



## **NILGA response to the HM Treasury consultation on introducing a UK Plastic Packaging Tax**

**10<sup>th</sup> May 2019**

The following response has been prepared in liaison with NILGA office bearers, councils and council technical advisors, and further to policy discussions with relevant industry representatives, government officials and council officers from Northern Ireland, England, Scotland and Wales.

This is one of three consultations, which collectively present a massive change for current waste management practices and council waste activities, particularly the financial aspects of that activity. It presents opportunities as well as challenges, and councils in Northern Ireland are keen to work collectively to ensure local government here has a strong voice at the table as these policies, and the details of these policies are developed.

Any queries in relation to this response should be forwarded to Karen Smyth at NILGA  
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**10<sup>th</sup> May 2019**

### **1.0 INTRODUCTION**

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of the 11 Northern Ireland district councils and is supported by all the main political parties. Waste management (including collection, disposal, recycling and treatment) is a key issue for local government due to the huge impact it has on our resources, economy and environment.

Resource and waste management have potential for job creation, combined with a positive environmental impact through modernising processes and infrastructure. NILGA is pleased to be able to have an opportunity to comment on the Treasury proposals for a Plastic Packaging Tax. We trust that our comments will be taken into account when developing the final proposals, and we are happy for our comments to be made public.

**For further details on this response, please contact Karen Smyth at the NILGA Offices.**  
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## 2.0 GENERAL COMMENTS

NILGA is keen to inform this consultation on a Plastic Packaging Tax, given our member councils' commitment to recycling, their role as the principal domestic waste and recycling provider, and the sizable impact that any change to the current system of packaging producer obligations (including taxes) will have on councils and their waste management services.

Councils in Northern Ireland have been at a disadvantage in responding to this consultation as it was launched as part of a substantial package of consultation documents, in the run up to a Northern Ireland local government election (held on 2nd May 2019). Nevertheless, senior officers from councils and our NILGA Office Bearers have endeavoured to consider the proposals in detail, and have outlined the following:

## 3.0 NILGA POSITION ON A PLASTIC PACKAGING TAX

NILGA broadly supports the government's reasoning for action outlined within the four simultaneous consultations recently issued by Defra and HM Treasury, three of which apply to Northern Ireland. We welcome the government's recognition of the need to deal with plastic packaging waste more effectively, and we broadly welcome measures that incentivise sustainable packaging. We have deep concerns however, about how the policies proposed in these consultations will interact and the potential for unnecessary complexity or unintended consequences if they are implemented together.

**3.1 We are particularly concerned that this HMT consultation may be adding unnecessary complexity and burden and believe that the HMT policy intent may be better addressed through a modulated fee structure within the proposed extended producer responsibility scheme, being taken forward by Defra.**

In the knowledge that government may wish to press ahead with the proposed tax, despite this concern, NILGA would request HM Treasury to consider the following:

- a) Councils in Northern Ireland have invested for decades in improving kerbside recycling, with recycling rates across NI currently between 42% and 54%, with an average of 48.1% (Nov 2018). Any proposal for a new tax must be considered within the context of existing waste disposal systems, the proposed new policy landscape and how the emerging government policies on extended producer responsibility, deposit return and tax interact.
- b) Local government, as the principal domestic, and largest Northern Irish waste and recycling management provider, needs to have an influential role in development of any future tax scheme, to enable planning on investment decisions, mitigation between financial risks, practicalities and national ambitions and addressing potential future changes required by such a scheme.

- c) NILGA is keenly aware of the high levels of cross border activity that occur within the agri-food industry on the island of Ireland and that a number of our larger producers (e.g. Coca-Cola) operate on an all-island basis. This poses some practical challenges, and a UK packaging tax could end up presenting complications for our manufacturers e.g. if there are several border crossings as part of a manufacturer's production activity. It will be essential not to place NI at competitive disadvantage in relation to the Republic of Ireland (which would be particularly problematic when NI is endeavouring to maintain industry confidence during a time of great political uncertainty).
- d) NILGA would encourage HM Treasury, in any practical application of the plastic tax to consider:
- Availability of food grade recycled materials
  - Role of the packaging and technical constraints for recycled content in certain plastics types (e.g. film)
  - Total unit of packaging when measuring overall recycled content
  - Sales packaging

**3.2 We note that there is no mention within the consultation document itself in relation to how any revenues raised may be used, or how these may be applied in the nations with devolved administrations, although a recent HM Treasury presentation on the consultation (21<sup>st</sup> March 2019, Belfast) suggested that future revenues raised would be used to enable investment to address single-use plastics, waste and litter.**

In the knowledge that government may wish to press ahead with the proposed tax, despite this concern, NILGA particularly request HM Treasury to consider the following:

- a) Northern Ireland local government needs to have a seat at the table when the responses to this consultation are being assessed and decisions on a system designed to include Northern Ireland are being taken. This is particularly necessary given the ongoing impasse at Stormont. Local government is open to adjusting and restructuring its waste services in light of government policy, but this needs to be a two-way conversation, in light of what is feasible, effective and desirable locally. It will be particularly important to ensure that a sufficient element of any future tax revenue is hypothecated to assist in dealing with litter and waste management locally and allocated directly to councils. Our experience of other similar taxes – particularly landfill tax – is that tax revenues can disappear into the NI block grant, and even if some money makes it to the relevant department, may not necessarily be allocated to local government despite the vitally important role councils play in the waste management system.
- b) More detailed figures and modelling information would be strongly welcomed, with information specific to each nation, to allow a more informed discussion. Councils in Northern Ireland currently spend more than £43m p.a. on clear up of litter and illegal dumping activity and have 'built-in' reliance on the revenue streams associated with recyclates that may be impacted by this

tax. A detailed Northern Ireland specific cost-benefit analysis would be vitally important prior to unpicking the current system – particularly if this tax, the EPRS and DRS are introduced simultaneously.

#### **4.0 NILGA RESPONSES TO CONSULTATION QUESTIONS**

##### **6 Do you agree with the government’s suggested approach to defining plastic in scope of the tax?**

Yes, using the definition in the draft Directive on Single-Use Plastics which references Article 3(5) of Regulation (EC) No 1907/2006, is justifiable. Clearly, this definition will need to be used carefully alongside the proposed packaging definition to ensure appropriate materials are being targeted.

Any subsequent change to the definition in the draft Directive should be considered for acceptance in the definition of plastic in the scope of the tax, to help ensure consistency and to reduce the prospect of confusion, dispute or subsequent legal challenge.

##### **7 Do you agree with the government’s suggested approach to defining packaging and packaging materials in scope of the tax?**

Yes, basing the definitions of packaging and packaging materials on definitions in the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, and underlying Packaging Waste Directive (94/62/EC) is justifiable as it provides clarity and consistency. This definition has also been subject to due diligence and has also been held valid for over a decade, which reduces the prospect of confusion, dispute or subsequent legal challenge.

Government should test the definition for its use in this new circumstance to ensure that it supports the overall intention of the tax which is to drive markets for secondary plastic material and, in particular, increased demand for post-consumer plastic.

##### **8 Is the government’s approach to components of plastic packaging consistent with the way businesses operate and packaging is created?**

This question requires close consideration to the views and responses of those businesses and organisations involved directly and therefore most familiar with creating packaging with different components. From a local government perspective, we agree with the government’s approach that the tax would address each component as an individual item. This should stimulate integration (horizontal

and vertical) within the supply chain to rationalise this process and take account of resource use considerations. This underlines the need for the tax to be targeted at the point where it can influence initial design considerations and maximise resource efficiency benefits.

**9 Which of the above options for defining plastic packaging for composite material items do you think works better for the purposes of the tax?**

Option 2 would appear to be the best option for bringing the most 'plastic packaging' within scope. Focussing on weight would also be expected to have the benefit of evidencing and auditing mass flow analysis of mixed packing manufacturing more easily. Option 1 would generate a loophole for manufacturers to avoid the tax by lowering the plastic element by the relevant amount and, as such, is unlikely to create significant stimulus when it comes to initial design considerations.

Again, close consideration should be given to the views and responses of those businesses and organisations involved directly as converters to help ensure that the option selected is optimal and capable of sector wide adherence, scrutiny and challenge.

**10 Do you think alignment with the reformed Packaging Producer Responsibility regulations is important for the purposes of the tax?**

Yes, in the context that the measures contained in the tax cannot be incorporated in a new EPR regime negating a need for the tax. Accordingly, considering that with the plastics tax, DRS and a fundamentally new EPR regime, the Government is introducing a whole new range of legislative and fiscal drivers aimed at creating, developing and supporting circular economic models. Alignment is preferable for consistency and to reduce the prospect of confusion, dispute or subsequent legal challenge.

For these changes to work each of the drivers needs to be 'pushing and pulling' in the same direction such that not only do we create markets for secondary markets, but through targeting the tax at the design stage we can influence initial decision making which ultimately should also look at additional packaging modes including reusable and refillables, i.e. moving beyond a recycling / reprocessing mindset.

Ideally, alignment should be achieved by refining or expanding the definition in the Packaging Producer Responsibility regulations (PPRR) rather than weakening any definition in the tax regime. However, if that is not achievable then the tax regime should use the most precise and definitive terms required to ensure its effectiveness and ensure appropriate balance is given to burdens on business with the potential for non-compliant behaviour. Within the wider context this means the Government should not be afraid to move away from absolute alignment with the PPR regulations if the advantages of doing so still result in drivers that also work with the wider changes noted above.

**11 Do you agree with the government’s suggested approach to defining recycled content for the purposes of the tax?**

Yes, subject to the relevant regulatory apparatus being in place we should be looking to support chemical recycling as one of a number of recycling options. Including chemically recycled plastic and other innovative recycling processes in the same category as mechanically recycled plastic will prevent fraud and abuse and will incentivise innovation. It will also make it easier for consumers to make choices across products with claims about origins of recycled content – as there would be no differentiation. Furthermore, due to foreseeable increased demand for recycled content it may be a necessary requirement (possibly in the medium to longer term and particularly if the threshold is increased at a later date) to allow exemption to the tax by helping ensure there is enough recyclable content.

Using the ISO standard 14021:2016 appears to be an attractive solution, as it is an international standard with clear definitions. This means product claims would be consistent across borders and across requirements and could help more easily address issues on the import of products.

The Government’s preferred position is to include pre and post-consumer plastics as part of the recycled content measure. The risk in this approach is that in order to meet the 30% threshold manufacturers prioritise the use of pre consumer ‘waste plastics’ generated in the manufacturing process which by their nature will be cleaner and more readably useable compared to post consumer sources. The consequence of this will be a failure to drive demand for post-consumer plastics. Critical to this point will be the need to understand how much pre consumer plastic is already utilised, as well as how much could be utilised in order to properly understand what, if any, changes in manufacturing behaviour would be stimulated by the tax.

In terms of concerns about encouraging wasteful manufacturing processes, by the inclusion of pre-consumer material as well as post-consumer material in the definition of recycled content, it is worth bearing in mind that unless the tax rate per tonne is higher than the cost of raw product per tonne then this approach would foreseeably drive up the cost of products, as raw material is a cost and evidence already secured shows a clear preference for new, rather than recycled plastic as the vast majority of plastic packaging is currently made from new plastics.

**12 Are there any environmental or technical reasons to consider excluding any particular ways of recycling plastic?**

No. If there is an environmental concern about any alternatives ways of recycling plastic that would be controlled or prohibited through other mechanisms, e.g. permitting or planning regulations. To exclude

ways of recycling plastic creates an uneven playing field and may hamper innovation and deprive business of opportunities.

However, as the tax is also liable on products imported to the UK which may contain recycled content derived in lower regulatory environments careful consideration should be given to any processes where there is genuine grounds for concern, however to adopt a differentiation approach that would apply to material derived from other countries may open up the opportunity for waste crime and fraud in a way that would be hard to identify or prevent.

It is worth considering that such a regime could lead to plastics recycling sourced from mining old closed landfills that contain waste with a high content of heavier plastics, this may or may not be considered a desirable consequence but it is one that would be controlled by other regulatory processes and plastic content recycling from this route should not be discounted as a matter of course.

**13 Is there any way that the proposed approach to defining recycled content could encourage unintended consequences, such as wasteful manufacturing processes?**

We find it hard to believe that modern manufacturing businesses would be wasteful to the point suggested in the question as this would result in increased costs and therefore lost profit. However, under the context of definitions to be included in the final legislative instrument(s) it is important for the Government to ascertain what extent manufacturing businesses already recycle pre consumer plastics that arise as waste from manufacturing.

A worst-case scenario would be a business producing plastic packaging with manufacturing processes that 'waste' 31% of their initial raw material input which is then recycled into the next manufacturing run. By simply changing how they document their processes such a business could claim to be meeting the threshold and pay no tax which in turn makes no contribution to stimulating markets for post-consumer plastics. One possible approach to address such concerns could be to specify a minimum post-consumer plastic content in similar fashion to how glass PRNs are split between re-melt and aggregate.

Not directly linked to this part of the consultation but worth considering, is that where the regime applies to complex packaging, to minimise or avoid the effect of the taxation regime some producers could seek to reduce plastic content in a way that reduces the effectiveness or lifespan of packaging, thereby creating a risk that it would lead to increases in waste. A similar unintended consequence could arise from joint and several liability where alternatives to plastic usage are adopted in parts of a supply chain to reduce exposure to the risk of having to pick up costs. These possibilities are worthy of consideration but as consumers would influence producers' decisions through their choices it is likely that these types of outcome would be limited in time and extent.

As stated in response to question 12 it is worth considering that such a regime could lead to plastics recycling sourced from mining old closed landfills that contain waste with a high content of heavier plastics, this may or may not be considered a desirable consequence.

**14 Do you agree with the government’s preferred approach of a single threshold, and why? If not, what alternative would be better, and what are the risks associated with this? Please explain your answer and provide any supporting information and evidence.**

Yes, a single threshold for all plastic packaging helps ensure a level playing field between manufacturers of different types of plastic and packaging would make the tax simpler for businesses to administer and minimise compliance risks and furthermore would make it easier for consumers to make choices across products making claims about content. This approach will help introduction of the tax and post implementation reviews can always make refinements as necessary based on evidence and experience.

However, detailed consideration should be given to the merit of setting higher thresholds and a mechanism for establishing them (e.g. existing average evidenced content plus 30%) on packaging products where it is demonstrably the case that higher levels than the single threshold being considered are already being reached to ensure that the regime provides a stretch incentive across the sector. This would be a more targeted variation of Option 2 ‘Setting different thresholds for different types of products’ as the principles of its application would be driven by clear association with the recycled content rather than for different types of products.

As an alternative to either a single threshold or multiple bands, serious consideration should be given to the use of and a mechanism for the application of an appropriate tax on all and any virgin material content. One benefit of this approach is that it would incentivize and drive all manufacturers towards continued increases in recycled content in a way which a single threshold does not, as a single threshold is only effective up to the level it is set. Another benefit is that it incentivizes increased recycled content whether the starting position for the recycled content of a packaging product is high, medium or low in a way that is more refined than use of multiple tax bands and without the complications and burdens on business that multiple bands would bring or the additional complexity and administration that setting different thresholds for different types of products would bring; it would also remove the need to revisit thresholds or band rates in the future.

**15 Assuming a single threshold, do you agree with a 30% threshold for recycled content and why?**

Yes, we agree, and the 30% figures reflect the current target set by the UK Plastics Pact. Based on evidence received that the vast majority of plastic packaging is currently made from new, rather than recycled plastic, 30% is a clearly defined and memorable stretch target that can be understood by consumers, converters and those through the supply chain and if it is readily achieved it can be increased further to incentivise change.

The purpose of the tax is to change behaviour as part of an upwards evolution in our manufacturing, resource use and waste management processes which result in a much better overall stewardship of plastics in general. To achieve this the burden that the tax representatives has to result in genuine

consideration at the design of stage of how to design plastic packaging to minimise exposure to the tax as well as look at reusable and refillable alternatives.

The risk of different thresholds is that design / manufacturing efforts become focused on moving to lower tax rate alternatives as opposed to meeting and exceeding the 30% threshold. However, within this we also think there needs to be 'pull driver' in the form of rewards for recycled contents that go significantly beyond the 30% thresholds. For example to encourage ongoing development and innovation in this area for business that can deliver 40% and 50% recycled content levels there should be some form of motivational reward, i.e. reductions in VAT rates for example which will become available to the UK once we have left the European Union.

**16 Are there any products for which it would be very challenging to increase the level of recycled content, and why? If so, please outline the effect of a tax on production decisions and consumption of these items.**

Because it may be a challenge, or in some instances prohibited to include recycled content, should not mean that relevant products should be exempt of tax or attract a lower rate. Applying tax to these items will help justify the development of alternatives where possible, guide consumers to more sustainable alternatives and generate income which can be deployed in ways to offset the effect of raw material consumption in those products or further incentivize the recycling of those products or other items and thereby more generally increase recycled plastic content, e.g. innovation and research funding.

**17 Are there any products for which the use of recycled plastic is directly prohibited in packaging? If yes, please provide details on these products stating the relevant legislation and industry standards as well as the effect of a tax on production decisions and consumption of these items.**

We have no information that would enable us to provide a meaningful response. We would suggest that should not mean that relevant products should be exempt of tax or attract a lower rate in line with our reasoning to Q.16.

**18 and 19 – NILGA has no response to make to these questions**

**20 Do you agree with the government's suggested approach of setting a flat rate per tonne of a plastic packaging product? Why?**

Yes, we agree.

Charging a flat rate per tonne appears preferable, is easier to measure, evidence and audit and is more likely to drive innovative design away from new plastic content. To keep the regime easy to enforce and administer and for easier understanding by consumers the flat rate should apply across all polymer types and all products whether they can include recycling content easily or not or where recycled content may be prohibited.

Aligning with the general approach used in the PPR Regulation will also make administration of the tax easier. It will make analysis of how well drivers from the plastics tax, DRS and EPR are aligned easier as well. A simple and transparent approach will aid introduction of the tax and will leave scope for evolving the tax as evidence accumulates with experience of its implementation.

**21 Do you agree with the proposed points at which domestic or imported products would be liable for the tax? If not, at what point in the supply chain do you think the tax point should be and why?**

Yes, we agree although issues around imported packaging should be monitored closely at implementation as interpretations may vary. Clarity in communicating how the tax works will be important.

The proposed points seem logical and in the case in plastic packaging manufacture with multiple stages, we support option 2 which is consistent with the tax point for imported packaging. Consideration should be given to the views and responses of those businesses and organisations involved directly and therefore most familiar the logistics required for the regime to work effectively without creating an excessive burden or system that could be open to abuse and fraud.

**22, 23 and 24 – NILGA has no response to make to these questions**

**25 Would you support extending joint and several liability for UK production, and for imports?**

Yes, this level of accountability strengthens the taxation regime, reduces opportunity for fraud and evasion and would elevate the degree of due diligence and quality of data reporting through a supply chain although this would be at an additional cost. Through the supply chain joint and several liability may have the added benefit of encouraging joint working and the development of alternatives to plastic usage to reduce exposure to the risk of having to pick up costs or of reducing the liability where a part of a supply chain collapses.

However, there is a risk that where supply chain processes collapse the burden could then fall on companies that are not financially strong enough to meet the cost at a point where it becomes due, particularly if a liability is accrued and then passed on in full. Therefore, to protect small businesses an appeal fund could be used that was ring fence funded from the tax income generated and principles for its application established.

**26 Please outline any issues in relation to routine wastage or spillage that may have an impact on the tax liability.**

Neither routine wastage nor spillage should affect tax liability. Such exemptions would create loopholes and may allow abuse and or tax evasion. Applying tax in these situations would incentivize waste reduction and spillage prevention.

As noted above it is important in design of the tax to understand to what extent plastics that become waste in the manufacturing cycle are themselves recycled. Minimal levels are to be expected and should not impact on the objectives of the tax. However, if such recycling levels are already in the region of the 30% content threshold then the tax in such circumstances will do little to drive demand for post-consumer plastics. As such the Government may need to specify minimum percentages for the use of post-consumer plastics that contribute to the overall 30% threshold.

**27 Do you agree with the government's initial proposal that the tax at import should only apply to unfilled packaging? If not, what would the effects be? What alternative would you prefer and how would it work?**

No, we remain to be convinced that the tax at import should only apply to unfilled packaging as this would seem to leave UK manufacturers at an unfair disadvantage. There is a risk to UK based businesses of a shift towards importing products that would previously have been produced in the UK, so that they could be imported pre-packaged and thereby gain a competitive advantage by avoiding a tax. To address this we would urge the Government to include within the enabling legislation that after a certain date, i.e. a sufficient lead time to allow commercial conversations to take place, UK importers of such goods will not be allowed to import finished goods in packaging that doesn't contain 30% recycled content.

**28 Do you agree with the government's suggested approach for crediting exports?**

Yes, the approach presented in the consultation appears to be justifiable. However, greater merit should be given to the views and responses of those businesses and organisations involved directly with exports and therefore most familiar with the practical and cost considerations.

**29 Do you foresee any difficulties in providing appropriate records to demonstrate that packaging has been exported?**

Yes, a change of this scale across a sector in relation to a new burden is foreseeably going to generate difficulties and those are best articulated by businesses and organisations involved directly with exports and therefore most familiar with the practical and cost considerations.

**30 Do you agree that the government should seek to exclude small operators? If yes, what would the risks be if the government did not do this?**

Yes, this seems reasonable but at a level much lower than the current producer responsibility packaging regulations de minimis.

If Government did not exclude small operators this would, amongst other things, increase the likelihood of small and specialist and niche businesses failing, of agglomeration of small companies and buy outs leading to the prospect of regional biases for processes developing, mean that issues of joint and several liability may put too large a potential burden on small businesses that would have to secure bonds or allocate resources to address a risk, stifle the innovation that many small companies bring by eroding at their margins to a disproportionate effect thereby restricting funds for product development and growth.

Safeguards should be put in place to prevent deliberate fragmentation of the supply chain as a means of falling within the de minimis threshold. An alternative would be to set a lower rate of tax to such organisations, so they are at least exposed to the same drivers for behavioural change. However, we do recognise that risks around fragmentation in pursuit of lower tax liabilities would still be an issue for the Government to address.

**31 Would Option 1a, Option 1b or Option 2 best meet the government's objective of excluding small operators from the tax whilst ensuring the tax has a strong environmental rationale?**

It appear that Options 1b is preferable from the perspective of protecting small businesses as it takes in to account not just the volume of material but also the turnover, this is the approach used in the Packaging Producer Responsibility system which means it is tried and tested in principle, so any lessons learned from that process should be factored in to decisions made on the approach to relief from this tax.

However, this does require another type of information to be provided, i.e. financial, which introduces an additional burden to those participating and administering the regime and introduces the possibility of accounting methods being used to gain tax relief.

**32 What factors should the government consider when setting a threshold (either on volume or turnover) or a relief? Do you have any suggestions for appropriate levels? If so, please provide an explanation for why you believe this is appropriate.**

Full alignment with any changes made to the Packaging Producer Responsibility system in relation to businesses annual turnover and handled tonnes of packaging a year should be considered. This consistency across a sector makes it easier to ensure that any future changes across government are also made in a joined-up way as is being achieved through the concurrent consultations in 2019.

**33 Would having a de minimis create any significant risks to the effectiveness of the tax at import (including, but not limited to, treatment of multiple imports from the same exporter/manufacturer/brand owner)? If yes, please provide evidence and suggest any additional legislative or operational countermeasures.**

It does create a risk which could be significant if it is not regulated and audited, however it may be the case that the lower the de minimis the lower the chance of this happening becomes, because the additional burden of significant disaggregation / fracturing of an operating entity or supply chain would in itself introduce additional burdens that would probably not outweigh any perceived gain of tax avoidance.

**34 Do you anticipate any risks or issues that would arise from introducing a de minimis that aren't explored above? Please provide details.**

We have no information that would enable us to provide a meaningful response.

**35 Do you agree that the registration and reporting requirements outlined are appropriate? If not, please specify why.**

Yes, the way the approach is presented in the consultation appears to be justifiable.

**36 Please provide details of the estimated one-off costs for registering with HMRC.**

We have no information that would enable us to provide a meaningful response.

**37 Please provide details of the expected one-off and on-going costs of completing, filing, and paying the return.**

We have no information that would enable us to provide a meaningful response.

**38 Is the government's suggested approach to compliance proportionate and appropriate? If not, please outline any scenarios that you anticipate may require bespoke compliance powers or penalties?**

The description provided appears proportionate and appropriate at strategic level but as there is no detail it is not possible to say how effective the system would be in delivering on those principles at this stage.

Powers of inspection, sampling and auditing of suppliers of raw materials and suppliers of recycled plastic should be provided for, so that where there are concerns and / or issues in dispute analyses can be performed at a chemical level to justify or disprove claims.

Consideration should also be given for a frequency of inspection and/ or audit proportionate to the scale of the operation to prevent fraud at scale, albeit that this detail may well feature in the forthcoming technical consultation. These are themes that should probably feature in the technical consultation that will follow.

Finally, and in common with the NILGA responses on DRS and EPR, the Government needs to ensure that any additional regulatory burden arising from these proposals is adequately resourced in terms of both skill set and capacity.

**39 Are our anti-abuse proposals sufficient to tackle the risk of fragmentation (abuse of the de minimis or universal relief) from UK based plastic producers?**

Yes, from the way the case is presented it appears so, unless there are concerns within HMRC on the effectiveness of the 'connected persons' principle as applied in other parts of the taxation regime. The lower the de minimis the lower the chance of fragmentation becomes, because the additional burden of

significant disaggregation / fracturing of an operating entity or supply chain would in itself introduce additional burdens that would probably not outweigh any perceived gain of tax avoidance.

**40 Is our approach regarding assuring the accuracy of declared recycled content appropriate? If not, please share any other suggestions you may have.**

It is stated that 'It may be less straightforward to evidence the level of recycled content in imported plastic packaging' and that will be exactly the case and HMRC needs to further consider ways of ensuring the compliance of importers, including the option of using UK based agents for non-established taxable persons. It may be that those operators and organisations closest to this part of the process will provide helpful responses to the consultation, if that isn't the case or there is conflicting views HMRC should consider working with focus groups to get a deeper understanding of issue and the merit of differing solutions.

In lieu of an alternative and as yet undefined approach NILGA supports the idea that a lack of appropriate document should result in the tax being applied. However, as with all Government initiatives to support the enabling legislation the Government will need to undertake a comprehensive information and education programme to make sure that all relevant businesses and trade organisations within the packaging / manufacturing sector are well aware of the changes including when the tax is first due.

We would further suggest that such comms initiatives are rolled out well in advance to signpost how the tax will work so that relevant business can start to consider and implement the necessary changes well in advance.

**41 Do respondents believe that using UK based agents for non-established taxable persons may help support compliance?**

Yes, it may. However, to remove potential for fraud by UK based agents representing non-UK established taxable persons the regime would have to be highly controlled and regularised and penalties for breaches would have to be onerous.

**42 Are there any further compliance risks that have not been addressed in this chapter, please provide details?**

The compliance risk of substitute materials (i.e. fraudulent introduction to the system of materials as 'recycled' when they are derived of virgin material and have just been processed) has not really been addressed in terms of how such cases would be proved one way or another.

Also changes of recycled content with time and over a tax year are likely and yet not really addressed. For example, to avoid a tax cost for a year recycled content could be ramped up in one period of that year in products that would then be sub-standard and could then be sold on (possibly at minimal or nil cost) for disposal or even bought as a fuel.

These issues need to be addressed in how regulation and enforcement of the tax is delivered.

#### **43 to 52 - NILGA has no response to make to these questions**

#### **53 If you manage waste, how long would it take you to set up the systems required to supply more plastic waste for recycling/recycle more plastic? How much could you produce?**

Councils collect plastics at either the kerbside and or at Recycling Centres and or via bring banks in various combinations. To supply more plastic for recycling via these routes would currently be an extra financial burden for local authorities involving additional costs including collection, processing and communications costs.

Not all plastics are currently targeted for recycling due to the impracticalities of dealing with them or the lack of sustainable and viable markets, meaning systems change would be required at a fundamental level which does require a strong connection with the possible changes to producer packaging responsibility and the significant increase in funding provided to councils.

#### **54 and 55 - NILGA has no response to make to these questions**

#### **56 Unless already covered in your responses to other questions within this document, is there anything else you would like us to note about the impact of the tax, especially any potentially adverse impacts on groups with protected characteristics?**

If councils are left to pick up any additional burdens as a consequence of a tax regime without adequate funding then any changes could indirectly affect any group with protected characteristics where any council is then forced to make consequential decisions about funding services due to their reduced ability to continue funding existing services to groups with protected characteristics.

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