaging tax due, we would like businesses to be able to receive a monetary refund of tax. We would like to see export credits available for direct and indirect exports, where the appropriate evidence is held. We note that where there have been multiple manufactures in the production of the plastic packaging, there should only be one business entitled to the export credit.

- 7.2 Q29: Do you foresee any difficulties in providing appropriate records to demonstrate that packaging has been exported?

The export evidence already required for VAT purposes is robust and the proposed export evidence to be held for an export credit of the plastic packaging tax does not introduce further documentation to be obtained. As we would anticipate manufacturers to be registered for VAT, they would already have systems in place to obtain the required export evidence for VAT purposes, so there should not be any additional burdens arising as the evidence will be used for both taxes.

## **8 Chapter 8 - Excluding small operators**

- 8.1 Q30: Do you agree that the government should seek to exclude small operators? If yes, what would the risks be if the government didn't do this?

A: We agree that small operators should be relieved from the tax. We would encourage a thorough evaluation of the compliance costs versus revenues raised (and risk of non-collection) as well as environmental effects before the small business threshold is set. We note that the reformed threshold may be less than the £2million turnover threshold for the Packaging Producer Responsibility rules; should this threshold drop significantly, we would strongly recommend that the threshold does not drop below the VAT registration threshold in force at the time the tax becomes effective. The impact of the tax and compliance burden would be disproportionate for smaller businesses who will have limited resources.

- 8.2 Q33: Would having a de minimis create any significant risks to the effectiveness of the tax at import (including, but not limited to, treatment of multiple imports from the same exporter/manufacturer/brand owner)? If yes, please provide evidence and suggest any additional legislative or operational countermeasures.

A: The de minimis threshold will create additional administration obligations although option 1(a) appears to be the simplest method of operating the de minimis threshold; it is linked to the purpose of the tax and only requires one threshold to be monitored.

Notwithstanding the unlikelihood of disaggregation to avoid the tax, there should be measures similar to those contained in VATA 1994, Schedule 1, para 1A to deter the practice which may risk the effectiveness of the tax. Since it is possible that disaggregation could be undertaken via entities other than companies, we think that careful wording is necessary.

## **9 Chapter 9 - Registration and reporting**

- 9.1 Q35: Do you agree that the registration and reporting requirements outlined are appropriate? If not, please specify why.

A: We agree that the registration and reporting requirements appear appropriate. We presume that businesses likely to be liable to the tax might operate through a group of companies. We consider that for the sake of administrative convenience, it should be possible to register a number of companies as a single person for the purposes of the plastic packaging tax. However, we do not think it necessary to have complex criteria to be eligible; in essence all that is needed is common administrative control.

## **10 Chapter 10 - Ensuring compliance**

- 10.1 Q38: Is the government's suggested approach to compliance proportionate and appropriate? If not, please outline any scenarios that you anticipate may require bespoke compliance powers or penalties?

A: We are not able to comment on the compliance of recycled content.

The approach to enforcement powers and penalties appear proportionate as they are based on established practice for other taxes. However, it may be considered whether a system of certification is required with penalties for false declarations which may be applicable to the seller and/or the purchaser of product. However, certification increases the administrative burden for businesses and they can be falsified.

The approach for connected parties appear proportionate.

The introduction of joint and several liability for agents will create additional costs for businesses. See paragraph 10.3 below.

- 10.2 Q39: Are our anti-abuse proposals sufficient to tackle the risk of fragmentation (abuse of the de minimis or universal relief) from UK based plastic producers?

See our response at paragraph 8.2 above.

- 10.3 Q41: Do respondents believe that using UK based agents for non-established taxable persons may help support compliance?

A: In our experience, the vast majority of agents support tax compliance. Where UK agents are automatically joint and severally liable for the plastic packaging tax this may deter them from acting for non-established taxable persons or the service they provide may be expensive due to the risk. Appointing an agent willing to bear this risk will bring an additional cost burden to the business.

## **11 Chapter 12 - Assessment of other impacts**

- 11.1 Q56: Unless already covered in your responses to other questions within this document, is there anything else you would like us to note about the impact of the tax, especially any potentially adverse impacts on groups with protected characteristics?

A: On a wider point, it is stated that using recycled packaging is more expensive than using new plastic packaging. As the overall cost of the final, packaged product will increase (either because more expensive

recycled packaging is used, or because taxed new plastic packaging is used), what is the government intending to do to mitigate the impact of this on consumers? There is no Tax Information and Impact Note accompanying this consultation. We note that the response to the original call for evidence stated:

*'The government has committed to investing to develop new, greener, products and processes funded from some of the revenues that are raised.'*

- 11.2 Where plastic packaging is designed to be used by a customer several times, is there any relief available to the plastic packaging tax where the recycled content is less than 30%? For example, if a manufacturer purchased bespoke moulded plastic packaging for transporting high value components to its service sites, and the bespoke packaging was unpacked then returned for reuse (and this could be evidenced), would there be any relief from the tax? A business strategy of reuse of its packaging would be a behaviour that should be encouraged.

Where any reliefs are available, there would need to be clear policies around adjustments for damaged packaging, change of intention and surplus stock where the component shape is modified.

## **12 Acknowledgement of submission**

- 12.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

## **13 The Chartered Institute of Taxation**

- 13.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

13 May 2019