

Plastic Tax: main features, recent changes and deferral of entry into force

The **Budget Law 2021** postponed to **July 1, 2021** the entry into force of the **Plastic Tax**, a tax on consumption of plastic products with a single use. The new Law also widened the range of subjects required to pay the tax, it raised the minimum amount to be paid, as well as extended control attributed to the Customs Agency and reshaped the penalty regime in case of violations. Assonime (the Italian association of joint stock companies) on March 3rd, 2021 issued Circular no. 5, providing initial clarifications on this matter and highlighting regulatory gaps and administrative uncertainties, as well as doubts regarding the EU framework.

Main features

Plastic Tax, introduced by **Budget Law 2020** according to **European Directive no. 2019/904** – which application was already postponed to January 1, 2021 as a result of the provisions of the Italian so-called “Decreto Rilancio” – is aimed at **disincentivizing the use of products made of plastic material** through the application of a **new tax on "single-use plastic" (MACSI)** used for the containment, protection, handling or delivery of goods or food products.

The new discipline aims at rewarding virtuous companies, operating in the MACSI industry, that will work for a technological adaptation dedicated to production of compostable products, recognizing them a tax credit.

The Plastic Tax is not applied to the above mentioned compostable products, medical devices and items used to contain and protect medicines.

The **Budget Law 2021** includes in the definition of **semi-finished MACSI** the **preforms**, i.e. the products obtained from the molding of PET suitable to become bottles or containers for beverages, through a special blowing process.

Subjects

The subjects to whom the plastic tax is addressed are: the **manufacturers of MACSI** produced on the national territory, the **purchasers of MACSI** coming from other EU countries in the exercise of economic activity and the **importers of MACSI** coming from other third countries.

The most recent regulatory provisions included among taxable parties also the **buyers**, i.e. subjects, resident or non-resident, who are involved in the sale of MACSI, produced by other national subjects in manufacturing plant.

Scope of application

The Plastic Tax is set at **€ 0.45 per kilogram of plastic** contained in MACSIs.

From an operational point of view, the **tax obligation** arises when the production takes place or when the disposable plastic is imported in Italy. The **tax becomes payable** when the MACSIs are released for consumption in national territory.

Plastic Tax must be included in a **quarterly return to be filed to the Customs Agency** by the end of the month following the calendar quarter to which the return refers.

The tax must be paid by the end of the month following the calendar quarter to which the return refers, by means of an F24 tax form, allowing the taxpayer to offset the payment due with other tax liabilities and with a **minimum amount** originally set at **€ 10.00**, now raised to **€ 25.00** (below which the quarterly return to Customs Agency and the payment obligation are no more consistent).

Recent regulatory amendments also stated that the **fiscal representatives**, in case of appointment by non-resident subjects, are **jointly responsible** with the producers of MACSIs for the payment in question.



Tax credit

The Plastic Tax regulation also provides for a **tax credit** equal to the **10% of the expenses incurred in 2020** (from January 1st to December 31st, 2020) for technological interventions aimed at the **production of compostable products**.

The tax credit is granted up to a **maximum of € 20,000.00** for each beneficiary and **can only be used to offset tax payment** within the overall threshold of 30 million euro fro FY 2021.

Lastly, the tax credit must be **indicated in the tax return for the fiscal year** in which the granting measure is set forth and in the subsequent tax periods, until the credit is fully used.

Penalty regime

For breaches related to plastic tax, the former regulation provided for a specific penalty regime, as set out below:

- in the event of **non-payment**, a penalty of between **two** and **ten** times the amount of tax omitted is due, and in any case not less than **€ 500.00**;
- in the event of **late payment**, a penalty of **30% of the tax due** is applied, and in any case no less than **€ 250.00**;
- in the event of **late submission of the return**, the penalty due ranges from **€ 500.00** to **€ 5,000.00**.

The 2021 Budget law provides a general mitigation of the penalty regime for **Plastic Tax breaches**:

- in the event of **non-payment** a penalty ranging from **two to five times** the tax due will be applied and in any case not less than **€ 250.00**;
- in the event of **late payment**, the penalty is equal to **25%** of the tax, with a minimum of **€ 150.00**;
- in the event of **late submission of return** and for any other violation, an penalty in ranging from **€ 250.00 to € 2,500.00** is applied.

The **Italian Custom Agency** is allowed to use of the powers set forth by art. 18 of Legislative Decree no. 504/1995 in carrying out the control activity.

Other provisions on use of recycled PET

The Budget Law 2021 confirmed, from FY 2021, the measures aimed at encouraging the recycling processes of polyethylene terephthalate (PET) used in food packaging. This provision was included in the so-called “August Decree”, and its application was mentioned only for experimental purposes, for FY 2021.

Therefore, starting from **January 1st, 2021** it is possible to use **entirely recycled PET** in the production of bottles, provided that the requirements set forth by art. 13-ter of the Ministerial Decree of Health dated March 21st, 1973 are met.

Application uncertainties with respect to the EU framework

With **Circular no. 5 of March 3rd, 2021**, Assonime has given some preliminary clarifications regarding the recent amendments made to the Plastic Tax regulations.

First of all, it is pointed out that the inclusion of **semi-finished products** in the scope of application of the tax has considerably complicated the identification of taxable products, since the semi-finished product, by definition, is not always referable to a clearly identifiable finished product.

However, according to Assonime, the reference to **preforms** seems to presuppose that the semi-finished products to be taken into account for the purposes of the tax are those already identifiable as MACSI, and do not include those that can be transformed both into MACSI and into products of another kind.



With reference to the inclusion of **customers** in the list of taxable subjects, Assonime has ascertained that this change excludes the passive subjectivity of the companies that materially manufacture the products. Otherwise, there would be a duplication of tax.

Assonime has also pointed out that doubts remain as to what should be meant by MACSI "obtained on its behalf in an industrial production plant": the rule certainly includes cases in which the goods are made pursuant to a specific agreement, but it is not clear whether it also includes cases in which the supply can be traced back to a purchase and sale agreement.

With reference to the appointment of a **fiscal representative** for the purposes of the tax payment by non-resident subjects, Assonime observed that the EU Court of Justice has often held that the obligation to appoint a representative for the fulfilment of tax obligations can be deemed as a restriction on the free movement of capital, which is in contrast with EU standards.

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