

Global Tax Alert

News from EY Americas Tax

Colombia updates regulations on tax incentives for investments in renewable energy sources

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EY Americas Tax

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With Decree 829 of 10 June 2020, the Colombian Government updated the regulations on tax incentives provided in Law 1715 of 2014 (as modified by Law 1955 of 2019 and Legislative Decree 2106 of 2019) for investments in renewable energy sources (RES) or energy efficiency (EE).

Background

Law 1715 of 2014

Law 1715 of 2014 established tax incentives for taxpayers that generate energy for sale or self-consumption from RES, including:

- (i) A special deduction equal to 50% of the amount of the investments in RES or EE (even for investments made through financial leasing agreements with non-revocable purchase options)
- (ii) Accelerated depreciation of assets (limited to a 20% annual rate)
- (iii) A value-added tax (VAT) exclusion on certain goods and services
- (iv) A customs duty exemption for goods not locally manufactured

Law 1955 and Legislative Decree 2106 of 2019

Law 1955 of 2019 established that taxpayers may claim the special deduction over 15 years, beginning in the tax year after the RES or EE project becomes operational (previously, the deduction had to be claimed over five years, beginning in the tax year after the investment was made). In addition, Law 1955 and Legislative Decree 2106 of 2019 authorized the National Colombian Authority of Energy (UPME for its acronym in Spanish) to certify the investments are eligible for the incentives. Previously, the environmental authorities also had to certify the investments in RES or EE projects.

Decree 829 of 2020

Scope of the incentives

The updated regulations expand the investments that qualify as RES or EE investments, including activities such as plant expansion and process improvements.

In addition to the activities that were already considered valid investments (e.g., technological research and development, preliminary formulation, financing, economic and environmental studies, acquisition of equipment, elements, machinery, and assembly, etc.), the decree adds required legal studies to the list of activities that are valid investments.

Under the updated regulations, the non-electrical uses of RES are included within the scope of EE for purposes of the special deduction (e.g., changing fossil fuels for RES in the transportation sector, or substituting traditional fuels with biofuels in the industrial sector).

Once the taxpayer receives the certification from the UPME, the VAT exclusion will apply at the moment goods are imported, as well as when local purchases are made. When the certification is issued after the importation of goods or acquisition of local goods and services, the updated regulations allow the investor to request a refund of the VAT paid.

Certification process

Previously, taxpayers did not have to pay a fee for the UPME to certify the investments were eligible for the incentives. The updated regulations require a taxpayer to pay the UPME an evaluation fee when it files its application for the certification of its investments.

If the project has the potential of producing energy of greater than 1 megawatt, the taxpayer must register the project with the UPME in the registry of energy projects before the taxpayer submits the application for the tax incentives.

As a transitory measure, taxpayers that, as of 31 December 2019, had not completed the process before the environmental authorities, but had a favorable certification issued by the UPME, may claim the application of the tax incentives.

The UPME will issue a resolution establishing the procedure for claiming the incentives within three months of the date the decree enters into force (10 June 2020).

Tax audit aspects

The National Tax Authority of Colombia should verify that:

- (i) The lessees of the financial leasing agreements exercised the purchase option at the end of the agreement.
- (ii) The assets of projects in RES or EE are not sold before their useful life is completed.
- (iii) If the taxpayer does not comply with all the legal requirements for the deduction incentive, a recapture of the incentive is recognized in the income tax return.

For additional information with respect to this Alert, please contact the following:

Ernst & Young S.A.S., Bogotá

- ▶ Margarita Salas margarita.salas@co.ey.com
- ▶ Luis Orlando Sánchez luis.sanchez.n@co.ey.com
- ▶ Josep M. Albert josep.albert@co.ey.com

Ernst & Young LLP (United States), Latin American Business Center, New York

- ▶ Zulay Andrea Arevalo zulay.a.arevalo.garcia1@ey.com
- ▶ Ana Mingramm ana.mingramm@ey.com
- ▶ Enrique Perez Grovas enrique.perezgrovas@ey.com
- ▶ Pablo Wejcman pablo.wejcman@ey.com

Ernst & Young Abogados, Latin America Business Center, Madrid

- ▶ Jaime Vargas jaime.vargas.c@es.ey.com

Ernst & Young LLP (United Kingdom), Latin American Business Center, London

- ▶ Lourdes Libreros lourdes.libreros@uk.ey.com

Ernst & Young Tax Co., Latin American Business Center, Japan & Asia Pacific

- ▶ Raul Moreno, *Tokyo* raul.moreno@jp.ey.com
- ▶ Luis Coronado, *Singapore* luis.coronado@sg.ey.com

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