

# Kluwer International Tax Blog

## The Spanish tax on non-reusable plastic packaging

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On 9 April 2022, [Law 7/2022](#) of 8 April on waste and contaminated soil for a circular economy (“LRSC”) was finally published. This law responds to the obligation to transpose into the Spanish domestic law the measures derived from [Directive 2018/851/EU](#) (Waste Framework Directive) and [Directive 2019/904](#) on the reduction of the impact of certain plastic products on the environment (SUP Directive)

None of these directives obliges Member States to incorporate waste or plastic packaging taxes into their legislation. However, the legislator has taken advantage of the text to take a first step in the announced reform of the environmental taxation system in Spain by creating two new taxes: the excise tax on non-reusable plastic packaging (IEPNR, for its acronym in Spanish) and the tax on the deposit of waste in landfills and the incineration of waste (IEDVIR, for its acronym in Spanish).

The specific case of the plastic packaging tax (IEP, for its acronym in Spanish) represents a new taxation element aimed at promoting the circular economy (Spain had precedents for the tax on the deposit and incineration of waste, albeit at the level of the Autonomous Communities).

This is a special tax, of an indirect nature and not harmonized at EU level, that will be applied to natural or legal persons for the manufacture, import or intra-community acquisition of non-reusable plastic containers to be used in the Spanish market.

The tax will be applied to: a) any non-reusable packaging containing plastic; b) semi-finished plastic products intended for the manufacture of packaging (preforms, thermoplastic sheets); c) plastic products which enable the packaging to be closed, marketed or presented.

The tax will be applied to this type of product regardless of whether they are empty or containing, protecting, handling, distributing and presenting goods.

The objective scope of the tax makes it clear that the taxable event “manufacture” is intended to grant the position of taxpayer to the subject who belongs to the plastic packaging sector and not to its suppliers or customers, hence it also includes semi-finished products that require subsequent operations to become containers (i.e. preform blow molding).

In addition, the new tax falls into a broad definition of the concept of “packaging”, so that not only packaging used for sale or primary packaging is taxed, but also collective or secondary packaging and transport or tertiary packaging. In turn, products composed of more than one material shall be taxed only for the quantity of plastic they contain.

The tax base of this tax will consist of the quantity of non-recycled plastic, expressed in kilograms, contained in the products that are part of the target scope of the tax and the applicable tax rate will be 0.45 euros per kilogram, which must be reflected separately in the invoice.

Therefore, and in line with the environmental purpose pursued by the tax, the percentage of recycled plastic included in the product formulation is excluded from the tax base, including both the derivative of a mechanical and chemical recycling process (a product with 50% recycling will only have to face a tax burden of 0.225 €/kg). In this line, the new tax exempts from taxation products with 100% recycled plastic in their formulation. The Law establishes that the amount of recycled plastic contained in the products subject to the tax must be certified by an accredited entity to issue certification under the [UNE-EN 15343:2008](#) standard or any standard replacing it. In the case of chemically recycled plastic, this amount shall be credited by means of the certificate issued by the corresponding entity accredited or authorised for this purpose.

However, it also includes some exemptions that deviate from their environmental purpose for social, economic and technical reasons: a) products that are intended to serve as containment, protection, handling, distribution and presentation of medicines, medical devices, foods for special medical purposes or infant formula for hospital use; b) plastic rolls for agricultural and livestock silage; c) products that are intended for export are exempted from the tax.

In general, if we take into account the definition of environmental tax provided, among other documents, in [Regulation \(EU\) 691/2011 of the European Parliament and of the Council of 6 July 2011](#) on European environmental economic accounts: “a tax whose tax base is a physical unit (or a proxy of a physical unit) of something that has a proven, specific negative impact on the environment”; it seems we can affirm that the excise duty on non-reusable plastic packaging falls within the category of environmental taxes, due to the environmental prejudice caused by the extraction, handling and disposal processes involving the use of virgin plastic. However, according to [PUIG VENTOSA](#), economic theory suggests that the tax rate should discriminate according to the environmental impact and this is something the approved tax fails to comply with. It is evident that different types of plastic have different consequences (for example, compostable plastics and in EPS –expanded polystyrene–), as they also have a different environmental effect or a different degree of recyclability depending on the use of different additives or dyes.

### **The Spanish tax vs. the EU’s own resource based on non-recycled plastic.**

The Own Resources [Decision 2020/2053](#) introduces, at EU level, from 1 January 2021, a new category of own financial resources in the context of the European Green Deal.

This is a national contribution to the EU budget based on the amount of non-recycled plastic packaging waste and calculated based on the weight of plastic packaging waste that is not recycled (total non-recycled plastic packaging waste minus recycled plastic packaging), with a uniform rate of call of EUR 0.80 per kilogram.

Contributions shall be calculated on the basis of Eurostat data. Member States are already obliged to collect and report data on the generation and recycling of plastic packaging waste in accordance with [Directive 94/62/EC](#) on packaging and packaging waste and its Implementing Decision (Decision 2019/665).

The EU expects this new own resource to result in an annual revenue of €7 billion. According to the studies conducted, Spain's contribution would be between 400 and 650 million euros, to which the reduction of 142 million euros per year provided for in Article 2.2 of [Decision 2020/2053](#) should be deducted for presenting a gross national income lower than the European average.

As [VILLAR EZCURRA and BISOGNO](#) have pointed out, the European contribution is an instrument characterized by both its financial and regulatory nature. The EU contribution presents a clear environmental objective within the framework of the European Green Deal and seeks to promote recycling and boost the circular economy. However, European legislation does not require that the resulting amount borne by the Member States is subsequently passed on to the polluting sectors. In fact, it is a figure that focuses solely on the relationship between the EU and Member States. However, Member States such as Spain or Italy have decided to recover via taxes on non-recycled plastic packaging part or all of the contribution they will have to pay to the EU.

Consequently, the European contribution, unlike the tax described, has no tax nature and, therefore, does not transpose it (see [VILLAR EZCURRA and BISOGNO](#)). Moreover, and as [PUIG VENTOSA](#) points out, the EU contribution and the fiscal measure introduced by Spain generate different, but complementary, incentives. Thus, while the European contribution -which taxes non-recycled plastic packaging waste (regardless of its composition)- generates an incentive for Member States to increase the recycling of plastic packaging; the state tax -which would tax the non-recycled plastic content of packaging (regardless of whether it is recycled or not)- will seek to encourage the use of recycled material in packaging by manufacturers and importers. However, [PUIG VENTOSA](#) shows that both instruments could have a complementary nature and would indirectly stimulate the selective collection of waste. In the case of the EU contribution, and in order to reduce the payment of the national contribution, the Member State could introduce measures to encourage selective collection and facilitate recycling. The tax, on the one hand, will increase the demand for selective collection of quality waste due to the incentive that taxpayers have, in the form of tax savings, for increasing the recycled plastic content.

On the other hand, and with regard to the possibility opened by the SUP Directive of using "economic instruments" in an attempt to ensure that certain plastic products are not offered to the consumer free of charge at the point of sale and to achieve an ambitious and sustained reduction in their consumption, it should be noted that the tax introduced by Spain goes beyond the possibility that the Directive enabled by

including in its scope of application not only the use in sectors such as food but in all single-use plastic packaging.

### **The tax in the context of the green tax reform promoted by Spain**

As we have stated, the tax adopted by Spain is not a harmonised tax that has to be transposed into national law. It is, however, a measure that should be understood in the context of EU policy and the promotion of the circular economy, as well as part of the steps taken by Spain to give greater weight to environmental taxation in the framework of the tax reform recently presented in the [WHITE PAPER ON TAX REFORM](#). Specifically, within the proposals and recommendations, there is a strong commitment to the use of taxes in order to contribute to the objectives of the circular economy, an area in which Spain was far from fulfilling the EU's commitments (for example, the recycling level is far from European figures according to Eurostat).

In particular, the aforementioned White Paper defends the need for coordination and complementarity of fiscal instruments with the environmental regulatory context in order to ensure the correct level of action and vertical and horizontal coherence to achieve the effectiveness of reform measures. Similarly, it is stated that the environmental tax reform can contribute to avoid non-compliance by Spain with the European Directives related to the environment.

For this reason, although the environmental tax adopted has as its fundamental reason the incorporation of the environmental costs associated with certain harmful activities such as waste, special attention has also been paid to the regulatory context of the fiscal instrument to guarantee its suitability, proportionality, effectiveness and usefulness in practice, as well as its role in facilitating compliance with Spain's environmental commitments.

However, the [WHITE PAPER](#) also argues that the desirability of adopting environmental fiscal measures such as the one described should not be confused with a prescription for immediate application, without considering the situation and socio-economic impacts. The Committee advocates, in general, a gradual action, which allows to minimize the impacts of the proposals and guarantee the fulfilment of the environmental commitments in the medium term (usually, their time horizon of definition). Taking into account the current socio-economic context, these factors could be used to explain why, despite its approval, the entry into force of the tax on non-reusable plastic packaging has been delayed until 1 January 2023. The reality, however, is that this delay reflects, fundamentally, the long and complex parliamentary procedure, as well as the difficulties that this proposal has had to face in order to adopt it.

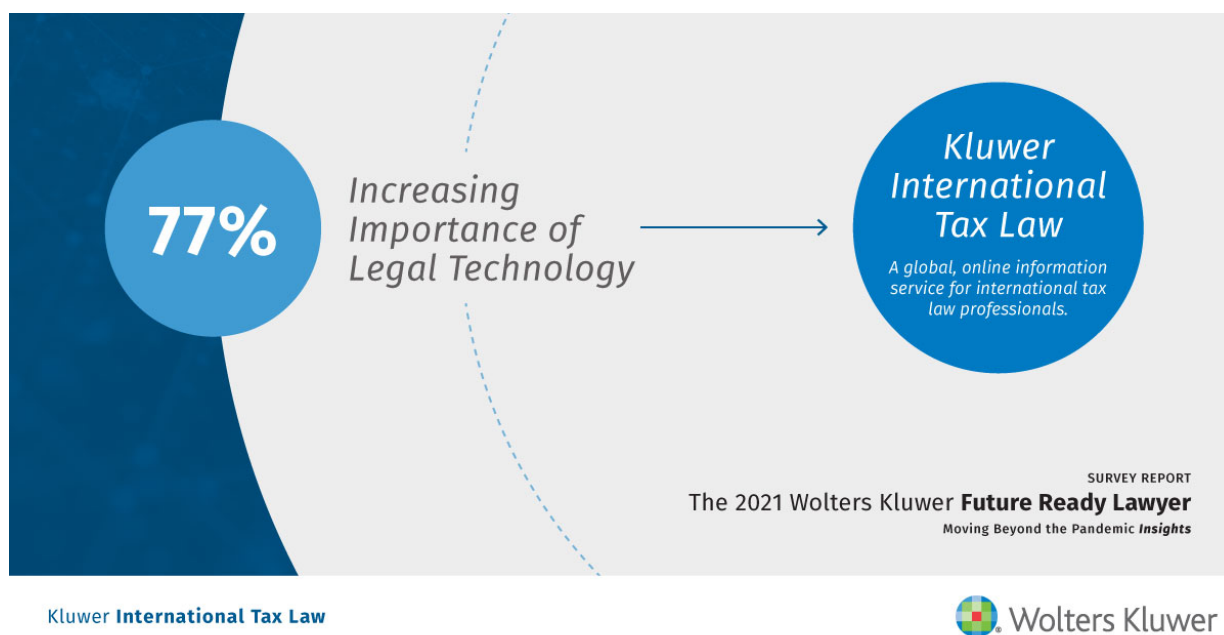
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This entry was posted on Wednesday, May 11th, 2022 at 4:02 pm and is filed under [Environment](#), [EU Green Deal](#), [EU law](#), [Spain](#)  
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