

Plastic packaging tax: 'finished' products and exports



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Q I am the tax manager of a UK business which manufactures food packaging. We purchase the raw materials which undergo processing in our plants including injection moulding and extrusion. Some of our products are supplied on for further processing, such as shaping and cutting, whilst others are supplied ready for distribution. End users of our products are in the UK and abroad. Are we subject to the new plastic packaging tax?

A With effect from 1 April 2022, the UK government has introduced the plastic packaging tax (PPT) to incentivise businesses to use recycled plastic for packaging purposes.

Broadly and subject to some limited exemptions, PPT applies to 'plastic packaging components' manufactured in, or imported into, the UK by businesses where such packaging does not contain at least 30% recycled plastic. A 'packaging component' is any product designed to be suitable for use, whether alone or in combination with other products, in the containment, protection, handling, delivery or presentation of goods at any stage in the supply chain (FA 2021 s 48(1)). Such a product will be a 'plastic' packaging component if it contains more plastic by weight than any other single substance (FA 2021 s 48(3)).

'Finished' products

PPT will only be charged on a plastic packaging component if it is 'finished' (FA 2021 s 47(1)(b)). A component is finished if:

- it has undergone its last 'substantial modification'; or
- in the case of a component that undergoes a substantial modification when it is packed or filled, its last substantial modification before being packed or filled (FA 2021 s 47(3)).

A 'substantial modification' is a manufacturing process which changes the shape, structure, thickness or weight of a component. Moulding and extrusion are examples of such substantial modification processes. Other examples include layering, laminating, forming and printing (see the

Plastic Packaging Tax (General) Regulations, SI 2022/117 ('the PPT regulations'), reg 8 and HMRC's guidance on Gov.uk and at bit.ly/3uSEgDT).

However, changes made to a component by the following manufacturing processes are not classed as substantial modifications: (i) blowing or otherwise forming a component from a pre-form; (ii) cutting; (iii) labelling; or (iv) sealing.

Therefore, if your business produces plastic film, for example, then passes it on to the next person in the supply chain to cut it, and that person then supplies it on to the end user who uses the cut plastic film to wrap food, your business will be liable for the PPT. Cutting packaging is not a substantial modification, so the plastic film was 'finished' when you manufactured it.

Your business would also remain liable if the only further substantial modification is part of the packing or filling process. So, if you directly supplied to the end user and they moulded the packaging component into a particular shape, for example to fit a specific food item, but the packaging component was moulded whilst it was being filled with the food item, your business would remain liable for the tax.

On the other hand, if a business after you in the supply chain or the end user substantially modifies the plastic packaging but not as part of the packing or filling process (for example, by moulding it prior to the packing or filling process), that entity will be liable for the PPT, not your business.

Exported packaging

The rules allow for PPT to be deferred, or

for PPT to be claimed back if already paid, if the packaging is exported.

PPT can be deferred for up to 12 months if, at all times since manufacture, your business intends to export the packaging and has written records evidencing this intention (FA 2021 s 51). If the packaging is then exported within 12 months of manufacture, the PPT liability is cancelled. If the packaging is not exported within 12 months or your business decides that it is not going to export the packaging, your business will be liable for PPT from the date it is known that the packaging will not be exported (see HMRC's guidance at bit.ly/37dJCrQ).

If you have accounted for PPT on packaging and you have sufficient records to evidence that it has been exported at a later date, your business can apply for a credit for the PPT it has paid. The credit will be set off against PPT liabilities for the accounting period when it is claimed (FA 2021 s 53 and reg 15(2) of the PPT regulations) or, if the tax credit claimed exceeds the amount of PPT due in the relevant accounting period, the excess should be repaid by HMRC (reg 17 of the PPT regulations). The credit must be claimed within two years of the packaging being manufactured (reg 15(3) of the PPT regulations).

It is important to keep written records evidencing an intention to export (when seeking to defer the payment of PPT) or evidencing that the packaging has in fact been exported (when claiming a tax credit).

Due diligence checks

As your liability for PPT may depend on subsequent processes and/or exports by others in the supply chain, it is important that your business carries out (and keeps records of) due diligence checks to reduce the risk of being involved in a supply chain where PPT goes unpaid (see HMRC's guidance at bit.ly/3LGo8Da). Otherwise, you could be held jointly and severally or secondarily liable for any unpaid PPT (FA 2021 s 59 and Sch 9).

HMRC recommends that due diligence checks should be carried out to establish the integrity of those in your supply chain at least every 12 months. There is no set list of checks, as these will depend on the specific business and supply chain. One example given by HMRC is obtaining written confirmation from your customer that they performed the last substantial modification.

Finally, if you haven't done so already, it is advisable to enter discussions and contract negotiations with those in your supply chain to determine which entity should be liable for the PPT and to include requirements for them to inform you if they make any substantial modifications or export the packaging. ■