

## CTPA Response to HM Revenue & Customs Plastic Packaging Tax Consultation 14 August 2020

CTPA welcomes the opportunity to comment on the HMRC Plastic Packaging Tax consultation and has submitted responses to previous consultations on this subject.

[CTPA, the Cosmetic, Toiletry and Perfumery Association](#), is the trade association representing the UK's cosmetics industry. [Membership](#) covers 80 - 85% of the UK cosmetics and personal care market by value, and comprises small, medium, large and multi-national companies supplying the UK market. Companies include manufacturers, distributors, ingredient suppliers, contract laboratories, contract manufacturers and own brand retailers. The UK cosmetics and personal care market was worth £9.35 billion at retail sales price in 2019 [1].

500 million people across the EU [2] use cosmetic and personal care products each day, adding to their personal self-esteem and thereby contributing positively to growth and productivity as well as to society as a whole. The innovative and science-led cosmetics industry undertakes vital work on safety, sustainability, and self-esteem and wellbeing.

In the UK and across the EU the manufacture and supply of cosmetic and personal care products is governed by the EU Cosmetic Products Regulation (EU No. 1223/2009) and its amendments [3], hereafter referred to as the Cosmetics Regulation. This Regulation and its amendments are directly applicable in all 28 EU Member States and EEA countries. The Cosmetics Regulation stipulates the requirements for labelling, safety assessment, product notification, good manufacturing practice (GMP) and ingredients for cosmetic and personal care products. The primary objective of the Cosmetics Regulation is maintaining a high level of human safety, and each cosmetic product must be the subject of a safety assessment performed by a duly qualified professional before it is placed on the market. The Responsible Person is responsible for ensuring compliance with all aspects of the Cosmetics Regulation.

The Cosmetics Regulation is enforced in the UK via the UK Cosmetic Products Enforcement Regulations 2013 [4] which specifies the role of the authorities, the penalties and the enforcement process. The Competent Authority for implementing the Cosmetics Regulation in the UK is the Department for Business, Energy and Industrial Strategy (BEIS) and enforcement in the UK is carried out by Trading Standards.

A cosmetic product is clearly defined in the Cosmetics Regulation as:

*“a substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours.”*

The Recitals to the Cosmetics Regulation also provide an indicative list of products that may fall within the scope of this definition:

It is important to note that there is a fundamental safety requirement under the Cosmetics Regulation that stipulates the requirement for each cosmetic product to be the subject of a

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safety assessment performed by a duly qualified professional before it is placed on the market. The safety assessor looks at the individual ingredients, how they are used in the final product and whether the finished product is safe. This evaluation includes the relevant characteristics of packaging material, in particular purity and stability and any potential interaction between packaging and product during the proposed life of the product.

Annex I of the Cosmetics Regulation describes the information that needs to be considered in the content of the Cosmetic Product Safety Report (CPSR). Section 4 provides details with regard to impurities, traces, information about the packaging material:

- The purity of the substances and mixtures.
- In the case of traces of prohibited substances, evidence for their technical unavailability.
- The relevant characteristics of packaging material, in particular purity and stability.

Point 3.4 of Commission Implementing Decision 2013/674/EU on Guidelines on Annex I to Regulation (EC) No 1223/2009 [5] further expands on this.

The requirements of the EU Cosmetics Regulation have been transposed into UK law, forming UK Cosmetics Regulation that will come into force on 1 January 2021

References:

[1] **The Cosmetic, Toiletry and Perfumery Association** "[Cosmetics Industry in Figures](#)" Kantar Worldpanel April 2020

[2] **Cosmetics Europe** "[Cosmetic Products](#)"

[3] L342/59 "[Regulation \(EC\) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products \(recast\)](#)"

[4] Statutory Instruments 2013 No. 1478 "[The Cosmetic Products Enforcement Regulations 2013](#)"

[5] [Commission Implementing Decision](#) 2013/674/EU on Guidelines on Annex I to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products

## The scope of the tax

**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.

**NO.** The definition of 'plastic' is of critical importance. CTPA acknowledges that there is no globally agreed definition of plastic and therefore, CTPA advocates for a definition of plastic which is defined in a scientifically robust manner.

Whilst the revised definition may cover existing plastic packaging materials, going forward it must be remembered that all plastics are polymers but not all polymers are plastic, defining a plastic as a polymer is unscientific. In addition, the proposed definition does not specify that a plastic is a solid material.

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If in the future a cellulose-based chemically modified material or another naturally derived polymer is shown to be biodegradable **under real-life conditions**, the proposed definition does not allow this material any tax exemption. Therefore, it is essential to have a mechanism to update the definition as science progresses.

Similarly, a clear and scientific definition of 'biodegradable' is crucial to include stipulation of a realistic timescale and environment where the degradation takes place.

CTPA disagrees with the notion that novel plastics or blends are likely to be developed 'to avoid the tax'. CTPA considers that legislation should be developed with a view to supporting and encouraging companies innovating less environmentally persistent materials, rather than working on the assumption that innovation will be a negative force seeking to avoid paying the tax.

In respect of mixed-material items, CTPA members have expressed differing views on the predominant material proposal.

One possible consequence of the proposal could be that companies replace a proportion of the plastic fraction with a material more environmentally damaging increasing the overall carbon footprint of a product. Alternatively, as the entire pack ultimately requires recycling, such a proposal might discourage the use of multiple materials that then compromise the recyclability of an item of packaging.

More complex, multi-material packaging might be utilised for cosmetic and personal care products to more safely include post-recycled material, owing to the potential for traces of prohibited substances within the recycled material. This could result in more material being used to incorporate the barrier/barriers, and the multi-material structure is likely to render the packaging unrecyclable based on current recycling infrastructure provisions.

Whilst innovation in novel materials is desired, they must be recyclable and innovation in multi-material packaging, if it is ultimately un-recyclable, is not the desired outcome.

**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.**

**YES.** CTPA welcomes the Government's exclusion of 'repeat use' items from being within scope for the tax as this provides further incentives for developing more sustainable packaging, for instance, the development of re-usable outer packs into which light-weight inserts or godets can be placed.

However, such items should be durable and clearly labelled to ensure the consumer understands they are designed to be re-used multiple times.

**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?**

**YES.** The plastic used to facilitate the transport of goods has a critical role to play in ensuring products can be transported safely and are not damaged. However, both exported and imported transport packaging must be treated in the same way.

**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.

As the association for the cosmetics and personal care products industry, CTPA does not represent the pharmaceutical sector and therefore is not able to comment on this matter.

**Question 5.** Would the proposed exemption cause any market distortion or other unintended consequences? If yes, please provide more details.

**YES.** Whilst not necessarily a market distortion, it is important that CTPA highlights that medicines are not the only products where the protection of human health must be considered, all packaging must be safe and protect the health of its users. In addition, as highlighted in the introduction, there are strict UK regulatory requirements that restrict cosmetic and personal care product manufacturers using recycled plastic content in packaging.

If a multi-material structure were used, such as a functional barrier, to incorporate post-consumer recycled plastic, it could utilise more material and the multi-material structure is likely to render the packaging unrecyclable based on current recycling infrastructure provisions.

CTPA would welcome further engagement with the Government to discuss the specific challenges facing the cosmetics and personal care products industry in incorporating post-consumer recycled plastic in certain items of packaging, particularly where products are applied directly on the skin, mucus membranes or used for oral hygiene.

### Liability for the tax

**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.

**NO.** CTPA recognises that the manufacturer of an item of packaging will understand its composition in terms of recycled plastic content, therefore this seems the most logical place to impose the tax.

However, one unintended consequence of the tax being applied to imported packaging is that this would place UK manufacturers at a competitive disadvantage as they will bear the tax on manufactured packaging regardless of whether it commercially exploited or becomes process waste.

Transparency and contractual understanding are vital throughout the packaging value chain.

**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.

**YES.** CTPA welcomes the Government's approach in considering liability for the tax to rest with the manufacturer of the original packaging and that each item is considered separately.

However, there are concerns that without tax exemptions for items of packaging for which a recycled content of at least 30% is not possible owing to safety implications, this removes

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the option to amortise the tax across a multi-component product. The option to amortise the tax across a multi-component product would also incentivise the inclusion of more recycled content for those components where it is possible, ultimately increasing the total amount of recyclate used.

**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?

**YES.** CTPA welcomes the decision to extend the scope of Plastic Packaging Tax to imported filled plastic packaging that does not contain at least 30% recycled plastic content and supports the Government’s proposed approach to apply the tax to the taxable person on whose behalf the plastic packaging is first exploited commercially in the UK. This ensures UK-based businesses are not put at a disadvantage. However, there are concerns over the level of documentation and verification required by the importer. A longer compliance time may be necessary to ensure the correct information is obtained through the supply chain, which for cosmetics and personal care products can be complex, in particular for small companies and importers.

The Fast-Moving Consumer Goods (FMCG) sectors have developed complex international supply chains with components passing through multiple jurisdictions before a product is finished and sold to the end-user. Transparency and traceability through the supply chain will require additional auditing as well as some form of proof of authenticity in relation to recycled content.

**Question 9.** Do you agree the “consignee” on import documentation is likely to be the taxable person for imports of plastic packaging? In what scenarios might someone else be the person on whose behalf the plastic packaging is commercially exploited?

**YES.** CTPA supports the concept that the ‘importer of record’ should be the person liable for the tax, and in the case of them being an agent, broker or other entity involved only in the customs clearance, then the legal or natural person they are acting on behalf of should be liable.

In an example provided, the liability reverts to an overseas company. If the UK has no authority over tax collection within another jurisdiction and without due diligence by all parts of the packaging value chain, the liability of the tax may fall to an unwitting UK-based company which undertakes the first commercial activity with the packaging.

**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.** CTPA recognises that if packaging is damaged during manufacture it is not liable to be taxed; it has not become a functioning packaging item and there is the opportunity to re-integrate it into the manufacture of subsequent packaging. However, as soon as it is a completed component, fit for commercial exploitation, it should be taxed even it is subsequently damaged, at which point it would fall into the waste management system.

As per CTPA's response to Question 6, one consequence of process waste occurring after extrusion (which would have been taxed) is to competitively disadvantage UK manufacturers compared to overseas manufacturers who only pay tax on those finished items imported.

**Question 11.** Do you foresee any difficulty or added costs with the proposal for the taxable person to incorporate the amount of Plastic Packaging Tax onto the sales invoice, and if so, could this information be provided to customers in any other way?

**NO.** CTPA welcomes the indication by HMRC that inclusion of the amount of the tax on the packaging manufacturer's or importer's sales invoice should become mandatory but that there is no mandatory transparency beyond this point

Transparency and clarity are required, not just to ensure that the tax has been paid by the appropriate party at the appropriate stage of the value chain, but also so that all entities understand the impact of the tax to the overall cost of packaging and a finished product. As the packaging customer may specify packaging requirements, or regulation may restrict the use of recycled plastic content, this will increase the drive for change to more recycled content where it is possible. One option would be to include the statement 'Packaging Tax Included' on the sales invoice.

This information would also form part of the documentation required for tax relief should the goods ultimately be exported.

**Question 12.** Are the proposals for joint and several liability reasonable? If not, please say why?

**NO.** CTPA hopes that this will encourage due diligence. Draft Guidance could include good practice advice to businesses on transparency.

However, as payment of the tax depends on claims about recycled content, the UK Government requires an effective system of independent testing to verify claims made about recycled plastic content. This will also provide the Government with data to prove that the tax is delivering its intended environmental objectives.

Chemical recycling, as it is further developed, will present a significant challenge as there is no way to prove chemical recycled content. However, the use of this material should be encouraged and for a sector that requires a known quality of recycle, such as cosmetics and personal care products, offers a realistic solution that should not be dissuaded.

**Question 13.** Do you envisage any problems with extending joint and several liability to online marketplaces and fulfilment house operators who knew, or had reasonable grounds to suspect that the tax had not been accounted for on sales made through their platform?

**YES.** CTPA hopes that the complexities of supply chains through fulfilment houses and on-line marketplaces would highlight the requirement for adequate enforcement and effective systems to verify claims made about recycled plastic content and ensure fair competition. However, there would be challenges bringing prosecution or sanctions against businesses outside the UK's jurisdiction.

**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?

**NO.** Members of CTPA have concerns over how adherence to this tax would be policed without a methodology to determine actual recycled content and adequate enforcement.

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Even then, if recycled content is derived from chemical recycling, no analytical method would be able to determine whether the source is virgin or recycled or a mixture.

To avoid the tax the use of recycled material will increase dramatically. There is insufficient supply of high quality recyclate which will lead to the unchecked inclusion, intentionally or not, of lower grades of material.

Enforcement should survey all packaging that is subject to the tax so that legitimate businesses are not undermined by those seeking to evade their obligations.

### Excluding small operators ('de minimis')

**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.** CTPA would seek clarification that the planned Extended Producer Responsibility (EPR) system for packaging will have the same ranges of de minimis relating to packaging and reporting.

For many everyday essential personal care products, tiny differences in component costs may distort the market towards producers under the de minimis threshold.

**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.** CTPA would always recommend record keeping as good practice. It will also alert companies as to how close to the de minimum threshold they are, it will help companies understand how much packaging they use and encourage the sustainable use of all materials.

**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.

**NO.** Whilst this might increase the administrative burden of companies, as outlined in its response to Question 16, CTPA would consider this record keeping as good practice.

### Evidence requirements

**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.** CTPA considers that since production lines have continual variables, the actual percentage of recycled material added to the packaging line offers an appropriate method whilst for other operations, the mass balance approach may be preferred.

**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?

**YES.** CTPA would suggest that this underlines the complexities of managing such complex supply chains that span multiple jurisdictions and would require all packaging manufacturers to be required to routinely specify the actual percentage of recycled content in the packaging.

Members of CTPA have concerns over how adherence to this tax would be policed without a methodology to determine actual recycled content and adequate enforcement. Even then, if recycled content is derived from chemical, no analytical method would be able to determine whether the source is virgin or recycled or a mixture.

**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.** The average unit weight for an item of packaging is commonly specified and controlled so CTPA recognises that an overall estimate can be derived from this.

**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.

**YES.** CTPA feels that in the absence of an analytical testing method, the UK Government requires an effective system of independent testing to verify claims made about recycled plastic content. This will also provide the Government with data to prove that the tax is delivering its intended environmental objectives. Members of CTPA have concerns over how adherence to this tax would be policed without a methodology to determine actual recycled content and adequate enforcement.

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

Members of CTPA work to recognised standards of Good Manufacturing Practice which require robust quality checks. Under the Cosmetics Regulation, members are also required to ensure that their packaging meets the relevant requirements for safety. In this regard, members of CTPA will have the highest regard for due-diligence and set a high burden of proof.

Audits would be required as well as appropriate documentation and certificates of compliance.

## Exports

**Question 23.** Are there any observations or issues you can see with the government's proposals to provide relief for exported plastic packaging through direct exports, REPs and tax credits? Please provide details of any alternative methods of relieving exports you would recommend.

**YES.** As outlined in the response to Question 11, CTPA recognises that transparency and clarity are required throughout the packaging value chain by the identification of the amount

of tax paid towards the proposed Packaging Tax for ease of claiming the relief due once the goods are ultimately exported.

Additional complications will result from the point raised in Question 6. Additional processes on packaging manufactured in the UK, occurring after the point of tax can result in a prolonged period before the packaging is a finished item, ready for sale to the packer/filler or final user. This will cause significant complications in administering the relief of tax for exports.

**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.

**NO.** CTPA is keen to continue engagement through the implementation and operation of the tax to further understand how this would work.

**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?

**NO.** As outlined in the response to question 3, the plastic used to facilitate the transport of goods has a critical role to play in ensuring products can be transported safely and are not damaged. CTPA believes that it would be fairer to treat both exported and imported transport packaging the same way.

## Registrations, returns and enforcement

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

**NO.** Extensive awareness-raising activities by HMRC and open dialogue with businesses and trade associations such as CTPA is required in the lead-up to April 2022 to ensure companies understand the technical aspects of this tax.

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

**YES.** CTPA is keen to continue engagement through the implementation and operation of the tax to further understand issues that may need to be resolved as ownership structures can vary with many brands operating as individual entities within larger groups.

**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.

**YES.** Whilst CTPA expects this would be less of a burden administratively, as an association, CTPA does not have enough information on this matter.

**Question 29.** Do you agree that these deregistration requirements are appropriate? If not, please specify why.

**NO.** CTPA is keen to continue engagement through the implementation and operation of the tax to further understand issues that may need to be resolved.

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

**NO.** CTPA is keen to continue engagement through the implementation and operation of the tax to further understand issues that may need to be resolved.

From its membership, CTPA understands that whilst complex, some already have systems and capacity to ensure records are as accurate as required.

**Question 31.** Do you intend to use a third-party agent to help meet your obligations for the tax or are you an agent expecting to provide this service? Would you expect their responsibilities to include filing your returns?

Whilst, as an association, CTPA does not have enough information on this matter, many of our members currently use similar systems to report their responsibilities under current environmental packaging waste requirements.

**Question 32.** Please provide details of the expected costs to your business of registering for the tax, and any expected one-off and on-going costs of completing, filing and paying the return, excluding any expected tax liability.

Whilst, as an association, CTPA does not have enough information on this matter, there will be an extra administrative burden for member companies for registering, compliance, reporting and finance. In addition, training and the employment of skilled personnel will be required to ensure compliance throughout the supply chain as well as additional procurement costs of suitable quality recycled plastic material.

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

CTPA would like to emphasise that this will not be an easy tax to administer and collect owing to complexities in supply chains and the lack of suitable methods of verification and enforcement.

**NO.** Members of CTPA have concerns over how adherence to this tax would be policed without a methodology to determine actual recycled content and adequate enforcement. Enforcement should follow all packaging that is subject to the tax so that legitimate businesses are not undermined by those seeking to evade their obligations. Enforcement should be fully aligned with existing HMRC regimes.

## Understanding commercial practices

**Question 34.** Unless already covered in your responses to other questions within this document or the previous consultation, please tell us about the plastic packaging manufactured or imported by your business and how you think your business would be impacted by the tax, including additional administrative burdens?

## Assessment of impacts

**Question 35.** Do you have any comments on the assessment of equality and other impacts in the Tax Impact Assessment?

For cosmetics and personal care products, packaging has an essential function in protecting the contents from spoiling and therefore protecting the consumer, and enabling the

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consumer to safely store and use the product over time. Cosmetic product packaging must also be labelled with specific legally required information, including a list of ingredients and, where necessary, how to use the product safely.

It is important to note that there is a fundamental safety requirement under the Cosmetics Regulation for each cosmetic product to undergo a safety assessment performed by a duly qualified professional before it is placed on the market. The safety assessor looks at the individual ingredients, how they are used in the final product and whether the finished product is safe. This rigorous evaluation includes the relevant characteristics of packaging material, in particular purity (including analysis for prohibited substances), stability and any potential interaction between packaging and product during the proposed life of the product (including the potential for prohibited substances to leach from packaging to the product). It will be extremely challenging to understand what contaminants may be present within recycled content without extensive analytical testing.

Cosmetics and personal care products are an essential part of daily life for every one of us. 500 million people across the EU use cosmetics and personal care products each day, for everyday hygiene and wellbeing but also contributing to their personal self-esteem.

The UK cosmetic and personal care industry is a responsible industry which is fully committed to reducing its environmental impact. Wherever possible, the industry will innovate and adapt in order to use packaging with a lower environmental impact and which is therefore not subject to the tax. However, the strict safety requirements necessary for cosmetics and personal care products and packaging mean that the detailed composition of the packaging must be known and so in some cases, recycled packaging cannot be used. In such cases, the Plastic Packaging Tax is likely to impact more vulnerable citizens hardest as the costs of adherence to the tax may need to be passed down the packaging value chain.

CTPA would welcome reassurance that additional revenue collected is re-invested to improve initiatives, infrastructure and incentives for local authorities to recover and reprocess plastic packaging in such a way as to maximise the quality and quantity of the resultant recyclate.