

Towards a plastic-free economy: the Italian plastic tax

Verso una economia libera dalla plastica: la tassa sulla plastica in Italia

di Erika Scuderi – 7 aprile 2021

Abstract

The fight against plastic waste has never been as high on the European and Italian agenda as it has been in recent years, and this is clearly demonstrated by the various measures recently adopted to promote the progressive reduction of single-use plastic products and their disposal in the environment. On the one hand, from 1 January 2021, the EU has introduced a New EU Own Resource calculated on the weight of non-recycled plastic packaging waste generated by Member States. On the other hand, from 1 July 2021, the Italian Plastic Tax introduced with the Budget Law 2020 is expected to enter into effect. Despite the draft implementing provisions shared by the Customs Agency on 18 February 2021, many grey areas and uncertainties remain.

Keywords: *Plastic Tax, MACSI, Environmental Taxation, EU own resources, 2030 Agenda*

Abstract

L'impegno nella lotta ai rifiuti plastici non è mai stata così in primo piano tra le priorità politiche europee e italiane come negli ultimi anni, come dimostrato dalle diverse misure recentemente adottate a seguito di lunghi studi per promuovere la progressiva riduzione dei prodotti in plastica monouso e il loro smaltimento nell'ambiente. Da un lato, a partire dal 1° gennaio 2021, l'UE ha introdotto una nuova risorsa propria calcolata sul peso dei rifiuti di imballaggio in plastica non riciclati generati dagli Stati membri. Dall'altro, dal 1° luglio 2021 è prevista l'entrata in vigore della Plastic Tax italiana introdotta con la Legge di Bilancio 2020. Nonostante la bozza delle disposizioni attuative condivise dall'Agenzia delle Dogane il 18 febbraio 2021, rimangono numerose incertezze.

Parole chiave: *imposta sul consumo di manufatti in plastica, MACSI, Plastic Tax, risorse proprie dell'Unione europea, fiscalità ambientale, Agenda 2030*

TABLE OF CONTENTS: 1. Introduction - 2. The International and European framework - 3. Focus on the New EU Own Resource - 4. Italian plastic tax: legislative framework and uncertainties - 5. Customs Agency draft provisions: are they enough? - 6. Lights, shadows and final remarks.

1. "While some might regard the global rise of plastic as a fantastic economic success story, others see an environmental tragedy" (ROLAND G., *Earth and Plastic* in PHILIPPE T. (ed.), *Earth 2020: An Insider's Guide to a Rapidly Changing Planet*, Cambridge, UK: Open Book Publishers, 2020, <https://doi.org/10.11647/OBP.0193>). The versatility of plastic in our economy and our reliance on such material are unanimously recognised (e.g., in its use for packaging, insulation materials and biocompatible plastics), but the way it is produced, used and disposed of has extremely harmful effects on the environment. According to researchers, between 1950 and 2015, the cumulative generation of plastic waste (primary and recycled) amounted to 6,300 million metric tons: of these, only 9% have been recycled (GEYER R. - JAMBECK J. - LAW K., *Production, use, and fate of all plastics ever made*, 2017, *Science Advances*, 3). It should also be considered that plastic packaging accounts for nearly half of all plastic waste globally, and much of it is thrown away right after the product is purchased (UNEP, *Single-Use Plastics: A Roadmap for Sustainability*, 2018). In the European continent, 80 to 85% of marine litter found on shores is made up of plastics, but the millions of tons of such waste that end up in the oceans each year are only the most visible and alarming sign of the problem. Over the last decade, the attention to environmental protection and biodiversity conservation has become high on political agendas. The urgent need to address environmental issues surrounding the production, use and consumption of plastics has led to the introduction of several international, European and domestic measures.

2. At the international level, the increased sensitivity stemming from the awareness of human activities' harmful effects on the environment led to the United Nations Organization's ("UN") *2030 Agenda for Sustainable Development*. With 17 Goals and 196 targets, the UN proclaimed its determination to protect the planet from degradation through sustainable consumption and production, sustainable management of natural resources and by taking vital actions to combat climate change to support the needs of the present and future generations. In particular, even though plastic pollution is not the main topic of any of the 17 Goals, SDG target 14.1 is often referred to when addressing this theme where it reads: "By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution".

At the EU level, the long-standing pledge to make all plastic packaging recyclable resulted in the adoption by the European Commission ("EU Commission") of an Action Plan for the Circular Economy in which it commits to the development of a "strategy addressing the challenges posed by plastics throughout the value chain and taking into account their entire life-cycle" (COM(2015) 614 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Closing the loop - *An EU action plan for the Circular Economy*. Brussel, 2.12.2015). In this context, the European Parliament ("EU Parliament") and the Council of the European Union ("Council") adopted Directive (EU) 2019/904 to prevent and reduce the impact on

the environment of certain plastic products and to promote a transition to a circular economy (Directive (EU) 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).

Finally, in implementing the aforementioned Directive, Italy introduced a tax on the consumption of single-use plastic items ("MACSI") but, due to economic constraints caused by Covid-19, its enactment has been postponed to 1 July 2021 ("Italian Plastic Tax"). The (net) revenue from the Italian Plastic Tax was estimated to be just under Eur 470 million for the year 2021 and Eur 290 million for 2022 (Dossier 2020 Italian Budget Law, *Profili finanziari* – A.C. 2305, p. 437).

In light of the first reactions against the Italian Plastic Tax, which was at first seen as a duplicate of the newly introduced national contribution to the EU budget (the "New EU Own Resource") leading to double taxation, it is worth stressing their substantial difference. While the first one is a domestic fiscal measure to be paid by specific taxpayers on the weight of virgin plastic items **produced**, the New EU Own Resource is linked to non-recycled/recyclable **plastic waste generated** by the Member States and is paid by them.

3. More in detail, in December 2020, the Council adopted a Decision through which rules on the allocation of own resources to the Union were laid down, and the New EU Own Resource was introduced (Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom).

The New EU Own Resource will be proportional to the weight of non-recycled plastic packaging waste reported each year by each EU Member State, calculated as the difference between (i) the weight of the plastic packaging waste generated in a Member State in a given year and (ii) the weight of the plastic packaging waste recycled in that year determined pursuant to Directive 94/62/EC.

The national contribution amount shall be defined by applying a call rate of Eur 0.80/kg to the weight so determined (with a downward adjustment for the Member States with a GNI per capita below the EU average as of 2017).

The New EU Own Resource should incentivise the Member States to reduce plastic waste streams and contribute to the achievement of plastics strategy's objectives and a circular economy. As the EU Commission pointed out in its Proposal (EU Commission, COM(2018) 325 final 2018/0135 (CNS), Bruxelles, 2/5/2018), this measure does not create any new tax for EU citizens. Indeed, the EU does not have the power to levy taxes, and the introduction of new categories of own resources fully respects national fiscal sovereignty (Proposal, para. 1.3 'Proposal for a Reform of the Financing System: addressing EU economic and environmental Challenges').

According to the subsidiarity principle, the Member States are free to adopt the most appropriate measures to achieve the objectives set. In this respect, although they may decide to pay the New EU Own Resource from their national budget, it is expected that some States will impose a new form of tax on plastic packaging products,

potentially leading to different regimes within the EU. To date, six EU countries have already introduced taxes on plastic waste (i.e., Denmark, Hungary, Latvia, Slovenia, Sweden and The Netherlands), four EU countries – plus the former member, the United Kingdom – announced the introduction of taxes on plastic waste (i.e., Greece, Ireland, Italy and Spain) and ten EU countries are currently discussing about the introduction of such taxes (i.e., Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, Germany, Lithuania, Portugal and Romania). In light of the above, it would be desirable to evaluate a potential common solution to avoid the overlapping of various administrative, tracking, reporting, and economic burdens.

According to an EU Commission estimate, the New EU Own Resource is expected to finance the EU budget for approx. Eur 7 billion in the period 2021-2027, i.e., 4% of total resources (Proposal, paras 3.3 and 3.4. ‘*Estimated Changes in the Structure of EU Financing by 2027*’). It should be noted that since this measure constitutes an own resource entered in the budget of the Union – and it is not an extraordinary and temporary additional mean to deal with the consequences of the Covid-19 crisis referred to in Article 5 of the Decision –, the revenue collected will be used to finance all expenditures entered in the EU’s annual budget without specific constraints.

4. Different in nature and scope from the New EU Own Resource, the Italian Plastic Tax has been introduced by Article 1, paragraph 634 of Law No. 160 of 27 December 2019 (“**2020 Italian Budget Law**”). Due to the unprecedented economic conditions caused by the Covid-19 pandemic, Law Decree No. 34 of 19 May 2020 (setting forth urgent measures regarding health, support for work and the economy, as well as social policies related to the epidemiological emergency caused by Covid-19) postponed its entry into effect to 1 July 2021.

The **tax obligation** arises in connection with domestic production, final importation from non-EU countries or introduction into Italy from other EU countries of MACSI. The tax is due at the time of release for consumption of the MACSI in Italy.

The **objective scope** includes single-use plastic items that are: (i) composed in total or in part of organic polymers of synthetic origin; (ii) have or are meant to have the function of containment, protection, manipulation or delivery of goods or foodstuffs; (iii) are not conceived, designed or placed on the market to perform several transfers during their life cycle or to be reused for the same purpose for which they were conceived. The tax is also applied on items made of plastic materials that allow the closure, sale and presentation of other MACSIs and semi-finished products made from plastic used to produce MACSIs. In order to provide clarifications with respect to the (unclear) objective scope of the tax, Law No. 178 of 30 December 2020 (“**2021 Italian Budget Law**”) stated that plastic preforms are included within the definition of ‘semi-finished MACSI’ (Article 1, paragraph 1084 of the 2021 Italian Budget Law). On the contrary, MACSIs that are compostable according to UNI EN 13432:2002 provisions, medical devices, MACSIs used to contain or protect medical formulations and MACSIs deriving from recycling processes, do not fall within the scope of the Italian Plastic Tax. This provision makes the accurate description of plastic good's

composition crucial in order to define whether or not and on which part of the item the Italian Plastic Tax is due.

The **tax** amounts to Eur 0.45/kg of MACSI.

The **person liable to plastic tax** is: (a) when the MACSI is produced and sold in Italy, the producer (unless the manufacturer produces MACSI by using as raw material or semi-finished products other MACSI on which the plastic tax is paid by another person, without the addition of other plastic materials referred to in Article 1, para. 634) or, as per the 2021 Italian Budget Law, the person that intends to sell the MACSI produced on its behalf in an Italian production plant (e.g., tolling agreements); (b) the acquirer or the importer when MACSI items come from the other EU Member States or third countries; (c) any seller of plastic items when a private consumer purchases goods from another EU Member State. The appointed tax representative is jointly liable with the non-resident person for the plastic tax due. The tax structure is now more consistent with the MACSI production value-chain and partially overlaps with the sugar tax design, simplifying procedures for economic operators and the Customs Agency responsible for the tax assessment.

The **plastic tax return** shall be submitted to the Customs Agency by the end of the month following the calendar quarter to which the tax return refers. The tax due shall be paid by the same deadline. For the **late filing of the plastic tax return**, an administrative penalty from Eur 250 to Eur 2,500 shall apply. The Customs Agency has recently released three different draft plastic tax return forms to be filled respectively by manufacturers (Forms A1 and A2), sellers (Form B), buyers and intra-EU sellers (Form C).

According to Article 1, para. 641, the tax due is **assessed** based on the abovementioned quarterly tax returns reporting all the elements required to determine the payable amount. Audit activities are performed by the Italian Customs Agency and the Tax Police.

Failure to pay the tax is punished with an administrative penalty ranging from two to five times the tax evaded, but not less than Eur 250. In case of **the tax's late payment**, an administrative penalty equal to 25% of the tax due, but not less than Eur 150, shall apply.

The legislative framework described so far has some grey areas.

For example, according to the 2021 Italian Budget Law, the Customs Agency should set criteria for determining, even on a flat-rate basis, the quantity of MACSI contained in imported goods. In this respect, uncertainties may arise with regards to mixed products or goods sold without detail on the weight of the plastic not recycled and not recyclable (See SANTACROCE B., *Il nuovo prelievo della plastic tax ad alto impatto nei cicli aziendali*, in *Norme&Tributi*, 22 January 2021, 21).

Furthermore, it is also doubtful whether the concept of “supply” as a taxable event, according to para. 639 of the Italian 2020 Budget Law, is related to the invoicing or delivery of the goods.

Besides, where the amount of tax due is not exceeding Eur 25, the plastic tax does not apply, and the plastic tax return shall not be submitted. In such a case, since the tax

assessment is based on these quarterly tax returns reporting all the elements required to determine the payable amount, it is uncertain how the Customs Agency should verify whether taxpayers correctly calculated the weight of MACSI eligible to tax and therefore the amount of tax due.

Finally, many pivotal aspects are not clarified and have been delegated to a decision of the Director of the Customs Agency (e.g., the identification of the MACSI in the customs area through the use of Combined Nomenclature Codes, the content of the quarterly tax return, rules for the assessment and payment of the tax, the identification of suitable instruments for tracking the quantity of recycled plastic present in the MACSI, rules to request the refund provided for by para. 642).

5. On 18 February 2021, the Italian Customs Agency shared the draft of the long-awaited implementing provisions, defining (i) the scope of application (Art. 1); (ii) Taxable persons' obligations (Art. 2); (iii) Obligations of EU sellers and purchasers (Art. 3); (iv) Importers' obligations (Art. 4); (v) Content of the plastic tax return, payments' and refunds' procedures (Art. 5).

The following aspects are worth mentioning.

As for the first point, the draft tries to clarify the objective scope of application of the Italian Plastic Tax and provides a non-exhaustive list of items included within the meaning of 'MACSI'. In this respect, it has been explained that MACSI items made with the use, even partial, of plastic materials consisting of organic polymers of synthetic origin included under customs headings 3901, 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3909, 3910 and 3911 of the Combined Nomenclature of the European Union will be subject to the Italian Plastic Tax.

The document also indicates suitable instruments for tracking the quantity of recycled plastic present in the MACSI, imposed on manufacturers and EU purchasers and sellers. As for the manufacturers, they are required to meet a number of obligations that can be summarised as follows: (i) Reporting obligations (i.e., to make appropriate prior communication, by electronic means, to the Customs Agency; to communicate an updated list of the sellers for whom the manufacturing activity is carried out at the production plant, with an indication of the relevant ID numbers; to submit a quarterly tax return); (ii) "Organisational" duties (i.e., to set up separate storages for virgin plastic material and recycled plastic material as well as the types of MACSI introduced in the plant); (iii) Liability to pay the Italian Plastic Tax; (iv) Accounting duties (i.e., to indicate in the invoices the data underlying the determination of the plastic tax that is included in the total consideration; to keep daily accounts for the production plant; and to keep an updated list of the plant operators where recycling processes of the plastic used in the production plant are carried out).

For EU purchasers and sellers (the latter through their tax representative) the following burdens have been foreseen: (i) Reporting obligations (i.e., to make a specific prior communication, by electronic means, to the Customs Agency and submit a quarterly tax return); and (ii) Accounting duties (i.e., to keep a daily

accounting of the MACSI handled and to keep the invoices for each MACSI purchase).

As far as the refund application is concerned, the draft indicates that it must be accompanied by a copy of the purchase invoices showing that the tax has been paid and of the documentation proving the export or intra-EU transfer of the MACSI.

Finally, the draft confirms that offsetting the plastic tax with “other taxes and contributions” is allowed but does not provide further details on the identification of such other taxes and contributions.

6. In the author’s view, the success of the Italian Plastic Tax cannot be achieved without (i) simple implementation measures and a clearly defined scope of application (ii) adequate incentives for economic players subject to such tax, in order to allow a fair reconversion of manufacture activities towards sustainable production and (iii) effective communication, consumers’ awareness and availability of green alternatives.

As for the first aspect, at least two issues need to be addressed. The draft of implementing provisions shared by the Customs Agency on 18 February 2021 seems to excessively burden taxpayers with administrative, accounting and organisational obligations. Simplification is needed to avoid unnecessary onera affecting producers that are already liable to the tax. While doing so, one should consider that other contributions are due on the same goods, albeit with different criteria (e.g., by CONAI) with related additional administrative burdens. Therefore, the Customs Agency should promptly publish the final implementing measures, providing needed simplifications and streamlining procedures. In addition, importers are required to indicate in box 33 of the customs declaration the specific additional code Z050 (“*Single use products (MACSI) subject to the tax referred to in Article 1, paragraphs from 634 a 650, of Law no. 160 of 27 December 2019*”) and to carry out the self-assessment of the tax in box 47 of the SAD form, concerning the declared quantity of MACSI. In this respect, it seems still unclear what should be declared if the exact amount of MACSI subject to tax is unknown.

As for incentives, in addition to the possibility to benefit from the EU “*Financial Instrument for the Environment and Climate Action*”, a tax credit of 10% of the expenses incurred in 2020 is provided for MACSI manufacturing companies for the technological transition towards biodegradable and compostable artifacts. The author believes that this measure will not be sufficient, considering that the tax credit has a maximum amount of Eur 20,000 for each beneficiary and can be granted within the overall limit of Eur 30 million for 2021.

Finally, the introduction of the Italian Plastic Tax can be seen as an opportunity to, firstly, convert the plastic production chain to ecological and circular methods and, secondly, redirect consumer’s demand towards greener choices through the (inevitable) increase in the price of plastic items. The mere announcement of the Italian Plastic Tax introduction immediately resulted in several “green reactions”. As an example, four Italian companies have developed a solution to obtain a film for food

packaging – similar to the plastic one used at present – that can be sent to industrial composting from which fertiliser for fields is obtained (See NETTI E., *Packaging ecologico, filiera italiana al via*, in *Il Sole 24 Ore*, 11 December 2020).

In conclusion, the author is aware that the introduction of new fiscal measures always triggers taxpayers' sensitivity, especially during a global economic crisis. However, there is no time left to postpone initiatives to face the environmental emergency declared in 2019 by the European Parliament (European Parliament resolution of 28 November 2019 on the climate and environment emergency (2019/2930(RSP))). Even though there is no doubt that the devastating impact of the Covid-19 pandemic should be taken into account when designing economic measures and that it would be ideal to avoid rebound of the economic burden on end consumers, measures for the relaunch of the economy must now be anchored on a more sustainable basis. In line with this goal, the Italian Plastic Tax aims to change producers' behaviour in compliance with the “polluter pays” principle (according to which those responsible for environmental damages should be held responsible for dealing with their impacts).

In addition to the environmental-related benefits, there are many other positive effects that this tax can achieve.

First, the revenue collected through such a tax can **support the expenses** related to the Italian contribution to the EU budget due on the weight of plastic packaging waste. Second, with the introduction of an environmental-related fiscal measure, the tax burden could be shifted from the factor “work” to the factor “environment”, and thus create **impulses for more employment** (a practical example can be found in the German Ecological Tax Reform. See, among the others, KNIGGE M. - GÖRLACH B. - *Effects of Germany's Ecological Tax Reforms on the Environment, Employment and Technological Innovation*, Summary of the Final Report of the Project: “*Quantifizierung der Effekte der Ökologischen Steuerreform auf Umwelt, Beschäftigung und Innovation*”, Research Project commissioned by the German Federal Environmental Agency, August 2005).

Finally, by (hopefully) reducing the production and sale of single-use plastic items, it will also gradually **decrease** the amount of the aforementioned Italian contribution to the EU budget.

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