
SPAIN - NEW ENVIRONMENTAL TAXES

Law 7/2022 on Waste and Contaminated Soils for a Circular Economy (Official Bulletin of April 11, 2022), responds to the need to receive into our legal system the contents of Directive 2018/851/EU, amending Framework Directive 2008/98/EC, on Waste (Waste Framework Directive), and Directive 2019/904, on Reducing the Impact of Certain Plastic Products on the Environment (Single Use Plastic Directive -SUP).

As a result of this need, and in order to prevent the generation of non-reusable plastic packaging waste and reduce the generation of waste, two new taxes have been approved in the field of environmental taxation. These taxes will come into effect **as of January 1, 2023** as follows:

- the tax on non-reusable plastic packaging; and
- tax on the landfilling, incineration and co-incineration of waste

***Caution:** Until the implementing regulations foreseen in the Law are approved, the former Implementing Regulations to Law 11/1997 on Waste and Packaging Waste remain in force in whatever aspects are not opposed to Law 7/2022; except with regard to the sanctioning regime and the provision related to the Mixed Commission foreseen therein, which have been repealed by Law 22/2011.*

Analysis of the New Taxes

A. Tax on non-reusable plastic packaging

The tax on non-reusable plastic packaging is shaped as an indirect tax applicable throughout the Spanish territory, without prejudice to the special provisions foreseen for the Foral regimes, which are levied on the use, in Spanish territory, of non-reusable packaging containing plastic, whether it in empty form, or containing, protecting, handling, distributing and presenting goods.

Included within this definition are:

- non-reusable containers containing plastic;
- semi-finished plastic products intended for the production of packaging, such as thermoplastic preforms or sheets; and
- products containing plastic intended to enable the closure, marketing or presentation of non-reusable containers.

To the effects of these provisions, Packaging is defined as

“Any product intended to contain, protect, handle, distribute and present goods, such as plastic cups or plastic rolls used for packaging and preventing breakage during the



transportation of products, as well as all products included in the definition of article 2 of Law 7/2022”.

2. Regarding the activities subject to the tax on non-reusable plastic packaging, the new Rules forbid

- the manufacture, importation or intra-Community acquisition of packaging containing non-reusable plastic; and
- the irregular introduction of these products into Spanish territory.

3. **Non-taxable and exempt activities.**

(i) Non taxable activities

In no case the tax will apply to

a) The manufacture of the referred products when:

- they have ceased to be suitable for use or have been destroyed prior to the accrual of the tax;
- they are delivered directly by the manufacturer, or by a third party in his name or behalf, to a territory other than the territory where the products are taxed.

b) The manufacture, importation or intra-community acquisition of:

- paints, inks, lacquers and adhesives to be incorporated into products intended to contain, protect, handle or deliver goods or products;
- of non-reusable packaging containing plastics which, although capable of performing the functions of containment, protection and handling of goods, are not designed to be delivered together with such goods.

(ii) Exemptions.

Depending on the use the packaging will be given, certain operations are declared **exempt**, among which we specifically mention the following:

- **Small imports or intra-Community acquisitions** of packaging products, i.e. those containing a total quantity of non-recycled plastic not exceeding 5 kilograms; or
- Those products intended to provide containment, protection, handling, distribution and presentation of medicines, medical devices, food for special medical uses, infant formulae for hospital use or hazardous waste of sanitary (health) origin, as well as plastic rolls for agricultural and livestock use.

4. **Taxpayers**

The individuals or entities subject to the tax are identified as follows:

- a) In the case of the Manufacture, Importation or Intracommunity acquisitions: individuals, legal entities and entities that, while lacking legal personality, constitute an economic unit or a separate taxable estate (General Tax Law art. 35.4) manufacturing, importing or carrying out the intracommunity acquisition of these products.
- b) With regard to the Irregular introduction of these products into Spanish territory: whoever possesses, markets, transports or uses them.

5. Accrual of the Tax

- a) **In the case of Manufacture:** Upon the products being first made available to a customer within the Spanish Territory; however, if **payments** are made **in advance** of the taxable event, the tax becomes due at the time the price is collected in whole or in part and for the amounts actually received.
- b) **In the case of Importation:** Upon the accrual of the customs duties pursuant to Customs Legislation.
- c) **In the case of Intracommunity Acquisitions:** On the 15th day following the day on which these products are shipped or transported to the customer; except if an invoice is issued before such date, in which case the tax will accrue on the date of shipment.
- d) **In the case of Irregular Introduction in Spain:** At the time the products are introduced in the territory where the operations are subject to tax. If such moment is unknown, at the oldest of the non prescribed tax periods, unless the taxpayer proves otherwise.

6. Taxable base, tax rate and tax liability

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

The amount of recycled plastic contained in these products must be certified by an entity chartered to issue certifications under the UNE-EN 15343:2008 standard. On a transitory basis, until April 10, 2023, the amount of plastic contained in a given product subject to tax can be witnessed by a sworn statement produced by the manufacturer.

The tax rate is of 0.45 euros per kilogram, being the total tax liability the amount resulting from applying this tax rate to the taxable base.

7. Main aspects of the Tax Management Regime.

7.1. Assessment:

- a) **Intracommunity manufacture or acquisition.** Taxpayers are obliged to self-assess and pay the amount of the tax debt direct. The settlement periods coincide with the calendar quarters, except in the case of taxpayers who are obliged to assess and pay the VAT on a monthly basis, in which case the VAT settlement period will also be calculated on a monthly basis
- b) **Importation.** The tax is settled in the manner provided for the payment of customs debts.

7.2. Registration: Taxpayers who manufacture, import or make intra-community acquisitions of these products are obliged to register themselves, prior to starting their activities, at the relevant territorial registry created with regard to this special tax on non-reusable plastic containers.

7.3. Accounting Obligations: The manufacturers of these products must keep accounting records thereof and, if applicable, of the raw materials necessary to obtain them. Likewise, those who make intra-community acquisitions must keep a stock record book, and in the case of imports, the amount of non-recycled plastic imported, expressed in kilograms, must be recorded.

8. Infringements and penalties

The regulations specifically identify the following tax breaches:

- a) Failure to register at the Territorial Register of the Special Tax on Non Reusable Plastics.
- b) In the case of taxpayers not established within the territory subject to taxation, the failure to appoint a resident representative.
- c) In the case of Certifying entities, failure by any of such entities to certify the correct amount of plastic, expressed in kgs, present in the products.
- d) Undue benefitting by the purchasers of these products from the exemptions provided for in the legislation.
- e) Incorrectly showing on an invoice - or in the certificate - the data required by the tax rules

B. Tax on landfilling, incineration and co-incineration of waste

The tax on waste landfilling is conceived as an indirect tax on the (i) landfilling of waste, (ii) incineration; and (iii) co-incineration of waste, applicable throughout the Spanish territory, without prejudice to the Special Foral Regimes in force in the Basque Country and Navarre.

The authority to collect the tax will be assigned to the Autonomous Regions through the execution of the corresponding agreements within the framework of institutional cooperation in the area of regional financing, as well as through the introduction of the necessary regulatory modifications.

As long as these assignments are not implemented, the State will collect and deliver to the Regions their corresponding shares of the tax collected (Law 7/2022, art.97).

2. The tax on waste landfilling is levied on the delivery of waste to:

- authorized landfills; and
- authorized waste incineration or co-incineration facilities or purposes of energy revaluation.

In both cases, the relevant facilities may be either publicly or privately owned and must be located in the territory where the tax applies.

To the effects of this law, the following definitions will apply:

- a) **“Waste”** is defined as *“any substance or object that the holder discards, intends to discard or is required to discard”*.
- b) **Landfill** is defined as *any facility for the disposal of waste by means of a surface or underground deposit.*

3. Deliveries exempt from the tax on waste disposal.

The delivery of waste to landfills or incineration or co-incineration facilities is declared exempt in the following cases:

- In situations of force majeure, extreme necessity or catastrophe; or in case the goods are seized to be destroyed.
- Waste derived from taxable transactions that would have been effectively charged this tax.
- Whenever there is a legal obligation to dispose of waste in such facilities.
- Waste coming from the decontamination of soils, carried out by the Administrations in situations of general interest (RD 9/2005 art.7.3).
- Inert waste suitable for use in construction sites.
- Waste resulting from treatment operations other than those carried out in municipal waste facilities.

A transitory exemption will apply until January 1, 2023 to the landfilling of industrial non dangerous waste made by its initial producers made in landfills located within their own installations, provided these are effectively owned by the producer and fare for the producer's exclusive use.

4. Obligated Parties: Taxpayer and substitute in the tax on waste deposits.

Taxpayers are identified as individuals, legal entities and those entities referred to in art. 35.4 of the General Tax Law However, individuals or legal entities and the entities referred to in art. 35.4 of the LGT, (see definition above) which manage either landfills, waste incineration or co-incineration facilities who are different from those who carry out the taxable event, will act as substitutes for the taxpayer.

Managers of these entities are obliged to

1. File the quarterly assessment of the tax and pay the corresponding tax;
2. Keep a dated register or a chronological archive of waste;
3. Verify the weight of the waste for tax calculation purposes through type approved systems;
4. In the case of activities subject to specific tax rates, (identified as activities R10 assure that the entity has received the relevant regional notice; and
5. Register the entity in the relevant Regional register

The individuals or entities acting as substitutes of the taxpayer must **pass on the** amount of the accrued taxes to the final taxpayers. This would not be required in the case of assessments directly made by the Tax Office and in cases where the taxpayer himself is obliged to make the self-assessment.

5. Tax Accrual

The tax on waste delivery is deemed accrued when:



- a) The waste is deposited in the landfill; or
- b) Waste is incinerated or co-incinerated at waste incineration or co-incineration facilities.

6. Taxable Base and Tax Rate

The tax base consists of the **weight in metric tons** to three decimal places of the waste that is deposited in landfills, incinerated or co-incinerated.

When the Administration cannot determine the taxable base by direct assessment, it may do so by means of the so called **indirect assessment**, taking into account, among others, circumstances such as the topographic survey of the volume of waste and its characterization¹

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¹ Source: Ed.Francis Lefebvre