



Newsletter

Environmental and Tax Practice Group

New Ecological Tax in the State of Tamaulipas

1. Environmental tax

In recent years, climate change has increasingly had a greater impact and relevance in the definition and application of public policies, and because of it, state governments have rapidly replicated in recent years the inclusion of environmental taxes on activities that impact the environment within its territory, the foregoing, as part of the mitigation and adaptation actions to the adverse effects of climate change.

In this sense, and based on the monitoring and compliance with the highest international agreement on environmental protection (the Paris Agreement), in 11 states, at least one regulation has been approved and implemented as a taxation mechanism in environmental matters known as "environmental taxes" or "green taxes".

Joining the wave of green taxes, on July 29th, 2020, the Government of the State of Tamaulipas included in the Finance Law for the State of Tamaulipas, a new tax for the "Emission of Compounds and Greenhouse Gases to the Atmosphere" in said State (the "Green Tax"), which, during the period from 2021 to 2023, was the subject to disputes before the jurisdictional bodies, and initiatives seeking to repeal it by the state legislature, having finally accredited its validity and legality upon the analysis of a significant number of precedents by the Supreme Court of Justice of the Nation, in which it declared the constitutionality of this tax, issuing criteria to determine said constitutionality; however, in our opinion, some criteria certainly continue to be challengeable, and in very particular cases, there may even be arguments that are yet to be analyzed.

On December 12, 2023, the Government of the State of Tamaulipas, included within the 2024 economic package, the Green Tax in the Income Law for the State of Tamaulipas for Fiscal Year 2024.

For this reason, the Green Tax is currently suspended and its execution methodology is pending to be defined, but it will be applicable and enforceable soon to entities that exceed 25,000 monthly tons of emissions, particles, compounds, and Greenhouse Gases ("GHG") located within the territory of the State of Tamaulipas, by the rules and guidelines defined for this purpose. The amount to be paid by approximately 36 companies from the State will be determined by applying the fixed fee of 8.5 times the daily value of the UMA (Unit of Measurement and Update) for each ton of compounds and gases emitted into the atmosphere (fixed sources in the State), seeking to allocate them to adaptation programs to climate change, pollution, and environmental balance. It is important to note that the fixed fee is significantly higher than that which has been agreed upon in other states, as well as the fee analyzed by the Supreme Court of Justice of the Nation.

However, and considering that up to now said tax is not enforceable, we consider it important to begin to establish legal strategies in tax and environmental matters that allow companies to prepare legally and technically to comply with the said obligation, as well as, if applicable, explore the means of defense that could be interposed with the entry into force of the regulation.

At Sánchez-Devanny, we have a highly experienced team in the matter, and we can gladly provide more information and answer your particular questions,

to guarantee an adequate internalization of costs and incentives to navigate this new legal obligation.

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2. Modification to the Lodging Tax in the State of Tamaulipas

On the other hand, it is appropriate to highlight the reform concerning taxes for lodging activities in the State of Tamaulipas, which entails an increase in the tax rate, as well as a new regulation concerning the tax obligations of those who provide said services through of digital platforms.

Originally, an increase from 2 to 3.5 percent was proposed by the entity's deputies but was later modified by a second proposal of an increase limited to only 3 percent, with the idea of providing competitive facilities to the hotel industry. Finally, on the aforementioned date, the reform to the Tax Law was published in the Official Gazette of the State of Tamaulipas, which determines a rate of 3 percent for all taxpayers who carry out activities in said industry, according to the assumptions outlined in said Law.

It is important to consider that the lodging tax is normally not paid by the entrepreneur or representative of the legal entity that provides the service; rather, it is transferred to the consumer of the lodging, and the law provides the possibility for entities to deduct said expense.

3. Tax on rates actually charged by Transportation Network Companies

On November 27th, 2023, DECREE No. 65-710 was published in the Official Newspaper of the State of Tamaulipas, through which various provisions of, among others, the Finance Law for the State of Tamaulipas, are reformed and added, regarding Executive Transportation Services, particularly to include Chapter VIII of the Tax on the rates actually charged by Transportation Network Companies.

As part of the referred Chapter VIII, a monthly tax is incorporated for Transportation Network Companies, which is determined by applying a 2% rate based on the rate charged to the user for each trip starting in Tamaulipas, without any deduction. In our opinion, this tax has various constitutional defects that can be claimed through indirect amparo proceedings before District Courts.

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