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Indirect Tax Alert

News from EY Americas Tax

Mexico: Baja California's Congress approves new tax legislation, including an emissions tax

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Baja California's Congress approved Legislative Opinion No. 65, which would modify the state's¹ tax legislation, including establishing a new emissions tax. The emissions tax would replace the tax on the first sale of gasoline and other crude oil derivatives that was effective 1 January 2020. The legislative opinion also would repeal the tax on the sale of gasoline and other crude oil derivatives applicable for tax year 2020. The legislative opinion will be enacted once it is published in the *Official Gazette*.

Background

On 30 March 2020, the Governor of the State of Baja California submitted to Congress a tax reform proposal that would add, modify and repeal certain provisions of Baja California's Treasury Law. Baja California's Treasury and Budget Commission analyzed the tax reform proposal and created Legislative Opinion No. 65, which it submitted for the Congress' approval.

Emissions tax

As detailed by the Governor's proposal, the purpose of the emissions tax is to allocate resources for implementing activities that reduce the emission of pollutants and to allocate resources to attend to the health issues caused by the emissions of those pollutants.

The emissions tax would apply to entities and individuals with installations or a “fixed place of business” in Baja California where goods (e.g., gasoline, diesel, natural gas and liquified petroleum gas) that generate pollutants are sold to final consumers. The applicable tax would be MXN\$0.17 per liter or kilogram of CO₂ sold (tax would be triggered at the moment the good is delivered) as follows:

Good or product	Emissions factor
Gasoline	2.196 kg CO ₂ /liter
Diesel	2.471 kg CO ₂ /liter
Natural gas	2.690 kg CO ₂ /kilogram
Liquified petroleum gas	3.000 kg CO ₂ /kilogram

The emissions tax would be determined on a monthly basis and would be paid no later than the 25th day of the month following the month in which the sale of those goods occurred. Additionally, taxpayers would not be allowed to credit the emissions tax against future tax payments.

Taxpayers subject to the emissions tax would have to comply with certain administrative obligations, including the following:

- ▶ Taxpayers must: (1) follow the accounting rules in accordance with the state’s Tax Code; (2) follow the general rules that may be published by the Ministry of Treasury; and (3) identify the activities that are subject to the emissions tax.

- ▶ Taxpayers with multiple installations or “fixed places of business” in Baja California must either file a return for each installation or “fixed place of business,” or a consolidated return that encompasses all of their installations or “fixed places of business” in the state of Baja California.
- ▶ Taxpayers must provide all the information requested in the return for the emissions tax.
- ▶ Taxpayers must register this new payment obligation in the state’s tax collection agency, as well as register the installations or “fixed places of business” where the taxable activities are carried out within the 15 days following the start of operations or when goods subject to the emissions tax are sold.

Defense strategy (Amparo Trial)

Taxpayers may challenge the constitutionality of the emissions tax through an “Indirect Amparo Trial” before a district court in the State of Baja California. In this regard, taxpayers may file this constitutional suit within 30 business days after the enactment of the tax reform or within 15 days after the taxing activity materializes (i.e., the taxing activity materializes when the tax return is filed).

Any suspension granted for the tax on the first sale of gasoline and other crude oil derivatives or the tax on the sale of gasoline and other crude oil derivatives as a result of the filing of an Amparo Trial will no longer be effective because the legislative opinion repealed those taxes. Therefore, if the Amparo Trial is successfully challenged, the suspension of those taxes will only apply for the period in which the taxes were in force.

Endnote

1. Baja California is a state in Mexico.

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