

EXPLANATORY MEMORANDUM TO
THE PLASTIC PACKAGING TAX (GENERAL) REGULATIONS 2022
2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument sets out the detailed administrative requirements for the Plastic Packaging Tax (the tax) which commences on 1 April 2022.
- 2.2 In particular, the legislation provides detailed definitions, including the meaning of 'substantial modification' which establishes when a plastic packaging component is finished for the purposes of the tax, and so when it therefore becomes chargeable to the tax. It also details the evidence that businesses need to keep, provides detail on how to weigh packaging and determine the recycled plastic content, and sets out the obligations with reference to the administration of the tax, such as requirements relating to registration and returns.

3. Matters of special interest to Parliament

- 3.1 None

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Primary legislation establishing the tax was included in sections 42 to 85 of and Schedules 9 to 15 to Finance Act 2021, with subsequent amendments in Finance Act 2021(2). The primary legislation includes the high level definitions and framework for the tax, and includes a range of powers to make secondary legislation setting out the detailed legislative framework for the scope and operation of the tax. This instrument makes regulations exercising the powers conferred by Finance Act 2021.

7. Policy background

What is being done and why?

- 7.1 The government is introducing a world leading new Plastic Packaging Tax from 1 April 2022. This tax aims to provide a clear economic incentive for businesses to use recycled plastic in the manufacture of plastic packaging, which will create greater

demand for this material. In turn this will stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration.

7.2 This instrument provides for administration of the tax, not limited to the following matters:

- the requirement to have evidence to prove that plastic is recycled plastic and for HMRC to provide guidance stating what amounts to sufficient evidence of this.
- the meaning of substantial modification, which determines when a plastic packaging component is finished for the purposes of the tax, and becomes chargeable. Manufacturing processes excluded from the definition are set out.
- the other substances that must be considered when determining whether a packaging component is plastic and how to determine the plastic content.
- the formula for calculating the recycled plastic content in a plastic packaging component and the requirement to keep records in relation to this calculation.
- the requirement to keep evidence where the direct export condition ceases to be met, so that liability to the tax is cancelled.
- further details about entitlement to tax credits, including conditions that must be met and evidence that must be kept. Provisions relating to the payment and repayment of tax credits are also made.
- administration of secondary liability and joint and several liability notices, including the factors HMRC must consider when issuing the notices.
- the standard method for measuring the weight of plastic packaging components, and the provision for alternative methods to be used, where published by, or as agreed with, HMRC.
- the requirement that the units of measurements be metric for the purposes of the tax and record keeping requirements regarding the weight of a plastic packaging component are also set out.
- the circumstances where HMRC may assess the weight of packaging components for the resulting tax due, using best judgement are provided for, including the ways the weight should be assessed.
- the form, manner and content of notifications of liability to be registered, including for this to be electronically, and making corrections to the register.
- requirements for persons who are liable to be registered for the tax to make returns and payments for each accounting period, including the form and manner of those returns and correction of errors. The content of returns set out is required to calculate the amount of tax due and enables HMRC to ensure compliance with the tax, including tax credits and certain exemptions. Provision is made for repayment of overpaid tax.

- requirements for persons who are liable to be registered for the tax to keep and preserve records.
- administration concerning partnerships and other unincorporated bodies, in particular determining what person is required to meet the obligations of the tax.
- the application for, modification of, and termination of group treatment, including making the representative member responsible for specific actions.
- administration concerning death, incapacity or insolvency of a person registered for the tax.
- administration concerning transfers of going concerns.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These are the first regulations made under these powers. As such, there is no need to consolidate the regulations.

10. Consultation outcome

10.1 Her Majesty's Treasury conducted a consultation on Plastic Packaging Tax in 2019. The response to the 2019 consultation can be viewed at:

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

10.2 HMRC conducted a further consultation in 2020 on the policy design. This was extended due to Covid-19 to give businesses more time to respond. Alongside the response to this consultation, HMRC published the draft primary legislation for technical consultation. These can be viewed at:

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

10.3 This instrument is now being published for technical consultation ahead of its introduction.

11. Guidance

11.1 Preliminary guidance about Plastic Packaging Tax has been published on GOV.UK and is available at: <https://www.gov.uk/government/publications/get-your-business-ready-for-the-plastic-packaging-tax>.

11.2 Further guidance to help businesses get ready for Plastic Packaging Tax will be published later this year, ahead of the tax coming into force on 1 April 2022.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies as a result of this instrument beyond that already set out for Plastic Packaging Tax as a whole.

12.2 There is no, or no significant impact on the public sector as a result of this instrument beyond that already set out for Plastic Packaging Tax as a whole.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken for the tax overall is to exempt businesses manufacturing and importing less than 10 metric tonnes of plastic packaging in any 12-month period from registering for and paying the tax. They will still need to keep some basic records to demonstrate that they fall below this threshold, but in many cases their normal business records should meet this requirement.

13.3 The basis for the final decision on what action to take to assist small businesses was to achieve a good balance between easing administrative burdens and meeting the environmental objectives of the tax.

14. Monitoring & review

14.1 To monitor and review this legislation, HMRC will evaluate the tax for yield, compliance and environmental impact after at least one year of monitoring data has been analysed and collected. This data will be collected through HMRC's implementation of the tax and compliance activity. HMRC's monitoring and evaluation will be subject to internal review and the legislation may be amended accordingly.

15. Contact

15.1 Chloe Harkness at HMRC Email: indirecttaxdesign.team@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly, Deputy Director for Excise and Environmental Taxes, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, Exchequer Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.