

Implications for the Oil and Gas Sector of the Proposed Tax Amendments for Fiscal Year 2022

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On September 7, 2021, Mexico's President submitted before Congress the proposed bill of amendments to several tax laws that, if approved, will enter into force on January 1st, 2022 (the Proposed Amendment.)

The Proposed Amendment includes relevant modifications for the oil and gas sectors that are described below.

I. Thin Capitalization.

Article 28, Section XXVII of the Income Tax Law establishes that interest derived from debts contracted by the taxpayer with related parties abroad are not deductible when the amount of the debts exceeds three times the taxpayer's equity.

However, such section states that debts incurred for the construction, operation or maintenance of productive infrastructure related to strategic areas for the country or for the generation of electricity will not be included in the calculation of the amount in excess of three times the taxpayer's equity.

The Proposed Amendment establishes that the referred exemption will only be applicable to the holder of the license, permit or concession issued by the competent authority, thus excluding contractors of licensees or concessionaires from said exemption.

Based on the foregoing, we suggest analyzing the current financing structure of oil and gas projects, to determine the specific impact of this amendment and to assess possible alternatives to mitigate its effects.

II. Volumetric Controls.

A. Entering into force of the volumetric control obligations.

In 2018, the Federal Fiscal Code FFC was amended with the objective of combating the illicit market of oil and gas. One of these amendments consisted in establishing a mandatory volumetric control system for taxpayers that transport, store or sell hydrocarbons and oil products.

It is worth mentioning that the mandatory volumetric control systems are also applicable to those taxpayers that store for their own use gasoline, diesel, turbosine, liquefied petroleum or propane, under a permit issued by the Energy Regulatory Commission, provided they consume a volume greater than 75,714 liters (20 thousand gallons) of hydrocarbons or oil products per month.

The obligations regarding the volumetric control systems, to this date, have not entered into force since the Federal Tax Authority has not issued the list of authorized suppliers of equipment and programs to maintain said systems.

The Proposed Amendment eliminates the obligation of acquiring the equipment and systems for maintaining volumetric control systems from authorized suppliers. Likewise, the Proposed Amendment eliminates the 2018 transitory provision that established that the publication of the list of authorized suppliers is a condition for the entering into force of the obligation to maintain volumetric control systems.

In this regard, if the Proposed Amendment is approved, the obligation to maintain volumetric control systems, that was established since 2018, will enter into force on January 1st, 2022.

B. Daily and monthly reports.

The Proposed Amendment establishes that the taxpayers obligated to maintain volumetric control systems must generate daily and monthly reports containing records of receipt, delivery and stock control, data from tax receipts or invoices associated with sales or acquisitions, information on the type of hydrocarbon or oil product and certificates of correct functioning of equipment and programs.

The Proposed Amendment additions to the FFC certain requirements of the volumetric control reports that were already established by the Miscellaneous Tax Resolutions such as records of receipt, delivery and stock control, information of the invoices of acquisitions of oil and gas and information on the type of hydrocarbon or oil product. Further, the Proposed Amendment establishes new requirements for said reports such as the information of the certificates of the type of hydrocarbon or oil product and of the correct functioning of equipment and programs.

C. Presumptive determination of taxable profit.

The Federal Executive proposes to amend Article 55 of the FFC to establish that the tax authorities may presumptively determine taxable profit in the following cases:

- A taxpayer does not submit the daily and monthly reports of volumetric control systems.
- A taxpayer does not have volumetric control systems or alters, renders them useless or destroys them.

- A taxpayer does not have the equipment or software to maintain volumetric control systems or does not keep them in operation at all times or alters, renders them unusable or destroys them.
- When a difference of more than 0.5% for liquid hydrocarbons or oil products or 1% for gaseous hydrocarbons or oil products, in the final volume of a calendar month, is detected by the Federal Tax Authority.
- When a difference of more than 0.5% for liquid hydrocarbons or liquid oil products or 1% for gaseous hydrocarbons or gaseous oil products is detected by the Federal Tax Authority, between the hydrocarbons or oil products acquired according to received invoices and the records of receipt of hydrocarbons or oil products.
- When a difference of more than 0.5% for liquid hydrocarbons or oil products or 1% for gaseous hydrocarbons or oil products is detected by the Federal Tax Authority between the hydrocarbons or oil products sold according to invoicing and the records of delivery of hydrocarbons or oil products.

To determine the presumptive taxable profit, the Amendment establishes that the monthly average price of the corresponding hydrocarbon or oil product must be applied to the following values:

	Number of hoses or pipelines	Metropolitan area	Value of the acts
Automotive fuels	24 or more hoses	Yes	Multiply by 15 the capacity of the tanks, which are considered to be 50,000 liters.
	9 to 24 hoses	Yes	Multiply by 12 the capacity of the tanks, which is considered to be 50,000 liters.
	1 to 8 hoses	Yes	Multiply by 9 the capacity of the tanks, which are considered to be 50,000 liters.
	N/A	No	Multiply by 6 the capacity of the tanks, which are considered to be 50,000 liters.
Propane Gas	24 or more pipelines	Yes	Multiply by 30 the capacity of the tanks, which are considered to be 80,000 liters.
	9 to 24 pipelines	Yes	Multiply by 24 the capacity of the tanks, which are considered to be 80,000 liters.
	1 to 8 pipelines	Yes	Multiply by 18 the capacity of the tanks, which are considered to be 80,000 liters.
		No	Multiply by 12 the capacity of the tanks, which are considered to be 80,000 liters.

The Proposed Amendment establishes that the omitted taxes will be calculated applying to the values above, a coefficient of 15% for the sale of gasoline and diesel in service stations, 38% for the distribution of propane gas and 6% for the rest of the activities subject to volumetric controls.

D. Administrative fines and criminal offenses.

The Proposed Amendment establishes that the following conducts will be subject to the following fines:

Conduct	Fine
Not having a report that determines the type of hydrocarbon or oil or a certificate of correct operation of equipment and programs.	\$35,000 to \$61,500
Registering an oil or petroleum product in volumetric controls that differs from that which actually corresponds.	\$1,000,000 to \$1,500,000
Not having equipment and programs to carry out volumetric controls.	\$2,000,000 to \$3,000,000
Not having volumetric controls.	\$3,000,000 to \$5,000,000
Failure to send information reports.	\$35,000 to \$61,500
Submit information reports in an untimely manner.	\$35,000 to \$61,500
Send reports with incorrect information or with errors.	\$35,000 to \$61,500
Failure to generate information reports.	\$35,000 to \$61,500

The Proposed Amendment contains the following criminal offenses:

Conduct	Penalty
Not having volumetric controls of hydrocarbons or oil products, or these are altered or destroyed.	3 to 8 years of imprisonment
Not having the equipment to carry out volumetric controls or not keeping them in operation or altering or destroying them.	
Not having the certificates that certify the correct operation and functioning of the equipment and computer programs to carry out volumetric controls.	
Providing the tax authority with false or inaccurate records of volumetric controls.	
To possess, install, manufacture or commercialize any system or program whose purpose is to alter the volume registers or the information contained in the equipment or computer programs for volumetric controls.	
To give any tax effect to the tax receipts issued by a taxpayer included in the list referred to in Article 69-B of the FFC, which cover the acquisition of any type of hydrocarbon or oil, without having demonstrated the materialization of such operations or having corrected its tax situation.	6 to 12 years of imprisonment
Sale of hydrocarbons or oil products of illicit origin. It is considered that hydrocarbons or oil products are of illicit origin when there is a difference of more than 1.5% in the case of liquid hydrocarbons and oil products or 3% in the case of gaseous hydrocarbons and oil products, between the volumetric records and the tax receipts of purchase or sale.	

In addition, the Proposed Amendment proposes a penalty of 3 to 6 years of imprisonment for those persons who transfer goods within Mexican territory without having a digital invoice complemented by a consignment note.

Likewise, the Proposed Amendment proposes a penalty of 3 to 6 years of imprisonment for any taxpayer that transports hydrocarbons or oil products without a digital invoice complemented by a consignment note and the additional special complements for hydrocarbons and oil products.

Derived from the amendments that are being proposed by the Federal Executive, we recommend that companies that are part of the hydrocarbons and oil products industry or that store these goods for their own use, to analyze their particular situation in order to determine if the controls they currently have comply with the requirements that are being requested.

III. Special Tax on Production and Services

Currently, Article 102 of the FFC states that a declaration of damage to the Federal Treasury will not be issued and, therefore, there will be no prosecutable offense in those cases in which the contraband comes from the omission of taxes or countervailing duties that do not exceed \$195,210.00 or ten percent of the taxes caused, whichever is greater. The Proposed Amendment proposes that this exception does not apply in cases where the omitted tax is a special tax on production and services on automotive fuels.

Article 103 of the current FFC establishes that the crime of smuggling is presumed to have been committed in those cases in which the tariff description or classification is declared inaccurately, except in those cases in which the customs agency has strictly complied with all the obligations set forth in customs and foreign trade matters. The Proposed Amendment proposes that the above exception shall not be applicable when the omission is related to the special tax on production and services on automotive fuels.

In addition to the above, the Proposed Amendment proposes to sanction those cases in which smuggling is configured due to omissions in the payment of the special tax on production and services on automotive fuels, with the definitive cancellation of the registration as an importer and the cancellation of the license of the customs agent who has carried out the customs clearance.

Based on the above, we recommend that all members of the hydrocarbons and oil products industry analyze the proposals presented by the Federal Executive, since they will imply additional tax obligations.

For further information, do not hesitate to contact our qualified personnel in this matter.

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