

Addition of “Ecological Taxes for Environmental Remediation” in the State of Guanajuato

Mexico City, December 14, 2022

On November 3, 2022, the Parliamentary Gazette of the State of Guanajuato (*Gaceta Parlamentaria del H. Congreso del Estado de Guanajuato*) published Decree Number 111, whereby an Eighth Chapter is added to the Second Title of the Income Law of the State of Guanajuato called “Ecological Taxes for Environmental Remediation”, (the “Decree”).

The Ecological Taxes for Environmental Remediation added to the Income Law of the State of (the “Law”), are the following (jointly, the “Ecological Taxes”):

I. Tax for Environmental Remediation for the Emission of Polluting Gases (the “Tax for Emission of PG”)

Its object is the air emissions of certain substances generated in the production processes that take place within the State and that affect its environment.

An air emission is considered to be the direct or indirect expulsion of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and Sulphur hexafluoride (the “Gases”), either individually or any combination thereof that affects the quality of the air, the components of the atmosphere and that constitute greenhouse gases that impact environmental deterioration by causing global warming.

- A. Obligated Subjects: (i) individuals, (ii) legal entities, and (iii) economic units residing in the State, or (iv) those residing outside the State, which have facilities or fixed sources in where activities that generate emissions of the taxed substances are carried out in the territory of the State.
- B. Tax base: the amount of contaminant load of the taxed substances emitted from the installation(s) or fixed sources, expressed in tons and Carbon Dioxide (“CO2”) equivalent.

To determine the tax base, the taxpayer will make a direct measurement or estimation of the air emissions generated and, if applicable, the last report to the Register of Emission and Transference of Contaminants ("RETC") of the Ministry of Environment and Natural Resources ("SEMARNAT"), as well as the reports and records held by the Ministry of Environment and Territorial Planning of Guanajuato ("SMAOT") or municipal public entities.

Each ton of the type of gas emitted must be multiplied by the factor established in Table 1 of the Decree.

- C. Causation and determination: the tax will be caused at the moment in which the taxpayers emit the taxed substances and that affect the territory of the State, applying a fee of MXP\$250 per ton emitted of CO₂ or its conversion.

II. Tax for Environmental Remediation for the Emission of Soil, Subsoil and Water Pollutants (the "Tax for Emission of SSWP")

Its object is the emission of polluting substances that are deposited, discarded or discharged onto the soil, subsoil or water in the territory of the State.

- A. Obligated Subjects: *(i)* individuals, *(ii)* legal entities, and *(iii)* economic units that in the territory of the State, under any title, directly or through intermediaries, discharge pollutants that are deposited, discarded or release onto the soil, subsoil or water in the territory of the State.
- B. Tax base: the amount in square meters of land or cubic meters of water affected, as appropriate, with polluting substances that are issued or discharged from facilities or fixed sources expressed as follows:
 - 1. For soil and subsoil, the amount of milligrams per kilogram, dry basis, obtained from samples that are carried out according to the Official Mexican Standards, in every 100 m² of land, in accordance with the following:
 - a. Soils contaminated with hydrocarbons: the samples to determine the amount of milligrams per kilogram, dry basis, for 100 m² of land, will be obtained in accordance with the Official Mexican Standard NOM-138-SEMARNAT/SSA1-2012, Maximum permissible limits of hydrocarbons in soils and guidelines for sampling in the characterization and remediation specifications, published on September 10, 2013.

- b. Soils contaminated with arsenic, barium, beryllium, cadmium, chromium, hexavalent, mercury, nickel, silver, lead, selenium, thallium and vanadium: Samples to determine the quantity of milligrams per kilogram, dry basis, per 100 m² of land, will be obtained in accordance with the Official Mexican Standard NOM-147-SEMANAT/SSA1-2004, which establishes criteria to determine the remediation concentrations of soils contaminated by arsenic, barium, beryllium, cadmium, hexavalent chromium, mercury, nickel, silver, lead, selenium, thallium and vanadium, published on March 2, 2007.
2. For water, in milligrams per liter, that are present in each cubic meter, based on the following:

The samples to determine the amount of milligrams per liter in each cubic meter of water, will be obtained in accordance with the Official Mexican Standard NOM-001-SEMARNAT-2021, which establishes the maximum permissible limits of pollutants in wastewater discharges in receiving bodies of water owned by the Nation, published on March 11, 2022.

The parameters change depending on the pollutants in the wastewater discharges and the receiving bodies of water. These are classified as follows:

- a. Pollutants in basic wastewater in rivers, streams, canals and drains.
 - b. Pollutants in wastewater to reservoirs, lakes and lagoons.
 - c. Pollutants in wastewater, in rivers, streams, canals, drains, caused by heavy metals and cyanide.
 - d. Pollutants in wastewater in reservoirs, lakes and lagoons, caused by heavy metals and cyanide.
- C. Causation fee: the tax will be caused by applying the following equivalents and fees for each pollutant:
 1. Soil and subsoil: A tax fee for the equivalent of MXP\$25 per 100 m² affected with the polluting substances indicated in section I, subparagraphs a) and b); and
 2. Water: Contaminants in basic wastewater and in wastewater, caused by heavy metals and cyanides, a tax fee of MXP\$100 per cubic meter affected by the polluting substances indicated in section II, subparagraphs a) - d).

III. Tax for the Environmental Remediation for the Deposit or Storage of Wastes (the "Tax for DSW")

Its object is the deposit or storage of waste in public or private landfills, located in the State of Guanajuato, which are toxic or hazardous pollutants that when released into the environment, represent a risk to on human health, ecosystems or to ecological equilibrium.

To identify that the wastes generate the aforementioned effects, the information reported by the obliged subjects of this tax to SEMARNAT through the environmental impact statement, the comprehensive environmental license, the COA and their waste management plan, will be taken as the basis.

- A. Obligated Subjects: (i) individuals, (ii) legal entities, and (iii) economic units, whether or not they are residents of the State of Guanajuato, that generate the wastes and that directly or through intermediaries, deposit or store waste in public or private landfills, which, are a toxic or dangerous and cause risk effects on human health, ecosystems or the ecological balance, when released into the environment.
- B. Tax base: the amount in tons of waste deposited or stored in public or private landfills, located in the State of Guanajuato that are generated during a calendar month or fraction of it.

There are certain exceptions established in the Law regarding the tax base when the wastes comply with certain technical characteristics based on the following laws: (i) General Law of Ecological Equilibrium and Environmental Protection; (ii) Law for the Prevention and Integral Management of Wastes, (iii) Law for the Integral Management of Wastes of the State and Municipalities of Guanajuato, or (iv) any NOM established in article 78-Q of the Law.

- C. Causation and fees: the tax will be caused by applying a fee of MXP\$100 per ton of waste deposited or stored in public or private landfills, in accordance with the provisions of article 78-Q of the Law.

Other Obligations

Subjects are obligated to pay the Ecological Taxes must comply with the following obligations:

1. Register in the State RETC, within 10 (ten) business days following the date of commencement of its operations by notice submitted in accordance with the general provisions issued by SATEG;
2. Keep a Polluting Emissions Registry book that will be available to SATEG and SMAOT (in the case of the Tax for Emission of PG);
3. Keep a specific record of the polluting substances that are acquired and used in the production processes, their use and destination, as well as the amounts emitted to the soil, subsoil or water and carry out monthly sampling tests (in the case of the Tax for Emission of SSWP);
4. Keep an inventory of deposited or stored wastes in which the quantity (in tons), the site of deposit or storage, the date and the specific type of landfill, whether public or private, are identified (in the case of the Tax for DSW);
5. Keep a specific record of the waste destined for a process of reuse, recycling, co-processing or recovery from the day the deposit or production storage began; which will be available to SMAOT, the State Water Commission of Guanajuato and the SATEG;
6. Maintain an inventory of final disposal wastes;
7. Submit monthly provisional declarations and annual declaration;
8. Submit an annual inventory report based on the guidelines issued by SATEG, and
9. Make available to the authorities, the information, records and receipts that are requested, in relation to the payment of the tax.

Determination and payment

Ecological Taxes will be paid through monthly tax returns, filed no later than the 22nd day of the month following their expiration, through the forms and means that SATEG authorizes and discloses for this purpose.

For the Tax for Emission of PG and the Tax for Emission of SSWP, an annual tax return must be submitted no later than the last business day of March for legal entities and economic units and in April for individuals, of the year following fiscal year in question.

Incentive and Destination of Ecological Taxes

A fiscal stimulus consisting of a 20% reduction in the tax that must be paid in the year immediately following that in which a decrease in taxed substances is observed. The decrease must be equivalent to 20% or more, between one fiscal year and another. For the stimulus to be applicable, the reduction of pollutants must be accredited before the SATEG.

The Ecological Taxes will become effective as of January 1st, 2023.

The fees in relation to NOM-001-SEMARNAT-2021, which establishes the permissible limits of pollutants in wastewater discharges in receiving bodies owned by the nation, will become effective as of April 3, 2023.

Alternatives

The Ecological Taxes will enter into force on January 1st, 2023 and can be challenged through an amparo lawsuit, either at the entry into force or against the first application.

In case of any doubt or assistance required, please contact us.

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