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## Cuatrecasas ESG

# Tax on fluorinated greenhouse gases

The Official Gazette of the Spanish State publishes the act amending key aspects of this tax

Legal flash

July 2022



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Act 14/2022, of July 8, amending Act 19/2013, of December 9, on transparency, access to public information and good governance, to regulate the statistics of micro, small and medium-sized enterprises in public procurement, **amends the regulation of tax on fluorinated greenhouse gases**. These amendments will be effective from **September 1, 2022**.

The tax is levied on **the manufacture, the importation, and the intra-EU acquisition and the illegal possession of fluorinated greenhouse gases** included in the objective scope of the tax. Under this new regulation, tax is imposed on the possession and use of these gases in Spanish territory and will no longer be levied on their consumption.



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## New regulation on tax on fluorinated greenhouse gases

On July 9, 2022, the Official Gazette of the Spanish State published [Act 14/2022, amending Act 19/2013, of December 9, on transparency, access to public information and good governance, to regulate the statistics of micro, small and medium-sized enterprises in public procurement](#) (“**Act 14/2022**”). The new act **amends the regulation of tax on fluorinated greenhouse gases** (“TFGG”) and, specifically, article 5 of Act 16/2013, implementing certain environmental tax measures and other financial and tax measures (“**Act 16/2013**”).

The amendment of article 5 of Act 16/2013 has resulted in significant changes to TFGG regulations, effective from September 1, 2022, such as higher taxes being levied on the use of fluorinated greenhouse gases in Spanish territory than on the consumption of these gases.

Under the new regulation, TFGG is now levied on **the manufacture, the importation, and the intra-EU acquisition of fluorinated greenhouse gases** included in the objective scope of the tax, regardless of whether the gases are packaged in containers or are contained in products, equipment or appliances.

The tax is to be paid by those responsible for the manufacture, the importation, and the intra-EU acquisition of these products. One new development is the introduction of **fluorinated greenhouse gas storekeepers**, which are also subject to this tax. For this purpose, by establishing storekeepers, Act 14/2022 seeks to avoid the financial cost arising from storing gases subject to this tax.

Act 14/2022 also **regulates several tax exemptions and non-taxability**. Among other cases, the tax is not levied on the manufacture of fluorinated gas **intended to be sent outside the Spanish territory**. Among the new developments, it is worth noting that **several exemptions will be removed** from September 1, 2022. We highlight the following:

- (i) **Removal of the exemption applicable to the first delivery or sale of fluorinated greenhouse gases to resellers** for resale, thus removing resellers’ role.
- (ii) **Removal of the exemption applicable to the first sale or delivery of gases to business owners, the intended use of which is to charge new equipment and appliances for the first time** (as well as the exemption on gases delivered to recharge equipment, appliances and facilities from which other gases delivered to waste management companies have been previously extracted).

The taxable base for TFGG is calculated on the **weight of the fluorinated greenhouse gases, expressed in kilograms**.

This taxable base will be subject to a **tax rate**, which must be calculated in accordance with the new regulations. As a rule, **a 0.015 coefficient will apply to the global warming potential of each gas**, which cannot exceed €100 per kilogram. A **deduction and refund** system is also established in some cases.



Excluding imports, self-assessments must be submitted on a quarterly basis instead of the four-month period imposed to date.

The new TFGG regulations introduce significant changes affecting tax management. Among other developments, manufacturers, certain importers, intra-EU acquirers and storekeepers are required to **keep an electronic record** of all gases subject to the tax and, if applicable, of the raw materials necessary for their extraction. The regulations establishing the requirements on how this record must be kept are yet to be approved.

Another new development is that before starting their activity, taxpayers (including storekeepers) must **register in the national tax census** in accordance with future regulations. Also, **taxpayers that are not established in Spain** must appoint an individual or legal **entity to act on their behalf** before the Spanish tax authorities, and they must both be registered in the census.

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## Conclusions and recommendations

Act 14/2022 introduces substantial amendments to the legal system and setup of TFGG, and from September 1, 2022, this tax will no longer be levied on the sale or delivery to the end consumer, but on the manufacture, the importation, and the intra-EU acquisition and the illegal possession of fluorinated greenhouse gases.

Operators that manufacture, import or make intra-EU acquisitions of fluorinated greenhouse gases subject to this tax must fulfill the obligations imposed under the new regulation (they must register in the national tax census and keep an electronic record of gases subject to the tax). Operators should also ascertain whether it would be advisable, based on their business practices, to apply to the tax authorities to become a “fluorinated greenhouse gas storekeeper” in accordance with future regulations.

Manufacturers and former resellers and businesses that use the gases to charge new equipment and appliances (within the scope of the previous exemption) are advised to fulfill the obligation of reporting on any fluorinated greenhouse gases they may have on their premises as of September 1, 2022. Otherwise, they may be penalized in the future for illegal possession of fluorinated greenhouse gases.

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



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