

Ban on the importation of any electronic cigarette related products

Mexico City, October 28, 2021

On October 22, 2021, the "Decree amending the General Import and Export Taxes Law Tariff" was published in the Official Gazette of the Federation ("DOF"), through which tariff codes 3824.99.83 and 8543.70.18 are amended to add alternative nicotine consumption systems (SACN) to the general prohibition in force for the import and export of any object that is not a tobacco product used for the alternative consumption of such substance.

Likewise, the National Note 16 of Chapter 85 corresponding to *"Electrical machinery and equipment, and accessories thereof; recording or reproducing sound devices, television and sound recording or reproducing devices, and parts and accessories of such products"* of the referred Tariff was amended to add the reference precisely to the SACN as goods included in the tariff classification mentioned above.

It is important to point out that, through the publication of the "Decree amending the General Import and Export Taxes Law Tariff" dated July 16, 2021, the description of tariff code 8543.70.18 was amended eliminating the SACN from such tariff code, considering that they were included in the tariff code 8543.70.99, in which they were classified prior to the entry into force of the measure described in the "Decree amending the General Import and Export Taxes Law Tariff", published on February 19, 2020 in the DOF.

However, the authority points out that, since the World Health Organization (WHO) has supported the prohibition of the importation, sale and distribution of such products, with the purpose of preventing non-smokers, young and vulnerable people from starting the consumption of SACN, as well as in compliance with the several court rulings issued by the Supreme Court of Justice (SCJN), and in accordance with the provisions of article 4, paragraph nine of the Constitution and the principle of the best interest of children, it was necessary to reestablish the express prohibition of the importation and exportation of the aforementioned SACN, since the purpose is to prevent health risks to children and young people.

In this regard, it is important to remember that both solutions, mixtures, cartridges and/or detachable tobacco units, as well as electronic nicotine delivery systems, similar systems without nicotine, electronic cigarettes and vaporizing devices with similar uses, are already prohibited for import and export through several amendments of the TIGIE on previous years, therefore, the prohibition of SACN is added to the prior existing restriction, without modifying the previous customs regime that affected the other types of devices and related substances.

It is equally important to point out that such the Decree in comment would be contrary to the thesis contradiction 39/2021 issued on October 19, 2021 by the Supreme Court of Justice, in which it declared as unconstitutional the prohibition established in article 16, section VI of the Tobacco Control General Law for being incompatible with the right to equality and consequently, violating the freedom to trade, sell, distribute, exhibit, promote or produce and the right to the free development of personality, by absolutely forbidding the commercialization of any object that is not a tobacco product, but that contains any of the elements of the trademark or any type of design or auditory sign that identifies it with tobacco products.

In this sense, the Decree published in the DOF, as well as the general prohibition of import and export of the substances and devices mentioned herein, could be challenged for being contrary to the Federal Constitution, International Treaties and other provisions, in order to seek that their import and export to and from Mexico is allowed.

The following link contains the official DOF publication for your reference:
https://www.dof.gob.mx/nota_detalle.php?codigo=5633607&fecha=22/10/2021.

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