

# Tax Alert

## The contribution on single-use packaging made of plastic or multi-material with plastic

12 July 2022



### Did you know that?...

... Upon the partial transposition of the Directive (EU) no. 2019/904, of the European Parliament and of the Council, of 5 June 2019, on the reduction of the impact of certain plastic products on the environment, by the Decree-Law no. 78/2021, of September 24, with the Portuguese State Budget Law for 2021, it was introduced a contribution on single-use plastic (or multi-material with plastic) packaging, in the amount of €0.30 per each package (exemptions and exclusions also foreseen within the law in force).

This contribution is levied per each package, totally or partially made of plastic (or multi-material with plastic) to be purchased in to-go food regimes, e.g., ready-to-eat meals, ready-to-eat meals with take-away (including drive-in) or with home delivery, and also applies for those meals packed in the establishment or in the point-of-sale area.

The entered into force of the contribution (which was postponed and regulated by the Government Ordinance no. 331-E/2021, of 31 December) occurred as of the last 1st of July, being now published the Administrative Ruling ("Ofício-Circulado") no. 35.170, of July 1, aiming to clarify the scope of the contribution on single-use packaging made of plastic, or multi-material with plastic which is due in Portugal mainland upon their release for consumption. Contribution is also expected to apply on single-use packaging made of aluminum, or multi-material with aluminum as of the 1st of January 2023.

Contribution applies on the single-use packaging (or multi-material with plastic) released for consumption by the taxpayers independently of its date of production or acquisition.



To be noted that the technical and legal definitions relevant as for the application of the current regime also result from previous law and guidelines shared by Portuguese Authorities for both VAT and Excise Duty purposes to ensure a full knowledge of the concepts and methodologies under discussion.

### I. Objective scope of application

The production, importation as well as the intra-community acquisition (acquisition from another Member State of the European Union of single-use packaging, including acquisition from the Autonomous Regions of Azores and/or Madeira, triggers the application of the contribution.

It is also important to mention that these instructions apply to all import operations, production, reception, storage, release for consumption, dispatch and export of single-use plastic or multi-material packaging with plastic, which are covered by the following Combined Nomenclature codes ("CN code"), with additional code 1852: 3923 10 90 90; 3923 30 10 00; 3923 50 90 00 and 3923 90 00 00.

### II. Subjective scope of application

This contribution is due by the following economic agents:

- ▶ Portuguese entities (with head-office or permanent establishment in mainland Portugal) that produce or import to Portugal single-use plastic or multi-material with plastic packaging;
- ▶ Entities that acquire single-use packaging from suppliers with head-office or permanent establishment in Azores/Madeira/other EU Member State to Portugal.

As mentioned above, the contribution is levied on the introduction for consumption, even if irregular, of single-use packaging produced, imported or acquired in Portugal mainland.

### III. Main obligations

With the exception of importers who have released for free circulation and for consumption, an authorized warehouse keeper status is required - being the taxable persons of this contribution in charge for all the reporting obligations, even in relation to single-use plastic or multi-material with plastic packaging that they do not own.

With the acquisition of an authorized warehouse keeper status all general obligations arising from such status (among others, registration - new categories and codes have now been created for the contribution's purposes, record and accounting of stock, audits, communication or customs procedures must be accomplished).



Indeed, the production, receipt and storage of single-use plastic or multi-material with plastic packaging can only be performed within a tax warehouse, under the terms foreseen within the Government Ordinance no. 331-E/2021.

In particular, it is worth noting:

- ▶ That the tax warehouses for single-use plastic or multi-material with plastic packaging (under a contribution/tax suspension regime) which can be for production or storage, also apply for single-use plastic or multi-material with plastic packaging coming from another EU Member State, third country (import) or from the Autonomous Regions of Azores and/or of Madeira, as well as those shipped from Portugal mainland.
- ▶ All tax warehouses entries and exits, without release for consumption, (thus, without the contribution assessment as per the cases foreseen in law) shall be mandatorily declared by the authorized warehouse keeper by filling in an electronic declaration of release for consumption (e-DIC. Without the release for consumption, the e-DIC is merely a record document for the registration of all entries and exits from the tax warehouse without the contribution being due.
- ▶ An e-DIC assessing the contribution must be processed, in case of single-use plastic or multi-material with plastic packaging exits from the tax warehouses to acquirers who do not have the authorized warehouse keeper status.
- ▶ The released for consumption of single-use plastic or multi-material with plastic packaging must be formalized:
  - Through the processing of an e-DIC with the contribution assessment;
  - Through the customs import declaration, at the time of import, in case of release for free circulation and consumption. In both cases, the NC codes and the additional Excise Duty code must be identified.
- ▶ The circulation of single-use plastic or multi-material with plastic packaging is also subject to the Portuguese Goods in Transit Regime (approved under the annex of the Decree-Law no. 147/2003, of 11 July) and even the free circulation as foreseen in law of single-use plastic or multi-material with plastic packaging (e.g., without the mandatory assessment of the contribution) shall be mandatorily accompanied by copy of an e-DIC mentioning the tax warehouse of destination of such packaging.

Therefore, the difference between processing an e-DIC with or without the contribution assessment/payment is of great importance. This distinction is made exclusively through the mentioned of distinct identification codes for each of these situations.

In this context, it is important to note that the instructions for completing the e-DIC have not yet been disclosed and should be published shortly by the competent Services.





#### IV. Assessment and Payment

The electronic declaration of release for consumption (e-DIC) with the contribution assessment must be processed, on a quarterly basis, until the 5th day of the month following the end of each quarter of the calendar year in which the releases for consumption took place. In case of import operations, custom's rules for assessment, payment collection and deadlines shall apply as already foreseen within the applicable customs legislation.

As a general rule, the assessment of the contribution shall be notified electronically and automatically notified to the taxpayers, until the 15th day of the month of globalization (month following the quarterly reporting period) in the reserved area of the Excise Duties ("IEC") platform on the Tax and Customs Authority's website ("Portal das Finanças")

The contribution must be paid until the 15th day of the second month following the quarter of the calendar year to which the assessment relates.

#### V. Other obligations and VAT invoicing

It should be also highlighted that:

- ▶ Economic agents subject to this contribution must communicate to the Portuguese Tax and Customs Authorities, until the end of January of the year immediately following the one to which they relate, the amount of single-use packaging produced, imported or acquired, identifying the respective type of material (currently, only plastic or multi-material with plastic) intended for consumption in Portugal mainland.
- ▶ The contribution of €0.30 per package must be itemized on the invoice and contain the following elements: (i) Designation: "single-use packaging"; (ii) The number of units sold/made available and (iii) The amount charged as a price, including the contribution.
- ▶ The contribution is part of the taxable basis, at the standard VAT rate, pursuant to Article 16(5)(a) of the Portuguese VAT Code.



## How can EY help?

Similarly, to other EU Member States, the attention to plastic taxes is increasing in Portugal as well. Consequently, businesses should take the necessary steps to be prepared to comply with the new requirements to avoid significant additional costs.

As a specialized company in rendering professional services in the indirect tax and excise duties areas, EY is qualified to assist in all recent challenges presented to the companies, providing any clarifications and finding the best solutions for any issue regarding the presented topic, namely:

- ▶ Assistance with the preparation and submission of all required reports, documents or other declarations to the competent authorities, as well as, in the fulfillment of annual reporting obligations arising from the current rules in force;
- ▶ Analysis, quantification and supply-chain optimization in terms of the impact and compliance introduced by this Contribution on single-use plastic or multi-material with plastic packaging;
- ▶ Identification and coordination during all stages, including assistance in obtaining the authorised warehousekeeper status or in the appointment of an authorized representative in Portugal as for producers of single-use plastic or multi-material with plastic, as for the cases foreseen in law;
- ▶ Support in the fulfillment of the formal, declarative and payment obligations for the accurate application of the measures disclosed herein.

## For additional information, please contact:



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