



Tax and Legal Services

Tax Alert 34/2020

September 17th, 2020

Special Tax Reform Bulletin Mining Sector

Federal Fees Law (LFD)

The motivation of the law of the bill submitted by the Federal Executive to the Chamber of Deputies to amend the LFD notes that, in conformity with the Mining Law, mining concessions confer the right to transfer ownership of the concession or the rights it embodies, a practice frequently employed by concessions holders.

Accordingly, the Federal Executive explains the need to modify certain aspects of the current special and extraordinary mining fees collection scheme so as to clearly establish who must pay these fees, thereby returning an adequate amount to the Mexican State for the benefit obtained by mining concession holders derived

from the sale of the natural resources covered by the concession, albeit without discouraging investment in this type of economic activity.

The Federal Executive proposes eliminating the benefit currently offered with regard to the special mining fee, which consists of crediting the definitive mining fee payments made pursuant to article 263 of the LFD throughout the year in question against special mining fee.

The Federal Executive also indicates that the application of this benefit, which allows the crediting of special mining fee, has gradually eroded the fee payable by mining concession holders to exploit nonrenewable natural resources. This is the case because the crediting

percentage represents 73 percent of the special mining fee collected in 2019, thus leaving the State with only 27 percent of the 100 percent to which it is entitled based on the exploitation of the nonrenewable substances or minerals granted by mining concessions.

Likewise, the motivation of the law also mentions that, from the authorities' standpoint, as certain incorrect interpretations have been utilized by taxpayers to reduce or defer both the special and extraordinary mining fees, other amendments are proposed to articles 268 and 270 of the LFD.

Based on the above considerations and if approved by Congress, the tax reform proposed for the mining sector would take effect as

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of January 1, 2021 and would consist of the following:

New taxpayers subject to the payment of special and extraordinary mining fees

The LFD currently stipulates that the holders of mining concessions and assignments shall annually pay special mining fee by applying the 7.5% rate to the positive difference obtained by subtracting authorized deductions from the revenues derived from the sales generated by extractive activities.

The bill indicates that the holders of mining concessions and assignments, and the buyers of the rights conferred by these concessions that obtain revenues derived from the sales generated by extractive activities, shall annually pay special mining fee by applying the 7.5% rate to the positive difference obtained by subtracting authorized deductions from these revenues.

Accordingly, the obligation to pay special mining

fee would be extended to the buyers of the rights conferred by these concessions that obtain revenues derived from the sales generated by extractive activities, so as to clarify the scope of the provision.

The bill also proposes that the holders of mining concessions and assignments, and the buyers of the rights conferred by these concessions shall annually pay extraordinary mining fee by applying the 0.5% rate to the revenues derived from the sale of gold, silver and platinum. Furthermore, it clarifies that the revenues to which the 0.5% rate is applicable are the total accruable income determined according to the Income Tax Law.

Special Mining Fee

In order to determine the basis of this fee, the bill establishes the nondeductibility of intangible assets that permit the exploitation of goods pertaining to the public domain or the provision of a concessioned public service, as referred to by the Income Tax Law, among other items,

the titles of mining concessions or assignments and the rights acquired for the exploration and exploitation of minerals or substances according to the Mining Law.

Furthermore, the definitive mining fee payments made during the year in question pursuant to article 263 of the LFD would no longer be creditable against special mining fee.

Article 263 of the LFD currently establishes that, on a half-yearly basis, the holders of mining concessions and assignments shall pay mining fee for every concessioned or assigned hectare, or fraction thereof, according to the following rates:

During the first and second year	During the third and fourth years	During the fifth and sixth years	During the seventh and eighth years	During the ninth and tenth years	As of the eleventh year
\$7.78	\$11.63	\$24.05	\$48.37	\$96.73	\$170.23

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Contact:

Carlos González Cabral

Tax and Legal Services Partner

cgonzalezcabral@deloittemx.com

Tel. 87 1747 4408

Jorge Sánchez Hernández

Tax and Legal Services Partner

jsanchezhernandez@deloittemx.com

Tel. 55 5080 6496

Eduardo Revilla

Tax and Legal Services Partner

erevilla@deloittemx.com

Tel. 55 5080 6081

Roberto Lozano

Tax and Legal Services Partner

roblozano@deloittemx.com

Tel. 81 8133 7453

www.deloitte.com/mx

www.deloitte.com/mx/impuestos



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www.taxathand.com



Aguascalientes

Universidad 1001, piso 12-1
Bosques del Prado
20127 Aguascalientes, Ags.
Tel: +52 (449) 910 8600
Fax: +52 (449) 910 8601

Cancún

Avenida Bonampak SM 6, M 1, lote 1,
piso 10, 77500 Cancún, Q. Roo
Tel: +52 (998) 872 9230
Fax: +52 (998) 892 3677

Chihuahua

Av. Valle Escondido 5500
Fracc. Des. El Saucito E-2, piso 1,
31125 Chihuahua, Chih.
Tel: +52 (614) 180 1100
Fax: +52 (614) 180 1110

Ciudad Juárez

Baudelio Pelayo No. 8450
Parque Industrial Antonio J. Bermúdez
32400 Ciudad Juárez, Chih.
Tel: +52 (656) 688 6500
Fax: +52 (656) 688 6536

Culiacán

Insurgentes 847 Sur, Local 103
Colonia Centro Sinaloa
80128 Culiacán, Sin.
Tel: +52 (33) 1454 2000

Guadalajara

Avenida López Mateos Norte 2405, piso 29
Colonia Italia Providencia
44648 Guadalajara, Jal.
Tel: +52 (33) 3669 0404
Fax: +52 (33) 3669 0469

Hermosillo

Blvd. Eusebio Francisco Kino No. 315
Piso 8, Suite 804, Colonia Lomas del Pitic
83010 Hermosillo, Son.
Tel: +52 (662) 109 1400
Fax: +52 (662) 109 1414

León

Paseo de los Insurgentes 303, piso 1
Colonia Los Paraísos
37320 León, Gto.
Tel: +52 (477) 214 1400
Fax: +52 (477) 214 1405 y 1407

Mérida

Calle 56 B 485 Prol. Montejo Piso 2
Colonia Itzimna
97100 Mérida, Yuc.
Tel: +52 (999) 913 4032
Fax: +52 (999) 913 4052

Mexicali

Calzada Francisco López Montejano 1342
Piso 7 Torre Sur
Fracc. Esteban Cantú
21320 Mexicali, B.C.
Tel: +52 (686) 905 5200
Fax: +52 (686) 905 5231 y 5232

Ciudad de México

Paseo de la Reforma 505, piso 28
Colonia Cuauhtémoc
06500 México, D.F.
Tel: +52 (55) 5080 6000

Monclova

Blvd. Harold R. Pape # 307-C
Colonia Guadalupe
25750 Monclova, Coah.
Tel: +52 (866) 190 9550
Fax: +52 (866) 190 9553

Monterrey

Av. Juárez 1102, piso 40
Centro
64000 Monterrey, N.L.
Tel: +52 (81) 8133 7300

Puebla

Edificio Deloitte, Vía Atlixcayotl 5506, piso 4 Zona
Angelópolis
72190 Puebla, Pue.
Tel: +52 (222) 303 1000
Fax: +52 (222) 303 1001

Querétaro

Avenida Tecnológico 100-901
Colonia San Ángel
76030 Querétaro, Qro.
Tel: +52 (442) 238 2900
Fax: +52 (442) 238 2975 y 2968

Reynosa

Carr. Monterrey-Reynosa 210-B, PA
Fracc. Portal San Miguel
88730 Reynosa, Tamps.
Tel: + 52 (899) 921 2460
Fax: +52 (899) 921 2462

San Luis Potosí

Av. Salvador Nava Martínez 3125, 3-A
Fracc. Colinas del Parque
78294 San Luis Potosí, S.L.P.
Tel: +52 (444) 102 5300
Fax: +52 (444) 102 5301

Tijuana

Misión de San Javier 10643, Piso 8
Zona Urbana Río Tijuana.
Tijuana B.C., 22010
Tel: +52 (664) 622 7878
Fax: +52 (664) 681 7813

Torreón

Independencia 1819-B Oriente
Colonia San Isidro
27100 Torreón, Coah.
Tel: +52 (871) 747 4400
Fax: +52 (871) 747 4409



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