

Legal update

Venezuela releases terms and conditions for exemption from levy on extraordinary/exorbitant prices in international hydrocarbons market

July 2018

Energy

Tax

The Ministry of the People's Power for Petroleum (the Ministry), through Resolution N° 049 (the Resolution), published the terms and conditions for exemption from the levy on extraordinary prices and exorbitant prices in the international hydrocarbons market (see Official Gazette N° 41,434 dated July 6, 2018). The Resolution became effective as of the date of its Official Gazette publication.

Scope of the exemption set forth in the Law

Article 12.1 of the Law Creating a Special Contribution on Extraordinary Prices and Exorbitant Prices in the International Hydrocarbons Market (the Law) exempts entities that export liquid hydrocarbons for commercial purposes and mixed companies that sell liquid hydrocarbons to Petróleos de Venezuela, S.A. (PDVSA) and any of its affiliates, in the following scenarios:

- Transactions made carrying out "*projects for new reservoir developments*"; or,
- Transactions with hydrocarbon volumes associated with "*projects of improved recovery*" or "*projects of production remediation*."

The above-mentioned transactions have to be qualified as such by the Ministry.

Definitions for purposes of the exemption

For purposes of the exemption on the levy for extraordinary prices and exorbitant prices in the international hydrocarbons market (the Contribution) and its scope, the Resolution defines the following concepts:

- **Projects for New Reservoir Development:** Projects with accumulated production/total recoverable reserve ratios for the area designated to the operating company that are equal to or less than 30% and that meet at least one of the following two conditions: (i) not having reached the production *plateau* planned for the area; or (ii) not having completed the timeframe to reach such production *plateau* according to the original business plan. The above applies provided the Ministry acknowledges the project qualifies as a new reservoir development project.

- **Improved Recovery Projects:** Activities aimed at increasing the reservoir recovery factor, once the primary and/or secondary methods have been used, including thermal and chemical methods, and miscible and immiscible gases, among others. These projects shall be approved by the Ministry and have a specific duration.
- **Production Remediation Projects:** Activities aimed at recovering the volumes of liquid hydrocarbons that correspond to the difference between the volumes in the investment and/or production profiles, and the volumes actually produced, in accordance with the original business plans of the operating companies. These activities shall allow the production of all the volumes of hydrocarbons authorized in the original business plans, while the rights for the exploitation of liquid hydrocarbons are in force. For mixed companies that have been financed by their B shareholders, these projects must be approved by the Ministry.

The following terms are also defined in the Resolution:

- **Official Completion of Development Wells:** Formal declaration issued by the Ministry, after the original completion, whereby the official production test is validated, the well, production method and producing sand are identified, and the final classification of the well is determined.
- **Original or Mechanical Completion:** Formal declaration issued by the Ministry approving the post-drilling operational procedure, which contemplates the design and mechanical conditioning of the well, identification of reservoir, sand and intervals to cannonade, and estimated production potential.
- **Official Production Test:** 24-hour production test applied to new development wells once the maximum production and the most efficient production rate have been determined, with the presence of officials duly accredited by the Ministry, in order to formalize the initial fluids production rate (petroleum, water and gas) of the reservoir/productive sand.

Applying for an exemption

Hydrocarbon operating companies may request exemption from the levy in accordance with the process set forth in article 49 of the Organic Law of Administrative Procedures.

Companies requesting the exemption must apply for it within five days following the end of each quarter, presenting the necessary information, as provided by the Ministry. For purposes of granting the exemptions, only the volumes produced during the 180 continuous days preceding the date of the application shall be considered.

Validity

The exemption shall be valid for a quarter.

Ministry evaluation criteria

When assessing exemption requests, the Ministry shall verify that the following criteria is met:

- Projects shall be considered as projects for new reservoir development, improved recovery projects or production remediation projects if they comply with the above definitions.
- The volume of liquid hydrocarbons must be associated with investments made to carry out such projects, but disbursements related to production maintenance and corrective or preventive maintenance of surface facilities shall not be considered investments.

- Production wells to be considered must have their official completion, to be requested vis-à-vis the Ministry, within 90 continuous days following finalization of the original or mechanical completion work.
- Wells with permanent reconditioning work of change of reservoir must have an official proof of production in the new reservoir.
- In the case of **projects for new reservoir development**, the volumes from the new development wells and from permanent reconditioning of change of reservoir shall be considered. In both cases, the production from these wells shall be considered for exemption from the date of formal declaration of the official completion issued by the Ministry in the case of new wells, and of the official test in the case of permanent reconditioning, until three years of production have been completed. The Ministry may extend this term for a period not exceeding two years when required by the technical or economic viability of the project. In those cases where the production of a well accepted for exemption is suspended, the volumes to be considered will be those obtained up to the date of suspension of such well.
- In the case of **improved recovery projects**, the volumes from the producing wells associated with the improved recovery project shall be considered for the duration of its term, provided that the operating company complies with the technical conditions of the approved project.
- In the case of **production remediation projects**, the volumes from new development wells and from permanent reconditioning of change of reservoir shall be considered. The operation shall comply with the activities set forth in the approved remediation plan. In both cases, the production from these wells shall be considered for the exemption from the date of formal declaration of the official completion, issued by the Ministry for new oil wells, and of the official test in the case of permanent reconditioning, until three years of production have been completed. If the production of a well accepted for exemption is suspended, the volumes to be considered will be those obtained up to the date of suspension of such well.
- Volumes of hydrocarbons that are beyond the scope of the exemption (namely, such volumes of hydrocarbons that are different from those associated in the projects referred to in Article 12(1) of the Law) shall not be considered¹.

For those areas that meet the criteria for a project for new reservoir development and where a production remediation project approved by the Ministry is executed, only those volumes associated with the latter shall be considered for exemption.

Other considerations

Royalties, extraction tax and export registration tax shall be calculated and paid on the volumes of hydrocarbons declared as exempt from payment of the levy on extraordinary prices and exorbitant prices in the international hydrocarbons market, in accordance with the provisions of the Organic Hydrocarbons Law.

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Footnotes

¹ **Article 12.1:** The following are exempt from the contributions set forth in this Law:

1. Whomever carried out the activities referred to in the last paragraph of articles 6 and 8, as a result of the performance of projects of new development of reservoirs, as well as the volumes associated with improved recovery or to projects of production remediation, declared as such by the Ministry of the People's Power with attributions on petroleum and mining matters.

The Ministry of the People's Power with attributions on petroleum and mining matters, through resolution, shall set forth the parameters that it will take into account to declare the volumes exempt from this contribution.

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