

➤ Emission compensation system for stationary sources subject to Green Tax comes into force

On September 29, 2023, Decree No. 4, dated January 25, 2023 (the "Regulation"), issued by the Ministry of the Environment (the "Ministry"), was published, coming into force the Emission Compensation System for stationary sources subject to Green Tax [1] (the "System").

The System promotes the development of emission reduction projects (the "Projects"). In addition, it allows taxpayers to compensate emissions from stationary sources subject to the Green Tax, for purposes of determining the amount to be paid.

In this regard, Projects shall request the Ministry to issue emission reduction certificates, which may be subsequently sold or transferred to the taxpayers, enabling them to request the compensation of their emissions to the Superintendence of the Environment (the "Superintendence").

However, Projects must be previously approved or homologated by the Ministry in order to be able to operate in the System. Also, once the Projects have started their implementation, the reduction of emissions must be verified by an external auditor authorized by the SMA, by means of a report.

During its first stage of implementation, it is expected that the System operates with certificates related to homologated Projects, previously validated by international programs recognized by the Ministry.

I. Emissions and reductions eligible for compensation

All emissions subject to Green Tax are eligible for compensation through the System, that is: particulate matter (PM), nitrogen oxides (NOx), sulfur dioxide (SO₂) and carbon dioxide (CO₂).

However, such emissions may only be compensated with reductions that meet the following conditions:

- 1 Compliance with certain attributes required by the Regulation, which must be accredited by the external auditors of the Projects: (a) additionality; (b) measurability; (c) permanence; and (d) verifiability.
- 2 The reduction shall derive from Projects executed within the national territory.
- 3 The kind of pollutant whose emission is sought to be compensated must be the same than the pollutant reduced by the Project.

II. Emission compensation requests

Taxpayers requesting to use the emission compensation mechanism shall comply with the following rules:

- 1 The request must be made through a digital platform managed by the Superintendency.

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- 2 The request may be made until the last working day of February of the year following the year of generation of the emissions reported by the taxed establishment.
- 3 Taxpayers may only use emission reduction certificates that derive from reductions that occurred within the 3 years previous to the taxed emission to be compensated.

The Superintendency shall review whether the compensation request complies with the requirements set forth by the Regulation. Then, the information must be delivered to the Tax Administration (*Servicio de Impuestos Internos*) for purposes of calculating the Green Tax applicable to the taxpayer.

The Regulation allows offsetting all or part of the taxable emissions.

Public registry of emission compensations

The Regulation contemplates the existence of a public registry that shall contain, at least, the following information:

- 1 Individualization of the approved Projects, its holder, status and type of project and credit period.
- 2 The emission reductions per pollutant approved, verified, certified or cancelled for compensation purposes, together with the identification of the authorized external auditors or entity responsible for the verification of such reductions.
- 3 Individualization of all external auditors authorized to verify emission reductions.

[1] The "Green Tax" is regulated in Article 8 of Law No. 20,780, dated September 29, 2014, and amended by means of Law No. 21,210, dated February 24, 2020. Such law establishes an annual tax to air emissions of particulate matter (PM), nitrogen oxides (NOx), sulfur dioxide (SO₂) and carbon dioxide (CO₂), produced by establishments whose emission sources, individually or as a whole, generate 100 or more tons per year of particulate matter (PM), or 25,000 or more tons per year of carbon dioxide (CO₂).

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