



MINISTRY  
OF TREASURY  
AND PUBLIC FUNCTION

## QUESTIONS AND ANSWERS REGARDING THE TAX SPECIAL ON NON-REUSABLE PLASTIC CONTAINERS

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## **OBJECTIVE SCOPE OF TAX (section 68)**

### **1. Are primary, secondary and tertiary containers part of the objective scope of the Special Tax on non-reusable plastic containers?**

Yes, these containers are part of the definition of container contained in article 68.1.a) of the Tax Regulatory Law, in accordance with the provisions of Law 11/1997, of April 24, on Containers and Container Waste and the Directive 94/62/CE of the European Parliament and of the Council, of December 20, 1994, relative to packaging and packaging waste.

#### **Examples of products that are part of the objective scope of the tax:**

Cosmetic product applicators (mascara brushes that are part of the container closure, ...).

Trays to contain and protect food (for sliced and baked goods, prepared food, fruit, meat, fish, ...).

Blister packs, boxes, cases and the like containing a single product or an assortment of products.

Retractable coils.

Plastic bags (food, diapers...) and plastic bags.

Food freezer bags.

Vacuum packaging bags.

Catalog and magazine mailing bags (containing a magazine).

Snack bags.

Bottles, drums and jugs, such as those used for hygiene products (gel, shampoo, soap, ...), for industrial products (lubricants, disinfectants, herbicides, ...), for food products (soft drinks, oil, sauces, isotonic drinks, ...), designed for single use, even if they can be refilled and reused.

Bottles of drugstore products (paint, solvent, ...), stationery products (plasticine, finger painting, spell check, ...), food products (yogurt, honey, butter, ice cream, ...)

Flanges, staples, clamps and other fastening elements that are part of a container.



Boxes, wedges, or trays for fast food, take-away or food products.

Polystyrene boxes to protect food or any other merchandise.

Capsules for beverage dispensing machines (for example, coffee, cocoa, milk), which remain empty after use.

Spools of sewing thread, fishing, ...

Container or separator for stationery products (waxes, markers, pencils, ...), perfumery products (make-up tests, ...), food products (fruits, eggs, cakes, pastries, ...).

Disposable cutlery that is presented attached to a container.

Dispensers for drugstore or perfumery products (wet wipes, detergent scoops, dental floss, mouthwash, paper tissues, ...)

Dosing devices that are part of the closure of the containers of detergents, hygiene products (toothpaste, soap, disinfectant gel, ...) or other products (glues, silicones, etc.)

CD spindles (sold with CDs, but not intended for storage).

Single-dose containers for food products (oil, vinegar, sauces), drugstore or perfumery products (creams, makeup, welcome products in hotels) or for samples for advertising purposes.

Wrappers for candies, ice creams, chocolates, ...

Cases (contact lens holders, mines, ...), non-reusable.

Film used to contain, protect, handle or deliver goods or products, such as those for food use, or those used to wrap books, magazines, colognes, suitcases, flowers,....

Plastic covers for clean laundry clothes.

Sheets for the protection of screens of electronic or telephone products.

Thermoplastic sheets.

Pots intended to be used solely for the sale and transport of plants and not for the plant to remain in during its lifetime.

Mesh or nets (such as those for fruit or toys).



Beverage straws that are presented attached to a container.

CD case wrapping film or foil.

Films or sheets for wrapping food.

Garment hangers sold with the item or delivered to the dry cleaner with the item.

Plastic preforms.

Sterile barrier systems (bags, trays and materials necessary to preserve the sterility of the product).

Lids and caps for containers, whether the container is made of plastic or another material, provided that the container is non-reusable.

Caps with built-in brushes or applicators.

Tetrabriks.

Disposable plastic tableware (plates, glasses, jugs, cups, glasses, ...).

#### Secondary and tertiary packaging

Plastic rings that group units of a pack (such as beverage cans).

Packing tape.

Packaging film.

Film to present all kinds of products that constitute groups of sales units or collective packaging (such as the one that covers cigarette cartons, or makes up packs of mineral water bottles).

Protective bubble film that wraps several sales units (it can also be primary packaging).

Pallet protective film.

#### **Examples of products that are not part of the objective scope of the tax:**

air fresheners

Reusable food trays like the ones used in schools.

Pens.



Garbage bags.

Bags to bake.

Soluble bags for detergents.

Silica gel bags.

tea bags

CD, DVD and video cases (sold with a CD, DVD or video inside).

Coffee capsules that are disposed of with the used coffee.

Cartridges for printers.

Disposable cutlery.

CD spindles (sold empty, intended for storage)-

Lighters.

Pots designed so that the plants remain in them during their life.

Mechanical mills (integrated into a refillable container, eg refillable pepper mills).

Garment hangers (sold separately).

removers.

Candle holders (such as those used in the cemetery).

Deodorant sticks.

## **SCOPE OF APPLICATION (article 69)**

### **2. Clarification of the tax regime in the Canary Islands, Ceuta and Melilla.**

In accordance with article 69 of the Law, the tax will be applied throughout the Spanish territory, therefore, it includes the territories of the Canary Islands, Ceuta and Melilla.

The entry into Ceuta and Melilla of the products subject to the tax from territories that are not part of the territory of application of the tax will be considered as imports, when said entry would have given rise to a release for free circulation if it were applicable in said cities. Regulation (EU) No. 952/2013, of October 9, 2013.

The entry into the Canary Islands of the products subject to the tax from territories included in the customs territory of the Union that are not part of the territory of application of the tax will also be considered as imports, when said entry would have given rise to a free dispatch.



practice if the products subject to the tax came from territories not included in the customs territory of the Union, as well as that of the products subject to the tax coming from territories not included in the customs territory of the Union, when it gives rise to release for free circulation of the same in accordance with article 201 of Regulation (EU) No. 952/2013 of the European Parliament and of the Council, of October 9, 2013, which establishes the customs code of the Union.

Therefore, for the purposes of the tax, in accordance with the foregoing, entries into the Canary Islands, Ceuta and Melilla of products subject to the tax, coming from territories other than the Peninsula and the Balearic Islands, will be considered imports and entries into the Canary Islands, Ceuta and Melilla of products subject to the tax from the Peninsula and the Balearic Islands will not, in any case, be considered an import or intra-community acquisition.

#### **TAXABLE EVENT (article 72)**

**3. Manufacturing company makes an intra-community acquisition or import of a semi-finished product in order to transform it and convert it into a non-reusable plastic container. To the extent that In the first acquisition or import operation, the accrual of the Tax is already produced, will the manufacture of the final container also be subject to taxation?**

The taxable event of the tax is the manufacture, import, intra-community acquisition or irregular introduction into the territory of application of the tax of the products that are part of the objective scope.

In this case, the taxable event occurs with the intra-community acquisition or import of the semi-finished product.

If in the territory of application of the tax the "manufacturing company" does not add more plastic elements to the semi-finished products, the manufacturing taxable event would not occur.

**4. Given the comparison of taxable events of the tax with those of VAT (importation, intra-community acquisition, operation assimilated to the intra-community acquisition), can the reintroduction of a product that is sent from Spain to another EU country for repair and subsequent reshipment to Spain be considered excluded from the concept of "operation assimilated to intra-community acquisition"?**

No, the law regulating the tax establishes that operations assimilated to intra-community acquisitions will be considered the reception of containers subject to the tax by its owner in the territory of application of the tax, except the Canary Islands, Ceuta and Melilla, whose shipment has been made by the owner from another Member state.

Therefore, in the operation described, the taxable event will be carried out without prejudice to the possibility of later requesting a refund of the tax for shipping the product outside Spanish territory.



## **NO SUBJECTION (article 73)**

**5. The manufacturing company sells a semi-finished product to a Spanish handling company, which transforms the product into a final container and delivers it to a client located outside the territory of application of the tax. Would the assumption of non-subjection prescribed in art. 73 b) of Law 7/2022 to the first delivery made by the manufacturer?**

In the case of semi-finished products, the accrual of the tax occurs at the moment in which the manufacturer makes the first delivery or makes available in favor of the purchaser in the territory of application of the tax.

Subsequently, "the Spanish handling company" may request a refund of the tax in accordance with article 81.1.d) of the Law if it sends the product outside the territory of application of the tax.

### **6. Interpretation of the precept regulated in letter d) of article 73.**

According to said precept, the following will not be subject to tax:

*"d) The manufacture, import or intra-community acquisition of products referred to in article 68.1.a) that, while being able to perform the functions of containment, protection and handling of merchandise, are not designed to be delivered together with said merchandise."*

Article 73 d) attempts to clarify that not every article designed to contain, protect, manipulate, distribute and present merchandise is part of the objective scope of the tax, it is also required that it may be delivered jointly with the merchandise.

For example, although the plastic that covers a greenhouse serves to protect goods (the plants that are in pots inside the greenhouse, for example) since it is not designed to be delivered together with the pots, it will not be considered as a container.

**7. Article 73 c) establishes the non-taxation for paints, inks, lacquers and adhesives, designed to be incorporated into the products that are part of the objective scope of the tax. Does it imply that adhesives, paints, inks and lacquers that are designed to be incorporated into products that are not part of the objective scope are taxed, for example, non-reusable containers that do not contain plastic?**

According to letter c) of section 1 of article 68, the following are part of the objective scope of the tax:

*"c) Products that contain plastic intended to allow the closure, marketing or presentation of non-reusable containers."*

Therefore, paints, inks, lacquers and adhesives destined or conceived to be incorporated in reusable containers do not form part of the objective scope of the tax.

And paints, inks, lacquers and adhesives intended or designed to be incorporated into non-reusable containers are not subject to letter c) of article 73.

**8. Clarification of the concept of adhesive for the purposes of non-restraint established in article 73 c).**



For these purposes, adhesive should be understood as the substance that, interposed between two bodies or fragments, serves to stick them, such as stickers or adhesive tapes.

**9. Is the part of inks and adhesives contained in the plastic films considered in the weight of plastic to be declared?**

In accordance with the assumption of non-subjection provided for in letter c) of article 73 of the Tax Regulatory Law, the manufacture, import or intra-Community acquisition of paints, inks, lacquers and adhesives designed to be incorporated into the containers.

However, when these inks, or any other element, form an inseparable part of the plastic because they have been incorporated in the process of obtaining the plastic itself, this assumption of prior non-subjection will not apply where these elements are taken into consideration individualized and for which its addition to the container is planned at a later stage of its manufacture.

**ACCRUAL (article 74)**

**10. When does the tax start to apply?**

- In the event of imports, when from January 1, 2023, the accrual of import duties corresponding to the imported products subject to the tax occurs.
- In the case of intra-community acquisitions, when the accrual for tax purposes occurs as of January 1, 2023, in accordance with the provisions of section 3 of article 74 of the Law.
- In manufacturing cases, when sales or deliveries of previously manufactured products are made after January 1, 2023 or when advance payments are made corresponding to said deliveries prior to January 1, 2023.

**EXEMPTIONS (article 75)**

**11. How often must the client request the prior declaration? Should it be per order/invoice or supply contract? for each product? in one year? What formalities must you meet?**

The Law establishes that the manufacture, importation or intra-community acquisition of the products subject to the tax that are destined for the uses of article 75 a) of the Law (medicines, health products, food for special medical uses, formulas for infants for hospital or hazardous waste of sanitary origin).

For its part, article 75 g) also provides that the manufacture, import or intra-community acquisition is exempt:

- Of the semi-finished products subject to the tax that are not going to be used to obtain packaging, or





- Of the products that contain plastic that are not going to be used to allow the closure, marketing or presentation of containers subject to the tax.

Taxpayers who make the first delivery or make available in favor of the purchasers of the previous products, must obtain from them a prior declaration in which they state the destination of said products.

The Law leaves to the choice of the contracting parties the decision on the temporary nature of the declaration (annual, monthly, weekly, for each order, ...), the only thing that is required to apply the exemption is that, prior to its application, the taxpayer obtains from the purchasers a prior declaration in which they state the destination of the products they acquire and to which the tax benefit will be applied.

Said declaration must be kept during the prescription periods related to the tax referred to in article 66 of Law 58/2003, of December 17, General Tax Law.

Obtaining the prior declaration is important for the taxpayer because, in the event of irregularities in relation to the justification of the use or destination given to the products subject to the tax that have benefited from an exemption due to their destination, they will be obliged to payment of the tax and the penalties that may be imposed by the taxpayers, as long as they do not justify the receipt of the products by the purchaser authorized to receive them through the provision of the prior declaration.

From such reception, the obligation will fall on the purchasers.

**12. Could stores bordering France and Portugal or those located at airports apply, for example, the case of exemption regulated in letter d) of article 75 of the Law?**

Letter d) of article 75 of the Law establishes that the following will be exempt from the tax:

*“d) The intra-community acquisition of the products that are part of the objective scope of the tax and that, prior to the end of the deadline for submitting the self-assessment of the tax corresponding to said taxable event, are destined to be sent directly by the intra-community purchaser, or by a third party in your name or on your behalf, to a territory other than the one in which the tax is applied.*

*The effectiveness of this exemption will be conditioned to the reality of the effective exit of the products from the territory of application of the tax.*

Therefore, if these stores make an intra-community acquisition of products subject to the tax and, prior to the end of the term for submitting the corresponding self-assessment, send the products outside Spanish territory, they may apply the exemption.

They will not be able to enjoy said tax benefit when they deliver or make the products available to the purchaser in Spanish territory, even if the purchaser travels abroad. In this case, it is unknown if the acquirer is going to send them outside the territory of application of the tax.

If the products were shipped outside the territory of application of the tax, the purchaser could request a refund of the tax in accordance with the provisions of letter d) of section 1 of article 81 of the Law.



**13. Is the exemption provided for in article 75 a) of the Law for medicine containers, health products, only applicable to primary containers (blisters) or also to secondary and tertiary containers?**

It is applicable to both primary and secondary and tertiary packaging. The same is applicable with respect to the exemption regulated in article 75 b) of the Law.

**Is there a difference depending on whether you are dealing with empty containers or packaged products?**

No, the tax applies both to empty containers, and to containers that are presented providing the function of containment, protection, handling, distribution or presentation of merchandise.

**By medicines and health products should we understand only those for human consumption or also those for veterinary use? (for example, vaccines to prevent animal diseases).**

For the purposes of Regulation (EU) 2017/745 of the European Parliament and of the Council, of April 5, 2017, on medical devices, which modifies Directive 2001/83/EC, Regulation (EC) No. 178/ 2002 and Regulation (EC) No. 1223/2009 and by which Directives 90/385/CEE and 93/42/CEE of the Council are repealed, "medical device" is understood as defined in section 1) of its article two:

*"1) any instrument, device, equipment, computer program, implant, reagent, material or other article intended by the manufacturer to be used in people, separately or in combination, with any of the following specific medical purposes:*

- diagnosis, prevention, monitoring, prediction, prognosis, treatment or alleviation of a disease,*
- diagnosis, follow-up, treatment, relief or compensation of an injury or disability,*
- investigation, substitution or modification of the anatomy or of a physiological or pathological process or state,*
- obtaining information through in vitro examination of samples from the human body, including organ, blood and tissue donations,*
- and which does not exert its primary intended action within or on the human body by pharmacological, immunological, or metabolic mechanisms, but to whose function such mechanisms may contribute.*

*The following products will also be considered medical devices:*

- products to control or support conception,*
- products specifically intended for cleaning, disinfecting or sterilizing the products referred to in article 1, section 4, and in the first paragraph of this point."*

Therefore, medical devices are those used in people.

Regarding medicines, since the Law does not specify anything in this regard, it should be understood that it includes both those for human use and those for veterinary use.

**14. In the exemption established in article 75 f) for the import or intra-community acquisition of non-reusable plastic containers with a**



**weight of non-recycled plastic less than 5 kilograms/month, should the calculation be made independently for each of the taxable events or jointly for both (5 kilograms of intra-community acquisitions and 5 kilograms of imports, or 5 kilograms in total?**

The computation must be made independently for each of the taxable events and must be taken for computation purposes each calendar month.

#### **TAXPAYERS (article 76)**

**15. A plastic film cover that is used to preserve paper sacks from the elements. That casing comes in a continuous coil, and is not made by the company, but is cut and welded to the size of the pallet. Who is the tax payer?**

If the film cover is acquired from another Member State of the European Union or is imported, the taxpayer will be the company that acquires it, in this case, the one that cuts and welds it. In the event that the cover is manufactured in Spain, the taxpayer is the manufacturer.

**16. The manufacturing company sells a semi-finished product to a Spanish handling company, which transforms the product into a final container and delivers it to a customer located in the territory where the tax is applied. Would the exemption regulated in art. 75 g) 1º of Law 7/2022 to the first delivery made by the manufacturer? In other words, at what stage is the tax accrued, on the first delivery from the manufacturer to the handler or on the second delivery from the handler to the packer when the product is already a container?**

The manufacturer of the semi-finished plastic products destined to obtain containers, such as preforms or thermoplastic sheets, is a taxpayer.

The accrual of the tax will occur at the time the manufacturer makes the first delivery or made available in favor of the purchaser of said products in the territory of application of the tax.

However, the incorporation into the containers of other plastic elements that, not constituting by themselves, individually, part of the objective scope of the tax, after their incorporation into the containers become part of the same, will be considered manufacturing. .

In the event that other plastic elements are incorporated into the products that are part of the objective scope of the tax, for which the tax had previously been accrued, in such a way that after their incorporation they form part of the product to which they are incorporated, the taxable base will consist exclusively of the amount of non-recycled plastic, expressed in kilograms, incorporated into said products.

#### **TAXABLE BASE (article 77)**

**17. Is the special tax on non-reusable plastic containers part of the tax base of the Value Added Tax?**



Yes, according to article 78. Two. 4 of Law 37/1992, of December 28, on Value Added Tax, are included in the concept of consideration and, therefore, form part of the tax base of the tax:

*“4th Taxes and levies of any kind that fall on the same taxed operations, except the Value Added Tax itself.*

*The provisions of this number will include the special taxes that are required in relation to the goods that are the subject of the taxed operations, with the exception of the special tax on certain means of transport.*

**18. How is the amount of non-recycled plastic contained in a product that is part of the objective scope of the tax credited when it is imported?**

In accordance with section 3 of article 77 of Law 7/2022, of April 8, on waste and contaminated soil for a circular economy:

*“(...) the amount of recycled plastic contained in the products that are part of the objective scope of the tax must be certified by an accredited entity to issue certification under the UNE-EN 15343:2008 standard «Plastics. Recycled plastics. Traceability and conformity assessment of the recycling of plastics and recycled content» or the standards that replace them. In the event of chemically recycled plastic, said amount will be accredited by means of the certificate issued by the corresponding entity accredited or authorized for such purposes.*

*The certifying entities must be accredited by the National Accreditation Entity (ENAC) or by the national accreditation body of any other Member State of the European Union, designated in accordance with the provisions of Regulation (EC) No. 765/2008 of the European Parliament and of the Council, of July 9, 2008, which establishes the requirements for accreditation and market surveillance relating to the marketing of products and which repeals Regulation (EEC) No. 339/93, or in the case of products manufactured outside the European Union, any other accreditor with whom the ENAC has an international recognition agreement.”*

Notwithstanding the foregoing, according to the tenth transitory provision of Law 7/2022: *“During the first 12 months following the application of the tax, alternatively to the provisions of section 3 of article 77 of this law, the amount of non-recycled plastic contained in the products that are part of the objective scope of the tax through a declaration of responsibility signed by the manufacturer.*

**19. How must the composition of products from third countries be accredited?**

The taxable base of the tax is made up of the amount of non-recycled plastic contained in the products subject to the tax.

To accredit the amount of recycled plastic, in order for the tax base to be reduced, it must be certified by any accredited entity with whom the National Accreditation Entity has an international recognition agreement.

The certification must be issued under the UNE-EN 15343:2008 «Plastics. Recycled plastics. Traceability and conformity assessment of the



recycling of plastics and recycled content” or the standards that replace them.

In the event of chemically recycled plastic, said amount will be accredited by means of the certificate issued by the corresponding entity accredited or authorized for such purposes.

**20. Are mineral fillers that may be incorporated into the plastic part of the tax base?**

For the purposes of this tax, in accordance with the provisions of letter u) of article 2 of the Law, plastic is understood as the material composed of a polymer as defined in article 3.5 of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council, of December 18, 2006 regarding the registration, evaluation, authorization and restriction of chemical substances and preparations REACH by which the European Agency for Chemical Substances and Preparations is created, modifies the Directive 1999/45/EC and Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 67/548/EEC and Directives CE and 2000/21/CE of the Commission, to which additives or other substances may have been added, and which can function as the main structural component of the final products, with the exception of natural polymers that have not been chemically modified (...).

Consequently, mineral fillers are considered a constituent element of plastic and when the amount of plastic in a container is quantified, these mineral fillers will be included as part of the plastic.

**21. Regarding the certification by an accredited entity of the amount of recycled plastic contained in the products subject to the tax, must all the operators in the chain have a certification issued by whoever was the manufacturer of the container?**

No, it is enough for the taxpayers who present the self-assessments of the tax, that is, the intra-community manufacturers, importers or purchasers, to have the certification issued by the accredited entity for these purposes. The information contained in the certification will be transferred, where appropriate, in the corresponding invoices or certificates.

**DEDUCTIONS (article 80)**

**22. A taxpayer makes intra-community acquisitions of goods contained in secondary packaging that group several units, which he breaks to disaggregate said sales units and make them available to the next purchaser, can he take advantage of the deduction assumption of article 80.1.b) of the Law, considering that said secondary containers are no longer suitable for use or have been destroyed?**

In this case, the intra-community purchaser may not deduct from the tax installments accrued the amount of the tax paid with respect to said packaging.

The assumption to which the question refers constitutes the normal use of these secondary containers. Obviously, in order to extract the goods contained in these containers, they must be opened, and that implies that they will not be able to



reuse, since they are non-reusable containers; but this action is not a case of destruction or unsuitability for use in the sense of article 80.1.b) of the Law, but rather it is the natural end of the life cycle of non-reusable secondary packaging.

The tax benefit included in article 80.1.b) of the Law comes when the products subject to the tax "have ceased to be suitable for use or destroyed" as a result of extraordinary circumstances, without fulfilling the functions they were intended to perform. until the end of their life cycle, for example, because the building where they are stored while awaiting sale to the purchaser burns down.

### **REFUNDS (article 81)**

**23. The purchaser of semi-finished products, such as thermoplastic sheets, when giving shape to the sheets to obtain the containers, generates waste or cuts, is it possible to request a refund of the tax corresponding to said "wastes"?**

Yes, article 68.1.g) of the Law provides for a case of tax refund for these cases.

**24. In the case of already packaged products that are spoiled throughout the distribution chain, before their sale to the final consumer, is it possible to request a refund of the tax?**

The tax regulations provide for different mechanisms to recover the tax when already packaged products are spoiled throughout the distribution chain. The mechanism for obtaining the tax refund depends on whether the products are damaged while in the possession of a manufacturer, who makes intra-community acquisitions, imports or any other purchaser.

- In the first place, the rule includes an assumption of non-subjection when the taxpayer is the manufacturer and the products are damaged prior to the accrual of the tax (article 73.a) of the Law).

- Secondly, the rule includes a deduction assumption applicable to the taxpayer who makes intra-community acquisitions. In this case, the amount of the tax paid may be deducted with respect to the products that, prior to their first delivery or made available to the first purchaser in the territory of application of the tax, have ceased to be suitable for use or have been destroyed. (article 80.1.b) of the Law).

- Thirdly, the Law provides for a case of return applicable to taxpayers who carry out the import taxable event, when prior to their first delivery or made available to the purchaser in the territory of application of the tax, they have ceased to be suitable for their use or have been destroyed (article 81.1.b) of the Law).





- Finally, when the products are damaged while in the possession of any acquirer, other than the one who has held the status of taxpayer, This may obtain the refund of the tax through the manufacturer of said products or whoever made their intra-community acquisition or import (articles 80.1.c), 80.2 and 81.1.c) of the Law).

**25. Can it be understood that, in the case of sales made to passengers destined for other Member States or third countries, the right to request a refund will correspond to the entity that manages said duty-free shops, provided that said entity is an importer and /or purchaser under the terms of article 81.1 of the Law on waste and contaminated soil?**

No, those who may request a refund, because the product subject to the tax has left the territory of application of the tax, are the purchasers in accordance with article 81.1.d) of the Law.

The effectiveness of the return will be conditional on the fact that the shipment of the products outside Spanish territory can be proven before the State Tax Administration Agency by any of the means of proof admissible by law, as well as proof of payment of the tax.

**26. Clarification of the assumption of refund of the tax in the case of importers who, prior to the first delivery of the purchaser in the territory of application of the tax, destroy the containers (art. 81.1.b)).**

**Does it apply to the case of a packaged product that is imported and from which the plastic container is removed (with its subsequent destruction) because the product is delivered to the customer in the store without the container? Under what conditions would the destruction have to take place (examples of the evidence that would be admissible in law to prove the destruction)?**

The assumption to which the question refers constitutes the normal use of these secondary containers. Obviously, in order to extract the goods contained in these containers, they must be opened, and this means that they will not be able to be used again, since they are non-reusable containers; but this action is not a case of destruction or unsuitability for use in the sense of article 81.1.b) of the Law, but rather it is the natural end of the life cycle of non-reusable secondary packaging.

The tax benefit included in article 81.1.b) of the Law comes when the products subject to the tax "have ceased to be suitable for use or destroyed" as a result of extraordinary circumstances, without fulfilling the functions they were intended to perform. until the end of their life cycle, for example, because the building where they are stored while awaiting sale to the purchaser burns down.

## **GENERAL MANAGEMENT RULES (article 82)**

**27. How should the payment of the tax be accredited?**

Those who hold the status of taxpayers, in the case of intra-community manufacturers or purchasers, through proof of payment of the balance



resulting from the corresponding self-assessment and the purchase invoice of the products subject to the tax. In the case of importers, by proof of payment made to the customs authorities and the corresponding purchase invoice.

In the rest of the cases, if it is about those who acquire the products subject to the tax from the manufacturers located in Spanish territory, through the purchase invoice of the products with respect to which they wish to prove the payment of the tax. In accordance with the provisions of article 82.9.a) of the Law, manufacturers must pass on to the purchaser the amount of the tax installments accrued upon making said sale or delivery. In the invoice they issue, they must state separately:

1st The amount of accrued installments.

2nd The amount of non-recycled plastic contained in the products, expressed in kilograms.

3rd If any exemption assumption is applicable, specifying the article by virtue of which the sale or delivery is exempt.

In the case of purchasers of the products subject to the tax to importers, intra-community purchasers or other purchasers, the payment of the tax will be accredited by means of the certificate or invoice issued by them in accordance with the provisions of article 82.9.b) of the Law:

*"(...) upon request of the purchaser, those who make the sales or deliveries of the products subject to the tax must record in a certificate, or in the invoices issued on the occasion of said sales or deliveries:*

*1st The amount of the tax paid for said products or, if any exemption assumption was applicable, specifying the article by virtue of which said tax benefit was applied.*

*2nd The amount of non-recycled plastic contained in the products, expressed in kilograms.*

*What is established in this letter will not be applicable when simplified invoices are issued with the content referred to in article 7.1 of the Regulation that regulates invoicing obligations, approved by Royal Decree 1619/2012, of November 30. "*

**28. Regarding the independent invoice or certificate referred to in article 82.9, must an independent breakdown be made if products with a different percentage of non-recycled plastic are included in the invoice/certificate? Is it enough to include the total weight of non-recycled plastic, as well as the accrued fee, if there are different non-reusable plastic containers?**

Except in the case of manufacturers, the invoice or certificate with the data collected in article 82.9 will only be issued if requested by the purchaser of the products because, foreseeably, they will request a refund of the tax. Therefore, if there are different products on the invoice, the data relating to each product must be entered separately.

## **INFRACTIONS AND SANCTIONS (article 83)**





**29. Can the sanction of article 83?2 e) of the Law be imposed on an intermediate operator in the chain for not supplying the information on a plastic container when said information has not been previously provided by its supplier?**

Letter e) of section 2 of article 83 classifies as a tax offense:

*"e) The incorrect consignment in the invoice or in the certificate of the data referred to in article 82.9."*

Therefore, the assumption of infraction that arises in the query is not typified.

## **GENERAL FEATURES**

**30. What are the means of proof admissible in law?**

In accordance with article 106 of Law 58/2003, of December 17, General Tax, the rules on means and assessment of evidence contained in the Civil Code and in Law 1/2000 will apply in tax procedures. , of January 7, of Civil Procedure, unless the law establishes another

What.