

New Tax Measures Introduced to Spain's Hydrocarbons Act

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On May 22, 2015, the *Official Gazette* of the Spanish State published the Hydrocarbons Act, Law 8/2015 ("the Act"), amending Law 34/1998 on the hydrocarbon sector and regulating certain tax and non-tax measures in relation to the exploration, research and exploitation of hydrocarbons.

This reform implies the creation of an organized natural gas market, facilitating the entry of new marketers and increasing competition, as well as a new single operator of this market, responsible for managing the gas hub.

Fracking is encouraged for the extraction of non-conventional gas and oil hydrocarbons, establishing incentives and specific provisions for autonomous regions and local authorities where this activity is carried out. Actually, fracking is subject to better tax treatment under the new regulation, i.e. lower rates than "conventional" extraction methods (between one and two points, depending on the volume of gas extracted per tax period).

Also, several measures have been introduced to encourage efficient competition in the liquid petroleum gas sector and combating fraud. From January 1, 2016, the market share of the wholesale operators of oil products in each province has been limited to 30% in terms of annual sales.

New tax measures have been introduced regarding the exploration and production of hydrocarbons. In particular, a new tax has been created on the value of the production of hydrocarbons, and the surface area fees relating to the national public domain of hydrocarbons has been amended, also creating new fees for carrying out seismic surveys and probes.

This new direct tax on the value of the extraction of gas, oil and condensates will be effective from January 1, 2016. Following the same legislative technique as in the case of the tax on fluorinated greenhouse gases (approved by Law 16/2013 of October 29, 2013, establishing certain measures on environmental taxation and other tax and financial measures), this new tax is exclusively regulated by Law 8/2015, without falling under Law 38/1992, of December 28, on excise duties. However, given the nature of this new tax on the value of the extraction of gas, oil and condensates, it is reasonable to understand that, as in the case of the tax on fluorinated greenhouse gases, management will also be assumed by the competent bodies in matters of excise duties.

The purpose of this tax, according to the preamble of the Act, is that "*part of the wealth arising from the use of the assets of the public domain to revert to society, to which under the Constitution and the law such assets belong.*"

Under the Act, extraction of gas, oil and condensates in hydrocarbon deposits exploitation concessions in Spanish territory is a taxable event, and payers of this tax will be legal persons and entities performing these extraction activities. The Act considers Spanish territory the territorial seabed, the exclusive economic area, the continental shelf and all other seabeds under national sovereignty.

The taxable income of this new tax is determined by the value of the gas, oil and condensates extracted by the taxpayer during the tax period, once the first purification and separation treatment has been carried out.

The full tax will be determined by applying the progressive charge scale, whose tax rates depend on the production volume.

For oil and condensates, land exploitation tax rates range between 2% and 8% and sea exploitation between 1% and 7%. In gas production, tax rates for land exploitation by conventional procedures range from 3% to 5% and by non-conventional procedures from 1% to 4%. Sea exploitation of gas tax rates range from 1% to 4%.

To these effects, the new act established that the tax period will be the calendar year, with the accrual taking place on the last day of the tax period (December 31). Taking into account the entry into force of this new tax, the first accrual will take place on December 31, 2016.

The taxpayers must self-settle the tax in the first 20 days of April of the year following the accrual of the tax. However, the Act also requires that, in the first 20 calendar days of October, taxpayers must make a partial payment on account of the liquidation corresponding to the tax period in progress, determined depending on the value of the extraction in the first 6 months of the tax period.

In addition, the Act amends the regulation of the surface area fee, which is revoked. The new regulation on the surface area fees set forth in the Act adds two additional tariffs. Thus, it has been added a third tariff for including probes in investigation permits and in exploitation concessions, and a fourth tariff for acquiring seismic data in exploration authorizations, investigation permits and exploitation concessions, also establishing the amounts relating to these tariffs. The amounts are maintained for the two existing tariffs (first tariff for investigation permits and the second for exploitation concessions).

Finally, it is worth mentioning that the Act establishes that the General State Budgets, in accordance with existing financial availability, will establish provisions for the autonomous regions and local authorities in whose territories these activities are performed to ensure that revenue arising from tax features will revert to these autonomous regions and municipalities. The reform has thus created financial incentives for autonomous regions and local authorities where activities for the exploration, research and exploitation of hydrocarbons are set up, as a compensation mechanism for any possible damage these activities may cause.