

Promotional Regime on Renewable Energy Sources Implemented

Last March 31st, the Argentine government issued regulations [i] implementing the Promotional Regime on the Generation of Electricity from Renewable Energy Sources, created by Law 26,190 [ii], and adjusted by Law 27,190 [iii] (the "Regime").

Through the Regime, the Federal Government aims at promoting the electric power generation from the use of renewable sources for the supply of electric power, the investigation for the technologic development or the manufacturing of associated equipment.

At the same time, the goal is, at a first stage, to achieve an 8% of the use of renewable energy sources out of the total power consumption in the country by December 31<sup>st</sup>, 2017, growing gradually to achieve a 20% by December 31<sup>st</sup>, 2025.

Consistently with this goal, under the Regime, defined consumers [iv] are required to individually acquire a minimum of 8% of their electricity consumption from renewable sources through auto-generation, cogeneration or purchase, individually or jointly through the Wholesale Electricity Market Administration Company ("CAMMESA" for its Spanish acronym), by December 31<sup>st</sup>, 2017.

Within this framework, the Regime reinstalls the use of long-term power purchase agreements (PPAs) with CAMMESA for the supply to the wholesale electricity market.

In addition, the Regime creates a Trust Fund for the Development of Renewable Energy ("FODER", in its Spanish acronym), in the form of an administration and financial trust, with the aim of granting loans, making capital contributions and acquiring financial instruments for the financing of projects under the Regime.

The Regime contemplates the following statutory tax benefits:

- Expedited reimbursement of valued added tax (VAT) related to the purchase of new fixed assets [v] or infrastructure [vi] works performed to develop the project, jointly with
- Accelerated depreciation for income tax [vii] purposes of capital assets (plant & equipment) acquired or works performed for renewable energy projects;
- Exemption from minimum presumed income tax (alternative minimum income tax): Assets used in the project will not be part of the minimum presumed income tax taxable base until the eighth fiscal year of the start-up of the project;
- Exemption from withholding tax on dividends on the profits reinvested in a new infrastructure project;
- Tax certificate for value equivalent to 20% of the national component of the electromechanical equipment, which can be applied to offset other national taxes [viii], if statutory requirements are met [ix];
- Extension of the carry-forward term for NOLs to 10 years, which are limited to offset profits of the same kind;
- Exemption from import duties on new capital assets and special equipment or parts or components of such assets, spare parts and new accessories, and supplies, effective up to December 31<sup>st</sup>, 2017;
- The access to and the use of renewable energy sources will not be subject to any tax, royalty, canon or any kind of charge, until December 31<sup>st</sup>, 2025.

In addition, the Regime contemplates the following benefits:

- Granting of loans and guarantees for the development of the project, through the FODER. This fund will also grant an additional consideration [x], for up to 15 years as from the application date;
- Dispatch priority treatment for renewable intermittent resources;
- Soft financing to be granted by Banco de la Nación Argentina, through short-term financial facilities with preferential interest rates to finance the payment of VAT credits stemming from the development of the projects; expedited VAT reimbursements may be used to pay off these loans;
- Increases in taxes: Beneficiaries may freely negotiate the transfer to the agreed price of the energy of the higher costs derived from the increase in taxes, charges, contributions or national or local charges, that may be implemented after the execution of the agreement [xi];
- Deduction of losses from the accounting liability resulting from interest and currency exchange rate differences arising from the financing of the project.

The Beneficiaries under this Regime are individuals with registered domicile and legal entities incorporated in the country, owners of the investments projects, involving incorporation of new assets, even if they are installed in existing facilities, new facilities contractors, which can consist in new capital assets, civil, electro-mechanic or assembly works and any other related services that constitute an undivided unit. Moreover, ongoing projects regulated under the previous regime may also benefit from the Regime to the extent they adapt to the current amendments and fall within the budget allowance.

The main requirements are as follows:

- Application to obtain "certificate of inclusion" in the Regime issued by the Ministry of Energy and Mining, enforcement authority of the Regime;
- Evidence showing effective implementation before December 31<sup>st</sup>, 2017;
- Guarantee equal to 100% of the total amount of benefits allocated to the project.

The Ministry of Treasury and Finance has been appointed as the authority in charge of issuing guidance relating to tax matters in connection with the projects.

Local jurisdictions are invited to subscribe to the Regime and to adopt similar local measures.

[i] Through Decree 516/2016, published on the Official Gazette on March 31st, 2016.

[ii] Published on the Official Gazette on January 1st, 2007.

[iii] Published on the Official Gazette on October 10th, 2015.

[iv] Large Consumers of the Electrical Wholesale Market and High Demands of the Providers of the Distribution Public service or of the Distributors Agents, with a power demand equal to or higher than 300kw in a calendar year, counting all demand facilities with individual energy meters.

[v] Beneficiary must evidence ownership of the fixed assets as of the time of the application of the reimbursement.

[vi] Any payments on leasing contracts triggering VAT credits may be computed as from the subsequent month following the exercise of the purchase option.

[vii] The beneficiary must hold the ownership of the fixed assets for three years as from the start-up date.

[viii] Income tax, minimum presumed income tax, VAT and excise taxes.

[ix] If there is a 60% of national component or a lower percent, if it can be proved effectively the lack of national production, but it may not be lower than 30%.

[x] Consisting in an economic benefit for the effective generation of electric power. The amount of the benefit depends on the renewable source used.

[xi] In the case of the contracts to be executed with CAMMESA, the contractor may directly request the transfer to prices of subsequent higher costs resulting from tax or charges increases (in the terms of Section 13 of Decree 531/2016).

If you have any questions on this subject, please contact:

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