

BRC's response to the HMRC technical consultation on the Plastic Packaging Tax Regulations

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The BRC's purpose is to make a positive difference to the retail industry and the customers it serves today and in the future. Retail is an exciting, dynamic and diverse industry which is going through a period of profound change. Technology is transforming how people shop, costs are increasing, and growth in consumer spending is slow. The BRC is committed to ensuring the industry thrives through this period of transformation.

We work with our members to tell the story of retail to drive positive change and use our expertise and influence to create an economic and policy environment that enables retail businesses to thrive and consumers to benefit. BRC membership comprises of over 5,000 businesses delivering £180bn of retail sales and employing over one and a half million employees.

We share the Government's objectives of increasing recycling and recycled content and welcome the opportunity to input to the technical consultation on the draft statutory instruments for the new Plastic Packaging Tax. Retailers are often business customers of manufacturers and importers of plastic packaging. Below are our comments on the relevant aspects of the draft statutory instruments, as well as some additional comments we recommend HMRC to give due consideration.

Key points:

- It is essential that the distinction between product and packaging remains clearly delimited and defined in secondary legislation
- Limited information on the levels of recycled content of plastic packaging and what last substantial modification processes have occurred is held by retailers, which is why a tax would be most feasible higher up the supply chain, close to the converter.
- HMRC together with other relevant Government departments and agencies should work with industry to develop a system to ensure that fraudulent claims on recycled content do not occur.

Comments on the Draft Statutory Instrument: Descriptions of products

We understand that the proposal is to amend the meaning of a "packaging component" that is subject to Plastic Packaging Tax, by removing three categories of products and adding a further category.

Therefore, products which are (i) filled packaging components with a primary storage function, (ii) packaging components that are an integral part of the good, and (iii) packaging components designed for re-use in the presentation of goods, which are set aside or designated will not be considered as packaging component in scope of the tax. However, products designed to be suitable for single-use and use by a user or consumer for a 'packaging-type' function in relation to any commodity or waste are added to the definition of a "packaging component".

We do not foresee any immediate problems with the proposed modification to remove the three above listed categories. It should be noted that it is essential that the distinction between product and packaging remains clearly delimited. The Plastic Packaging Tax is only applicable to packaging and the regulations should not inadvertently blur this line, especially when the packaging function of a product is incidental to its original purpose. Although we recognise the HMRC's effort to simplify, the reference to 'packaging-type function' for the added category does not clarify the understanding of what would fall under this category. We would welcome additional examples other than bin bags and party cups from HMRC.

We wish to underline that this confusion is due to the extended scope of plastic packaging adopted by HMRC. As such, we recommend that the definition of plastic packaging is kept under review and realigned with current packaging legislation as required. In addition, as the tax is intended to address single use packaging, reusable transit plastic packaging used within the supply chain multiple times should not be in scope. This would then align with the exclusion from scope of reusable plastic packaging used by consumers as presently proposed by HMRC.

Comments on the Draft Statutory Instrument: Substantial modification

We understand that the draft secondary legislation aims to give meaning to the term 'substantial modification', which is essential for determining when the finished plastic packaging component is chargeable for Plastic Packaging Tax in the manufacturing supply chain.

Limited information on the levels of recycled content of plastic packaging and what last substantial modification processes have occurred is held by retailers, which is why a tax would be most feasible higher up the supply chain, close to the converter.

In addition, we are aware that the present definition of scrap that is attached at the point of last substantial modification presents some technical challenges. As BPF points out, the current proposal is that converters will need to be aware of the exact amount of scrap attached at the point it is shipped for further modification by the packer filler. Depending on the application, the amount of scrap can be significant and reach levels of up to 40%. This could be challenging due to the varying applications and scrap levels that may occur and the need for this information to be shared on a timely basis. If this cannot be addressed, it will leave those packing and filling in the UK at a competitive disadvantage from those importing the same goods into the UK, as UK processors will be paying tax on scrap as well as the finished product.

As the plastic packaging tax will be passed on to retailers through the supply chain, we would welcome clarification from HMRC on how the VAT would be accounted for in respect of the plastic packaging tax (i.e. whether VAT would be added to the material cost plus tax or just to the material cost with the tax added to the cost + VAT).

Other comments for HMRC's consideration

In light of the recent CMA's work around misleading environmental claims, and Defra's ongoing packaging EPR reform, we are not convinced that HMRC's approach regarding assuring the accuracy of declared recycled content and fraud prevention is appropriate.

With an international supply chain and over 60% of the packaging placed on the UK market being imported, one of the biggest challenges for retailers will be ensuring these systems are

used by all. A mechanism will need to be introduced, such as certification for monitoring and approving the recycled content, with chain of custody demonstrated as there is nothing at present. We recommend a practical Recycled Content Verification System to support everyone's trust and confidence in the system. Although it brings greater burden and potentially cost to protect and ensure compliance, we think some form of certification is required. Otherwise, how can retailers confidently know what they use or buy has recycled content.

Internationally, particularly in Europe and the USA, audit and certification systems are now becoming established but they are still in their infancy. Such systems are not widely used elsewhere in the world at present. We agree with the wider industry's position that it will be necessary to ensure that robust systems and auditable raw material trails are in place to mitigate against fraud. Minimum requirements will be needed in line with current certification and audit systems using relevant standards such as those for testing and traceability. Without proper checks in place there is the potential to undermine recycling.

Another general comment we wish to reiterate relates to the need to make clear in the Draft Regulations that packaging component should only contain recycled content where it is legally permitted under food contact or other legislation. Regulatory constraints, technical feasibility or lack of supply prevent the inclusion of recycled content.

Finally, whilst the tax aims to provide a clear economic incentive for businesses to use recycled plastic in the manufacture of plastic packaging, by creating greater demand for this material, the tax alone will not ensure that the investment required to sort and recycle material will be created in the UK nor in a timely manner. To be able to overcome the issues relating to supply it will require the UK to become a far more self-sufficient nation in reprocessing plastic waste. Substantial investments will be required in both mechanical and chemical recycling, paired to the introduction of consistent collections of flexible plastics as early as possible across the UK. Although some investment has already been announced, more long-term certainty will help attract further investment in much needed domestic infrastructure, as there are many changes taking place and investors may not be certain where to invest. The impact assessment only forecasts the first three years of the tax, which is shorter than the investment horizon required to attract investors and causes uncertainty.