



Law Society
of Scotland



Consultation Response

Plastic Packaging Tax

May 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law sub-committee welcomes the opportunity to consider and respond to HM Treasury's consultation on *Plastic Packaging Tax*¹. We have the following comments to put forward for consideration.

General comments

With respect to all of the ongoing consultations (including this consultation, the consultation on reforming the UK packaging producer responsibility system and the consultations on deposit return and collection consistency which do not apply to Scotland), it is important that there is consistency across the UK and that the expectations and considerations for consumers, producers, retailers and the public sector across the UK are taken into account.

The Scottish Government has already consulted on the introduction of a deposit return system and so, from a regulatory perspective, achieving the necessary level of legislative consistency across the UK may be challenging.

This may be an appropriate matter for a common framework covering the UK to be agreed. Such a framework need not cover all of the substantive policy requirements but the underlying elements of the form of documentation, classification of materials, labelling etc would benefit from consistency across the UK so that everyone in the supply chain is working within the same system.

Given the remit of our organisation, we have only responded to those questions which are of relevance to that remit. The questions on which we have 'no comment' have not been included in our response below.

¹ <https://www.gov.uk/government/consultations/plastic-packaging-tax>

Consultation questions

6 Do you agree with the government's suggested approach to defining plastic in scope of the tax?

7 Do you agree with the government's suggested approach to defining packaging and packaging materials in scope of the tax?

The way in which materials are defined in the legislation requires careful consideration. To ensure the consistency that is required (as noted above in the general comments section of this response), further detailed consultation with those in industry who deal with the materials to which this consultation relates on a regular basis would be advisable.

The definitions should include distinctions, for example, between:

(1) materials which are biodegradable or compostable (within a short period of time) and are not therefore akin to other plastic materials which take significant periods of time to biodegrade or do not degrade at all, and

(2) materials which are and are not capable of being recycled.

Where such unrecyclable materials comprise part of other plastic packaging, whether that makes such packaging unrecyclable as a whole should be considered.

10 Do you think alignment with reformed Packaging Producer Responsibility regulations is important for the purposes of the tax?

Yes, in order to ensure and achieve the consistency which is required.

11 Do you agree with the government's suggested approach to defining recycled content for the purposes of the tax?

The way in which materials are defined in the legislation requires careful consideration. To ensure the consistency that is required (as noted above in the general comments section of this response), further detailed consultation with those in industry who deal with the materials to which this consultation relates on a regular basis would be advisable.

The Government should be wary of introducing exclusions or different thresholds for different types of product and/or use of materials as that is likely to make the aim of the tax (to encourage higher levels of recycled content) more difficult to achieve in the long-term.

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

Provided that the tax is only applicable to the non-recycled element of the product, this proposal would seem to make sense. However, the suggestion at Table 4,A on page 20 of the consultation for varying tax bands may have more success by incentivising innovation in manufacturing.

21 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?

Yes, provided that the legislation is clear and consistent about those tax points such that all businesses affected by the tax understand the point in the supply chain at which it becomes due. Further consideration should be given to the production of products which includes multiple packaging parts produced or provided by different businesses.

In addition, the position regarding the export of packaging or products to which the tax would apply if those were to be sold commercially in the UK needs to be clarified to avoid any potential inconsistency. For example, if packaging that does not meet the required recycled content threshold of 30% is exported and therefore not subject to the tax only to be filled and then re-imported into the UK as a filled product, how will the Government capture that sort of avoidance?

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

Please see our response to question 21 which is also relevant to this question.

25 Would you support extending joint and several liability for UK production, and for imports?

Have the potential legal complications and implications of this approach been fully considered? At what point in the supply chain would the tax be levied on filled imported products given that the UK would not have control of the manufacturing process in such cases?

28 Do you agree with the government's suggested approach for crediting exports?

Please see our response to question 21 which is also relevant to this question.

29 Do you foresee any difficulties in providing appropriate records to demonstrate that packaging has been exported?

As with any environmental measure which requires record-keeping, appropriate checks will need to be put in place to ensure that all required documentation is completed and made available prior to exports being permitted, particularly where other parties in the supply chain will be relied upon to provide parts of the documentation required. However, the documentation suggested in the consultation should be reflective of the type of documentation that manufacturers, logistics' companies and others are accustomed to retaining.

This is a good example of where a common framework (to determining the required documentation) may be advisable.

30 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?

Any exclusions to the tax should be carefully considered on the basis that a robust monitoring system will be required to ensure that there is not tax avoidance.

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

As mentioned above, a robust monitoring system will be required to ensure that there is not tax avoidance.

The timeframe for determining the design of the tax, introducing the required legislation and ensuring that all those who will be liable to pay the tax (across a wide range of businesses and industry in the UK) are properly informed of their registration requirements is fairly tight. The Government should consider issues encountered with the compliance of registration requirements in relation to other taxes (such as Scottish Landfill Tax) and the implications for a lack of compliance, how that will be monitored and ultimately enforced.

38 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?

Please see our response to question 35 which is also relevant to this question.

We suggest that the Government should consider what additional resource will be required in order to effectively enforce and penalise non-compliance with the scheme, particularly considering the current levels of enforcement for similar taxes (such as Landfill Tax and Scottish Landfill Tax).

Penalties for minor non-compliance should be appropriate and proportionate when considered in light of the purpose of the tax.

Ultimately, the effectiveness of any enforcement will be dependent on the clarity of the legislation which is brought in to implement the tax. Consideration should be given to legislation relating to landfill tax (across UK jurisdictions) and the scope for interpretation and dubiety which it has created in a number of instances. The legislation implementing this tax needs to be adequately considered and clear in nature to avoid similar issues arising in practice.

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