

Tax News

Two new environmental taxes have been recently passed

Law 7/2022, of April 8th, on waste and contaminated soils for a circular economy, published in the Spanish Official State Gazette on April 9th, regulates two new environmental taxes whose purpose is to reduce the generation of waste and improve the management of waste whose generation cannot be avoided.

- The Special Tax on non-reusable plastic packaging, and
- The tax on the deposit of waste in landfills, incineration, and co-incineration of waste.

They will enter into force on January 1, 2023.

We briefly summarize below the main aspects of these new taxes.

Excise tax on non-reusable plastic packaging

- It is an indirect **tax levied** on the use in the Spanish territory of non-reusable packaging containing plastic, whether they are empty or they are containing, protecting, handling, distributing, and presenting goods.
- Its **purpose** is to prevent the generation of non-reusable plastic packaging waste and to promote the recycling of plastic waste, contributing to the circularity of this material.
- It will **apply** throughout the Spanish territory **as from January 1, 2023**, without prejudice to the applicable foral tax regimes.
- It **taxes** the manufacture, import or intra-community acquisition of the following products (hereinafter, the Products):
 - **Non-reusable packaging containing plastic.**
 - Packaging is considered to be all articles designed to contain, protect, handle, distribute and present goods, including (i) those defined as such in Law 11/1997, of April 24, 1997, on packaging and packaging waste, and (ii) any other which, not fitting into said definition, is intended to fulfill the same functions and may be used in the same terms, unless it forms an integral part of a product and is necessary to contain, support or preserve said product throughout its useful life, and provided that all its elements are intended to be used, consumed or disposed of together.

- Non-reusable containers are those that have not been conceived, designed, and marketed to carry out multiple circuits or rotations throughout their life cycle, or to be refilled or reused for the same purpose for which they were designed.

- **Semi-finished plastic products intended for the manufacture of such non-reusable packaging** (e.g., thermoplastic preforms or sheets); and
- **Products containing plastic intended to enable the closure, marketing, or presentation of non-reusable packaging.**

The manufacture of packaging exclusively from semi-finished plastic products or products containing plastic intended to enable the closure, marketing, or presentation of packaging, shall not be regarded as manufacture.

- The **unlawful introduction** into the Spanish territory of the Products is also subject to the tax. It will be deemed to occur when whoever owns, markets, transports, or uses the Products, does not prove to have made their manufacture, import or intra-community acquisition, or when he does not justify that the Products have been acquired in the Spanish territory.
- The following are **not subject to the tax**:
 - The manufacture of the Products that have ceased to be suitable for use or have been destroyed or are returned for destruction or reincorporation into the manufacturing process, after reimbursement of the amount thereof to the purchaser;
 - The manufacture of Products intended to be sent directly by the manufacturer, or by a third party in his name or on his behalf, to a territory other than that in which the tax applies (i.e., other than Spain),
 - The manufacture, intra-Community acquisition or import of paints, inks, lacquers, and adhesives designed to be incorporated into the Products, and



- The manufacture, intra-Community acquisition or import of non-reusable packaging containing plastic that being able to perform the functions of containment, protection, or handling of goods, are not designed to be delivered together with them
- It is established that the following operations, among others, are **exempt from the tax**:
 - The imports or intra-Community acquisitions of packaging containing a total amount of non-recycled plastic of less than 5 kilograms in a month.
 - The manufacture, import or intra-community acquisition of (i) Products intended for the packaging of medicines, sanitary products, food for special medical uses, infant formula for hospital use or hazardous waste of sanitary origin, or (ii) plastic rolls for silage for agricultural and livestock use.
- The **accrual occurs**:
 - In the cases of manufacture: at the time when the first delivery is made or made available to the acquirer. If advance payments are made, the accrual is brought forward to the moment of total or partial collection of the price, for the amounts received.
 - In the cases of imports: at the time in which the accrual of the import duties would have taken place (admission of the customs declaration).
 - In cases of intra-Community acquisitions: on the 15th day of the month following that in which the shipment or transport of the products begins unless prior issuance of the invoice. In this case, the accrual takes place on the date of issue of the invoice.
- **Taxpayers** are those who carry out the manufacture, import or intra-Community acquisition of the Products. In cases of unlawful introduction of the Products into the Spanish territory, the taxpayer will be the person who possesses, markets, transports or uses such Products.
- The **taxable base** will be constituted by the amount of non-recycled plastic, expressed in kilograms, contained in the Products. A **tax rate** of 0.45 euros per kilogram applies over the taxable base.
- In the cases of manufacture or intra-community acquisition, the taxpayers must self-assess and pay the amount of the tax debt. The settlement period will be monthly or quarterly depending on the taxpayer's VAT settlement period.
- On imports, the tax will be settled in the manner provided for the customs debt. The customs declaration must state the amount of non-recycled plastic imported, expressed in kilograms, and whether the exemption is applicable for imports not exceeding 5 kilograms in a month.



- Certain accounting or stock record bookkeeping obligations are established for manufacturers and intra-Community purchasers.
- Invoicing obligations are regulated on the sales or deliveries of the Products, and the manufacturer is required to charge the tax on the first sale or delivery made.
- Taxpayers must register, prior to the beginning of their activity, in the **Territorial Registry of the Special Tax on non-reusable plastic packaging**. Taxpayers not established in the Spanish territory must appoint an individual or legal entity to represent them before the Tax Administration and both must register before said Registry.
- A system of specific infringements and penalties is established for this tax.

Tax on the deposit of waste in landfills, incineration and co-incineration of waste

- It is an indirect tax **levied on** the delivery of waste to landfills, incineration or co-incineration facilities for disposal or energy recovery.
- It will **apply** throughout the Spanish territory **as from January 1, 2023**, without prejudice to the foral tax regimes.
- It is set up as a tax assigned to the Autonomous Communities, which may assume certain regulatory powers as regards management, collection, and tax audit. It replaces the current regional taxes on this field.



- It **taxes** the delivery of waste for disposal in authorized landfills, or for disposal or energy recovery in authorized waste incineration or co-incineration facilities, whether they are publicly or privately owned, if they are located in Spain.
- However, the following **exemptions** apply:
 - The delivery of waste ordered by the public authorities in situations of force majeure, extreme necessity, or catastrophe, or in the case of seizures of goods to be destroyed.
 - The delivery of waste that derives from transactions subject to tax, provided that they would have been effectively taxed by this tax.
 - The delivery of waste for which there is a legal obligation of elimination in these facilities.
 - The delivery to landfill by the administrations of waste from the decontamination of soils that could not be treated in situ.
 - The delivery of inert waste suitable for restoration, conditioning or filling works carried out therein and for construction purposes; and
 - The delivery of waste resulting from treatment operations other than municipal waste rejects, from facilities that carry out recovery operations other than intermediate treatment operations.
- **Temporarily, until January 1, 2026**, the delivery of non-hazardous industrial waste made by its initial producer in landfills located in its facilities, owned by it and for its exclusive use, will be exempt.
- The **accrual occurs** at the time of deposit, incineration or co-incineration of the waste.
- **Taxpayers** are the individuals or legal entities that carry out the taxable event. The taxpayer substitute are the managers of the landfills, or of the waste incineration or co-incineration facilities.
- The **taxable base** will be constituted by the weight, expressed in metric tons to three decimal places, of the waste deposited in landfills, incinerated or co-incinerated. It will be determined for each facility in which the activities that constitute the taxable event of this tax are carried out.
- The **total tax liability** will be the result of applying to the taxable base a proportional tax rate depending on the type of waste (between 0 and 40 euros per metric ton).

The autonomous communities may increase the tax rates with respect to waste deposited, incinerated or co-incinerated in their respective territories.

- The taxpayer substitute must charge output the amount of the accrued fees to the taxpayer of the tax, who will be obliged to bear them. This will be made separately in the invoice.

Likewise, the **taxpayer substitute** must present **quarterly self-assessments** and make the **payment of the tax** during the first thirty calendar days of the month following each calendar quarter.

The pass on will not be required in the event of liquidations issued by the Administration and when the taxpayer himself must present the corresponding self-assessment.



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