

## UK Plastic Packaging Tax: An Update on the New Measure to Reduce Plastic Waste

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The Finance Act 2021 sets out a more sustainable and environmentally friendly tax system by legislating to implement a plastic packaging tax (Tax). The new Tax, which will come into force on 1 April 2022, will encourage the use of recycled plastic within packaging and provide an economic incentive for businesses to use recycled material when producing plastic packaging. It is estimated that the Tax could lead to an increase in the use of recycled plastic in packaging by approximately 40 percent, equivalent to carbon savings of nearly 200,000 tonnes in 2022 to 2023. The increased demand for recycled plastic should result in greater recycling and collection of plastic waste, reducing the UK's carbon footprint and building a more environmentally sustainable economy.

### The Charging of the New Tax

Plastic packaging containing less than 30 percent recycled plastic content that is produced in or imported into the UK (Chargeable Plastic Packaging) will be taxable at £200 per tonne. Where Chargeable Plastic Packaging is manufactured in the UK, the Tax will be payable by the manufacturer; and, where Chargeable Plastic Packaging is imported into the UK, the Tax will be payable by the person on whose behalf it is imported. A plastic packaging component will be taken to have less than 30 percent recycled plastic content unless it is shown otherwise.

The recycled content of a component will be based on the weight of the plastic material within a component, compared to the amount of recycled content. For these purposes, recycled plastic is plastic that has been reprocessed from recovered material by means of a chemical or manufacturing process, other than organic recycling, in order to be used for its original purpose or for other purposes.

The Tax will not be chargeable on plastic packaging where:

- it has 30 per cent or more recycled plastic content;
- it is made of multiple materials of which plastic is not proportionately the heaviest when measured by weight;
- less than 10 tonnes of plastic packaging are manufactured and/or imported by a business annually;
- it is manufactured or imported for use as immediate packaging of human medicines;
- it is in use as transport packaging to import products into the UK; or
- it is exported, filled or unfilled, unless it is in use as transport packaging to export products out of the UK.

The Tax will be paid by reference to accounting periods determined in accordance with regulations by HM Revenue and Customs (HMRC).

The liability for this Tax can be deferred where Chargeable Plastic Packaging is intended to be a direct export. The deferral period is 12 months, starting from the day the Chargeable Plastic Packaging is manufactured or imported. The liability will be cancelled if the Chargeable Plastic Packaging is exported before the end of the deferral period.

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## Regulations

The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 (SI 2021/1417) (Regulations), were laid before parliament on 13 December 2021 and, once approved, will come into force on 1 April 2022.

### The Revised Meaning of Packaging Component

The Regulations amend the meaning of “packaging component” as it applies to the Tax to remove three categories of products, namely:

1. products that are primarily designed for long term storage by users or consumers. Examples include, glasses cases, toolboxes, first aid kits and earphone cases. It does not include products that are designed to be discarded once the goods inside them at the time of sale have perished or been consumed, for example, tubs for ice cream and shampoo bottles;
2. products that are designed to be an integral part of the good sold, without which the good cannot be reasonably used or consumed. Printer cartridges containing ink or toner, tea bags, and inhalers will fall into this group. It does not include products such as yogurt pots and liquid soap pumps, as they only act as packaging or storage for the goods they contain; and
3. products that are designed to be reused in the presentation of goods, for example, reusable sales display shelves.

However, single-use products and products that provide a packaging function only when used by the end-user have been added to the meaning of a packaging component, meaning that products such as bin bags, carrier bags and party cups will now be within the scope of the Tax.

### Registration and Recordkeeping

The Tax will be administered, collected and managed by HMRC, who will establish and maintain a register for the purposes of collecting and managing the Tax. Manufacturers and importers of plastic packaging components will be liable to be registered for the Tax if:

1. there are reasonable grounds to believe that they will manufacture and/or import at least 10 tonnes of finished plastic packaging components in the next 30 days; or
2. they have manufactured and/or imported at least 10 tonnes of plastic packaging components in the past 12 months.

These parameters are similar to those for registration for value added-tax (VAT). Registration thresholds are by reference to quantities of finished plastic packaging components rather than Chargeable Plastic Packaging; therefore, registration may be required regardless of whether any actual liability to pay the Tax arises. Only plastic packaging components manufactured in or imported into the UK after 1 April 2022 will be included in calculations for this Tax. A person who is liable to be registered must notify HMRC before the end of the notification period, which is 30 days starting from the first day on which liability arises. HMRC will register the person with effect from the day on which the liability arises.

A registration may be cancelled if HMRC is satisfied that:

1. the liability conditions are no longer met and have not been met for at least 12 months; or
2. the liability conditions were never met.

Businesses will need to keep records and, in most cases, register for the Tax, even if all the packaging that they manufacture or import contains more than 30 percent recycled plastic. If a business manufactures or imports less than 10 tonnes of plastic packaging a year, the record keeping requirements will be reduced.

Under HMRC current guidance, the requirement for businesses to include a statement with their invoice to show that the Tax has been paid, which was due to come into force with the Tax on 1 April 2022, will be delayed until further notice.

### **Group Companies**

Where two or more corporate bodies, with at least one having an established UK presence, are under the same control, they are eligible to be treated as members of the same group for the purposes of this Tax. Although the amounts incurred by group members are charged to the representative member, all corporate bodies in the group, or who join the group while there is an unpaid amount, are joint and severally liable for any non-payment of the amount.

### **Transferring a Business as a Going Concern**

Draft Regulations provide that where a business registered for the Tax is transferred as a going concern, its current registration will need to be cancelled and a new registration made by the new owner of the business. Once the transfer is complete, the new owner will keep the same registration number which was allocated to the business when it was originally registered for the Tax. In addition, any liabilities and obligations in respect of the Tax before and after the day of transfer will become the liability and obligation of the new owner(s) of the registered business.

### **Insolvency**

Where a business already registered for the Tax becomes insolvent, the insolvency practitioner must notify HMRC within 21 days of the business going into administration. If it fails to do so, HMRC may treat the business as if it were solvent for a period of up to six months starting from the day in which the notification was required.

### **Penalties and Anti-Avoidance Legislation**

There will be civil and criminal penalties for failure to comply with the Tax, including penalties for failure to register, file returns or pay the Tax. Where a business fails to comply with a requirement, there is a £500 fixed penalty, and a daily penalty of £40 for each day, after the first, on which the business continues to default. The only defence is that of a reasonable excuse for the failure (note, insufficiency of funds will not be considered a reasonable excuse), but there is an appeals process if the penalty is disputed.

There are also anti-avoidance, anti-fragmentation measures that prevent entities from artificially splitting their businesses in order to come under the 10 tonne per year registration threshold and avoid paying the Tax. Where HMRC determines that such avoidance is happening, it can issue a direction to such businesses so they are treated as single taxable entity.

### **Impact**

This Tax is likely to have a wide impact: UK producers of plastic packaging, importers of plastic packaging and business customers of producers and importers of plastic packaging will all be affected. As single-use products are now within the scope of the Tax, the Tax will also have an impact on consumers as the prices of ready-made meals or unhealthy foods that are often packaged in plastic are likely to increase in consequence, and as such encourage healthier lifestyle choices.

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## CONTACTS

For more information on Plastic Packaging Taxes, contact your Katten lawyer or either of the following:



**Charlotte Sallabank**  
+44 (0) 20 7776 7630  
[charlotte.sallabank@katten.co.uk](mailto:charlotte.sallabank@katten.co.uk)



**Christy Wilson**  
+44 (0) 20 7770 5241  
[christy.wilson@katten.co.uk](mailto:christy.wilson@katten.co.uk)

*Ugo Onwumelu, a trainee in the Tax practice, contributed to this advisory.*

# Katten

katten.com

Paternoster House, 65 St Paul's Churchyard • London EC4M 8AB

+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax

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