1 Introduction

1.1 The Chartered Institute of Taxation is pleased to comment on the consultation concerning the introduction of a sugar levy on soft drinks.

1.2 We do not have expertise and therefore do not comment on the major issue of whether and how much the proposed tax will reduce sugar consumption. We comment from the practical experience of tax practitioners as set out in para 19 below.

1.3 The answers to questions 1 to 3 are set out in section 3 of this submission. We make no comment on questions 4, 7, 9-13, 16, 18-19, 23-24, 27-28, 31, 34-35, 37-39, 42, 44.

1.4 We note that in the Financial Secretary’s introduction there is a statement –

‘Across England the government will invest the revenue …’.

We also note that the regulations referred to for definitions are those applicable in England although it is clear from paragraph 1.12 that the levy will be applied throughout the UK.

We think it would be helpful to know how other parts of the UK will benefit from the share of the levy that they will have to bear.

2 Executive summary

2.1 We consider that the system for collection of the tax requires clear definition of what is to be taxed and what is not. We would prefer to base the definitions on those used in VATA 1994, Schedule 8, Group 1. It also requires clear definition of other terms eg importer, dilution ratio.
2.2 We agree that there should be relief for small business. Again we consider that the model for such relief should be that used in VATA 1994 ie that there should be a registration threshold below which an operator need not register for the levy.

2.3 Since the tax is intended to be levied on consumption in the UK of drinks containing sugar, it is appropriate to relieve goods exported or otherwise not consumed in the UK from the tax.

2.4 Like all taxes, there need to be measures to enforce compliance but those measures should be proportionate and should not go beyond what is needed to enforce compliance.

3 About the Chartered Institute of Taxation

3.1 Question 1: The CIOT is an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation. We are not involved in the soft drinks industry.

3.2 Question 2: We are established in the United Kingdom but have members across the world.

3.3 Question 3: We have between 10 and 100 staff in the UK, together with around 400 volunteers on our various technical and other committees.

4 Question 5: Definitions

4.1 We are not able to comment on the technical appropriateness of the definitions of ‘added sugars’.

4.2 However, we have considerable knowledge in dealing with complex definitions in relation to food in value added tax. As HMRC will be aware, the definitions in VATA 1994, Schedule 8, Group 1 have often been a source of disagreement where clarity has had to be obtained via litigation. While that legislation still creates occasional difficulty, some clarity has been achieved. Accordingly, we believe that a greater degree of simplicity would be achieved by using existing definitions as a base rather than creating another that would have to operate side by side with the VAT legislation.

4.3 Legislation needs to contain clear definitions to ensure legal certainty but at the same time it needs to be borne in mind that it is usually ordinary employees that operate tax systems. Accordingly, definitions need to be simply expressed.

4.4 As the consultation document notes, those liable to the levy are highly likely to be registered for VAT. Ideally, therefore, definitions used for the new legislation should be consistent with those used for VAT rather than definitions applicable to England. In particular, references to what are ‘beverages’ should align with those used in VAT law so that similar definitions apply.
5 **Question 6 – Dilution ratios**

5.1 As the consultation document suggests at paragraph 3.21, incorrect dilution ratios have the potential to reduce the tax due eg if a dilution ratio is stated to be one part concentrate to five parts water instead of one part concentrate to four parts water, the proportion of sugar in any normally diluted drink will be reduced. In the case of products close to the threshold for paying the tax, manipulation of the dilution ratio can then lead to an absolute saving in the tax rather than a proportional one. Ideally therefore attention will need to be given to products around these thresholds, but we suspect that monitoring of this by HMRC will be difficult.

5.2 Dilution ratios are also likely to be subjective. Consumers purchase cordials but do not necessarily follow recommended dilution ratios – some consumers liking a stronger taste and some a weaker taste. Legislation needs to make clear how the correct dilution rate should be determined but it may be that some sort of average will need to be applied.

5.3 Legislation therefore needs to set out the processes as to how ratios should be determined.

6 **Question 8 – Milk products**

6.1 The proposals create an inconsistency between the treatment of cordials and products such as powders for milk-shakes. Milk-shake preparations can be very high in sugar, even after mixing with milk, and the exclusion as envisaged in paragraph 3.30 will (at the most extreme) allow a milkshake with up to 25% of sugar to remain exempt from the levy; nearly 5-times the threshold for the levy for products mixed with water.

6.2 This may simply be a matter of policy similar to the decision to limit the tax to beverages and to exclude other food.

7 **Questions 14 and 15: Taxable person and reliefs for small operators**

7.1 We agree that there needs to be relief for any small operators.

7.2 The purpose of *de minimis* limits in taxation is usually to simplify the collection of the tax rather than to provide relief from the tax to those that would otherwise be responsible for collecting the tax.

By way of example, in the VAT system, businesses with a turnover that does not exceed £83,000 do not have to register for VAT but will ‘pay’ some VAT (in the form of irrecoverable input tax) because they pay VAT at the previous stage in the production chain and so the product is not entirely VAT free.

7.3 The alternative mentioned in the consultation is to set an exemption that applies to all operators. This may solve the problem of small operators that have productions below the *de minimis limits* but potentially creates an avenue of avoidance, which is considered later.
8 Question 17 – Definition of importer

8.1 There are two issues here –

- Ease of administration
- Prevention of evasion

8.2 Since the value of soft drinks imported into the UK is small (see para 4.13), the amount of levy, which could possibly be evaded is also likely to be small, so the key issue will be ease of administration unless it leads to smuggling of soft drinks. It is therefore important that the definition of importer must be narrow and not leave open to question whether or not it is the retailer, wholesaler or someone else.

8.3 There are likely to be a number of difficulties in applying the levy to imported products, some of which we raise for consideration below:

- Calculating the levy will require some knowledge of the product to establish the sugar content, either when purchased or post-dilution. An importer will not currently need that information, and so it places an obligation on the importer and the seller to exchange that information accurately and timeously. Who will HMRC investigate if they disagree with ratio provided by the overseas seller?
- Placing the responsibility to register for the levy on overseas suppliers will quite possibly result in non-compliance, even if a simple on-line registration and payment facility is available (which itself would take time and cost to create to accommodate overseas registrants).
- Applying the small business exemption (see below) will need careful consideration, depending upon whether it is calculated by virtue of quantity of produce (which the importer would need to monitor over a period of time) or the size of the business (meaning that a large importer might pay the levy even for a small amount of product).
- Whether individual imports below a certain threshold could or should be relieved, rather like the low value consignment relief (LVCR) system for VAT.

9 Question 20 – Samples, gifts etc

9.1 We agree that samples and free gifts for retail promotions should be subject to the tax. Provided the samples etc are to be consumed, and promote further consumption, then taxing these products seems to be consistent with the purpose of the levy.

9.2 There may be a case for other free goods to be relieved from the levy but if there is, it is unlikely to be material so we agree that in order to ensure a simple and straightforward application of the tax there should be no reliefs of this nature.

10 Questions 21 and 22 – Relief for small operators

10.1 The stated objective of the exclusion for ‘small operators’ (see paragraph 5.1 of the consultation document) is ‘to balance the administrative costs to HMRC of collecting the levy against the revenue likely to accrue from enforcing the levy below the
threshold.’ Paragraph 1.12 also stated (in relation to the policy for the levy) ‘It will be designed to provide a relief or exemption for the smallest operators, or low volumes of production or import’.

10.2 As drafted, the policy intent is not entirely clear. A ‘small operator’ could be a simple business, with a modest turnover, but whose sole activity is the production of a soft drink. However, the proposals both look at the volume of product, rather than the size or sophistication of the operator.

10.3 Like VAT, we suggest that the government should consider turnover as an indicator of whether someone is a ‘small operator’. For example, businesses who are not registered for VAT might be excluded from the levy.

10.4 Looking at the product-based exclusions, the method suggested in paragraph 5.3 of the consultation document also emulates the VAT registration system by providing a threshold below which no liability to tax arises. However, once that threshold has been exceeded, all product is then liable to the levy. Like VAT, consideration would need to be given to the period of time over which production is monitored (eg the previous 12 months), the time limit for registration once that threshold has been exceeded, exceptions for one-off ‘spikes’ in quantity etc.

10.5 Further, depending upon where liability for the levy lies, a small operator who engages a producer to make sugary drinks on his behalf may pay the levy anyway because the cost would be included in the producer’s price. For this reason, we are attracted to a system which places the liability for the levy with the legal owner of the product, rather than simply with the producer, but we have insufficient knowledge of the production and supply chain to say much more.

10.6 The advantage of a universal relief, such as the alternative option, is that it appears to be fairer - but it does complicate the relief. For example, the Apprenticeship Levy will have an annual levy allowance below which no levy will be payable, but that allowance is pro-rated across the year, meaning that levy payments might occur in ‘peak’ months, when over the course of the year no levy is in fact payable. We would recommend reviewing how small operator reliefs apply across a variety of taxes, to identify which would be most appropriate in these circumstances.

11 Question 25 – Imports used for international travel

11.1 This suggestion would follow the principle and policy intent that goods are not taxed unless consumed within the UK. However, it would increase complexity.

12 Questions 26 – Export credits

12.1 Excise duties are usually imposed only in the country where they are consumed so it is logical to provide relief for duty on goods that are exported. This also prevents possible double taxation.

12.2 Accordingly, we agree with the concept of providing a relief from the levy provided that there is proof of export.
12.3 While allowing relief only for direct exports has the benefit of simplicity, it potentially creates distortion of competition, accordingly we are also in favour of the option suggested in 6.10 (extending the relief to indirect exports).

12.4 We agree that there are always risks associated with refunds of tax so we would expect that the usual provisions aimed at protecting the revenue will be put in place eg power to require security, requiring evidence of export etc, but such provisions should be proportionate and not go beyond what is necessary to protect the revenue.

13 **Question 29 – Exports and small operators**

13.1 We agree that in determining the threshold at which small operators would be relieved from the obligation to pay the tax, it is likely to be simpler to base it on all production.

13.2 However, it is likely to be perceived as unfair. By way of example –

<table>
<thead>
<tr>
<th>(units)</th>
<th>Producer A</th>
<th>Producer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK consumption</td>
<td>8,000</td>
<td>8,000</td>
</tr>
<tr>
<td>Exports</td>
<td>2,100</td>
<td></td>
</tr>
<tr>
<td>Exempt goods</td>
<td>2,100</td>
<td>000</td>
</tr>
<tr>
<td>Total</td>
<td>10,100</td>
<td>10,100</td>
</tr>
</tbody>
</table>

The exempt goods are drinks with sugar in but just below the threshold to be taxed.

If the threshold is 10,000 units, Producer A does not have to register because although he produces the same number of units as Producer B, his exempt goods are not included in turnover. Producer B pays because his export turnover is included. Basing the levy threshold on all drinks production would solve this issue, but might result in small amounts of levy being paid if a sugary drink is just one out of many lines of otherwise exempt product.

13.3 We note that the VAT registration threshold does not include exports because they are outside the scope of VAT. It does not appear to create problems for VAT taxable persons to determine what turnover needs to be included or excluded.

14 **Questions 30, 32 and 33 – Registration and reporting**

14.1 The process for registering for the levy will need careful consideration, to ensure that both historic and future supplies are taken into account to determine if and when registration is necessary. The current system for VAT registration is well understood and operates relatively well, and may be considered a suitable model on which to base the levy.

14.2 We agree that there should be provision for deregistration of businesses that fall below the registration threshold.

15 **Question 36 – Other registration issues**
15.1 We presume that businesses likely to be liable to the levy might operate through a group of companies. We consider that for the sake of administrative convenience, it should be possible to register a number of companies as a single person for the purposes of the levy.

15.2 Having regard to the nature of the tax, we do not think it necessary to have complex criteria to be eligible; in essence all that is needed is common administrative control.

16 Questions 40 – Penalties

16.1 Penalties act as a disincentive to breach compliance requirements rather than an incentive to comply. It is an important issue since in our view more positive measures are needed to promote compliance rather than take the approach that bigger financial penalties will act as a disincentive. Measures might include assisting taxpayers to develop processes that ensure compliance.

16.2 Nevertheless, we agree that there should be penalties for failure to register, failure to submit returns, inaccuracies and other breaches. Penalties should be a last resort and should take account of the behaviour of the taxpayer.

17 Question 41 – Anti-abuse

17.1 We agree that notwithstanding the unlikelihood of disaggregation to avoid the tax, there should be measures similar to those contained in VATA 1994, Schedule 1, para 1A to deter the practice.

17.2 Since it is possible that disaggregation could be undertaken via entities other than companies, we think that careful wording is necessary.

18 Question 43 – Other compliance issues

18.1 The consultation document does not address the issue of bad debt relief. While the tax is structured as a tax on production/importation, in our view, provision should be made for relief in the event that a sale of goods takes place where the sale price is not paid.

19 The Chartered Institute of Taxation

19.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,600 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
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