



Tax Alert

Amendments to Income Tax Law for the special treatment of foreign capital investment in the country

A law that promotes investment projects from capital of foreign origin, carried out by investors, through the establishment of a special treatment of foreign capital investment in the country (Decree 46-2022) was published in Guatemala's official gazette on 19 September 2022 and is effective as from 29 September 2022.

The Law of Promotion of Foreign Capital Investment adds article 53 bis to Decree 10-2012 Tax Update Law (Income Tax Law) which includes the following:

- The investors shall maintain the legal status established and retain the rights supported by the resolution that the Ministry of Economy issues for this purpose and for the terms established therein, which cannot exceed 10 years for each project.
- The investments supported by the resolution of the Ministry of Economy must be made in property, plant and equipment, which are productive or that have the potential for being so, and during the first 2 to 7 years based on the number of Investment Units (IU), which

are equivalent to the current average minimum wages (AMW) established per day, calculated as of the notification of the resolution of approval of the project by the Ministry of Economy and should be started within the first year of such notification.

- The resolution will be presented by the interested party to the Tax Authority, with the documents that support the investment. The requirements and forms for the investments will be established through a specific regulation, this regulation is to be issued by the Ministry of Economy during the following 60 days of the effective date (29 November 2022).
- The Ministry of Economy, within the scope of its authority, must guarantee the progress of the project and of the investment, as well as compliance with the obligations.
- Failure to timely carry out the investment that is expected to be made during the first year scheduled for the execution of the investment project, or failure to comply with the substantive or formal tax obligations, as well as with the progress of the project, will result in the advance termination of the treatment.
- Investors from the mining and energy sectors, as well as those benefitting from tax benefits in accordance with the Law of Promotion and Development of Export and Drawback Activities, Decree 29-89 of the Congress of the Republic of Guatemala, may not benefit from the special treatment of foreign capital investment.

The Law establishes that in the event that amendments are made to the tax system in which the provisions benefit the investor, such investor may ask the Ministry of Economy to issue a certification of compliance with the obligations contained in the resolution of approval of the investment project, which must be presented to the Superintendency of Tax Administration.

In the event of non-compliance with the scheduling for the execution of the approved investment project as of the second year of benefitting from the special treatment of foreign capital investment, the Ministry of Economy, after holding a hearing with the investor, will proceed to issue the corresponding resolution. The Ministry of Economy must impose an economic penalty equivalent to 1% of the amount expected to be executed in the current fiscal year, or in the case of a repeat offense, a ruling will be made on the applicability of the revocation of the resolution of approval of the investment project. All resolutions regarding penalties must be notified to the Tax Administration within a term of 15 business days.

Finally, to have more clarity regarding this law, it will be necessary to wait until the Executive Branch, through the Ministry of Economy, issues the corresponding regulation for the law, within the term of 60 days following the entering into effect of the law.



Our experts:

Deloitte offers a range of integrated tax and legal services. Our teams combine technical knowledge, experience and innovation, which allow us to help our clients meet their objectives at the local and global levels.



María Andrea González

Partner
Tax
mgonzalezs@deloitte.com



Kevin Orellana

Tax Manager
kjorellana@deloitte.com

Deloitte.

Deloitte refers to Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, its network of member firms and their related entities, each of which is a legally separate and independent entity. Please see www.deloitte.com to learn more about our global network of member firms.

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory and tax & legal services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 330,000 professionals are committed to making an impact that matters.

As used in this document, Deloitte Guatemala, S.A., which have the exclusive legal right to engage in, and limit its business to, providing auditing, consulting, tax consultancy, legal, risk and financial advisory respectively, and other professional services, under the name "Deloitte".

This presentation contains general information only and Deloitte is not, by means of this document, rendering advice or accounting, commercial, financial, investment, legal, tax or other services.

This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. No representation, warranty or promise (either explicit or implicit) is provided regarding the accuracy or completeness of the information in this communication and Deloitte will not be responsible for any loss suffered by anyone who relies on this presentation.