

## Life Sciences and Tax Joint Newsletter November 06, 2019

### New provisions regarding the marking and labeling of prepackaged food and non-alcoholic beverages and applicable excise taxes.

On October 1, 2019, the Decision of the Health Commission Advertising Declaration, with the draft decree amending and adding various provisions to the General Health Law regarding overweight, obesity and labeling of food and non-alcoholic beverages, was published in the Chamber of Deputies' Parliamentary Gazette.

This publication contains the Draft Decree Amending and Adding Various Provisions to the General Health Law, regarding Overweight, Obesity and Labeling of Food and Non-Alcoholic Beverages.

In our view, the most relevant amendments proposed in this Decree are those corresponding to articles 115 section VII, 159 section V, 210, 212 and 215 section V.

These provisions, include the obligation to establish within the basic food charts, lower amounts of sugars, saturated fats, trans fats and sodium to those currently established. Likewise, it includes various requirements aimed to avoid excess consumption of the foregoing products and seeks to reduce some of the causes of the current health situation in Mexico regarding overweight, obesity, child obesity and diabetes and which has been considered as a national health emergency.

To this end, the obligation to include in food products and non-alcoholic pre-packaged beverages labels nutritional information that is easy to understand, truthful, direct, simple and visible, is established, as well as to separate such warnings from the ingredient and nutritional facts declarations.

Said information separation should be done in such a way that the maximum limits for excess energy content, sugars, saturated fat, sodium and other nutrients considered as "critical", is easily visible and comprehensible to the consumer.

Likewise, the possibility of including certain captions and pictograms in such labeling as established by the competent authorities is established.

The aforementioned articles establish the obligation for the Mexican authorities to take into consideration the international treaties and conventions to which Mexico is a party and which include issues related to the marking and labeling of this type of products.

We believe that some of these amendments could, be subject to its challenging before the competent courts, since they could be considered contrary to the treaties and conventions that have been entered into by Mexico regarding marking and labeling of food and non-alcoholic beverages that are of various types and with various

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countries and organizations.

In this same connection, on October 11, 2019, the draft of amendments to the Mexican Official Standard NOM-051-SCFI/SSA1-2010, General Labeling Specifications for Food and Pre-packaged Non-Alcoholic Beverages-Commercial and Health Information published on April 5, 2010, was published in the Federal Official Gazette.

These amendments to the aforementioned NOM are essentially intended to bring the provisions applicable to the marking and labeling of foods into line with the corresponding provisions of the General Health Law.

Among the most relevant amendments mentioned in said proposal, new definitions are included and some others such as "sugars" are broadened in their scope, and differences between original products and substitutes, and new nutritional "stamps" and various warning captions are established.

Nutritional seals must be included in the front label of such products and must include those related to: a. calorie excess; b. sugar excess; c. saturated and trans fats excess; d. sodium excess; and products which consumption must be avoided by children due to their sweeteners or caffeine content, among others.

These seals must be included on the front label and in an easily visible size and contrasting colors so that consumers can easily determine its content and possible health risks.

So far, it has not been formally determined how long after the publication of these amendments will these enter into force. However, based on similar experiences, it is likely but not guaranteed that a period of six months will be granted from the date of its publication

Likewise, the possibility of requesting an extension of the implementation date by the Standards General Directorate, for those companies that cannot modify the labelling of the products subject to said NOM by its entry into force, is established.

This request may be submitted from the amendment's publication date and up to three months before the amendments enter into force and must in every case show the technical and financial reasons justifying such extension.

Interested parties may submit comments on the proposed amendments until December 10, 2019.

In addition, the strategy to battle obesity in Mexico has also resulted in possible amendments to multiple tax provisions, in particular to the Special Tax on Production and Services Law (IEPS).

As part of the Tax Reform for the year 2020 proposed by the Executive branch, the aforementioned law is intended to be modified in order for the Special Tax on Products and Services fees for the marketing and importation of sweetened beverages, to be annually updated and up to the ten thousandths of a unit.

Said reform is still under analysis by Congress, however, it is likely to be shortly approved.

Our team of experts in the Life Science and Tax practice area will be at your full disposal to resolve any doubt arising from these amendments, in the case you may require more information or support regarding the referenced matter.

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