



SSD Tax: All cost, No Benefit

An Irish Beverage Council response
to the Sugar-Sweetened Drinks Tax
Public Consultation

Executive Summary

The Irish Beverage Council (IBC) represents companies that produce, distribute and market soft drinks, fruit juices, bottled water, sports and energy drinks throughout the island of Ireland. We welcome the public consultation process on the Sugar-Sweetened Drinks (SSD) tax proposal and look forward to further engagement and clear opportunities for dialogue with relevant authorities.

As an industry, we recognise the growing societal multifactorial challenge of obesity and are fully committed to playing our part. We have been to the fore in the food and drink sector and demonstrated our commitment through investment in reformulation of products and introduction of innovative new lines containing less or no sugar and fewer or no calories. *IBC members removed 10 billion calories from the Irish national diet from 2005 to 2012.* Despite these advances a discriminatory tax has been announced on our products while ignoring the fact that only 3% of our nation's total calorific intake is coming from SSDs.

We remain in fundamental disagreement with the principle of additional food and beverage taxes. While totally against the principle of SSD tax, our firm position is that if introduced it should include **clear, measurable and specific definitions and common understandings**. It should **not impose an undue burden on business** and apply **equally and consistently to all producers and importers** to ensure that it is not anti-competitive. If introduced, it is **essential to include a sufficient lead-in time** once there is specific detail, to allow those liable to comply. The IBC are firmly of the view that any legislative proposal must include **a review and sunset clause** where the aims are not met.

The Department of Finance's own "Getting Ireland Ready for Brexit" shows that post-Brexit trade arrangements are not known. Implementing any sort of punitive taxation regime on business at this time is unhelpful when so much uncertainty exists. However, given the highly-integrated cross-border production and distribution systems that exist within the soft drinks industry across the island of Ireland, the proposed SSD tax presents a significant challenge for the sector when added to the cost of recent euro/sterling currently fluctuations and the uncertainty of future trading relationships between the Republic of Ireland and Northern Ireland.

We simply cannot ignore the facts:

- The Department of Health's own Impact Assessment of a SSD tax in Ireland failed to find a single real-world evidence-based study globally that suggests the success of a sugar tax in decreasing national obesity figures and acknowledged that further taxation on SSDs may not alter consumption.
- The proposed SSD tax is poorly targeted, inefficient and inequitable. An SSD tax will mean price increases for over 70% of the population, while less than 4% of individuals who consume SSDs daily fall into the obese category.
- As a regressive tax, it hits poorer and fixed income families hardest and increase the cost of Ireland's hospitality and tourism offering.
- A SSD tax would increase the attractiveness of cross-border shopping, despite a similar UK measure, hurting our economy.
- The potential for black-market counterfeit products poses a health risk to Type 1 diabetics who use SSD for their health needs.
- There is the sinister risk of an increase in cross-border smuggling.

- The Revenue Commissioners have highlighted that a grey market could develop with *“illicit supplies in bulk going into the retail sector”*.
- As currently proposed, the SSD tax would infringe EU State Aid rules. The Finnish Government has recently confirmed that it is extending the tax scheme of beverages to cover sugar sweetened milk-based beverages to remove the discriminatory element.

The Sugar-Sweetened Drinks tax proposal marks a watershed behaviour-centric fiscal policy, in addition to existing VAT legislation. As set out, this proposal would damage one of the key sectors driving our economic recovery.

Obesity is a societal issue. McKinsey’s analysis showed that obesity is a multi-factorial problem with no single solution. The same report found taxation to be the 13th most-effective approach, out of 16. We recommend a voluntary approach to work together with Government for the *Healthy Weight for Ireland* action plan.

Irish Beverage Council – January 2017

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Chapter 1

Introduction

1.1 *Irish Beverage Council*

The Irish Beverage Council (IBC) represents companies that produce, distribute and market soft drinks, fruit juices, bottled water, sports and energy drinks throughout the island of Ireland. IBC is organised as a part of Food and Drink Industry Ireland (FDII) within Ibec. Ibec represents employers of over 70% of the private sector workforce in Ireland, including over 150 businesses in the food and drink industry.¹ IBC itself represents around 70% of the beverage industry workforce.²

A member of the Union of EU Soft Drinks Association (Unesda), the Association of the Industry of Juices and Nectars (AIJN), the European Federation of Bottled Waters (EFBW) and FoodDrinkEurope, IBC serves as the national beverage industry's voice within the European Union.

1.2 *Scope and extent of industry*

Members range from Irish-owned SMEs to major multinational corporations operating throughout the island of Ireland. Products range from low-calorie/no-calorie to original flavour soft drinks and energy drinks to pure fruit juices and fruit juice concentrates, bottled water, and smoothies which are sold throughout the world.

1.3 *Economic activity and employment*

The sector is a significant part of Irish trade as a source of business for other Irish producers, sub-suppliers, and retailers.³ According to statistics from Bord Bia, the beverage industry, are a large contributor to the economy with a value of €1.5 billion.⁴ We, the IBC, represent well over half of all share value of the industry, as well as around 70% of all industry employees.⁵

The beverage industry employs over 3,500 people directly and indirectly supports over 3,000 additional jobs.⁶ We provide employment to all classes and all skill levels, and aim to support continued employment and business growth to protect our employees' and customers' interests in the future.

Our contribution to the Irish economy occurs through many channels. Consumers spend over €600 million per year on industry products in stores. Industry payroll is about €107 million, and we spend approximately the same amount on Irish-sourced materials and services.⁷ The industry also exports over €133 million in goods each year.⁸

1.4 *Fundamental disagreement with the principle*

It must be recognised that we remain in fundamental disagreement with the principle of additional food and beverage taxation and comments on the implementation do not change this position. The Sugar-Sweetened Drinks (SSD) tax marks a watershed behaviour-centric fiscal policy in addition to existing VAT legislation that could set an unfortunate precedent for the food and beverage sector.

It remains unclear whether this is being introduced solely as a revenue raising measure or as a tax intended to affect behavioural change. As a source of revenue, such a discriminatory tax would be extremely unstable and, as the Department of Finance has noted, complex to design and challenging to collect.⁹

Taxation is a blunt instrument and is an inappropriate model to effectively deal with the obesity challenge in Ireland. As an unproven method of tackling what is widely accepted as a multi-faceted challenge, it's unlikely to have a positive impact on public health and highly likely to have a detrimental impact on the economy.¹⁰

1.5 *Commitment to consultation*

The details contained in the Department of Health proposal raise a number of fundamental questions which have yet to be answered. IBC would welcome consultation with Government to gain clarity on the scope, objectives and rationale of the SSD tax. The IBC are committed to continued further engagement with the Department of Finance and the Revenue Commissioners.

1.6 *Industry action to tackle obesity*

We recognise the challenge of tackling obesity, overweight and related disease in Ireland and we remain fully committed to playing our part in solving that problem.¹¹ The McKinsey Global Institute found that product portion size and reformulation were the top two most effective interventions against obesity.¹² The soft drinks industry has demonstrated its commitment through investment in reformulation of products and introduction of innovative new lines containing less or no sugar and fewer or no calories.

At the beginning of 2016, the Irish food and drink industry became the first in the world to publish exact details about the efforts of industry reformulation. The FDI/Creme Global Reformulation Report was launched by then Minister for Health, Leo Varadkar, TD, and proved conclusively the positive impact industry efforts have had on consumption. IBC members took 10 billion calories out of the Irish diet each year between 2005 and 2012. 10 percent of all sugar contributed to the Irish diet by soft drinks was also reduced in these seven years.¹³ This was achieved through voluntary action years ahead of the Department of Health's call to work with industry on a roadmap for reformulation targets.¹⁴

1.7 *Positive commitment to further calorie cutting*

IBC aims to continue doing its part to combat the multi-factorial, cross-sectoral issue of obesity. We are committed to yet further reformulation and product innovation and increased efforts to inform consumers' choice.¹⁵

1.8 *Reduction of sugar intake from soft drinks*

Through reformulation and the expansion of market share for low-/no-calorie products, we help to inform consumers without restricting choice.

Our commitment to voluntarily reducing sugar content in our products has been well-documented. The first-of-its-kind Reformulation Report from 2016 demonstrated that IBC members removed 2,500 tonnes of sugar from the Irish diet each year between 2005 and 2012.¹⁶ Members of the beverage industry have committed to several initiatives to reduce sugar.

Our industry is also committed to doing its part in reducing portion size, which the McKinsey Global Report said is the most effective intervention technique to combat obesity.¹⁷ Between 2005 and 2012, industry low-/no-calorie products gained 5%, 15%, and over 16% in the cola, lemonade, and cordial/squash markets, respectively.¹⁸

The beverage industry has dynamically reduced sugar content through voluntary innovation alone.

1.9 *No evidence of a SSD tax impact on consumer behaviour*

International evidence shows that additional taxation on sugar-sweetened drinks does not achieve public health objectives of reducing incidence of obesity, overweight and related illnesses.¹⁹ Shemilt et al (2013) reviewed 880 studies and concluded that "the public health case for using economic instruments to promote dietary and physical activity behaviour change may be less compelling than some

proponents have claimed.”²⁰ . There is no evidence to suggest Ireland will prove successful where others have failed.

1.10 *SSD Tax; the international experience*

No sustained reduction in consumption of soft drinks has ever been correlated to imposition of a punitive tax. Following a dip in consumption the first year past implementing an SSD tax, Mexico reported increasing soft drink sales in the year following.²¹ Mexico’s National Institute of Public Health provided evidence that soft drinks manufacturers’ sales actually increased in the two years following their sugar tax by about 7.0 percent compared to average recent non-tax years.²² France likewise experienced a drop in consumption, but in 2015 consumption was 4.2% higher than in 2011, the year before the tax.²³ Other countries with SSD taxes have seen no decreases in sales or reductions that feel in line with pre-existing trends.²⁴

The Department of Health working paper “Introducing a Tax on Sugar Sweetened Drinks Health Rationale, Options and Recommendations” admits that, because of the limitations of assessing other market factors to price fluctuation, no inferences can be made on the impact Finland’s, France’s, and Hungary’s sugar taxes have had on overall population consumption.²⁵

There have been documented international failures in taxing sugar as well. The European Commission found the Finnish tax on sweets, ice cream and soft drinks to constitute illegal state aid.²⁶ Denmark announced plans scrap its sugar tax after it cost the state an estimated €38.9 million in VAT from cross-border smuggling, with no measureable difference in public health.

1.11 *UK Proposal*

We note the Minister of Finance’s intention to complement/align Ireland’s SSD tax with the UK tax.²⁷ It must also be noted that aligning tax release dates does not guarantee an alignment of market impact, and without further detail on proposed SSD tax rates, it is impossible to compare potential costs of the Irish proposal with the UK proposal.

1.12 *Ireland - a food nation*

We welcome the significant importance the Government attaches to the food and drink industries and its contribution to Ireland’s economic recovery.

Our reputation abroad as a ‘Food Nation’ is growing every year. Exports have increased from less than €8 billion in 2010 to just less than €10.8 billion in 2015.²⁸ Agri-food is Ireland’s most important indigenous sector employing 50,000 directly, with 180,000 linked jobs in farming and support industries.²⁹

Our food and drink industry is well placed to exploit market developments and national policy must continue to support the measures necessary for investment, market access, and expansion and volume growth.

IBC recognises Ireland’s food industry as a key driver for our economy and is calling on the Government to work with industry to ensure the sector is not damaged by taxation which is costly to the consumer, damaging to Irish businesses and will make no sustainable positive contribution to public health.

Chapter 2

Public Health Rationale

2.1 *Recognition of obesity and related diseases in Ireland*

We recognise the growing problem of obesity and weight-related diseases in Ireland, and are fully committed to doing our part in solving the public health problem in our community.³⁰ The 2015 *Healthy Ireland Survey* showed that 60% of the population aged 15 years old and over are overweight or obese, as well as a significant number of our children.³¹ All community members must acknowledge their roles in this issue. We agree with the Minister of State for Health Promotion's view that "The key issue is to make the healthy choice the easy choice."³² IBC notes the McKinsey Global report's analysis that obesity is a multi-factorial problem that no one method of social or political intervention can solve alone.³³ It must also be emphasised that the same report found taxation to be the 13th most-effective tool to combat obesity, out of 16 possible interventions.³⁴ We recommend a voluntary approach to work together with Government for the *Healthy Weight for Ireland* action plan.

2.2 *Reformulation and product design*

Taxation is not an effective societal option to combat obesity. The McKinsey Global report found that the top two most effective interventions to combat obesity, in terms of Daily Adjusted Life Years (DALYs) saved, were product portion control and reformulation.³⁵ Both of these options can be addressed through voluntary measures taken by industry, resulting in an expanded low-/no-calorie drinks market.

One of the specific actions assessed by the McKinsey Global report was the reduction of average portion sizes of high-calorie beverages by beverage producers. This involved: "Encouraging appropriate consumption through incremental (i.e., 1 to 5 percent) reductions in portion sizes and designing packaging to better delineate portion size to help consumers moderate their consumption" (pg. 33). Likewise, reformulation must be incremental in order for the product to remain acceptable to the consumer palate.

It has been proven that these incremental changes to products have positive large-scale effects. Euromonitor found that there has been a global trend for increasing unit volume growth of smaller packaging sizes in the soft drinks industry.³⁶ While portion size is ultimately a matter of consumer choice, "rightsizing" products encourages consumers to buy and consume smaller quantities, reducing sugar and overall calorie intake. As another industry-led effort to promote healthy options in our communities, reformulation further demonstrates industry commitment to providing healthy options. IBC members removed 10 billion calories and 10 percent of all sugar contributed to the Irish national diet from 2005 to 2012.³⁷

2.3 *Literature review - taxes and consumer behaviour*

There is no real-world evidence that a fiscal tax will lead to an improvement in consumer health. The economic justification for a SSD tax improving health uses models predicting own-price elasticity for the beverage industry, where increasing a product's price will decrease demand for the product.³⁸ However, the application of own-price elasticity is inappropriate when the fiscal measure aims to target a multi-factorial issue such as obesity. Applied to health objectives, an implicit correlation is assumed between a decrease in the demand of one product and an increase in overall population health. The latter factor assumes that a tax will result in cross-elasticity where a tax on sugar-sweetened beverages will lead to consumption of healthier products.³⁹

The proposed SSD tax falls under step 1 of the government's obesity plan, *A Healthy Weight for Ireland*⁴⁰, and so the potential effects of the tax on product substitution must be addressed. Fletcher et al (2010) analysed soft drink sales and excise tax information in applicable US states and found that calories lost from reduced soda consumption as a result of taxation were offset by increases in the consumption of other beverages.⁴¹ In a follow-up paper in 2013, Fletcher et al found that studies that directly linked state-level soft drink taxes to population daily beverage consumption and measured weight found little to no evidence that soft drink taxes lead to a decrease in weight.⁴² There is a high probability that, even if soft drinks consumption decreases, there will be a limited impact on overall caloric intake due to the consumption of other calorie-containing drinks and sugary foods.

Fletcher (2011) shows that unlike other "sin tax" products, soft drinks compete in a market with many other products with comparable sugar and calorie content, meaning that a reduction of SSD consumption will not necessarily correlate to a reduction of calories.⁴³ Sin taxes in the name of public health aim to change the behaviour of less-healthy members of a population, but this only applies to a small percentage of total soft drink consumers. Independent research carried out by IUNA shows that the proportion of overweight individuals who drink SSDs is not significantly greater than the proportion of overweight individuals who do not consume soft drinks.⁴⁴ A tax in the name of reducing obesity on a product used in equal frequency by non-overweight individuals will fail to have a widespread effect on the health of the total population.

An SSD tax also appears unlikely to address obesity on an individual level. Hill et al (2003) suggests that maintained reductions in consumption of approximately 100 calories per day could halt weight gain for 90% of the population.⁴⁵ IUNA data shows that SSDs make up only 3% of total energy intake of Irish children, or about 49 kcals per day.⁴⁶ Following the implementation of a soft drinks tax in Mexico, data from two studies found that the reduction in national consumption amounted to a decrease of only 6 calories from the average daily diet.⁴⁷ Using an almost-ideal demand system model, Allais et al (2009) found that a tax of 10% on caloric foods would reduce caloric consumption by just 1%.⁴⁸ Evidence suggests that the proposed SSD tax will do little to nothing to decrease obesity in Ireland.

The evidence base suggesting the success of SSD taxes has an inconclusive dependence on statistical models and extrapolations that contain acknowledgements of limitation in real-world application.⁴⁹ The Health Impact Assessment (HIA) of an SSD tax in Ireland fails to find a single real-world evidence-based study that suggests the success of a sugar tax in decreasing national obesity figures.⁵⁰ Dharmasena et al (2012) estimated body weight reduction and an increase in non-sugar-sweetened beverages, but the HIA noted that the model was limited to in-home consumption and an assumption of separability of non-alcoholic beverages from food and other beverage categories. HIA also reviewed Fletcher et al (2010), who noted that a tax may cause a shift in product consumption but found a possibility that consumers would not switch to purchasing lower-calorie items. Fletcher et al (2010) also found US soft drink taxes to have positive impacts, but of such small magnitude and different structure than the Irish proposal that the HIA did not claim this study to be established precedent of success. The HIA concluded their literature review section "Sugar-Sweetened Drinks and Health" with reference to Jou et al (2012), who noted three key points that may influence the effectiveness of a volume-based excise tax: population obesity prevalence, SSD consumption levels, and existing baseline tax rates. This

study cautioned Ireland (among others) that, since a volume-based tax would only add to an existing tax base, the cost of implementation must be justified by expected benefits.⁵¹ Based on this, the HIA acknowledged that further taxation on SSDs may not alter consumption.⁵²

2.4 *Review – public health impact of SSD taxes internationally*

There is no robust evidence to show the effects that global tax policies have had on consumption or health impacts.⁵³

The Department of Health has acknowledged that no inferences can be made on the impact Finland's, France's, and Hungary's sugar taxes have had on overall population consumption.⁵⁴

2.5 *Multifactorial nature of obesity*

Obesity is a multifaceted problem and one that requires strategic coordination of a variety of policy interventions.⁵⁵ The Minister for Health and the Minister of State for Health Promotion both agree on the multi-faceted nature of weight, and the Department of Health's action plan for obesity, *A Healthy Weight for Ireland*, adds that there is no one simple solution for this complex issue.⁵⁶ The action plan further mentions that bi-lateral discussion with other government departments revealed emphasis for prioritising prevention, early detection, early intervention and greater access to specialist treatment and care services.⁵⁷ The McKinsey Global report ranked taxation as the fourth least-effective means of fighting obesity.⁵⁸ Given this, we believe it would be fruitful for the Department of Health to commit to reviewing the evidence for the effectiveness of fiscal measures (action item 1.10) before considering implementation, and focus on more effective means of curbing obesity, such as industry reformulation and product innovation.⁵⁹

2.6 *Lack of conclusive evidence*

The case for an SSD tax is to target obesity by reducing regular calorific intake from that product. The evidence from the Healthy Ireland survey shows that the subset of the population who are both obese and regularly consume SSDs is less than 4%. The tax targets 1.6% of total calorific intake at a population level rising to 3.6% of for the group of consumers who ever consume SSDs. What limited applied econometric evidence we have on the medium term efficacy of this kind of tax in reducing obesity either points to very small or no impacts at a population level⁶⁰. As such a negligible improvement in obesity levels amongst a subset of the population (4%) that are obese and regularly consumer SSDs will result in a massively inefficient tax eroding the consumer surplus of a much larger subset of the population who are of normal weight and consume SSDs either regularly or irregularly.

2.7 *Switching behaviour*

As detailed in section 2.2, the soft drinks industry has made efforts to expand the low-calorie and no-calorie beverage market in the interest of promoting healthy consumer choices. It has been shown that taste is a more significant factor in consumer choice than product price or nutrition characteristics.¹⁶¹ We believe that incentivising healthier choices, rather than increasing product price, will have a greater effect in shifting consumer behaviour.

¹ Based on a subset demographic within the population.

2.8 *Lack of evidence relating to price increases and demand*

Raising the price of a product does not necessarily lead to a decrease in demand; other factors must be taken into consideration. As mentioned in the above section, product taste has more influence on consumer behaviour than price, and so reformulation and product innovation are essential to shifting consumer behaviour towards healthier options. It is unclear how the Department will confirm that the tax will affect consumer behaviour as intended. Will the SSD tax include proposals to legislate for mandatory pass through or differential pricing? Without these safeguards, there is no indication that an SSD tax will have any effect on consumer behaviour.

It is also prudent to note that discriminatory taxes often impact healthy people rather than the demographic of concern. Discriminatory taxes are more likely to affect moderate consumers⁶², meaning that a sugar tax will not have the intended public health impact.

2.9 *Suggestive evidence vs. conclusive evidence*

Conducting research on behalf of the Department of Health, the Institute of Public Health (IPH) concluded that:

The review concludes that, much as with research in other fields, there are limitations in the current literature and conclusive answers are not available...Although there may be a growing body of evidence implicating SSDs in excess weight gain, currently research in this area provides imperfect knowledge, which is further hampered by a lack of available information on consumer behaviour in response to an SSD tax.⁶³

The scientific community agrees that there is no compelling evidence that taxation has any effect on obesity rates. Fletcher et al (2013) suggests caution in taxing sugar-sweetened beverages with a core purpose of obesity reduction, based on the existing concrete evidence.⁶⁴ Thow et al (2014) conduct a literature review on food taxes and conclude that the evidence base for SSD taxes affecting consumption is far from conclusive and reliant on modelling studies and extrapolated data than observed outcomes.⁶⁵ IPH confirmed that there is no conclusive research that taxation affects behavioural change. It remains unclear why government is pursuing a health-oriented fiscal measure in lieu of concrete evidence of effectiveness.

2.10 *Lack of progress on activity measures*

Given the lack of evidence for fiscal measures (see above section), it is perplexing that this tax proposal is a higher priority for the Department of Health than thoroughly reviewing whether such a tax would effectively meet its objectives.

The Action Plan released in 2016 shows that the Department of Health seeks to address the rising problem of obesity through a variety of cross-sectoral measures to promote healthy living.⁶⁶ Simon Harris, TD, Minister of Health, stresses that in order for this plan to succeed, "We need to make the healthy choice the easy choice."⁶⁷ We are unclear why taxation with inconclusive effectual evidence is prioritised as the most efficient way to achieve this goal while funding for health-promoting sports grants was cut by 17% in Budget 2017.⁶⁸

Chapter 3

Potential EU and State Aid Implications

3.1 *Introduction*

We sustain concerns that the institution of an SSD tax would impact the industry's competitive environment in a way that infringes European Union state aid regulation. As proposed it places artificial standards that impact economic competitiveness without due cause. Competitors within the beverage industry with advantageous product mixes or more means to absorb tax liability in business strategy may be provided state aid.

3.2 *Substitutability*

There is a risk in infringing state aid rules regarding the proposal's exemption of milk-based products with added sugar. As sugary beverages, these products share shelf space and market value. Should these products be excluded from the scope of the sugar-sweetened beverage tax, we have concerns that the distinction between added sugar milk-based products contradicts supporting one sector through the tax system. For more details, refer to pages 31 and 32 in the Department of Finance's Tax Strategy Group (TSG) paper 16/02 on General Excises.⁶⁹

3.3 *Large and small company competition and state aid*

It should be noted that we cannot estimate the total disproportionality and impact of this tax proposal without further detail. However, the application of this tax proposal will invariably have an impact on intra-industry competition.

We have substantial concerns about the disproportional impact the tax will sustain on beverage-producing SMEs.

However, as the UK levy has shown, granting tax exemption to SMEs also raises serious concerns about state aid. Exempting small business from the proposed tax would treat products with the same sugar content differently, distorting the market and unnecessarily complicating the tax. This form of aid would incentivise businesses to break into smaller units (with different ownership or share listings), decrease Irish competitiveness for exports and contradict targeted health outcomes for a policy intended as a health, not a fundraising, measure.

3.4 *Intra EU movement controls and state aid*

According to the Department of Finance's TSG 16/02 on General Excises,⁷⁰ it must be recognised that an SSD tax must not impede the freedom to supply goods from other member states under competition guidelines.

Difficulties may arise in respect of administering and levying a tax on products coming into Ireland. The lack of intra-EU border controls could lead to a risk of non-compliance when goods are being brought into Ireland. EU rules regarding the Free Movement of Goods would need to be considered.

Regarding intra-EU trade, the current statistical information already filed by taxpayers to help EU authorities record intra-EU trade in goods (such as INTRASTAT or VIES returns) may not be sufficient by themselves to provide the information needed by businesses to apply the tax i.e. to identify the amount of taxable sugar content goods brought into Ireland from other EU Member States.

As mentioned in Chapter 4, some practical difficulties could also be expected in seeking to use current CN commodity codes (which are used in INTRASTAT returns) to identify the added sugar content in products and to determine if a certain

product should be liable to the tax (and if so, at what rate). Currently, where businesses apply a degree of estimation in preparing data such as weight of products for INTRASTAT purposes, the current processes may not be fit for the purposes of the proposed tax.

Where the rationale for introducing the tax is to reduce consumption, there is also the matter of whether the tax would be applied to goods that are either (i) produced in Ireland for export, (ii) supplied to transport undertakings for consumption on board (e.g. airlines) or else (iii) imported into Ireland from another country for temporary storage or packaging (i.e. not for consumption in Ireland) before being transported to another country. The question arises whether any form of SSD tax should apply in these cases, if the products are dispatched from here and therefore not consumed in Ireland (especially if the absence of a relief would potentially put Irish producers at a competitive disadvantage in export markets and resulting in double taxation where the countries of consumption also impose their own SSD tax).

It can be noted that in certain other taxes, relief is given for supplies of goods that are dispatched abroad from Ireland where certain conditions are met e.g. VAT “zero-rating” where 0% VAT is applied instead of the VAT rate that would ordinarily apply to the supply of the particular product in Ireland.

If relief from the tax is to be given in respect of product that is dispatched from Ireland, it would be necessary to consider whether this would be given as an “upfront” relief or exemption or whether it would be allowed by way of repayment and also, what level of information/ filings would be needed to claim the relief.

If introducing a SSD tax regime in Ireland, it is necessary to consider whether this would breach EU rules on fair and equitable treatment (e.g. where the regime is targeted at specific products rather than covering a range of products containing sugar, such as milkshakes and other milk-based products) or be in violation of EU State Aid rules.

Broadly, State Aid is an advantage in any form that is given on a selective basis to undertakings by public authorities of the EU Member States. The EU Commission may order recovery of illegal State Aid from the recipient(s) for a ten-year period, plus interest.

Consequently, the impact of State Aid rules would need to be considered in respect of the introduction of any new SSD tax system in Ireland.

3.5 *EU Action Plan on VAT*

The EU Commission recently adopted an EU Action Plan on VAT which may allow Member States greater freedom to use VAT rate as a policy instrument. The intention of the EU Action Plan is to overhaul the existing EU VAT system to reflect the current economic realities of modern businesses. This plan includes proposals to grant individual EU Member States greater autonomy in deciding what VAT rates should be applied to goods and services in their respective countries. Such measures would potentially grant the Irish government the power to implement different rates of VAT on certain drinks and foods. While the specific timing of these EU Action Plan measures are not yet known, these may offer an alternative to the introduction of a SSD tax.

It is difficult to estimate the cost to industry and the retail sector while the details of future VAT reform are unknown. There is also a danger in designing a completely new tax system before a major overhaul of our VAT system. This situation is further complicated by the uncertainty of the UK's future trading position following its withdrawal from the EU and their future VAT levels.

3.6 *Impact for countries outside the Customs Union*

Where products are imported into Ireland from non-EU countries, including potentially the UK post-Brexit, an additional cost could be expected to arise for importers where customs duty is incurred in addition to the SSD tax.

Without knowing if the UK and Northern Ireland will continue to be part of the Customs Union, it is difficult to address the impact of a SSD tax on cross-border trade. The north-south dimension of the beverage industry in Ireland means that the industry is particularly sensitive to a UK outside the Customs Union. To impose a new tax without knowing the UK's future is to risk the all-island dimension of our beverage industry.

3.7 *Potential Brexit impact*

The Irish government has indicated that it will monitor ongoing developments in the UK with regard to how their new equivalent of the SSD tax will be implemented. While the Irish consultation document indicates the Irish government's intention to align the Irish SSDT with the proposed UK sugar tax regime, it was acknowledged by the Irish government in the "*Getting Ireland Ready for Brexit*" consultation document, which accompanied the recent Budget 2017, that the exact arrangements that will apply post-Brexit to transactions between Ireland and the UK (and indeed between the UK and the EU) are not yet known. As such, it is not possible at this juncture to predict the impact of Brexit on any sugar tax regime that may be introduced, or to assess the degree to which the UK and Irish sugar tax systems will be aligned in the post-Brexit environment.

It is also possible that packaging and labelling requirements for products in Ireland and UK will diverge over time, following the UK departure from the EU. This may create practical difficulties in applying the Irish SSD tax on products being imported from / exported to the UK and an additional administrative burden for businesses with manufacturing and distributing operations both in Ireland and the UK.

For example, if sugar sweetened drinks are imported into Ireland from the UK and there is an expectation that the importer / recipient of the goods is the person liable to pay any SSD tax arising in these goods, could they rely on the information contained on the packaging of the UK products in order to determine if they fall within the scope of an Irish sugar tax regime and also determine the amount payable?

The growing prospect of a "hard" Brexit is also a cause for concern in that the implementation of a sugar tax will likely add a further layer of complication regarding the customs and excise treatment of SSDs brought in from the UK and is likely to result in additional paperwork and red tape as well as cost, which may have a considerable impact on businesses.

Chapter 4

Tax Design and Administration

4.1 *Objective identification of product to be taxed*

According to the consultation document, the proposed Sugar Sweetened Drink Tax is intended to “apply to water and juice based drinks” with an “added sugar content” above 5 grams per 100ml. but that it will not apply to “milk based drinks”. Therefore, so as to remove potential uncertainty for tax administration as to whether a certain product falls within the scope of the new tax or not, it is necessary that the legislation and related guidance sets out clear definitions of the terms:

- “water-based”,
- “juice-based”,
- “milk-based”,
- “drinks”,
- “sugar”, and
- “added sugar content”

Questions arising, which may cause difficulties in interpretation and implementation include:

- the meaning of “added” sugar content (including the types of processing envisaged, whether naturally-occurring sugars e.g. ingredients which already have a natural sugar content such as honey, would be included)?
- whether purees, sauces, stewed fruits, “post-mix” drinks and smoothies could be regarded as “drinks”?
- the indicators (level of viscosity) of a product that would be relevant in determining its categorisation as a “drink”?
- the percentage or level of ingredients required in order for a “drink” to be considered to be “based” in water, juice, milk?
- the meaning of “milk” (e.g. including dairy-based, other animal-based, vegan alternatives) and the specific types of derivatives of milk that would be included as “milk-based” ingredients (e.g. dried milk, milk concentrates)?
- whether the legislation would require that each “batch” / import / purchase would need to be checked/ verified for its sugar contents or whether a business would be permitted to continue to use historic information regarding a particular product for a specified period, in which cases the permitted time periods would need to be set out.

4.2 *The point at which the tax becomes liable*

The consultation document indicates that the tax will be collected at first point of import or production. This approach would require a clear definition of the terms “import” and “production”:

- Would the concept of importation align with the interpretation in other specific tax heads such as Customs duty or VAT of when an acquisition or import of goods into Ireland from other countries takes place. Where the tax is applied on products when they imported into Ireland, there could be practical difficulties in meeting the requirements of a SSD tax regime if the supplier has not provided the importer with sufficient or accurate information to determine the total tax payable;
- At what stage would a product be regarded as being “produced”, what degree of packaging would still be considered to be part of the “production” phase etc. Practical difficulties in implementation of a tax could be expected where a product goes through various stages of what could potentially be considered “production” and possibly these stages could be carried out by different traders.

If the SSD tax is designed in a similar manner to certain excise duties, a question arises whether it would be possible to “defer” the payment of SSD tax on, for example, products that are stored in a Revenue approved warehouse or area after production/ import or whether the payment could be deferred until the product is removed from the approved area, this may assist in respect of cash flow but may involve traders needing to provide security to the administering public body.

4.3 *The person liable to pay the tax*

The question next arises regarding the person or business who would be liable for calculating and remitting the SSD tax. In introducing any new tax, it can be expected that the administrative/ financial burden for impacted businesses in meeting their obligations under the tax would increase, for example additional working hours spent and “third party” costs such as making necessary systems changes, professional fees.

Without knowing the specific parameters of the SSD tax regime, it is difficult to quantify the resulting additional cost of compliance. This will be affected by factors such as:

- The level of complexity in how the tax is calculated e.g. multiple bands of taxation, clarity of definitions and terms used in determining the tax liability, specified method of calculating and evidencing the tax computation;
- The frequency of filings;
- The frequency of verification checks from the Revenue Commissioners;
- The method for claiming relief, if any, in respect of small businesses or cross-border trade
- The level of complexity of the filings themselves and the extent of information required to be recorded, the extent of supporting documentation (if any) that is required to accompany the filings
- Whether the filings can be made electronically, or by an agent, if the SSD tax is self-assessment tax, this could result in more professional advice being needed by businesses and resulting in additional costs.
- Requirements regarding record keeping, the length of time that supporting records need to be retained

Although it is not possible to predict with any accuracy the exact cost for businesses of dealing with the administration of the new tax, by way of example and excluding any other costs such as implementing systems changes, a recent publication by the European Commission would suggest that the VAT compliance costs of businesses that sell goods across multiple EU Member States is approximately €8,000 per country per annum⁷¹. This is for a tax that has been in force for a number of years, and in respect of which there is an existing level of familiarity and therefore it is a *very conservative estimate* of the costs involved, particularly at the start-up stage.

4.4 *Existing legal requirements for production, ingredients labelling and identification and use of CN codes to identify liable products*

In order to help ensure legal certainty, product manufacturers / importers would need clarity as to whether current legal and industry requirements in Ireland for packaging and labelling of their products would be regarded as sufficient for the purposes of calculating and implementing a SSD tax.

Additional labelling requirements imposed on manufacturers/bottlers could result in potentially recurring additional costs for businesses, especially where subsequent changes are made to the SSD tax provisions in, say, successive Finance Acts. The question of labelling is also important for importers of sugar sweetened drinks into Ireland. The EU uses a special coding system (the “Combined Nomenclature” or CN codes) to classify products being imported into the EU from outside the EU.

The question arises whether existing commodity codes could be used to determine whether an imported product is liable to the new SSDT and if so, at what rate. However there may be practical difficulties where the commodity code classification is not based on the specific added sugar content of the product, or is not based on the specific level of added sugar in the particular product. By way of example, the current code (2202) is used to identify “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages...”⁷²

4.5 *Definition of “added sugar”*

Where the SSD tax is framed as a tax on certain drinks with “added sugar content”, questions arising (and which may cause difficulties in interpretation and implementation) include:

- the meaning of “sugar” and “naturally occurring sugar” the meaning of “added” sugar content. This in turn would need clarity on matters such as:
 - the types of processing envisaged to be treated as a process “adding” sugar, and:
 - whether naturally-occurring sugars e.g. ingredients which already have a natural sugar content such as honey, would be included.

4.6 *Definition of “pre-packaged drinks products”*

In indicating that the SSDT will apply to “pre-packaged” drinks only, any SSD tax regime would also need to define the term “pre-packaged”. For example, questions arising in respect of this point include whether the “pre-packaged” term only refers to bottles, cans or cartons. If so, these terms would need to be defined. Another question is whether for example “pre-mixed” drinks for use in retail outlets via dispensers would also fall into this category.

4.7 *Dilution levels for concentrates and cordials*

The consultation document acknowledges that the SSD tax presents difficulties in relation to drinks which are intended to be consumed at a diluted level, and asks whether the sugar contents of these products could be declared at their intended consumption levels, at the early point of import or production.

Where an “intended consumption level” approach is implemented for drinks to be diluted, this in turn would require that a SSD tax regime sets out clear criteria.

4.8 *Enforcement measures and penalty regime*

Another question requiring consideration would be identifying the public body that would be responsible for administering the new tax (e.g. Question 12 of the consultation document refers to the Revenue Commissioners as the relevant party) and also identifying, for example the penalty regime, if any, that would be applied in the case of errors or non-compliance, and consider whether the SSD tax regime will be subject to the same Code of Practice as certain other taxes with regard to audit procedures, taxpayer disclosures of errors and penalty settlements.

4.9 *Lead in time for Revenue to put in place administrative systems*

Practically, in introducing a SSD tax regime, it would be necessary to consider the specific procedures that would be put in place for potentially affected businesses to clarify matters of doubt in respect of the tax. Questions arising include:

- whether there would be a procedure for businesses to seek advance opinions or determinations (would this be similar to the existing Binding Tariff Information (BTI) in respect of customs duties or a Revenue determination in respect of VAT rates etc)
- if so, would these rulings be published (or would they for example apply solely to the applicant),
- what measures, if any, would be taken to redact any commercially sensitive information where rulings were published,
- whether applications for opinions would be accepted from parties other than the business that is liable for the SSD tax (e.g. customers),
- how long would a ruling be “binding” for and would there be an appeal mechanism where a business disagreed with a ruling given or previously published?

Chapter 5

Economic Analysis

5.1 *Introduction to trade considerations*

This analysis begins from the starting point that a SSD tax will be introduced. Taking as noted our objections to the dubious health benefits of a tax which targets 3% of total daily calorific intake, we look at the expected economics from the point of view of the tax itself, its impact on households and particularly on cross-border trade in retail.

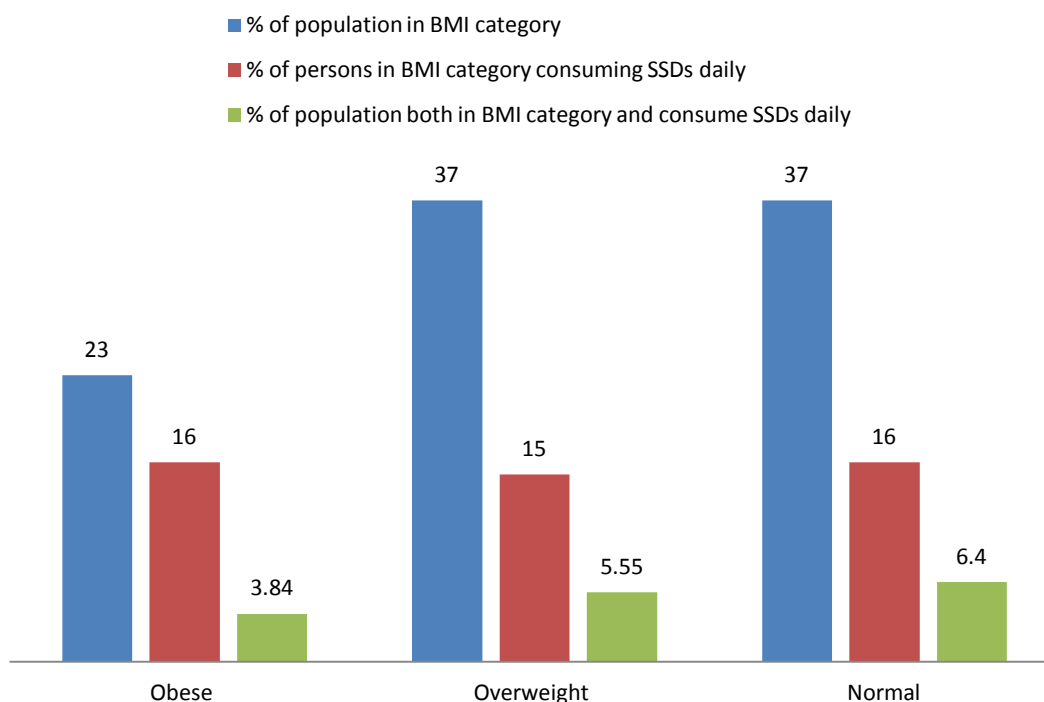
5.2 *Use of excise to shape consumer behaviour*

The benefit of 'non-neutral' taxes, such as a tax on SSDs, is to align economic costs of a good facing the consumer with the actual individual and social costs. Although in theory this may be possible it is often difficult to achieve in practice without taxing people unnecessarily or causing economic distortions which mitigate or negate the benefits of the tax. The Institute for Fiscal studies has outlined this difficulty as it pertains to taxing sugar stating that "any tax is likely to affect not only the people for whom the actual costs are most out of line with their perceived costs, but also the people for whom there is no social or unaccounted-for future private cost. The tax makes the latter type of individual worse off, since they face a higher price, and there is no benefit to society or to the individual in the future."⁷³ In this case the equity and efficiency of the tax depends on the benefits of the marginal impact of the tax on SSDs on obesity amongst the target population versus the marginal losses in consumer surplus amongst the broader population.

From the outset, the proposed SSD tax is likely to be poorly targeted, inefficient and inequitable. The recent Healthy Ireland survey gave clear evidence of this poorly targeted nature of the measure. A significant proportion of the tax is likely to be levied on SSD consumers for whom the economic cost is already equal to the social or unrecognised private cost. The survey showed no difference in terms of daily consumption of sugar-sweetened drinks between those of a normal weight and those who are overweight or obese.

16% of those of a normal weight drink sugar sweetened drinks on daily basis compared with 15% of those who are overweight and 16% of those who are obese. Of those that consume SSDs daily only 24.3% have a BMI above 30. Only 3.8% of the overall Irish population fall into this category. Almost 40% of those that consume SSDs daily on the other hand are of a normal weight. For that 40% of the effected population the tax represents the imposition of little more than a cash-grab. At a population level the figures from the Healthy Ireland survey suggest that there are upwards of 100,000 more people who consume SSDs daily and are of normal weight than who consume SSDs daily and have a BMI over 30.

Figure 1: BMI and SSD consumption



Source: Healthy Ireland survey

This tax inefficiency may in practice hit a broader part of the population. As we have shown to the 2016 only 3.8% of the population are obese and consume SSDs on a daily basis. 67% of people on the other hand purchase snack foods and confectionary on a daily basis. The IFS have noted that it is likely that consumers with a strong taste for sugar would substitute towards these products in response to the introduction of a tax on SSDs. Not only that but many retailers (particularly those using value based pricing models) would logically respond to the displaced demand by increasing the price of substitute products in line with the increase in SSDs. There is some evidence of this in the case of Denmark's fat tax where retailers increased prices on lower-end butter products over and above the level of the tax in response to demand displaced from higher end butter products⁷⁴. This in effect would mean price increases for over 70% of the population in order to target obesity amongst 4% of the population.

5.3 *Impact on cross-border trade*

The total current market for soft drinks and fruit juices in Ireland is in the region of €513 million per annum with the average household spending €291 per annum on soft drinks (HBS, 2011, Census, 2016). The imposition of a tax on sugar sweetened drinks which would raise €100 million per annum would add around €56 to this average household spend (assuming 100% pass through to the consumer. Some studies have shown significant over-pass through for soft-drinks with smaller pass through close to national borders⁷⁵) and represent the imposition of something approaching a 20% tax induced price increase in the product category. Previous studies⁷⁶ have shown the sensitivity of Irish cross-border consumption to price differentials across a number of goods. This has been outlined by the Danish government in a 2010 submission to the OECD and witnessed in their experience with the 'fat tax'. –

“Taxes on health related goods have to be balanced with respect to cross-border shopping. Too high levels of taxes will not reduce the total consumption of unhealthy goods, but only lead to increased cross-border shopping”.

The expectation of companies in IBC is that Irish soft drink companies could lose sales worth in excess of €60 million per year (or about 11% of the market) through cross-border shopping were a tax equating to 10c per can to be levied. This would come through two main avenues:

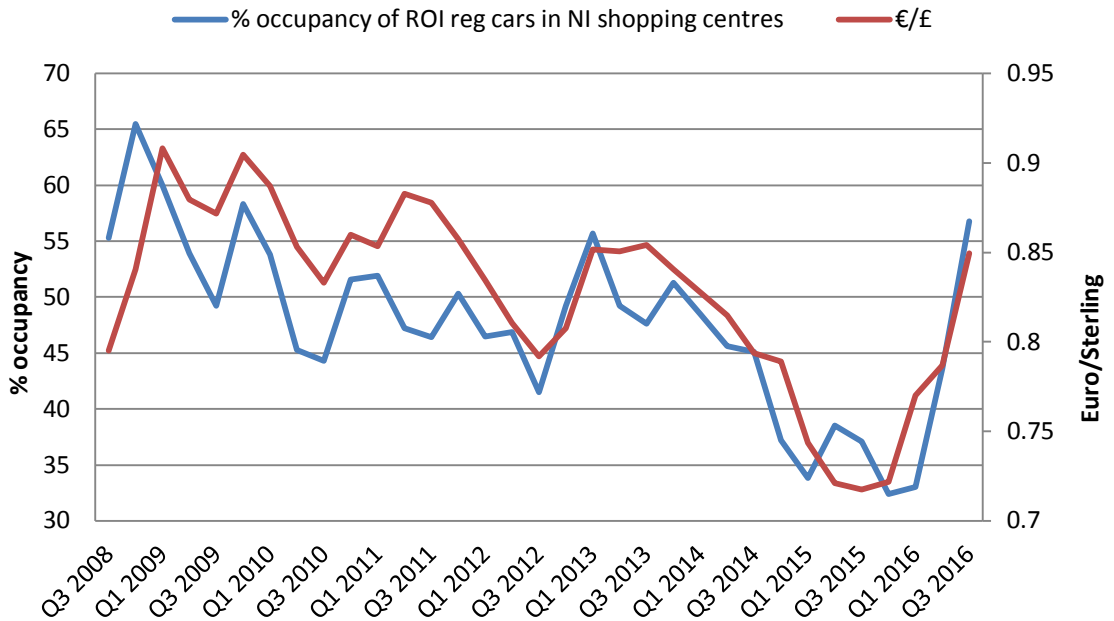
1. Firstly, the imposition of a sugar tax would increase the attractiveness of cross-border shopping by maintaining an already high soft drink price differential between the Republic and Northern Ireland.
2. Secondly, the non-bonded nature of the product in addition to an SSD excise on producers based in the Republic would enhance the attractiveness of the grey market and encourage arbitrage for wholesalers and retailers

Of course, consumers are unlikely to travel just to purchase SSDs alone. SSDs are, however, an important part of the overall basket which drives consumers toward shopping cross-border. The products are a direct compliment to the alcoholic and food products which commonly make up a large proportion of the total consumed by cross-border shoppers. In the following section we look at the rising tide of cross-border shopping, relative prices of SSD products on each side of the border, the impact of a tax on SSDs on that relationship and finally in this chapter provide an estimate of total losses to food and drink sales with reference to the academic literature.

5.4 *Cross-border and the consumer*

Any attempt to introduce a soft drinks tax would create a significant differential to the price of products sold North and South of the border and constitute an incentive to cross-border trade. Following the UK's decision to leave the EU, there has been concern among major retailers that a continued, weakened sterling may lead to increased cross-border trade. Recent evidence has pointed in that direction. Inter-trade Ireland data shows that the occupancy rate of ROI registered cards in shopping centres north of the border has increased from 32% in Q1 of this year to almost 58% in Q3. This is now just short of the peak of 65.5% seen in Christmas 2008.

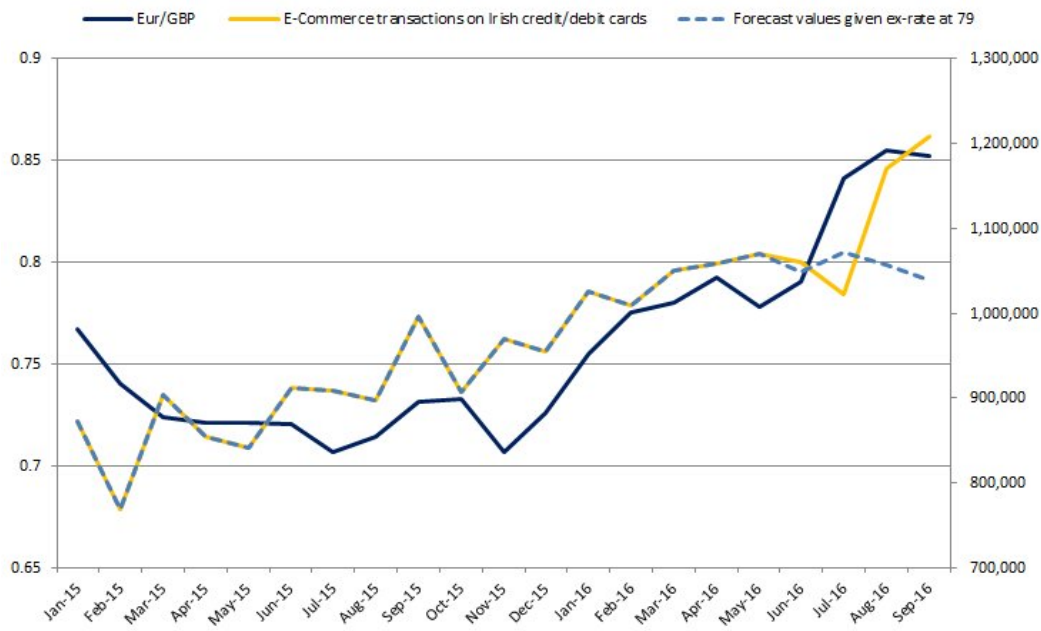
Figure 2: Cross-border retail



Source: Intertrade Ireland

Other indicators have indicated similar trends. New figures from the Central Bank have also shown a surge in online shopping in the months following the UK vote. E-commerce transactions recorded on Irish debit and credit cards jumped by 20% from €1 billion to €1.2 billion between July and September as sterling fell. This was way above trend and is likely to have mostly gone to UK based online retailers.

Figure 3: Euro/Sterling exchange rate and E-commerce on Irish cards

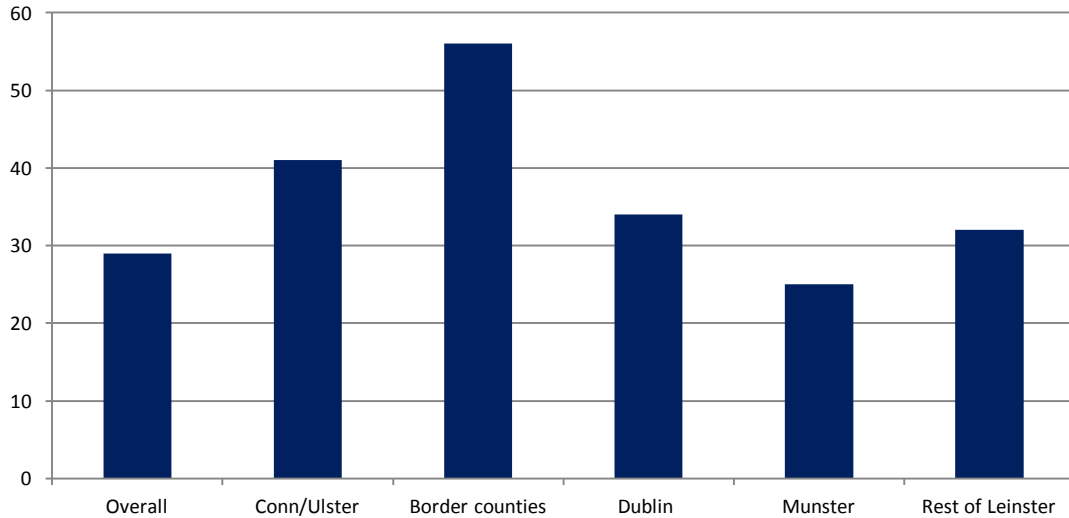


Source: Central Bank of Ireland

Recent research by Red C for the Sunday Business Post confirmed this trend at a consumer level. The nationally representative survey showed that 29% of respondents intend to shop cross-border this Christmas. This was highest among

persons along the Border region (56%) but over 30% in all regions apart from Munster. Transport cost and distance will play a large role in the regional dispersion as with all cross-border shopping.

Figure 4: “I plan to shop over the border in NI in the run-up to Christmas” (% affirmative)



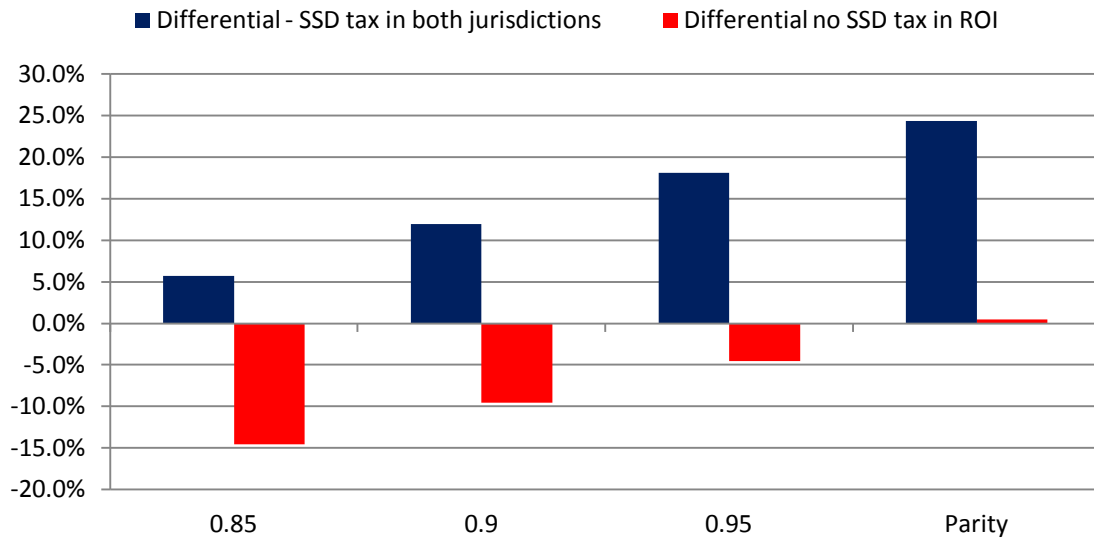
Source: Red C/SBP

In a number of analyses it has been suggested that the delay of the SSD tax until 2018 when a similar measure is intended to be introduced in the North will negate the potential impact of the tax on cross-border shopping. This misses the point almost completely. Consumers do not look at just the tax element of the price; they look at the whole price. Insofar as the introduction of an SSD tax contributes to the maintenance of a large existing overall price differential it will drive cross-border shopping.

A basket of three major soft drink brands in major retailers in the Newry versus Dublin shows on average a price of €2.09 for a 2 litre bottle in Dublin versus a £1.68 in Newry. This represents a 5.7% difference in prices between Dublin and the North at an 85c euro/sterling exchange rate. At 95c that difference rises to 18.1% or just over 32c per bottle. It is worth noting that about ½ of this differential at 95c is driven by the existing gap in VAT rates applied between the jurisdictions.

Non-implementation of the SSD tax in the Republic plus implementation of a sugar tax (increasing average consumer price by 20p per litre) in the UK would reverse the existing differential leaving prices in the Republic 14.6% lower than in the UK at 85p exchange rate and 4.5% below the UK at a 95 p exchange rate. This would entirely reduce the incentive from cross-border shopping for SSDs even at parity. In effect, however, the introduction of a sugar tax in the ROI would see 21.5 percentage point deterioration in the cross-border price differential (at 90c Euro/Sterling) versus a counterfactual scenario where it is not-implemented.

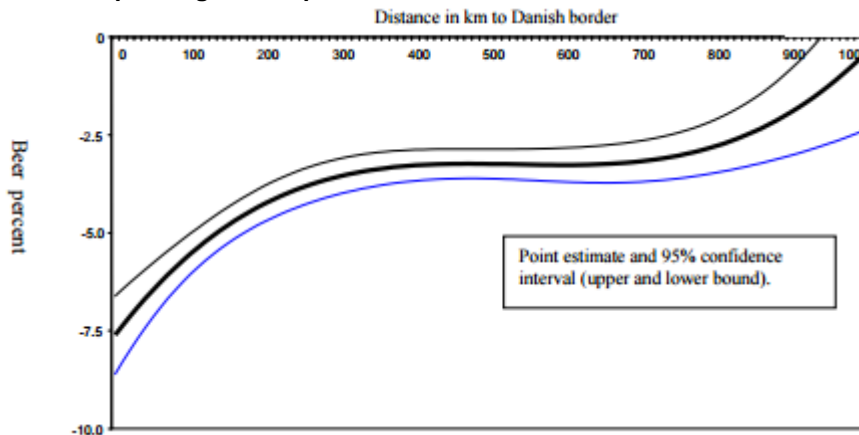
Figure 5: ROI v NI price differential across three SSD brands at a major retailer (with and without average SSD tax pass through of 20c/pl) (%)



Estimates of elasticities of cross-border activity are rare. In one of the best studies of its genre Tosun & Skidmore (2007)⁷⁷ using county level data on food sales and sales tax rates for West Virginia to estimate that for every one-percentage point increase in the county relative price ratio due to the sales tax change, per capita food sales decreased by about 1.38 percent. Somewhat similar results are found in Banfi et al (2005) who estimate elasticity for cross-border shopping to the gasoline price differential in Swiss border regions of 1.75⁷⁸. In an Irish context Fitzgerald (1989) found that the cross-elasticity of Irish spirits sales value with respect to the price in the North was around unity indicating that spirits bought in the North were a close substitute for spirits bought in the Republic.

Asplund et al. (2007)⁷⁹ on the other hand look at the elasticity in border municipalities of alcohol with respect to foreign prices. A major caveat to the use of their estimates, for our purposes, is that their variable of interest is measured as change in nominal foreign prices and takes no account of changes in the relative price differential between jurisdictions. Their estimates also take no account of the relatively high prices in neighbouring foreign jurisdictions. As such the elasticities reported are likely to be an underestimate of the impact of absolute price differentials. Nonetheless, they give useful information on the effect of distance on elasticity. Elasticity estimates for Spirits and Beer range from .375 to .75 at the border and from .25 to .5 for regions 150 km from the border. This is useful in an Irish context given that the regions within 150km of the border accounted for over 93% of cross-border shopping in 2009. This suggests elasticity estimates may be biased toward the higher end of the scale.

Figure 6: Estimated effect on sales volumes for beer in Swedish regions following a 10% reduction in the corresponding Danish price



Source: Asplund et al (2007)

In the coming section, we use the existing estimates for relative price elasticity of cross-border trade to estimate the impact of the SSD tax introduction in the Republic on sales losses across the food & non-alcoholic drinks. For this purpose we look at the difference between two alternative scenarios –

1. Where a 20p/l average SSD tax is introduced in the UK and also the Republic of Ireland and the Euro/Sterling exchange rate is 0.95 leading to a price differential of 11.9% between ROI and NI
2. Where a 20p/l average SSD tax is introduced in the UK and but not the Republic of Ireland and the Euro/Sterling exchange rate is 0.95 leading to a price differential of -9.6% between ROI and NI

For our central scenario we use the mid-point elasticity of the three studies which examine relative price changes on cross-border trade - 1.376. A table of alternative specifications at different exchange rates (.85, .95 and parity) as well as different elasticities (0.75 and 1) are presented in Table 1.

The total food and non-alcohol beverage market in Ireland in 2015 was worth €8.45 billion. Previous studies have shown that there is a close alignment of cross-border shopping patterns with the private consumption basket used to compile the Republic's Consumer Price Index (CPI). This suggests that the bulk of cross-border shopping is straightforward substitute shopping, with people buying cheaper cross-border items in the same proportion as they normally buy them at home⁸⁰. In this context is reasonable to assume that soft drinks in cross-border comparisons make up a similar share of the total food budget as weighted in the CPI - 3.2%.

In this context, a relative increase of 22.7% (the total difference between our two alternative scenarios) in the price of sugar drinks as a result of the SSD tax would increase the relative price of the total food budget by 0.77 percentage points². Applying our central elasticity of cross-border activity at .95c Euro/Sterling exchange rate (our central scenario for the exchange rate in January 2018) this would imply a reduction in per capita food sales of 1.05% or €89.7 million per annum.

² We assume similar price increase across other branded soft drink products, such as diet varieties, due to value based pricing

Table 1: Millions lost in food and non-alcoholic beverage trade to cross-border activity by elasticity and exchange rate at alternative specifications

Elasticity/Exchange rate	€£ 0.85	€£ 0.9	€£ 0.95	€£ Parity
Elasticity 0.75	43.8	46.3	48.9	51.4
Elasticity 1.0	58.3	61.8	65.2	68.6
Elasticity 1.37	80.2	85.0	89.7	94.4

5.5 *Cross-border and the grey market*

Separate to a potential incentive to cross-border shopping is the more sinister risk to an increase in cross-border smuggling. Questions remain as to how the movement of soft drinks would be controlled into and out of the State. At present there are no border controls to enable a check on importing soft drinks which could be subject to a SSD tax. Indeed, it is quite possible the imposition of any such mechanism would be illegal within the single market. Therefore, any such imports would need to be the subject of a voluntary declaration and self-assessment. IBC is concerned that this will lead to an increased risk of cross-border smuggling, along with a risk of the sale of non-controlled products in the State.

There are 231 entry points currently, between the Northern Ireland and the Republic of Ireland. This has in-part lead to the development of mature grey and black markets in areas like tobacco and fuel. This activity need not even be illicit. Revenue data, for example, shows that 7% of cigarettes consumed in the Republic are bought legally from the North⁸¹ with a loss of almost €75 million in tax to the exchequer. This despite limited or negative (Republic being cheaper) price differentials⁸²

These serious concerns about compliance, loss of tax revenue and trade are not IBC's alone but are shared by state operators including the Revenue Commissioners. These were outlined in statements to the Oireachtas Committee on Budgetary Oversight on the 20th of September, 2016, saying:

“Our working assumption is that if one were to introduce a tax on sugar sweetened drinks, it would need to be at a material level to have an impact. If it is at a material level, one is looking at potentially significant discrepancies between here and the North of Ireland. That would give rise to obvious compliance problems, which would be extremely difficult to deal with in the context of the Single Market. Both countries are still in the Single Market and one cannot have border controls or checks on movement in it.

Essentially it would in all probability be a self-assessed tax where returns are made on the first supply in the State of the products that are liable to the tax. There would be a big concern that if there was a significant difference in price levels between here and the North, there would be diversion. I am not talking about consumers going up to buy soft drinks but a grey market could develop with illicit supplies in bulk going into the retail sector. That would be a very difficult challenge. There are several compliance risks and practical considerations in the design of the tax”

Chapter 6

Consultation Response

- 6.1 *The tax will apply to water-based and juice based drinks with an added sugar content of above 5 grams per 100ml. It will not apply to milk-based drinks. Are there drinks on the market which do not fit neatly into these categories, which may be of concern for producers from a compliance point of view?*

In the absence of a detailed definition of added sugar, pre-packaged drinks and where / who the tax will be levied it is challenging to give a detailed answer. It is difficult to see how the stated health objective can be met if not all sugar-sweetened drinks are considered.

Notwithstanding this; dissolvable powders, flavoured ices, tea / coffee, lactose-free and dairy free milk substitutes and candy sprays may not fit neatly and cause concern from a compliance point of view. It is also difficult to see how dilutes fit “neatly” into this category given the varying level at which the consumer uses the product and no industry standard dilution levels.

- 6.2 *Naturally occurring sugar will not be included within the scope of the tax. Do producers have the mechanism for identifying and declaring the added sugar content as opposed to the naturally occurring sugar content of their drinks?*

Members comply fully with legislative labelling requirements. In seeking a mechanism for identifying and declaring the *added* sugar content of the final product it is important to understand that current mechanisms identifies total sugar in product, no differentiation between added and natural is possible in final product.

Under the current EU labelling rules (REGULATION (EU) No 1169/2011) the sugar content of all foods must be determined by the Food Business Operator and the resulting value must appear on the label. According to this regulation the declared nutritional values (including sugar) must be based on either:

- a) the manufacturer’s analysis of the food;
- b) a calculation from the known or actual average values of the ingredients used; or
- c) a calculation from generally established and accepted data.

Beyond this requirement, we are not aware of any pan-industry standard in identification and declaration. We believe that a coordinated system of sugar calculation involving pre-developmental, production, and on-shelf analyses provides a more accurate determination of sugar content than any ‘point in time’ testing, which would only add additional cost in the presence of pre-existing methods. We are happy to work with government to conduct further research in this area.

We urge that all non-calorific sweeteners are overtly exempt from consideration, including those derived from sugar, to indicate the permissibility of these ingredients.

- 6.3 *It is intended that the tax will be collected at first point of import or production. What compliance issues does this present for producers?*

In the absence of a detailed definition of added sugar, pre-packaged drinks and where / who the tax will be levied it is challenging to give a detailed answer. Further as there is uncertainty as to the UK’s future trading relationship with Ireland, and indeed its membership of the Customs Union, it is extremely challenging to explore all the compliance issues.

What is clear is that should the tax be levied as currently suggested the cash flow burden of paying the tax in advance of products being sold would constitute an undue burden on business.

As set out in Chapter 4, the compliance issues that could arise include:

- The level of complexity in how the tax is calculated e.g. multiple bands of taxation, clarity of definitions and terms used in determining the tax liability, specified method of calculating and evidencing the tax computation etc;
- The frequency of filings;
- The frequency of verification checks from the administering public body
- The method for claiming any reliefs
- The level of complexity of the filings themselves
- The extent of information required to be recorded, the extent of supporting documentation that is required to accompany the filings
- Whether the filings can be made electronically, or by an agent etc.
- Requirements regarding record keeping, the length of time that supporting records need to be retained

While totally against the principle of SSD tax, our position is that should the tax be introduced, it should apply equally and consistently to all producers and importers to ensure that it is not anti-competitive.

While it is impossible to give details on compliance issues without further definitions, as mentioned above, we are strongly of the view that it should not be on the point of production or import to avoid an undue cash flow burden on business.

6.4 *The tax will apply to pre-packaged drinks products only. This presents difficulties in relation to drinks which are intended to be consumed as a diluted level. Is there scope to declare the sugar contents of these particular products at their intended consumption levels, at the early point of import or production?*

In the absence of any clarity on the term “pre-packaged drinks” it is challenging to give details. Also we must recognise that there is no common understanding of “intended consumption levels”.

It is important to acknowledge there are no standard dilution rates for dilutables, by category, flavour or sugar content. There is no test to determine appropriate ratios. A standard dilution rate does not exist and considerable research would need to be undertaken to understand whether setting a level would be feasible.

Manufacturers are clear with their customers on recommended dilution rates. There is also a considerable range of diluted products, including more recent innovation such as super concentrated packs.

Recommended dilution rates vary from business to business and from product to product, based on an assessment of the rate which is most likely to appeal to consumers. A standard dilution rate would not allow for this variability in product and would not allow for dilution rates to be altered over time as consumer preferences and tastes for sweetness change.

Should a tax be introduced it should have a tolerance for changes in the dilution rate. This tolerance, effectively allowing gradual movement of a recommended dilution rate, would deliver a simple way to encourage customers to consume less

sugar by increasing and advertising this new dilution rate – effectively a ‘DIY’ reformulation.

Space must be allowed for industry innovation to help reduce packaging and water use, like increased concentration. Any tax would need to include tolerance for changes in dilution rates.

The initial design of the SSD tax indicates any change in dilution rates may be seen negatively, when it may actually assist in achieving the sugar-reduction policy objective.

6.5 *What do respondents consider to be an ‘added sugar’? What would they define as necessary to include in this definition in order to cover the types of sugars typically added to soft drinks?*

A pre-consultation to define ‘added sugar’ and other terms used in the consultation document, as happened in the UK, would have been helpful and allowed submissions to be fuller.

In order to be constructive the IBC is suggesting the sugar definition in EU REGULATION (EU) No 1169/2011 forms the basis of a definition of added sugar as all monosaccharides and disaccharides present in food, but excludes polyols.

The IBC is strongly of the view that any legislative proposal for this proposed tax expressly state that all non-calorific sweeteners are exempt from consideration, including those derived from sugar, to indicate the permissibility of these ingredients.

6.6 *If you are a very small producers of SSDs, what concerns do you have regarding being included in the SSD tax?*

Given the lack of clarity in the question – there is no definition of a ‘very small producer’ - it is unclear what concerns are appropriate to highlight. The introduction of a SSD tax could potentially discourage start-ups or small local producers from operating in the industry, especially where the cost or resources required meeting the various obligations are either too high or else uncertain.

Should a relief be considered for very small producers there is a risk that it could encourage/set an incentive for gaming the tax system, where large businesses break into smaller units (with different ownership or share listings). Further, a very small producer allowance could breach EU State aid rules and if it is considered, a universal relief should be adopted.

If the objective of the tax is to alter consumer behaviour as stated in the Healthy Weight for Ireland action plan, it illogical to consider exempting parts of the market.

6.7 *In relation to milk-based drinks, should there be a minimum milk content in order for a drink to be defined as milk-based?*

Should Government proceed with the tax, all added sugar drinks should be treated equally, regardless. To do otherwise would give their manufacturers unfair advantage and runs contrary to the tax’s stated aim.

We also believe consideration should be given to the Finnish Food & Drink Industries’ Federation (ETL) proceedings initiated in 2013 with the European Commission against the Finnish Government for unlawful state aid regarding the

excise duty on sweets, ice-cream and soft drinks. In response to this complaint the Finnish Government has recently confirmed that it is extending the tax scheme of beverages to cover also sugar sweetened milk-based beverages to remove the discriminatory element in the scheme.

More recently, it is important to note the stance taken by Commissioner Vestager in her reply to a question from a Finnish MEP Anneli Jäätteenmäki on this subject:

“Member States are in principle free to design their taxation system. Nonetheless, Member States must exercise this competence in accordance with Union law, including state aid rules.

As regards special-purpose taxes, such as environmental and health taxes imposed to discourage certain activities or products that have an adverse effect on the environment or human health, the Commission Notice on the notion of state aid explains that such measures do not fall under state aid rules if Member States ensure that all activities or products, whose situation is the same in light of the intrinsic objective pursued by the tax, are subject to the tax on equal grounds.

If the effect of the tax is to apply different tax treatment in such a way that it favours certain undertakings or the production of certain goods over others which are in a comparable legal and factual situation in the light of the intrinsic objective pursued by the tax, the measure is prima facie selective and constitutes state aid (if all the other conditions of existence of state aid are fulfilled), unless the Member State can show that this differentiation is actually justified by the nature and general scheme of the system in question.”

6.8 *Are there particular cross-border issues that you envisage will exist if the Irish SSD tax does not closely align with the UK soft drinks industry levy?*

Without the details of the UK's future trading relationship with Ireland and the EU generally in the context of Brexit, it is virtually impossible to envisage all the issues that will exist. The imposition of an extra layer of administration that could include registering for export credit to avoid double SSD taxation, as well as registering and reporting for a SSD tax itself, before it is even known if the UK will continue to be part of the Customs Union, poses a significant threat to cross-border trade.

There is also a significant economic threat to cross-border trade. We are asking that these threats set out in Chapters 5 be addressed in any proposal.

It is the position of the IBC that, while totally against the principle of SSD tax, should the tax be introduced, it should apply equally and consistently to all producers and importers to ensure equal burdens of compliance and a continued level playing field of internal-market competition.

For a SSD tax to be effective there needs to be an adequate and proportionate enforcement regime and anti-avoidance measures. As the consultation document does not set out the detail for compliance and enforcement it is difficult to answer the cross-border aspect of this question.

There is a risk of counterfeit, recipe fraud and imports of product that does not meet the aims of the tax. Were the tax to be introduced there is a significant incentive for retailers to source product from cross-border wholesalers for onward

sale at increased margin. The IBC would welcome further discussion about proposals to prevent any grey market activity. With 231 entry points between the Ireland and Northern Ireland and no customs controls at these points, any imports of soft drinks by wholesalers would have to be subject to voluntary declaration and self-assessment. This presents a real risk of cross-border smuggling and a risk of non-controlled products entering the market.

The proposals have the potential to open up a grey and black market for soft drinks through imports, without a clear, adequate system of checks and balances.

6.9 *How integrated are the production systems for soft drinks across borders in the UK and Ireland? Does the cross-jurisdictional nature of production of soft drinks present particular difficulties to producers?*

It is important to state that many beverage companies produce, market and / or sell product on an all-island basis.

The soft drinks supply chain is highly integrated across Ireland, the UK and Northern Ireland. The majority of soft drinks consumed in Ireland are imported. Some members supply the island of Ireland from bottling-plants in Northern Ireland and Great Britain, there are also members who produce product in this jurisdiction for local consumption, export and intra company volume.

The cross-jurisdictional nature of soft drinks production includes other parts of the value chain. Some retailers and wholesalers operate on an island of Ireland nature, as do many foodservice operators.

This is a significant aspect of the beverage industry in Ireland. Without clarity of the UK's trading position following Brexit it is challenging to pinpoint particular difficulties.

As well as the issues raised in our answer to question 8 concerning the black and grey market, cross-border economy and seeking to prevent the creation of a competitive advantage for either producers or importers, there are a number of issues that are raised in the cross-jurisdictional nature of production, most notably currency fluctuations.

With the UK set to leave the EU and the jurisdiction of the ECJ, there is a significant chance for divergence in terms of standards underpinning both the industry and a SSD tax between Ireland and the UK and Northern Ireland. While legislation on standards, labelling and testing may not change there is no way to predict any future actions and/or rulings that may emanate from either the Royal Courts of Justice or the ECJ.

While the details of the UK's withdrawal are still unknown, even less is known about a future ISDS system to protect industry and investment should divergence between Royal Courts of Justice and ECJ occur post Brexit.

6.10 *Is there a system whereby producers can track their individual products, for example in the case of a product recall being necessary? Would it be possible to integrate this system with the SSD tax, to allow the Revenue Commissioners to audit whether products for sale to the consumer have been subject to the tax?*

IBC member companies have robust product tracking systems and comply with all legislative requirements. However there is no pan-industry system that would allow

Revenue to audit no / low / medium / regular sugar products. Without further details of the auditing process we cannot speculate on how the systems might be integrated. The IBC is willing to engage with the Department and Revenue to develop tracking and audit systems.

- 6.11 *More broadly, do you have any concerns from a health perspective about which products are included and excluded by the scope of the tax?*

Soft drinks make up just 3% of our daily calories, meaning the tax completely disregards 97% of calorific intake. This poses a significant problem in achieving the stated health aims of the tax. SSDs are recommended to balance blood sugar content in diabetics. The potential for black-market counterfeit / recipe fraud products entering the legitimate market could pose a significant health threat to Type 1 diabetics who use SSD products for their health needs ; there is no guarantee that counterfeit products will be produced to the same recipe standards. Sugar-sweetened beverage products have been recommended by dieticians as treatment for Type 1 Diabetes patients for their convenience and ready availability.⁸³

- 6.12 *Producers may be required to provide regular documentation to verify the added sugar contents of their produce to the Revenue Commissioners. We anticipate that this information will already form part of industry production methods. How costly a task would this be for producers?*

Without clear definition of “added sugar” it is difficult to assess. However the primary concern for the IBC is that there is a level playing field for both domestically produced and imported drinks with testing through the same facilities.

It is important to state that naturally occurring and added sugars once blended together are impossible to distinguish. This raises a number of issues – such as the integrity of the data from the importers/producers and the Revenue’s ability to verify such data. This is something that the government will need to clearly address, should a tax be introduced, in order to ensure that there is no discrimination between domestic manufactured beverages and imported beverages.

- 6.13 *Those who are liable to pay the tax will be required to register and submit returns. Are respondents aware of any data sources that can be relied upon to support compliance and/or reduce administration burden on businesses? (e.g. traceability records)*

With no details provided in the consultation document of what is required to register / submit returns and no details of the test and tracking required it is challenging in the extreme to comment on compliance and administration burden.

As set out in Chapter 4 it is questionable whether existing commodity codes could be used to determine whether an imported product is liable to the new SSD tax and if so, at what rate. However there may be practical difficulties where the commodity code classification is not based on the specific added sugar content of the product, or is not based on the specific level of added sugar in the particular product.

- 6.14 *Are there circumstances where soft drinks may become spoiled or unfit for use after the bottling process and if so, can producers advise the extent that this occurs and the quantities involved?*

Products may become spoiled in a number of ways:

- Packs may be under-filled and not be packaged for sale

- Packs may become damaged during the production process
- Product may not reach quality standards & be scrapped
- Packs may become damaged during warehouse storage and transportation
- Product in warehouse may exceed its best before or shelf life & be written off and scrapped
- Shops may hold stock past its best before date and return it
- Product recalls
- The testing of reformulated products inevitably leads to trial-and-error waste. Potential taxation on these products would discourage reformulation and innovation.

Given that the proposed tax is focused on consumption outcomes, rather than manufacturing, it would be appropriate for the tax to take full account of spoiled product that did not reach the consumer.

6.15 *Are you involved in any export or re-export trade in soft drink or SSD and if so, do you see any difficulties posed to those transactions?*

With no details in the consultation document of what is required in these transactions, it is difficult to answer this question comprehensively. The IBC is willing to engage further with the Department and Revenue and in particular to discuss intra company volume and cross-border trade issues.

For illustration rather than indicative purposes however, there are cases where member companies may re-export. Products can be sold in good faith and then this product can be sent abroad, for example in the military or religious orders. Imports may not come through a company's distribution processes in Ireland, for example stock is sold to a retailer by a producer and is subsequently transported by the retailer to all of their retail outlets including outlets in Ireland.

6.16 *What "black-market" or other tax evasion activity do you consider might be directly caused by introducing a SSD tax?*

The proposals have the potential to open up a grey and black market for soft drinks through imports, without a clear, adequate system of checks and balances. An adequate and proportional enforcement regime is required and it is critical that the appropriate funding be granted to the enforcement authorities.

As stated in question 8, there is a risk of counterfeit, recipe fraud and imports of product that doesn't meet the aims of a SSD tax. Were the tax to be introduced there is a significant incentive for retailers to source product from cross-border wholesalers for onward sale at increased margin. The IBC would welcome further discussion about proposals to prevent any grey market activity. With 231 entry points between Ireland and Northern Ireland (before we consider ferry ports and connectivity with the rest of the EU) and no customs controls at these points, any imports of soft drinks by wholesalers would have to be subject to voluntary declaration and self-assessment. This presents a real risk of cross-border smuggling and a risk of non-controlled products entering the market.

It is important to repeat that counterfeit and recipe fraud black-market products entering the legitimate market could pose a significant health threat to Type 1 diabetics.

Chapter 7

Unintended Consequences and Issues Not Covered in the Consultation Document

7.1 *Inflation*

As the intention of a SSD tax is to increase consumer prices it is inevitable that it will impact inflation.

7.2 *Impact on hospitality, café, restaurant, pub & tourism offering*

A SSD tax specially designed to increase prices to the consumer will increase the cost of Ireland's hospitality, café, restaurant, pub and tourism offering. This will unfairly disadvantage the tourism sector against competing markets.

The British Soft Drinks Association commissioned independent experts Oxford Economics to estimate the effects on the sector of their levy. The report, "*The Economic Impact of the Soft Drinks Levy*" showed the impact of the UK levy will be felt across the wider economy, particularly in the hospitality sector and amongst smaller retailers. Lower sales will reduce the industry's contribution to the economy by £132m. A similar more acute impact can be expected here.

Hospitality businesses have exacerbated cost efficiency possibilities following the recent recession and will therefore find it extremely difficult to remain competitive, while offering increased costs to their customer.

7.3 *Impact on socioeconomic disadvantaged groups*

Food and beverages are basic necessities, and so there is a distinct risk of regressive policy when including these items in a tax.⁸⁴ There is high likelihood that the tax as proposed will disproportionately effect households with low incomes. The 2010 Household Budget Survey shows that more impoverished socio-economic groups spend a higher proportion of their income on SSDs.⁸⁵ Within the Department's working paper for tax rationale, we note that evidence remains inconclusive for any savings of health expenses to offset this regressive impact.⁸⁶ Briggs et al (2013) demonstrates that lower-income households are no more likely to shift behaviour than higher-income households.⁸⁷ An estimate of the full impact is challenging without more details of the tax. Given the evidence from precedent studies, however, we are concerned with the disproportionate socio-economic impact of the proposed tax.

7.4 *Charities and community groups*

The IBC do not believe that product given away free of charge should be subject to a SSD tax, should it be introduced. As an industry, all companies provide product to many worthy causes, including charities and community groups. If the cost of this community support programme is increased through the application of a SSD tax, the scale and reach of these programmes will be put at risk.

7.5 *Impact on innovation*

The impact of this tax has the potential to restrict future ability of industry to invest in new innovations. This is counterproductive in implementing the Government's stated health aims. An allowance should be in place to allow for future innovation in sugar derivatives that support calorie reduction in beverages.

7.6 *Stifling start-up and growth of small producers*

The introduction of a SSD tax could potentially discourage start-ups or small local producers from operating in the industry, especially where the cost or resources required meeting the various obligations are either too high or else uncertain.

7.7 *Brexit*

As stated in the Department of Finance's "*Getting Ireland Ready for Brexit*" the exact arrangements that will apply post-Brexit to transactions between Ireland and the UK are not yet known. Therefore it is impossible to predict the impact of Brexit on any SSD tax regime that may be introduced, or to assess the degree to which the UK and Irish SSD tax systems will be aligned in the post-Brexit environment. It is simply untrue to state that a new SSD tax system will align or complement a similar UK measure in the future. Given the integrated nature of the production systems for soft drinks across borders on our island and the cross-jurisdictional nature of the beverage industry, Brexit poses a significant challenge to any SSD tax regime.

7.8 *Smuggling and counterfeiting*

The existing black market for high taxed goods cannot be ignored. There are valid concerns that by introducing a SSD tax regime a further potential black market could be created. While it is unclear who the relevant authority to enforce a SSD tax will be, the existing black market shows that enforcement authorities are facing serious challenges. To increase the black market space at this time would be to further burden authorities and risk increases in smuggling and counterfeit activity across all black market goods. Given the volume of products that the SSD tax could cover this poses serious resource and staffing challenges for any enforcement agency.

7.9 *Wage and social protection pressures*

Increasing the cost of a weekly shopping basket, increased dining costs and socialising expenses will inevitably lead to increased demands on the exchequer, especially for those on fixed incomes. As this submission has demonstrated it is not clear that consumers will simply switch to untaxed products. When assessing the cost to the State of the impact of a SSD tax, additional demands for increased pay and payments must also be considered along with the administration of a SSD tax.

7.10 *Exports competitiveness*

While the rationale for introducing the tax is based on public health strategy in Ireland, there is also the matter of whether the impact of the tax will affect the competitiveness of goods that are produced in Ireland for export or supplied to transport undertakings for consumption on board airlines and ferries. The impact of the administrative burden of an export credit and the SSD regime on domestically consumed product, or possible dual production or labelling will directly impact the export competitiveness of Irish produced goods abroad.

Chapter 8

Conclusion and Recommendations

8.1 *Lack of public health rationale*

Without adequate evidence that a SSD tax can meet its intended health priorities, we remain unconvinced that this proposal is worthwhile legislation. Reviews of existing research find the effectiveness of SSD taxes in reducing obesity inconclusive. Shemilt et al (2013) reviewed 880 studies and concluded that “the public health case for using economic instruments to promote dietary and physical activity behaviour change may be less compelling than some proponents have claimed.”⁸⁸ Committing funding to a tax that has a sole objective to reduce the rate of childhood and adult obesity is making a promise to the public that government may not be able to keep.⁸⁹

8.2 *Cost to industry and the economy*

Without further detail on the rate and scope of the proposed tax, it is impossible to estimate the potential economic impact of the legislation. However, in order to maintain a stable economic climate for consumers it is important to have fiscal measures backed by sound fiscal thinking. We urge the Department of Finance to enquire further about the economic costs of this tax prior to introducing legislation, to assess its full impact on jobs within affected sectors, cost to consumers, business growth and prosperity, and public contributions from the industry.

8.3 *Requirement for further research*

Given the Health Impact Assessment conclusion that evidence for the effectiveness of taxation in addressing the challenge of obesity remains inconclusive, it is our position that further research is required before implementing a SSD tax. As demonstrated in section 2.9, current evidence suggests caution in implementing an SSD tax solely for the purpose of addressing obesity. Data for suggesting the effectiveness of SSD taxes remains heavily reliant on models rather than precedent, and studies based from real-world consumption data remains inconclusive at best. Without a consistent demonstration of effectiveness, the implementation of a sugar tax is a liability for the Irish economy.

8.4 *Future review and sun setting*

If it is the case that the sole reason for introducing an SSD is to reach stated health targets, and not simply to raise revenue, it is logical to review the tax and its impact, if any, on the targets. The health objectives (Healthy Weight for Ireland pg29) include self-assessment surveys. As self-assessment is not evidence based and open to interpretation, appropriate agreed measures would have to be considered.

The IBC are firmly of the view that any legislative proposal would include a review and sunset clause to insure its removal should the aims not be met or the proposal proves ineffectual.

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Irish Beverage Council

Irish Beverage Council is the Ibec group that represents companies that produce, distribute and market soft drinks, fruit juices, bottled water and sports and energy drinks throughout the island of Ireland.

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