



Cuatrecasas ESG

New developments on waste tax

The Official Gazette of the Spanish State has published the Act on Waste and Contaminated Land, imposing new environmental taxes

Legal flash

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Act 7/2022, of April 8, 2022, on Waste and Contaminated Land introduces a new **state tax on the deposit of waste in landfills, and the incineration and co-incineration of waste**, replacing the taxes already introduced in some autonomous regions. **The new tax will enter into force on January 1, 2023.**

Also, among others, the new act imposes the obligation on **local authorities** to set a **rate** that must be differentiated and specific for the services they must provide in relation to the waste they are responsible for, and that must be paid according to the waste they generate.

These changes respond to international recommendations on environmental tax, and they seek to encourage the circular economy and apply a waste hierarchy.



New environmental taxes imposed under the Act on Waste and Contaminated Land

The Official Gazette of the Spanish State has published *Act 7/2022, of April 8, on Waste and Contaminated Land for the Circular Economy* (the “AWCL”), to meet the new targets set in two EC directives: Directive (EU) 2018/851, of May 30, 2018, on waste; and Directive (EU) 2019/904, of June 5, 2019, on the reduction of the impact of certain plastic products on the environment. Click [here](#) to find out more in our legal flash on the most significant measures approved under the AWCL.

The AWCL introduces very different measures to prevent and reduce waste generation and its adverse effects. These measures include the approval of two new taxes, which will **enter into force on January 1, 2023**: (i) tax on landfill, incineration and co-incineration of waste, discussed in this legal flash, and (ii) **tax on single-use plastic packaging**. Click [here](#) to find out more about this second tax in our legal flash.

New tax on landfill

This tax is an **indirect tax** applicable throughout Spain, without prejudice to the region-specific tax regimes established in the Basque Country and Navarre.

Given that previous **regional taxes have coinciding taxable events, the entry into force of this new state tax will make these taxes incompatible** on applying the provisions set out in regional financing regulations. The AWCL states the need for compensation in these cases. The aim is to formalize the transfer of management, collection and inspection competences to the regional authorities, and even their regulatory capacity to increase tax rates.

The tax is levied on **the delivery of waste for (i) landfill disposal, and (ii) its disposal or energy recovery in waste incineration and co-incineration facilities**. Under the act, “waste” is defined as any substance or object that the holder discards or intends or is required to discard, excluding categories such as emissions, wastewater, animal carcasses, excavated land and natural materials, among others of a similar nature.

The **taxpayer** is the individual or legal entity responsible for the taxable event, and the manager of the landfill site, incineration or co-incineration facility is considered the substitute of the taxpayer.

Some deliveries are **exempt** from this tax, including in situations of *force majeure*, exceptional necessity, catastrophe and the forfeiture of assets for destruction, and the delivery of waste on which taxes have been paid previously.



As well as these exemptions of an indefinite nature, the AWCL includes a **transitional exemption, applicable during the first three years after the tax is enforced (i.e., until January 1, 2026), on the delivery of non-hazardous industrial waste by initial producers to landfills located on their own premises.** The fact that they must **own these facilities** and use them on an exclusive basis could undermine the practical effectiveness of this exemption in cases where, within the same business group, one of the entities owns the waste disposal or incineration facilities, and another or other entities produce this waste.

The **tax base is determined by the weight, in metric tons**, of the waste deposited in each facility, and the applicable rates (from €1.5 to €40 per ton) vary depending on the type of facility and waste.

The manager, as the substitute of the taxpayer, is obliged to charge taxpayers for the tax amounts accrued, and the taxpayers will be obliged to pay these amounts. The accrued amounts charged (as part of the VAT base) will be shown separately in all invoices. Likewise, managers of landfills and incineration and co-incineration facilities have other requirements, such as registering their activity in a national tax census and verifying the weight of the waste.

Local waste management costs: rates and public funds

The AWCL imposes the obligation on local businesses to have a rate or, if applicable, public untaxed funds to cover management costs for waste within the competence of municipal authorities. The rate or funds must be approved **by April 10, 2025.**

Conclusions

The AWCL approves the **state tax on the deposit of waste in landfills, and the incineration and co-incineration of waste** to ensure the fulfillment of the EC environmental targets.

Companies delivering waste to landfills and incineration and co-incineration facilities, and the companies managing these facilities **must assess the impact of this new tax and the new liabilities arising from it.** Moreover, in the future it will also be necessary to analyze the regional legislation applicable to them in each situation, given that regional authorities will be granted a certain amount of regulatory authority.

For additional information, please contact our *Knowledge and Innovation Group* lawyers or your regular contact person at Cuatrecasas.



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