

Indirect Tax Alert

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Packaging tax - effective as of 1 January 2008

As from 1 January 2008, a tax is levied on various types of packaging. In this Tax Alert, we are providing you with up-to-date information on the new levy. Our aim is to give you some insight into the possible implications of the tax for your business, although the practical consequences can not yet be overseen in all cases. The new legislation contains concise rules which do not cover all possible situations.

Taxable packaging

The following three situations are involving a tax on packaging:

- Packaging for supplied products, insofar as the packaging is supplied for the first time by a producer in the Netherlands to another party. Hence, this situation only concerns those producers who first supply a product in packaging. It does not concern producers of packaging who supply empty packaging to, for example, producers of foodstuffs.
- Packaging containing products in the case where the importer of a packaged product disposes of the packaging. This situation applies, for example, to the packaging containing raw materials that a Dutch producer obtains from a supplier established outside the Netherlands.
- Packaging designed and intended for filling at a point of sale in the case that the packaging is supplied for the first time by a producer in the Netherlands to another party. This means plastic bags, wrapping paper, packaging for fast food, etc. The situation here only concerns last-minute packaging

used subsequently for certain products. In this case, the tax is levied at the beginning of the supply chain, hence at a point when the packaging has not yet been filled with a product, but the intention is to do this at a later point in the chain.

The tax in the first and third situations will be a levy on producers. The tax in the second situations will be a levy on importers. This Alert discusses below the qualification as producer or importer.

The levy will be waived if the packaging is not in free circulation in the EU and the goods supplied are packaged outside the Netherlands. Refillable packaging (bottles with refundable deposits for example) is taxed only once, when the filled packaging is supplied for the first time in the Netherlands to another party, the idea being to make the reuse of packaging more financially attractive.

Taxpayers

As stated above, producers and importers are liable for the packaging tax. A producer is an entrepreneur as defined in the Dutch VAT Act 1968. The term "importer" refers to entrepreneurs that import products into the Netherlands and dispose of the packaging themselves. It is therefore possible for an enterprise that imports packaged products, disposes of the original packaging and repackages the products to supply them to another party to be designated as an importer as well as a producer, and to be liable for packaging tax in both capacities.

If the importer or producer is part of a group, the group is liable for the tax. The term “group” in this case is used in accordance with the definition of a tax group for VAT purposes. It includes collaborative ventures established on a permanent basis, franchise structures for example. One of the practical implications of this is that, for example, chain stores and supermarkets operating under the same name under a franchise agreement will be designated as a tax-paying group. Needless to say, that this will lead to all sorts of practical problems.

Rates

The rates distinguish between different packaging materials and packaging types. There are three packaging types: point-of-sale packaging, batch packaging and transport packaging. Point-of-sale packaging and the product it contains form a unit, for example, the bottle filled with drink. Batch packaging is the packaging containing a batch of products, for example, the box holding a number of packets of sugar. The third type refers to packaging used for the shipping and loading of products, for example, pallets. The table below shows the initial rates, the expectation being that they will gradually increase.

<i>Material</i>	<i>Rate in euros per kilo of packaging</i>	
	<i>Point-of-sale packaging</i>	<i>Batch and transport packaging</i>
<i>glass</i>	0.0456	0.0160
<i>aluminium and alloys containing aluminium</i>	0.5731	0.2011
<i>other metals</i>	0.1126	0.0395
<i>plastic</i>	0.3554	0.1247
<i>bio-plastic</i>	0.1777	0.0624
<i>paper and cardboard</i>	0.0641	0.0225
<i>wood</i>	0.0228	0.0080
<i>other types of material</i>	0.1017	0.0357

Exemption

Under the new scheme, the first 15,000 kilos of packaging are exempt from tax. In cases where different packaging types or materials are used, a special rule applies. (The exemption is allocated to the different materials and types in proportion to their share of the total weight of packaging.) The exemption has been set at a level such that 98% of

market players will incur no liability for packaging tax. The remaining 2%, which will be liable for the tax (8,000 to 10,000 enterprises), account for an estimated 95% of all the packaging in question. The exemption takes the form of a reduction in the amount of tax to be remitted and applies to all taxpayers. However, this means that companies that are uncertain of remaining under the 15,000 kilos threshold will nevertheless have an obligation to keep a record of how much taxable packaging material they supply or import within the meaning of the legislation.

Levying

The tax will be levied over a calendar year and the tax return will have to be filed within three months of the end of this period. During the year, however, provisional payments of tax will have to be made, based on prior years. How the provisional payments will be determined in the first year of the new tax (2008) is not known at the moment. Companies which are liable to the tax as from January 1, 2008, must make provisional payments in the third and fourth quarter of 2008 of half of the total tax estimated to be due over 2008. In the return to be filed at the end of 2008 (ultimately March 31, 2009) companies must report the actual amounts due over the year 2008.

Administrative obligations

As stated above, the administrative obligations associated with the tax are not known in full detail yet. Our understanding, however, is that it is not intended for taxpayer companies to physically weigh the amount of packaging they use themselves. Instead, an attempt will be made to find an acceptable method for determining the tax liability, based on the accounting records of the taxpayer in combination with data relating to standard packaging used. For example, a company knows that when it sells a batch of 12 units of a certain product, they will be in a cardboard box weighing 200 grams. If the company also records how often it sells such batches, it is relatively simple to calculate the total weight of the boxes concerned that are used in a year. It is clear that such a practical approach does not work in all cases, but we understand that practical solutions can be discussed with the tax authorities.

It will become clear that this the new tax also entails a substantial administrative burden to determine the amount of packaging used (a.o. system changes). We consider that the administrative burden for some companies will cost more than the final amount of packaging tax they have to remit.



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