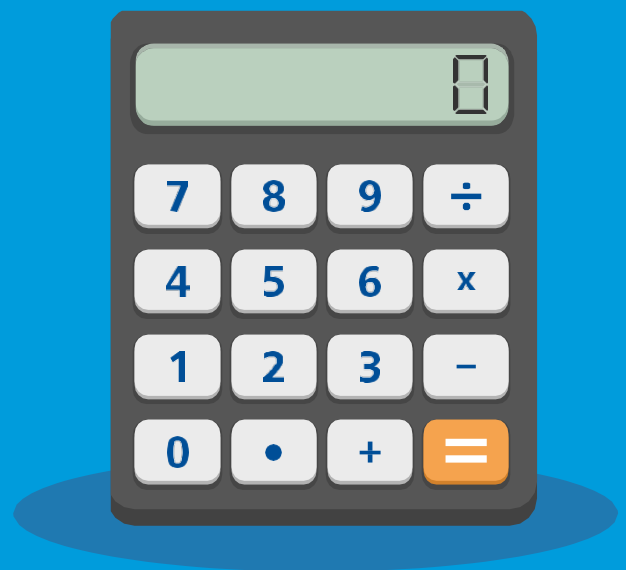




# Tax on landfill, incineration and co-incineration of waste

## Tax Alert



April 2022



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## Tax on landfill, incineration and co-incineration of waste among the tax measures included in the Law on Waste and Contaminated Soil for the Promotion of a Circular Economy.

Eleven months after it began its passage through parliament, Saturday, 9 April 2022 saw the publication in the Official State Gazette of **Law 7/2022** of 8 April 2022, on the management of Waste and Contaminated Soil for the Promotion of a Circular Economy (“Law 7/2022”).

This new legislation transposes European Union Directives (EU) 2018/851 on Waste and (EU) 2019/904 on Single-use Plastics into Spanish Law. It also repeals Waste and Contaminated Soil Law 22/2011, the legislative framework that has governed waste in this country until now.

In its quest to promote the creation of a circular economy, Law 7/2022 introduces two new taxes: (i) the excise tax on non-reusable plastic packaging and (ii) the tax on landfill, incineration and co-incineration of waste, both of which are set to enter into force on **1 January 2023**.

### Tax on landfill, incineration and co-incineration of waste

#### ➤ Taxable event

Broadly speaking, the tax on landfill and incineration of waste is an **indirect tax** on any waste generated that is destined for disposal via landfill, incineration or co-incineration.

The tax will apply throughout Spain, notwithstanding the provincial tax regimes in force in the form of economic accords and agreements, and is envisaged as a devolved tax that may be managed by the autonomous regions. As such, the tax is to be collected by the autonomous regions, having regard to where the taxable event in question takes place, and will replace the existing regional taxes.

Specifically, the **tax is to be levied on** deliveries of waste for disposal at authorised landfills, or disposal or energy recovery at authorised incineration or co-incineration plants, provided they are located in the tax territory.

The tax will **become chargeable** upon disposal at the landfill or upon incineration or co-incineration at the relevant facilities.

#### ➤ Exemptions

**Deliveries of waste to landfill sites, or incineration or co-incineration plants** are exempt: (i) in cases of force majeure, extreme need, catastrophe or the decommissioning of assets for destruction; (ii) where they arise from taxable operations on which this tax has effectively been levied; (iii) where there is a legal requirement for disposal at such facilities; (iv) where the waste in question is generated as a result of processing operations not including municipal waste rejects from facilities engaged in recovery operations other than intermediate processing operations.

The following **waste deliveries** will also be exempt: (i) waste delivered by the authorities as a result of soil decontamination that cannot be treated in situ; (ii) inert waste suitable for restoration, refurbishment or backfilling works or for construction purposes.

#### ➤ Parties liable and secondarily liable for the tax

The party liable for the tax as **taxpayer** will be the party delivering the waste to landfills or incineration or co-incineration facilities, with the managers of the landfills or above facilities being deemed the **substitute taxpayer**.

#### ➤ Tax base and rate

The tax base will be calculated for each facility based on the weight (in tonnes, to three decimal places) of waste deposited at landfills, incinerated or co-incinerated.

### 3 Tax on landfill, incineration and co-incineration of waste among the tax measures included in the Law on Waste and Contaminated Soils for the Promotion of a Circular Economy.

The tax rate, which will depend on the taxable event in question, will range from Euros 0 per tonne to Euros 40 per tonne.

Autonomous regions may increase these rates with respect to the waste disposed of, incinerated or co-incinerated in their respective territories.

#### ➤ Registration on the territorial register and accounting

Any taxable persons that are required to **register on the territorial register for the tax on landfill, incineration and co-incineration of waste** must do so within thirty calendar days of the entry into force of the Order regulating such register.

Taxable persons who manage landfill sites or waste incineration or co-incineration facilities must also keep a **record** of all waste disposed of, incinerated and co-incinerated, together with the dates on which such events take place.

#### ➤ Charging and self-assessment

Substitute taxpayers **must charge** the amount of the tax accruing in respect of taxpayers separately in the relevant invoice.

However, it will not be necessary to charge the tax in this way where it is assessed by the authorities or the taxpayer itself is required to file the relevant self-assessment.

Substitute taxpayers or taxpayers, as the case may be, must **file the relevant self-assessment quarterly** and pay the resulting tax debt within the first thirty calendar days of the month immediately following the end of each calendar quarter.

#### ➤ Infringements and penalties

In addition to the infringement scenarios envisaged in the General Taxation Law, failure to register on the territorial register for the tax on landfill and incineration of waste will be considered a tax infringement. This tax infringement, which will be classed as serious, will trigger a penalty consisting of a fixed monetary fine of Euros 1,000.

#### ➤ Other tax-related measures

An excise tax on non-reusable plastic packaging is also introduced and will enter into force on 1 January 2023.

Elsewhere, Law 7/2022 includes other tax-related measures that entered into force the day after the date of their publication, i.e. 10 April 2022. Namely:

- Local authorities have a maximum of three years to introduce a **charge or, as the case may be, a public financial contribution of a non-tax**, specific, distinct and non-loss-triggering nature, that permits the implementation of “pay-as-you-throw” schemes and reflects the **actual, direct and indirect costs of waste collection, transport and processing operations**, including the supervision of these operations and the relevant after-care and supervision of disposal sites, awareness and communication campaigns and revenues from the implementation of extended producer responsibility for the sale of materials and energy.
- It will also be possible for local bodies to establish, through the relevant ordinance, an **allowance of up to 95%** of the gross amount payable in respect of the charges levied on solid urban waste collection services for companies in the food distribution and restaurant industry, subject to compliance with certain requirements.
- Article 112.bis of the Revised Water Law (“RWL”) is amended to reinstate the **“fee for the use of continental waters for electricity generation”** in the wake of the latest judgment of the Supreme Court.
- Finally, an **amendment is introduced to the VAT regime applicable to donations of products** to not-for-profit entities subject to the special regime regulated in Law 49/2002 of 23 December 2002.

Please do not hesitate to contact KPMG Abogados’ Special Taxes, Foreign Trade and Customs team should you wish to discuss any of the above matters.

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