

Galicia

Legal Update

Proposed modifications to various provisions of the Federal Government Fees and Charges Act

Mexico City, September 22, 2020

This past September 8, the Executive presented the **Initiative of Decree by which several provisions of the Federal Government Fees and Charges Act (*Ley Federal de Derechos* or the "FGFCA")** were modified, added, and repealed. Below please find an executive summary of the most relevant aspects:

Official Gazette of the Federation ("DOF"). The first paragraph of article 19-B of the FGFCA is modified to specify that no fees will be paid for the publication services provided by the DOF. This will apply to mandatory publications, and those ordered or regulated by the Political Constitution of the United Mexican States, in federal laws and regulations, in International Treaties, or the Expenditure Budget of the Federation.

Consular Services. A second paragraph is added to article 20 of the FGFCA, setting forth a 30% increase in the collection fee for the issuance of ordinary passports, according to the validity requested. The foregoing applies to those cases in which the issuance of passports is urgent for the interested parties who did not schedule an appointment to carry out the ordinary passport process and who have immediate travel needs due to a medical, labor, or consular protection emergency, which must be duly justified before the Ministry of Foreign Relations. This shall also apply to those who have scheduled trips beforehand.

Certification Services. Sections V and VI of article 78 of the FGFCA are amended in order to create legal certainty and make a clear distinction between the collection of fees established in the aforementioned sections and those established in sections I and II of such law.

Federal motor transport. Article 148, segment A, section I, subsection a), numeral 2, of the FGFCA, which imposed the fees for the services regarding the issuance of the permit for the operation and exploitation of the federal motor transport service for towing units both in person and electronically, is repealed.

Forestry Services. Article 194-N of the FGFCA is modified to standardize it with the General Law of Sustainable Forestry Development, which no longer contemplates the authorization of commercial forest plantation in substitution of native vegetation; and article 194-N-1 is modified to include the service of issuing the records of the acts and documents registered in the National Forest Registry.

Additionally, sections I, II, and III, of article 194-N-2 of the FGFCA will be modified for the fees to be proportional to the cost that the provision of services represents for the State. Therefore, the phases involved in the execution of the corresponding procedures concerning forestry health shall be specified, considering that the service is provided from the moment a request is received and analyzed.

Services in control of the Federal Environmental Protection Attorney. Section VI is amended and section VII of article 194-U of the FGFCA is repealed, in order to have consistency between the fee amount and the cost that the provision of the new vehicle certification service represents for the State.

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Additionally, the second paragraph of section VIII is repealed and section IX is included in article 194-U of the aforementioned legal dispositions, to establish a fee payment for the environmental auditor's approval in any of its modalities.

Maritime services. Article 195-Z, sections II and III, in their subsections f) of the FGCA, are amended to adjust the cost of the service for the issuance, replacement, or modification of the registration certificate concerning vessels without a continuous deck intended for riverine fishing of up to 5 meters in length, as well as for the recognition of vessels or naval artifacts of up to 10 units of gross registered tonnage, considering that the provision of services regarding small vessels, translates into a lower cost.

Likewise, new charges for services are included, among which are the following: (i) the issuance or replacement of the certificate of the Long Range Investigation and Monitoring Ship System Conformity Tests or the LRIT System; (ii) the issuance, replacement, or renewal of the authorization as a Recognized Protection Organization; (iii) the assignment of a permanent registration number and certificate of maritime approval as a waste reception facility; (iv) the third party authorization to carry out the underwater inspection service to national vessels and naval devices; and (v) the assignment of a permanent registration number and a certificate of maritime approval to service stations for the maintenance of maritime radio communication equipment and electrical installations of the vessels.

Radio spectrum. *Bands from 814 to 824 MHz, 824 to 849 MHz, 859 to 869 MHz, and 869 to 894 MHz.* A new article 244-G of the FGCA will tax the segments of the frequency band of the radio spectrum within the 800 MHz and 850 MHz frequency ranges intended for mobile services and will incorporate, from articles 244-B and 244-D, the following band segments: from article 244-B, segments from 824 MHz to 849 MHz and 869 MHz to 894 MHz; from current article 244-D, the segments from 814 MHz to 821 MHz and from 859 MHz to 866 MHz. Likewise, the incorporation of frequency bands of the radio spectrum included in the frequency ranges from 821 MHz to 824 MHz, and from 866 MHz to 869 MHz is also proposed.

Bands from 614 to 698 MHz and 1427 to 1518 MHz. Article 244-H is included for purposes of adding the band from 614 to 698 MHz, provided it is considered feasible to use it for the deployment of the 5G mobile system in Mexico. This article shall include fees calculated based on an annual collection scheme, which considers international bidding references for this type of frequency band.

Likewise, the band segment from 1427 to 1518 MHz, to be included in article 244-I of the FGCA, contains fees calculated based on an annual collection scheme.

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In this regard, a *vacatio legis* is proposed for articles 244-H and 244-I to come into force on January 1, 2024, when the concessions are granted no later than November 30, 2021, and on January 1, 2025, when such concessions are granted after December 1, 2021.

Bands from 3300 to 3400 MHz and 3400 to 3600 MHz. Article 244-J of the FGFA will impose the collection of fees for these frequency bands of the radio spectrum, for which purposes, a transitory provision shall provide that concessionaries will not be subject to the payment of said fee until the moment in which they have authorization from the competent authority to provide mobile wireless telecommunications services.

Mining. The modification of some aspects in the current scheme for the collection of special and extraordinary mining duties set forth in articles 268 and 270 of the FGFA is necessary to clearly establish who is subject to the payment of these fees and to give back to the Mexican State an amount of the benefit obtained by the mining concessionaires derived from the sale of the natural resources subject to the concession, without discouraging investment in this type of economic activity.

Considering the authority has detected by way of audits that the holders of mining concessions, through different legal figures, assign or entrust the extraction activity to a person who is not the owner of the concession, arguing that they obtain no income derived from the transfer or sale of such activity, it is deemed necessary to specify who is subject to the payment of these fees, through the modification of articles 268 and 270 of the FGFA.

Likewise, regarding the special mining right, the benefit consisting of crediting the mining fee definitive payments made in the applicable tax year in terms of article 263 of the FGFA against the special mining fee, will be eliminated. The latter, considering that the application of the aforementioned benefit has been decreasing the contribution that mining concessionaires must pay for the exploitation of non-renewable natural resources.

Additionally, the tax authority has detected incorrect interpretations by taxpayers regarding the tax treatment applicable to the acquisition of mining concession titles or assignments and of the rights acquired by third parties for deduction purposes, in which they argue that the value of the titles should be considered as a deductible expense, when, in accordance with article 268 of the FGFA, this is not an authorized deduction considering that in terms of the Income Tax Law ("ITL"), mining concession titles should be deemed as a deferred expense investment and not as an expense or outlay which allows mining prospecting or exploration. Article 268 of the FGFA shall be modified to clearly state that the value of a mining concession title will be deemed a deferred expense investment for tax purposes.

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Lastly, to prevent taxpayers from deferring the extraordinary mining right payment or artificially reducing the total income derived from the sale of gold, silver, or platinum, the second paragraph of article 270 shall be modified in order to establish that for the determination of the fee payment, taxpayers must consider the total taxable income in accordance with the ITL, which implies that, to provide greater legal certainty in the determination of the extraordinary mining fee, taxpayers must consider the accrued income as tax basis instead of the collected income.

Water Bodies Receiving Wastewater Discharge. A fee to discharge wastewater to receiving bodies owned by the Nation is established in article 276 of the FGFA, to encourage actions that favor the environment. Those individuals or entities who discharge wastewater permanently, intermittently, or incidentally into national water deposits or streams, will be subject to a fee, with the possibility to obtain an exemption in its payment, provided they comply with the parameters and limitations set forth in section I of article 282 of the FGFA, considering they would be complying with the administrative quality standard set forth in the Mexican Official Standard NOM-01- SEMARNAT-1996.

Please note that the presentation of the Economic Plan marks the beginning of a parliamentary debate, so the contents presented do not represent definitive changes to the FGFA. Nonetheless, if deemed necessary, **Galicia's** tax team is ready to provide further information on any subject presented herein.

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