

Response to HMRC Plastic Tax Consultation

Our role

Natural Resources Wales (NRW) is a Welsh Government Sponsored Body. Our purpose is to ensure that the natural resources of Wales are sustainably maintained, used and enhanced, now and in the future.

NRW welcomes this opportunity to contribute to the consultation. We give our views from our perspective as a regulator and advisor on recycling and waste and resource management in Wales.

Our Response

Question 1. Do you agree with the revised definition of plastic, which removes the ‘main structural component’ test and limits the exclusion to ‘cellulose-based’ polymers? Please outline your reasoning.

Yes, we agree.

We believe removing the main structural component test to focus on predominant material will simplify the assessment of which products are in scope of the tax.

We believe that wherever possible composite packaging must be included within scope of the tax. Composite packaging is notoriously difficult to recycle, often contaminating both plastic and card waste streams. By not capturing this material there is a risk that more manufacturers will move to these materials to avoid the tax, therefore resulting in a perverse outcome. The plastic tax should be seen as an incentive to reduce all composite packaging materials.

We agree the limiting the exclusion for ‘cellulose-based’ polymers as this again reduces confusion and improves clarity of plastics that are in scope. There are no clear definitions of bio-degradable, compostable and bio-plastics. These materials impact plastic recycling and need different types of treatment when recycled or composted. Therefore, we believe it is reasonable to include these materials within scope of the tax. It is suggested it could be further clarified to say only material solely containing *cellulose-based polymers that have not been chemically modified*.

The definition of packaging under the Plastic Tax and the reformed Plastic Packaging Regulations needs to be as consistent as possible to avoid confusion.

Question 2. Do you agree that packaging-type products that do not fulfil a packaging function until they are used by the end consumer should be included in the tax unless they are for longer term storage? Please outline your reasoning.

Having a different definition from the Packaging Regulations may cause confusion for businesses falling under both regimes. Consideration should be given to potential changes to the current Packaging Regulations definitions as part of the regulatory reform.

Under the current Packaging Regulations packaging items sold as products (e.g. cling-film and 'jiffy bags') may still pick up an obligation at the manufacturing and conversion stages so are not totally out of scope of the Regulations or obligations.

Other items that are classed as products when placed on the market that may need further consideration include;

- Packaging tapes – 'celo-tape'
- Growbags bags – the plastic 'bag' containing the compost
- Plastic envelopes – e.g. jiffy bags
- Plastic gift wrapping 'paper'
- Plastic disposable cups and trays
- Refuse sacks

If the ambition of the tax is to encourage recycled content in all plastic packaging then it could be considered to include all packaging items, including durable items used for longer term storage.

Plastic items that may need further consideration on if they were to be considered as long-term or durable storage could include;

- Plastic 'bags for life'
- Freezer / zip lock type bags
- Tupperware containers
- Coat hangers
- CD cases
- Power tool cases

Question 3. Do you have any observations on the government's proposed approach to excluding plastic packaging used to facilitate the transport of imported goods?

In order to be ambitious, fair and consistent with UK transit packaging, it is suggested that imported transit packaging is not excluded.

Excluding imported transit packaging (around goods) would disadvantage UK manufacturers through giving an unfair advantage to imported goods.

Under the current Packaging Regulations obligated producers are required to report the quantity (material and weight) of transit packaging around imported goods and also declare if this is removed prior to passing the goods on not. Therefore, any importer obligated under the Packaging Regulations will have access to this information.

There are various methods such as bill of materials (BOM), invoices, purchase requirements that enable importers to control and determine the transit package around imported goods.

The transit packaging around imported goods will typically end up as waste, and need to be appropriately treated, in the UK. Therefore, it is fair and proportionate to treat imported transit packaging around goods the same as UK transit packaging and imported packaging products.

As a net importer of goods imported transit packaging is a significant packaging waste stream in the UK. Including imported transit packaging in scope of the plastic tax will incentivise UK importers to work with suppliers to increase the recycled content of all plastic packaging they are responsible for and support the global recycling markets.

We recognise that from a regulatory perspective it may prove challenging for HMRC to monitor and determine how the recycled content information is accurately verified or corroborated as this will be reliant on declarations or evidence from overseas companies.

These requirements are likely to impact smaller businesses, especially those under the current de minimis of the Packaging Regulations who do not routinely capture their exact packaging weights. However, the de minimis is expected to change as part of the Packaging Regulation reforms.

Question 4. Do you think it is feasible to provide evidence that packaging has been commissioned for use as immediate packaging for licensed human medicines at the time the tax is chargeable? If not, please explain why.

Yes, we agree.

As with all packaging the producer of medicines should be able to determine the activities they carry out and the packaging that will be in contact with their products.

The specific requirements for packaging around medicines and high level of testing and assessment outlined in this consultation demonstrates that it should be feasible to identify packaging used for direct contact with licensed medicines.

As well as further consideration for packaging around medical devices 'immediate contact' medical packaging around medical equipment and material such as instruments, dressings, PPE etc may need to be considered.

Question 6. Do you agree the proposed charging conditions will ensure that the UK manufacturer of plastic packaging is liable for the tax? If not, please explain why.

Yes, we agree

This aligns with the definition of packaging converter under the current Packaging Regulations.

Question 7. Do you foresee any issues for specific packaging components due to the proposed approach of disregarding further ancillary processes for the purposes of the tax? Please explain what these issues are.

There is a risk of double counting or missed obligation unless the first manufacturer makes it clear to any downstream processors that the tax has already been paid.

Depending on different plastic packaging products this could be complex, therefore businesses would need clear advice and guidance on the point the tax is payable for different products. Under the current Packaging Regulations an 'Agreed Positions and Technical Interpretations' document is produced by the Environment Agency that provides advice and guidance on which packaging products and activities are in scope.

Question 8. Do you have any observations on the proposed treatment of imports of plastic packaging, particularly linking the tax point to "first commercial exploitation" i.e. when it is controlled, moved, stored, is subject to an agreement to sell, or otherwise used in the UK in the course or furtherance of business?

This aligns to the current Packaging Regs where the import obligation falls to the first legal entity that owns the goods when they enter the UK.

Question 10. Do you agree that packaging that is damaged after the tax has become due should not be relieved? If not, please explain why you think this packaging should be relieved.

Yes, we agree, this should not be relieved.

Damaged packaging will have been manufactured and will have the same environmental impact and need the same end of life treatment (recycling or reprocessing) as un-damaged items.

If damaged packaging is relieved from the tax there could be a risk of packaging being declared as damaged or being intentionally damaged to avoid the tax. For example, a company could offer the option of cheaper goods if a customer chooses 'damaged' packaging option.

Relieving the tax on this packaging could also be exploited in a 'carousel' type system where plastic packaging is deemed waste to avoid paying tax but then recycled to count towards recycling content to avoid tax on the new product.

Question 14. Will extending joint and several liability to third-party fulfilment house operators and online marketplaces be sufficient to deter overseas sellers from non-compliance with the tax? If not, what other steps should HMRC consider?

To be effective statutory requirements must be robustly monitored and enforced so the regulator would need to be sufficiently resourced and given appropriate powers and proportionate enforcement powers and sanctions to ensure compliance.

Question 15. Do you agree with the proposed guidance and tools to help business determine if they are above or below the de minimis? What other help could the government provide?

Yes, we agree.

Tools and guidance provide assistance and support for businesses to determine if they are below or above the de-minimis. These tools are particularly useful for smaller businesses that are typically more likely to be below any de minimis.

Tools and guidance also support regulators in that there are standard, consistent assessment methods that are easier to check and verify.

Question 16. Do you agree with the approach to record keeping for businesses below de minimis? If you disagree, please suggest what alternative approaches would be more appropriate and why.

Yes, we agree.

In order for businesses to determine they are below the threshold they will have needed to perform an assessment or estimation of the packaging they manufacture or import, which may include using one of the proposed available tools. From a regulatory perspective it seems reasonable to expect that they retain those records to demonstrate they are below the threshold.

If tools are provided to assist businesses calculate if they meet the de minimis it is suggested that a reporting function is available for businesses to save their calculation to demonstrate they have completed an assessment and the result of that assessment.

If the business activities continue to be reasonably consistent (i.e. no significant changes) it would be reasonable for a business to use the same estimate until any business changes occur. Therefore, this exercise would not need to be repeated each compliance period but would require a periodic review.

A tiered approach of recording keeping depending on how close the business is to the 10 tonnes appears reasonable and proportionate.

Question 17. Do you agree with the proposed forward and backward look test to apply the 10 tonne threshold? If you disagree, please suggest what would be more suitable and provide evidence to support your view.

The current Packaging Regulations are based on the packaging handled in the previous compliance year, i.e. calendar year.

Having both a forward and backwards look does place a burden on businesses to continually monitor their activities throughout the year rather than once at the end of the year.

Question 18. Do you agree with the government's proposal to restrict calculations of recycled plastic content to approved methods? If not, please explain why. What methods other than the proposed mass balance approach should be considered?

Yes, we agree.

Restricting the calculations methods that can be used ensures a consistent approach is taken across businesses. This will also assist HMRC in checking and validating the calculations.

Question 19. Where businesses are importing plastic packaging with at least 30% recycled content, will it be feasible for them to obtain the mass balance evidence from overseas manufacturers? What other ways could importers demonstrate the proportion of recycled plastic?

Checking and validating information provided by overseas businesses is challenging and can therefore pose a higher risk of abuse or fraud.

In order for a mass balance to be properly assessed and monitored all input and output data would need to be made available, not just the packaging produced.

To avoid errors or abuse as far as possible it is recommended that mass balance is limited as far as practicable to individual 'batch' level, i.e. per run of plastic product produced. In this way the input recycled plastic data will be representative for the plastic pellet/produced. A mass balance at any higher level, e.g. more than one production line or product, would not accurately demonstrate the recycled packaging content of individual packaging products.

Question 20. Do you agree with the government's proposed method for calculating the weight of the packaging? If not, please explain why and how you would calculate it.

Yes, we agree.

This aligns with the current packaging regulations that require packaging data to be 'as accurate as reasonably possible'.

Question 21. Are the types of evidence within the government's list appropriate for proving recycled plastic content and the other information required by HMRC? Are there any additional sources of evidence which could be used? If so, please provide details.

Waste exemptions, permits, and approvals will demonstrate that a company is authorised to carry out a waste management operation but will not provide evidence to show the recycled content of the outputs from these processes.

Accredited reprocessors of plastic packaging waste issue PRN's based on the plastic packaging waste that they receive to recycle. An accreditation will demonstrate that the company does recycle plastic packaging waste but will not determine the percentage of recycled plastic in the final product.

Companies producing recycled products from plastic waste can use the [Non Packaging Plastics Quality Protocol](#) to demonstrate the recycled material they have produced is no longer waste. In order to apply this quality protocol they have to assess and test both the inputs and outputs from their process.

The current UK wide waste data tracking system development currently underway between DEFRA, the Devolved Governments and regulators will deliver improved data to show the movements of waste materials and products in the future.

Question 22. What further due diligence could businesses reasonably conduct to ensure their products meet the relevant specifications for tonnage and recycled plastic?

Sampling and evidence used to demonstrate recycled plastic (pellet or flake) meets the requirements of the [Non Packaging Plastics Quality Protocol](#), or an alternative end of waste assessment, may assist businesses in demonstrating the material contains recycled plastic and the specification and composition of the recycled material.

Question 24. Do you agree with the proposed information requirements to evidence the proposed export reliefs? If not, please explain how you could evidence the export.

Yes, we agree.

Question 25. Do you agree with the proposal not to relieve transport packaging used on exports? If not, do you have any suggestions on how transport packaging could be offered relief?

To be consistent with exported packaging products if a business can demonstrate that they have directly exported transit packaging around goods then we believe this could be considered for relief. The clearest example is where a UK business loads their goods into a shipping container at their premises for direct delivery to an overseas customer they will have a clear audit trail to demonstrate the transit packaging has been exported.

Under the current Packaging Regulations third part exports can only be declared if the business can provide a clear audit trail to demonstrate the packaging has been subsequently exported by a third party. There is no allowance for assumptions or estimates. A similar approach could be considered for exported transport packaging under this tax.

Question 26. Do you consider these registration requirements to be appropriate? If not, please specify why.

Yes, we agree

Question 27. Do you agree that the group eligibility criteria are appropriate? If not, please specify why.

This would not align with the current Packaging Regulations a Group registration can only be submitted by the Parent Company of a Group. The Packaging Regulations de-minimis (packaging handled and turnover) applies to the Group as a whole. When a Group registration is submitted this must include all members of the Group. If a Group Registration is not submitted, then each member of the Group must register separately.

Allowing different parts of a Group to register separately, together or in various combinations, may make it more challenging to monitor businesses to ensure all members of a Group of Companies are registered.

There may also be a potential risk of a Company registering and paying tax twice if registered as both individually and as part of a Group or a Company being included in two Group registrations.

Question 28. In your view, are businesses eligible to form a group likely to make use of this facility? If so, please estimate the value of savings that may be offered by registering and reporting as a group.

From our experience of the Packaging Regulations businesses do make use of the Group Registration option. Our records show approximately 12% of packaging producer registrations in Wales are Group Registrations.

Question 30. In your view, will the reporting requirements be straightforward to comply with? If not, please provide details of any issues you expect.

Businesses obligated as producers under the current Packaging should not have any significant issues complying with these requirements.

Businesses under the de-minimis of the current Packaging Regulations may find it more challenging initially to gather the plastic tax data but once systems are in place this would be expected to become easier for them.

The current Packaging regulations de-minimis will be reviewed as part of the reform and maybe removed.

Aligning the Plastic Tax with the reformed Packaging obligations will assist businesses reporting and complying with their obligations under both Regulations.

Question 33. Do you consider that HMRC's approach to powers and penalties is appropriate? If not, please specify why.

We believe the consideration of 'Fit and Proper' for other regimes is a potentially powerful compliance tool.

To ensure efficient and effective compliance we suggest further consideration is also given to wider information sharing. This needs to include how information collected for Tax purposes can be shared with NRW (and other regulators) for the purposes of our regulation under the Packaging Regulations, and other relevant regimes, and vice versa.

Current 'Protected Tax Information' rules can be a barrier and we therefore suggest legal gateways are considered to ensure that tax payer information can be shared to;

- Assist in the HMRC in collecting tax. Example would be where HMRC need to disclose tax information as part of a request to other bodies to obtain information back that will be used to assess compliance of the tax.
- Support other regulators efforts to prevent and detect crime. Particularly where HMRC holds information or intelligence that maybe used to support regulators investigations into fraud or other criminality.

These requirements would need a data sharing agreement between regulators.

Work is already underway to determine the options for data sharing between HMRC and the regulatory bodies for the Packaging Regulations. We will work with HMRC to continue this work and consider this further.

Our Key Points;

We support the introduction of a tax on plastic packaging containing less than 30% recycled content to encourage the reduction in unnecessary and single use items and to create markets for recycled plastics. In order for the tax to be as ambitious and fair as possible the tax should apply equally to both UK and imported packaging, including transit packaging.

We understand that the recyclability and recycled content of packaging is being considered as part of the modulated fees to be paid under the Extended Producer Responsibility for Packaging reforms. To support this an ambitious approach for the Plastic Tax to encourage increasing recycled content would be to have a sliding scale for recycled content. While the 30% threshold ensures all manufactures are moving towards recycled content to avoid paying a tax, there is no incentive to use more than 30% recycled content and drive towards using 100% recycled plastic.

Once 30% recycled content is met there is no further incentive to prompt businesses to innovate, avoid the use of unnecessary plastic packaging and seek alternative materials where appropriate. It allows manufactures to achieve the minimum standard based on today's methods of production and commercial environment.

To fully achieve the ambition of the proposals, it will be necessary to ensure that the waste collection and processing infrastructure can guarantee the supply of recycled content in sufficient quantity and quality. In order to develop this infrastructure domestically there needs to be sufficient demand for recycled plastic. Having a sliding scale of thresholds would increase this demand help drive the industry further to become a fully circular plastic recycling economy. Other policy drivers, such as separate collection requirements for businesses and bans on single use plastic items in Wales can support this.

The overall aim of the plastic tax is to incentivise the use of recycled content in plastic packaging manufacturing and stimulate markets and demand for recycled plastic. However, it should also be an ambition that it encourages manufactures to make decisions or choices around eradicating unnecessary plastic packaging. Whilst we recognise plastic has its place and use, it should only be used where it is the most appropriate material, taking into account the full life cycle impacts and end of life management costs.

We believe the Plastic Tax can play a role in achieving the aims outlined by Welsh Government in the recent Beyond Recycling consultation to move Wales towards a circular economy. The more ambitious the Plastic Tax the greater impact it will have on the ambitions for Wales, in particular to;

- Become the world leader in recycling
- Phase out single use plastic
- Create the conditions for business to seize the opportunities
- Take full responsibility for our waste

We are content to be contacted by HMRC and Welsh Government in relation to this consultation.