



HM Revenue  
& Customs



HM Treasury

# Soft Drinks Industry Levy

**Summary of Responses**  
December 2016

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# Ministerial Foreword

Today we set out the shape of the government's Soft Drinks Industry Levy – a central pillar in our Childhood Obesity Plan.

The levy has been designed to drive reformulation in the soft drinks market, and over the past few months we have seen the effects that government action is having.

Several major companies in the UK soft drinks market have recently strengthened their commitment to reformulate before implementation, and therefore some of these will not pay the levy on any of their drinks by the time the tax goes live in April 2018. This shows that change is possible.

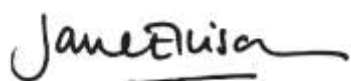
We recognise the work of market-leading companies, and acknowledge the investment costs associated with reformulation work. Individual companies' commitments to recipe changes, portion re-sizing and marketing lower sugar brands in the run-up to April 2018 will all be rewarded through the levy design.

The government has always been clear that this is a levy we would rather not collect – but one which is necessary to help drive down sugar consumption and tackle childhood obesity. Across England the government will invest the revenue during this parliament in giving school-aged children a better and healthier future, including programmes to reduce obesity and encourage physical activity and balanced diets. The devolved administrations will receive funding through the Barnett formula in the usual way.

The government's response to the consultation submissions, and the draft legislation we publish today, re-affirm our commitment to exempt small businesses. We have also set out an approach that reduces the risk of a growth in a so-called 'grey market' for untaxed imports which could undermine UK-based production, and we will apply the levy in a way that accounts for the industry's high levels of quality control during production – so firms pay only for what leaves the factory floor.

We have considered carefully all the submissions we have received and we believe that the policy set out here encourages continued product reformulation, whilst minimising unnecessary burdens on business and reducing the risk of unintended consequences.

The government is determined to act in the best interests of the nation's children and the Soft Drinks Industry Levy has an important part to play.



**Jane Ellison**  
**Financial Secretary to the Treasury**

# 1. Introduction

At Budget 2016 the government announced that it would introduce a levy on sugar sweetened beverages from April 2018.

A full consultation setting out specific proposals for how the levy would be designed and implemented was published in August 2016.

A total of 154 responses were received. The largest group of respondents were medical and health groups (26%). Other responses came from manufacturers (25%), individuals (18%), representative trade associations (13%), other government departments and local authorities (11%) and retailers (7%).

In addition to these responses, HM Treasury and HM Revenue and Customs officials met with a number of stakeholders during the consultation process to discuss the proposals.

Over half of all respondents were in favour of the levy, with many wishing to extend the scope of the levy to other products. In particular 95% of medical and health bodies who responded to the consultation were supportive of the proposals, and 73% of retailers. A majority of manufacturers and associated trade bodies were opposed to the levy (78%).

This document provides a thematic summary of the responses to each proposal and sets out the government response.

The government is grateful to all the organisations and individuals that took the time to respond to the consultation.

## Background

Obesity is a major UK-wide public health challenge, and sugar consumption is a leading factor. We know that children are still consuming unhealthy amounts of sugar from soft drinks.

Nearly a third of our children are overweight or obese, as well as nearly two thirds of adults. Obesity is a drain on the NHS, where we spend over £6bn on treating illnesses from obesity annually, and has significant economic costs estimated at £27 – 46 bn.

Although the latest surveys suggest we are seeing the sugar consumed in soft drinks falling overall, a single 330ml can of 'full sugar' soft drink can contain 35g of added sugar, instantly taking a child over their maximum recommended daily intake, often with no intrinsic nutritional value.

The Scientific Advisory Committee on Nutrition (SACN) concluded that consumption of sugar-sweetened beverages is associated with increased risk of Type 2 diabetes and higher weight in children, and should be minimised.

Public Health England and the Chief Medical Officer have said that reformulation and smaller portion sizes are key for reducing sugar intakes. This is at the centre of the government's Childhood Obesity Plan, and Public Health England's sugar reduction programme.

The Soft Drinks Industry Levy encourages producers to: (i) reduce added sugar content in drinks; (ii) market low sugar alternatives, and (iii) reduce portion sizes for high sugar drinks. All responses will reduce levy liability.

The industry has shown reformulation is possible without turning off consumers, and significant industry players have acted to accelerate this process since the levy was announced in March 2016, but others need to be more ambitious and move faster. There is still time for others to act over the next 18 months.

### **Next steps**

Following this initial consultation period, the government has published draft primary legislation for levy, and has opened a further eight week technical consultation on the legislation, closing on 30<sup>th</sup> January 2017.

HMRC and HM Treasury will continue to work with stakeholders to ensure that the primary legislation achieves the policy intent and minimises business burdens where appropriate.

The government also intends to publish relevant secondary legislation in draft in early 2017 for consultation.

We will announce the final levy rates as part of Budget 2017.

## 2. Responses

### Soft drinks within the scope of the levy

The consultation asked for views on whether the scope of the levy, and the administration arrangements were sufficiently robust. Respondents made clear across all questions in this section that in order for the levy to be robust there must be legal certainty, proper guidance and effective monitoring to prevent avoidance.

### Definition of added sugar

There were 81 responses to whether the proposed definition of added sugar was sufficient, nine responses to whether the definition could be improved and 46 responses to whether the Fruit Juices and Fruit Nectars (England) Regulations 2013 provided a reasonable reference point to ensure that fruit juice products are excluded from the definition of added sugars. Although many replies amalgamated their answers, 10% of respondents disagreed with the definition of added sugar, 51% agreed and 39% both agreed and thought the proposal should go further. On the inclusion of the regulations as a reference point for excluding fruit juice, 78% of respondents agreed and 22% disagreed.

Several responses said that added sugars are already defined in EU legislation (Regulation (EC) No 1924/2006) as “added mono- or disaccharides or any other food used for its sweetening properties” and that this provides a better basis for the levy definition than that set out in the consultation. Such a definition would exclude fruit juices from being classed as added sugar (because they are used for flavour and not just sweetness) but would capture de-ionised juices (which only provide sweetness). The definition would also capture novel bulk sweeteners such as agave nectar, but the levy legislation should specifically state that intense (artificial) sweeteners are not in scope. This would in turn create consistency with labelling regulations.

Several responses said the levy should go further to include all sweeteners, as they still have the effect of raising blood sugar, whilst others questioned the inclusion of sweetening ingredients which some people consider “healthier alternatives” to sugar, and which could cause confusion. These include agave nectar, new fruit sugars such as coconut and date sugar and panela or unrefined whole cane sugar.

Many of those who disagree with definition of added sugars, and the treatment of fruit juices, point out that the Scientific Advisory Committee on Nutrition (SACN) defines ‘free sugars’ to include sugars from fruit juices, and recommends that these are limited to 5% of total energy intake for adults and children over the age of two years. Therefore respondents who disagreed with the approach tended to be of the view that the definition of added sugars for the levy should mirror the SACN definition of ‘free sugars’.

Others noted that fruit juices and vegetable juices can still contribute towards an individual’s recommended ‘5-a-day’ intake of fruit and vegetables, and that it is therefore justifiable that pure fruit and vegetable juices should not be counted as added sugars when used in soft drinks. Twenty responses highlighted the Public

Health England recommendation that pure fruit juice consumption should be limited to a portion of no more than 150 millilitres per day.

Several respondents commented that the exemption for fruit juices does not go far enough and that, in its current form, it unfairly discriminates against certain fruits, distorting competition. In particular these respondents argued that blackcurrants need sugar to be palatable due to the astringent taste. They have a high vitamin content compared to other fruit juices and should be exempt on the grounds of their health benefits.

A number of responses noted that there is a risk that excluding fruit juices from the levy may result in i) an increase in the use of fruit juices as soft drink sweeteners by manufacturers, ii) an increase in consumption of fruit juices by children and therefore iii) no net reduction in sugar consumption among children. Some respondents were concerned that products like de-ionised fruit juice would not be counted as added sugars under this definition.

It was a common theme amongst all respondents that the government should monitor behaviour closely in this part of the market to ensure that manufacturers are not able to identify and exploit loopholes which might run contrary to the spirit of the legislation.

### **Government response**

The government notes that most of the respondents agreed that the proposed definition captures the calorific sugar ingredients used in soft drinks.

We acknowledge that there are differing definitions of 'sugars' and 'added sugars' in use, and welcome respondents' suggestions on the most appropriate reference point in existing legislation. We have considered these responses carefully in advance of publishing draft primary legislation, and we will seek further comments on specific provisions when we publish detailed secondary legislation in draft during 2017.

The government recognises some respondents' concerns that excluding fruit juices from the definition of added sugar in the levy differs from the definition of 'free sugars' proposed in the SACN report, and we acknowledge the need for monitoring of producer and consumer behaviour once the levy is implemented to ensure overall sugar levels fall.

The primary aim of the SDIL is to encourage producers to remove added sugar from soft drinks. It therefore remains consistent with the policy intent that 'no added sugar' drinks which may contain a mixture of fruit and vegetable juice ingredients, often with water and sweeteners, should not be bought within scope of the levy. The proposed approach should achieve this.

We also note that a similar approach is needed for the natural sugars occurring in milk when milk is mixed with other liquids to form a drink, and we have brought forward draft legislation which looks to achieve this aim.

## Dilutables

There were 47 responses about dilutables and cordials. 86% of responses thought that taxing dilutables and cordials at diluted volumes would cause problems versus 14% who thought there would be no problems.

The majority of responses cited concerns that the approach would be open to abuse and would need careful monitoring to ensure manufacturers do not simply change their recommended dilution ratios in order to avoid the levy. Others suggested ongoing monitoring of consumption of dilutables to ensure that consumers do not compensate for any reduction in sugar by increasing the volume of the concentrate.

Other respondents suggested:

- A single ratio to be applied across all dilutes and cordials irrespective of different brand recommendations;
- Any recommended dilution ratio used to determine liability should be independently verified to prevent abuse;
- Any dilution rate should be set in legislation;
- A standardised ratio over the top of a manufacturer's dilution ratio would add complexity for manufacturers and could discourage the adoption of lower dilution ratios as part of reformulation efforts;
- If a company chooses not to provide a dilution ratio, the taxation should be levied according to an industry average determined by agreement between the British Soft Drinks Association and HM Revenue and Customs.

Some thought it was unlikely the public would shift their long established diluting habits simply because the ratio on the bottle had changed, and that there needs to be consumer acceptance for changes in the dilution rate. Some respondents thought that any change in dilution ratios should be accompanied by a marketing campaign to encourage greater dilution.

It was also suggested there could be different dilution rates for different customers. For instance, a pub buying in cordials may be using the products as primarily mixers for alcoholic drinks than a facility aimed primarily at children.

Other concerns were:

- Cordials are not designed to be drunk in pure form, only after dilution or as an ingredient to a larger drink. Because of higher levels of sugar existing in the concentrated state, the cordial industry would face higher levy liabilities than other soft drink producers which could have negative impacts on sales of cordials;
- In reality consumers may exceed the recommended dilution ratio provided by manufacturers. Therefore charging the levy on the basis of these



recommended ratios could underestimate the actual sugar content of these products 'as drunk';

- The administrative burden of reporting at a product line level would be significant. Though this was balanced by one large retailer, who suggest their suppliers could accurately test sugar content as products are regularly tested during the production process.

### Government response

The government recognises respondents' concerns around monitoring and enforcement in this area.

The government acknowledges that there are a number of different approaches to ensuring that dilution ratios are not manipulated to reduce a business's levy liability.

We do not plan to create 'standard' dilution ratios for classes or ranges of products, and we will allow companies to set and declare their own dilution ratios, unless we suspect the dilution ratio has been set or changed specifically to avoid the levy. Where avoidance is suspected HMRC will have a power to impose a dilution ratio on a product.

### Liquid drinks flavourings

There were 52 responses about liquid drinks flavourings. 93% of responses were in favour of including them in the levy and 7% were against the proposal.

Around half of the responses pointed out that flavourings can contribute significantly to the sugar content of a drink and argued they should be taxed.

Several respondents suggested that, ideally, recommended dilution ratios should be given on these products against which liability to the levy could be assessed, but failing that then there should be 'separate thresholds and rates' depending on the amount of sugar.

However, several respondents thought flavourings should be excluded because they did not fit the definition of 'a liquid to be consumed, or diluted for consumption, to slake thirst' as they are ingredients., and one respondent put forward the view that it was 'important to our customers that they are able to customise their drinks'. Their main arguments were:

- These flavourings are predominantly used by the industry in adult drinks (i.e. flavoured coffees) and as such, their inclusion in the scope of the levy would not support the objective of encouraging reformulation in drinks consumed by children;
- If the levy were to extend to drinks that are hand-made in a retail outlet and were to be based on the dilution of those drinks, the operational complexity would be significant and would add a major administrative and logistical burden to the business.

## Government response

The government acknowledges the significant support for the principle of taxing liquid drinks flavourings and will continue to keep this issue under review after the levy has been implemented.

The fact remains that these products are not beverages, and that they bear strong resemblance to food products which are clearly outside of the SDIL tax base, such as honey, treacle and maple syrup sold in their retail form as food products to consumers. Attempting to include them could significantly complicate the SDIL legislation and enforcement.

For the purposes of a levy aimed at driving reformulation in the pre-packaged soft drinks market, these products are not within the immediate boundaries of the levy, and we therefore remain of the view that taxing them would require a separate regime on which significant further work and consultation would be required.

We therefore do not propose to include these products within the scope of the Finance Bill 2017 legislation for the levy, but will return to the issue at a later date.

## Milk-based drinks

There were 72 responses on an exemption based on a minimum proportion of milk. Twenty-six responses stated that the 75% milk content proposal was either an arbitrary cut off point or too low, while 22 responses suggested that all milk drinks with added sugar, for example milkshakes, should be included.

A number of responses suggested that only the percentage of added sugar should be taxed, as milk naturally has around 5% naturally occurring sugar. The tax should apply if there is less than 95% milk, thus allowing up to 5% added sugars. Some respondents suggested using definitions found in The Schools Food Standards as a basis, which would achieve a similar outcome.

Several manufacturers were concerned that excluding milk-based drinks from the levy would create market distortions between milk-based drinks and water-based or fruit juice-based drinks.

There were also requests for exemptions for formula milk and meal replacement drinks which are not used to slake thirst.

## Government response

We recognise respondents' concerns about the amounts of added sugars in some milk-based drinks, and we agree that the presence of high levels of added sugars must be balanced against the positive nutritional properties that milk brings as part of a balanced diet.

Added-sugar milk-based drinks will be firmly in scope of Public Health England's sugar reduction programme for the Childhood Obesity Plan. The sector's performance against industry sugar reduction targets will be monitored and reviewed, alongside the continued case for the exclusion for milk-based drinks in the levy. It is vital that manufacturers focus on removing the added sugars from their drinks and making them healthier. The government will continue to keep this area under review.

Nevertheless, it is the case that one in five teenage girls do not get enough calcium in their diet, and milk remains an important part of the Eat Well plate. The government continues to be of the view that the nutritional properties of milk justify a different approach to milk-based drinks in the levy. We will therefore bring forward primary legislation to exclude drinks containing at least 75% milk or yoghurt, with the detailed definitions set out in secondary legislation.

We have addressed issues around formula milk for babies and infants in our response to question 12 on medicinal products and foods for specific groups.

## Milk substitutes

There were 22 responses about the composition of milk substitutes. The majority of these responses agreed milk substitutes should be included in the levy if the amount of sugar was the same as milk-based drinks, to encourage reformulation. Three responses agreed medicinal products, when carefully defined, should be excluded. There were also several responses requesting plant-based drinks, such as made from oats or soya, should be specifically excluded from the levy.

## Government response

The government recognises that some people choose to consume plant milk drinks as replacements for dairy milk, and that for people affected by dairy allergy or lactose intolerance these may be an appropriate dietary substitute.

Dietary specialists may recommend the use of plant milk drinks fortified to contain levels of calcium similar to that of milk as alternatives for dairy milk, as these products have a comparable nutrition content. As we noted in the consultation document, the vast majority of plant-based milk drinks on the market would not be subject to the levy as they contain less than 5g/100ml of sugar.

The government recognises the arguments for parity of treatment with dairy milk and we will therefore exempt plant milk drinks that are a nutritional alternative to dairy milk. The government will set out further specifications in secondary regulations.

## Candy sprays, ice lollies and dissolvable powders

There were 61 responses about the treatments of candy sprays, ice lollies and dissolvable powders. Although the vast majority of respondents explicitly supported the proposed approach in principle, many made the point that dissolvable powders are similar to cordials in respect of dilution ratios. Some respondents were in favour of including powders in the levy as they are used to sweeten products and to exclude them would send the wrong health message.

### Government response

The government is pleased to note the broad support in principal for the proposed approach to candy sprays, ice lollies and dissolvable powders. These products will therefore not be included in the scope of the levy.

The government notes the views of some respondents on the inclusion of powders which can be dissolved to form a beverage. As noted in the consultation document, this is currently a small part of the UK soft drinks market, and it is also a class of products where the routes to reformulation are less well established.

The government will monitor behaviour in the market for dissolvable powders to ensure that supply and demand for 'dilute at home', or 'retailer diluted' products is not being distorted by the levy design, and that the reformulation aims of the levy are not undermined.

## Low alcohol products

There were 40 responses about low alcohol products. Around half of the respondents to this question supported including these products in the levy as products such as 'alcopops' are consumed by young adults (and shandy for example is not age restricted) and not to tax them suggests they are a healthy alternative to sugary soft drinks. Other suggestions included one to say pre-mixed alcoholic drinks should be exempt and another saying any product escaping excise duty should be included.

However, some respondents questioned why these products would be included in the levy where they are not marketed or sold to children, and the rationale of additional tax on low alcohol products as they are marketed as a 'healthier' alternative to full alcohol products.

### Government response

In the UK it is lawful for individuals under 18 years of age to purchase pre-packaged drinks of up to 0.5% ABV in shops. This includes drinks such as shandies which may have significant levels of added sugar and are often consumed by children and teenagers.

The government has consulted on a proposal to include drinks up to 0.5% ABV within scope of the levy, and on the best way to avoid unintended consequences for reduced

alcohol variants of alcoholic drinks, which are designed for adults looking to reduce their alcohol intake.

The consultation responses highlighted an enforcement issue related to the labelling of alcoholic drinks. At present, products are not legally required to carry a label stating their alcoholic strength below 1.2% ABV, which is the point at which alcohol duties become due.

In practice it would not be possible in all cases to identify drinks with a strength of up to 0.5% ABV for the purposes of enforcing the levy based on the product labelling, which could be a significant factor for assessing the liability of packaged products.

The government does not consider it proportionate to introduce additional labelling requirements for alcoholic drinks at this time. The government will therefore bring forward legislation which includes added sugar alcoholic drinks of up to 1.2% ABV within scope of the levy, other than where these are low alcohol alternatives aimed at helping adults to make healthier choices and consume less alcohol, such as low strength beers and wines.

### **Drinks for medicinal purposes, and related products**

There were 31 responses on this subject.

Some were against any exemption for this class of products, but more respondents were in favour of exempting drinks on medical grounds, with some suggesting this was acceptable as long as the drinks were available only on prescription. Many respondents suggested that where sugary drinks are used to treat medical conditions, such as Type 1 diabetics and hypo-glycaemic attacks, that there should be an exemption or provision for diabetics to receive those levy free.

There were also suggestions to exempt drinks and powder formulations under the British National Formulary or Foods for Special Groups (EU Directive 609/2013) and also meal replacement drinks.

### **Government response**

The government accepts respondents' proposals to extend this exemption to beverages covered within the definition of Foods for Specific Groups as defined in relevant legislation.

This will provide certainty that baby formulas, as well as a range of products used to treat dietary conditions, are clearly not within scope of the levy.

### **Impacts on those with protected characteristics**

The government received 41 responses about adverse effects on groups with protected characteristics. A number of responses referred to medical conditions such as Type 1 or Type 2 diabetes and suggested that in order to meet its equalities obligations, the government would need to monitor the impact of the levy on those

groups. Specific concerns raised were whether the price of sugary soft drinks would rise, while others noted that if all sugary soft drinks in scope of the levy reformulated their products it could have an impact on the effectiveness of sugary drinks as treatment for hypo-glycaemic attacks. Some respondents suggested that Type 1 diabetics should be able to receive levy free soft drinks, to be dispatched through pharmacies, the NHS Drug Tariff, or through an exemption.

Eighteen responses agreed the impact on protected groups will be negligible, particularly if the levy is borne by the producer.

### Government response

Overall the levy is expected to have a positive impact on the health of individuals in the UK. The government has carefully considered all the responses that raised concerns or suggested questions on whether the levy will have an impact on those with protected characteristics.

Whilst we recognise soft drinks with high levels of added sugar may have a role to play in raising blood glucose levels for people living with diabetes where sugar intake is a medical factor, there will continue to be a range of drinks containing sugar which will not be subject to the levy and can be a suitable alternative for individuals managing medical conditions which may require them to consume sugary drink or food. HM Treasury and HMRC will undertake ongoing monitoring of the levy and keep these concerns under review.

### Liability for the levy

Responses common to all questions in this section requested more clarity on definitions, including the definition of a small producer and the legal definitions of packager, manufacturer and producer in relation to existing food law.

There were 36 responses about making the bottler or packager liable for the levy. Opinion was split equally about whether the liability for the levy should fall on the bottler or packager. Those who agreed thought it was the least burdensome option. Those in disagreement raised concerns that:

- Bottlers may not have control over reformulation the legal (brand) owner should be liable instead;
- It would create admin burdens and cash flow problems. Some respondents were concerned it could require producers to give commercially sensitive information to third party bottlers.

Several businesses proposed an alternative model of liability, suggesting that the tax point be moved to the point of sale to the consumer. This would also deal with wastage and spoilage which some producers said would complicate liability at the point of bottling.

There were 20 responses about contracting out and the small operator relief. Some respondents thought there should be no relief at all to avoid distorting the market.

Suggestions in favour of the proposal thought there should be an annual rather than quarterly return, applied to a brand rather than overall litreage.

The majority of responses about one-off and ongoing costs thought it was too early to assess and would depend on the size and type of business. Most agreed that they levy would increase administration costs. Those that expressed an opinion estimated between £5K and £100K for new systems, staff and training with on-going costs of between £25K and £50K annually.

We received 26 responses on the definitions for importers. Respondents that disagreed highlighted the potential for abuse if imports were split into smaller quantities, particularly if importers are delivering to many customers. In addition, some respondents noted that importers are reliant on the information given by the overseas producer which may not be reliable.

Some respondents suggested that the tax point should be moved to the time of import rather than the first UK receiver, to put imports and UK production on an equal footing. Some shared concerns that the proposed treatment of imported liable soft drinks would lead to an increase in the grey market.

There were 26 responses to questions on spillage. Those who disagreed suggested moving the tax point to the consumer, which would deal with spillage. Others suggested that goods not sold to the public should not be liable for the levy.

Respondents gave examples of where goods could be unusable or spoiled after bottling:

- Quality control (where the product has been made the incorrect specifications);
- Faulty packaging or labelling;
- Carrier damage;
- Supply contract ending.

Other respondents suggested that there should be a reclaim facility for refunds on products recalled and destroyed under controlled circumstances as there is for alcoholic products.

We received 60 responses to whether free samples should be included within the scope of the levy, of which the majority agreed they should be included. Those agreeing suggested if free products were not included it would send out a mixed health message. Others thought that if liability were moved to the point of sale then there was no issue as the goods would not be sold. Some respondents stated that including free samples in the levy would negatively impact on innovation as it was a way of marketing and testing new products.

### **Government response**

The government is grateful for the responses to the above questions, and to the businesses and organisations that met with officials to detail how the soft drink industry works in practice, including businesses who gave officials a tour of their bottling plant.



The government does not consider that a point of sale tax aimed at raising consumer prices would be as effective in driving producer-led reformulation of sugar sweetened beverages, and therefore the levy will continue to be implemented as a levy on producers and importers.

Having carefully considered the evidence provided the government has decided that liability should remain with the packager for the purposes of the levy as this is where the production volumes are most easily recorded and reported. For imports, we have decided that liability will fall on the first UK receiver of the goods, as these will help address concerns about disaggregation of imports.

However, in order to address concerns regarding spillage or quarantined soft drinks we have decided to move the duty point from the point of bottling to the factory gate. Under this model, the levy will only become payable once the products have left the production facility, thus allowing for wastage on site.

We will consider further whether a credit facility, restricted to the producer, would be appropriate when soft drinks have been recalled and destroyed after they have left the factory gate.

While we recognise that many soft drinks producers provide free products for various commercial and non-commercial reasons, there will be no specific exemption for such products because of concerns about abuse and avoidance.

### **Small operators**

There were 19 responses about defining small operators. Some respondents stated that thresholds were a matter for HM Treasury, others suggested between 500,000 and 100m litres as an appropriate production level or based on turnover of up to £10m. Many responses suggested that there should be no exemption at all, as any exemptions could distort competition and fuel the grey market. It was suggested that any exemptions could be considered State Aid.

There were 35 responses on the model for a small operators' exemption. Some respondents repeated there should be no exemption at all, while a minority thought a universal relief was the fairest approach in a competitive market although large companies may benefit from it more than small companies.

### **Government response**

The government has listened to concerns about the levy driving a 'grey market' for imported soft drinks and we are of the view that this is an area where a more tightly defined exemption will benefit the Exchequer, HMRC and the businesses affected by the levy.

We will therefore introduce legislation to ensure that only products imported from overseas manufacturers who would be eligible for the small operator relief on their total production will be exempt from the levy. This equalises the treatment of overseas production with UK-based production, and will ensure that importers cannot gain a



competitive advantage over UK producers of soft drinks by bringing widely consumed branded products into the UK levy free. In structure this exemption is similar to the Small Brewers Relief Scheme.

As a universal relief available to all operators would not be compatible with this model of exemption, we will specify in legislation that only operators producing below a certain volume threshold will benefit from a levy relief on liable products.

To help inform the evidence base for setting the level of the threshold the government commissioned research alongside the consultation to explore how small producers and importers of soft drinks work, including detailing the production levels of liable soft drinks. The results of the research will be published in due course.

After taking the consultation and the research into careful consideration we have decided to set the small operator threshold at one million litres of liable product. This will ensure that only genuinely small operators are out of scope of the levy, whilst meaning that in practice operators producing sufficient volumes of liable product to serve the national market would tend to be in scope.

## **Treatment of imports and exports**

There were 23 responses to questions on the risk of abuse from imports and 20 responses about the effect on importers. Respondents noted that the implications of leaving the European Union were not yet known, but that the levy could make overseas products more attractive and could increase the grey market in soft drinks. Exchange rates and shipping costs were also noted as having a big influence on grey market activity.

A majority of responses wanted imports used for international travel to be liable for the levy. Those agreeing thought that the drinks were still being consumed by UK nationals and there would be an inconsistent health message. Those disagreeing said that the goods were consumed outside the UK and therefore should be exempt in line with other products under UK excise rules.

There were 21 responses about providing an export credit against future liability. Some respondents suggested that limiting export credits to direct exports would be complicated and could lead to the incorrect levy being paid. Others highlighted that producers who export with many companies could face higher administrative burdens. Other suggestions were that a drawback facility similar to the one for excise products was needed or that exporters could be pre-registered by HMRC.

Some responses noted that businesses with significant exports could face severe cash flow difficulties if the levy had to be paid in full in one return and a credit claimed afterwards. Suggested solutions were limiting levy credit to direct exports only or providing an upfront relief when the product is clearly produced and labelled for export.

There were 18 responses about the length of the supply chain, the majority of respondents saying that the supply chain can be long and complex and cannot often

be traced beyond the first intermediary. Similarly on costs, the majority of the 28 responses thought it was too early to make accurate cost estimates, but costs would be likely to include new software and system changes with staff training.

There were 28 responses on whether all drinks which are liable for the levy (UK and export markets) should be included for determining a small operator with a majority agreeing they should. Those agreeing suggested that it was the only consistent and fair approach, whereas different treatment could create loopholes in the levy. Those disagreeing thought the proposal would either discourage exports or manufacturers would move production overseas to remain competitive.

### **Government response**

The government supports British exporters. In line with other excise duties and VAT, and in order to ensure that British producers are not at a disadvantage when trading outside the UK, domestic producers that export sugar sweetened drinks will be able to claim a credit against any levy liability arising on their UK supplies.

The government has listened to producers concerns about cash flow. Producers will still have to account for their exports in the levy return, but we will allow exports to be netted off against current liability provided there is evidence to support the claim. The government also recognises there are revenue risks associated with exports and that producers will need to keep appropriate evidence of export in their records. However, as producers registered for VAT already have to maintain such evidence to justify VAT zero-rating this evidence should already exist and any increase in administrative burdens should therefore be minimal.

Only the producer of the liable drinks will be able to claim an export credit. In order to reduce the risk of fraud no cash repayments will be made. HMRC will closely monitor the take-up of export credits.

### **Registration and reporting**

Twenty three responses were received on registration requirements. Opinion was split almost equally with a slim majority agreeing with the proposals. Those disagreeing suggested all businesses involved in the production or import of soft drinks should be registered. 15 respondents agreed that the deregistration requirements were appropriate.

Additional registration costs were thought by most respondents to be too difficult to estimate at present as they were dependent on the size and complexity of the business. A majority of the 20 respondents agreed the reporting requirements were straight-forward, but others warned of additional IT and administration costs and stressed that implementing new systems takes time. It was noted that whilst UK manufacturers may have the information readily available, other parties such as importers may not.

Many of the 18 responses suggested it was too early to estimate one-off and on-going costs at present. Most suggested that the biggest costs would be where new reporting systems were required, plus costs for ongoing maintenance. Some respondents

referred to the Corporation Tax changes in 2018 which will increase businesses tax payments in the first year of the levy.

Regarding the use of other data sources, several respondents favoured using the existing reporting structure, for example VAT and Intrastat returns.

Other registration and reporting issues raised by 14 respondents included the consequences of leaving the European Union in relation to reporting EU sales and more detailed information being required from HMRC on reporting requirements. Many respondents suggested having a robust monitoring and evaluation system, to guard against recipe and dilution fraud where the label differs from the practical application.

### **Government response**

The government is pleased that a majority of respondents agreed that the registration and reporting requirements of the levy are straight-forward. HMRC will set up an implementation working group comprised of some businesses who will pay the levy to ensure that user needs are reflected in the administration and payment systems.

We are grateful to the organisations that sent us estimates of the one-off and associated costs with registering and complying with the levy.

The government will continue to consider whether additional data sources are needed to monitor compliance with the levy.

### **Ensuring compliance**

We received 22 responses on proposals to require annual tests of sugar content. A majority stated that there were already strict labelling rules and as such any additional requirements were unnecessary. Several responses highlighted that the additional costs of third part testing made it prohibitive for small businesses. Some manufacturers said they already test each batch and therefore an annual test was redundant.

There were 12 responses on dilution ratios. A majority of these said that dilution was a matter of taste and therefore there were no possible tests to identify appropriate dilution ratios.

There were 19 responses about tests for imported drinks. Several responses suggested the current brix tests would be appropriate, regardless of the product's origin, while others noted that there was already a legal requirement in relation to EU labelling legislation. Respondents stressed there must be a level playing field between UK and imported drinks, particularly after the UK has left the European Union.

Of the 43 responses on penalties, a majority were supportive of the proposals. Those who disagreed felt they could not comment due to the lack of detail. Other responses highlighted the need for a proportionate enforcement regime. Some responses asked for a grace period of 12 months, before penalties were imposed.

There were 16 responses on the anti-abuse proposals. While several respondents agreed the proposals were sufficient to tackle the risk of fragmentation, others thought

the focus on individuals may negate the intended effect. Some responses referred to the small operator exemption, stating the way to deter fragmentation was to set this as low as possible, not least to encourage innovation.

There were numerous responses regarding support needed for businesses. The key suggestions were:

- A database showing the producers and those qualifying for the small operator exemption in order to verify authenticity;
- Concentrate compliance efforts on the grey market, especially policing overseas manufacturers and importers;

There were 31 responses citing other concerns. These were:

- There should be vigorous, independent evaluation of the levy to ensure compliance, including research into customer attitudes and retail data;
- The amount of artificial sweeteners in drinks may increase;
- Clearer labelling to show added sugar rather than total sugar would be helpful;
- Concern that additional manufacturer costs will simply be passed to the retailer; this would adversely affect smaller retailers and franchises;
- Concern about additional costs in compliance audits;
- There should be proposals for bad debt relief in case the sale price is not paid.

### **Government response**

The government has listened to businesses concerns regarding the proposed sugar content testing. As sugar content tests should already be conducted in order to comply with EU nutritional labelling laws we will require that the results of those tests be held in business records. Legislation will provide that HMRC can require independent testing of the sugar content of liable products where we suspect the stated sugar content is incorrect.

HMRC will develop a compliance strategy to ensure that businesses who are liable for the levy comply and pay the levy. HMRC will help and support businesses to implement the change and get it right through its guidance and communications. HMRC will also create a working group to monitor implementation of the levy.

Legislation will set out penalties for late filing and payment, and set out penalties for failing to comply with the obligations of the levy. The government recognises that this will be a significant change for businesses in this sector and HMRC will consider a light touch approach to penalties in the early stages.

### **Commercial practices**

There were 22 responses about the impact of the levy on business practices and 12 responses on the impact on small and micro businesses. Some respondents noted that the small producer exemption limit could discourage some businesses from growing further. Other respondents highlighted that some businesses who supplied

ingredients for soft drinks wanted reassurance that they would not be unduly affected by the levy.

### **Government response**

The government is mindful that some businesses are concerned that the levy will impact on their ability to be competitive. Government has listened to these concerns and will provide an export credit facility to producers who export levy liable products outside of the UK. The government will provide a small operator exemption to ensure that micro businesses are not unduly affected by keeping them out of scope of the levy altogether.

### 3. Next steps

The government is grateful to all those who contributed their views during the consultation process.

The government has today published the draft legislation for the levy for technical comments and will publish secondary legislation in draft during 2017.

Officials will continue to meet with stakeholders to ensure the successful implementation of the levy.

Primary legislation for the levy will be in Finance Bill 2017.

## Annex A: List of stakeholders consulted

The following organisations sent responses to the levy consultation, plus 29 individuals and one organisation that did not want to be identified.

Abbott  
ABInBev  
Action on Sugar  
AG Barr  
Ajinomoto  
Alcohol Scotland  
The All Party Parliamentary Group on Food and Drink  
Asda  
Association of Convenience Stores  
The Association for the Study of Obesity  
The Association of Directors of Public Health  
The Association of Licensed Multiple Retailers  
The Automatic Vending Association  
Barnsley Metropolitan Borough Council  
Beneo  
The Big Bike Shop  
The British Beer and Pub Association  
The British Dental Association  
The British Dietetic Association  
The British Fruit Juice Association  
The British Hospitality Association  
The British Medical Association  
The British Retail Consortium  
The British Soft Drinks Association  
The British Specialist Nutrition Association  
British Sugar  
Britvic  
Cambridge Vending  
Cancer Research UK  
Champs Public Health Collaborative  
The Chartered Institute of Taxation  
The Children's Food Trust  
The Co-operative Group  
Coca Cola Great Britain and Ireland  
Coca Cola Hellenic Bottling Company  
Cornwall Healthy Weight  
Cott Beverages  
CPF Bristol and South Gloucestershire Federation  
Dairy UK  
Danone  
Diabetes UK  
ENSA  
Exeter Wellbeing Board  
The Faculty of Public Health

The Federation of Wholesale Distributors  
Fentimans  
The Food and Drink Federation  
The Food Foundation  
Food Standards Scotland  
[Frank Field MP ]  
GlaxoSmithKline  
Global Brands Limited  
The Greater London Authority  
Hall and Woodhouse  
Haringey Council  
Healthier Futures  
Heart of Mersey  
Heineken UK  
Innocent  
The Institute of Public Health Ireland  
The Jamie Oliver Food Foundation  
Juvenile Diabetes Research Foundation Limited  
Kopparberg  
Leeds City Council  
The Local Government Association  
Lucozade Ribena Suntory  
Lucozade Ribena Suntory Blackcurrant Growers  
Morrisons  
The National Association of Cider Makers  
The National Children's Bureau  
The National Farmers' Union  
The National Federation of Retail Newsagents  
NHS Scotland  
Norbev Limited  
Oatly  
Obesity Action Scotland  
Obesity Health Alliance  
Ocean Spray  
Organic and Fair Plus  
People Against Sugar Tax  
PepsiCo  
The Polar Krush Group  
The Provision Trade Federation  
Public Health Devon  
Public Health Durham  
Pupils to Parliament  
Radnor Hills  
Refresco Beverages  
Revive Vending  
The Royal College of General Practitioners  
The Royal College of Midwives  
The Royal College of Paediatrics and Child Health  
The Royal College of Physicians of Edinburgh  
The Royal College of Surgeons (faculty of Dental Surgery)



The Royal Society for Public Health  
Runnymede Borough Council  
Sandringham Farms  
School Food Matters  
The Scottish Grocers Federation  
The Scottish Government  
Scottish Health Action on Alcohol Problems  
The Scottish Wholesale Association  
SHS  
Simpson Beverages  
Subway Group  
Sugar Wise UK  
Sustain  
Tata Global Beverages  
Tate and Lyle  
TaxPayers' Alliance  
Tesco  
Three Rivers District Council  
UK Health Forum  
The University of Liverpool, Law and Non-communicable Disease unit  
The University of Newcastle Human Nutrition Centre  
The University of Reading  
Vimto (Nichols plc)  
Wales Dietetic Leadership Advisory Group & Public Health Dieticians in Wales  
Weetabix  
Whitbread  
The Wine and Spirit Trade Association  
The World Cancer Research Fund International  
WSH  
Zenith International Limited