



New legal regime for Tax on Fluorinated Greenhouse Gases (Law 14/2022)

Tax Alert



July 2022

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9 July 2022 saw the publication in the Official State Gazette of [Law 14/2022](#) of 8 July 2022, amending Law 19/2013 of 9 December 2013, on transparency, access to public information and good governance with a view to regulating the statistics of micro- and small and medium-sized enterprises (SMEs) in respect of public procurement (“Law 14/2022”). This new legislation, **effective as of 1 September 2022**, is set to amend the regulation of the Tax on Fluorinated Greenhouse Gases (“TFGG”) and, specifically, article 5 of [Law 16/2013](#), establishing certain environmental taxation measures and adopting other tax and financial measures (“Law 16/2013”).

The first final provision of Law 14/2022 of 8 July 2022, effective from **1 September 2022**, **overhauls the legal framework** governing the TFGG, rewording article 5 of Law 16/2013.

It should be noted that the [Implementing Regulations](#) and [Ministerial Order](#) regarding the Tax are currently in the public consultation phase.

Taxable event

This is an **indirect tax** levied on the use of fluorinated greenhouse gases in Spain.

The tax will now be levied on the **manufacturing, import, intra-Community acquisition and unlawful possession of the taxable fluorinated gases**. The taxable event is thus no longer the sale or delivery of the gases to the end consumer, as the tax will now be levied on the possession and use of these gases in **Spain**.

The taxable event will be deemed to have occurred if these gases are brought into the tax territory in **containers or already incorporated into products, equipment or apparatus**.

Non-taxation, exemption, deduction and refund

Under the new legal regime for the tax, a number of the current exemptions will cease to apply (i.e. the exemption relating to the incorporation of the gases into new apparatus or equipment and the elimination of the concept of reseller), while others will apply for a limited period. For example, the manufacturing, import and intra-Community acquisition of taxable gases intended for use in dose inhalers for the supply of pharmaceutical ingredients will be exempt until 31 December 2026. As of that date, this exemption will no longer apply.

This tax is levied on a long list of taxable events (albeit limited by certain non-applicability, exemption or refund scenarios). These scenarios regulated by Law 14/2022 include, most notably, the following:

- The tax will not be levied on taxable fluorinated gases intended to be sent outside Spain.
- An exemption will also apply in the case of the manufacturing, import or intra-Community acquisition of fluorinated gases intended for use as a raw material in a chemical transformation process whereby their composition is completely altered, or where they are going to be used in military equipment or incorporated into ships or aircraft used in international maritime or air navigation, not including private recreational sailing or flying.
- The import or intra-Community acquisition of taxable gases contained in products forming part of the personal luggage of travellers coming from a third territory will also be exempt, provided that the products do not constitute a commercial shipment.

Taxpayers

Manufacturers, importers and intra-Community acquirers, and, in the case of unlawful possession, anyone who possesses, places on the market, transports or uses these gases, are all **liable for the tax**.

Persons who store fluorinated gases will also be liable for the tax.

Where there are irregularities as regards justification of the use or purpose of taxable gases which have benefitted from an exemption based on their intended purpose, the taxpayers will be required to pay the tax and any penalties that may be imposed, until such time

as they evidence receipt of the products by the acquirer authorised to receive them, by submitting a prior declaration stating the purpose of the products, once the products have been received, the acquirers will be liable.

The new concept of person who stores fluorinated gases

To protect those who store certain quantities of the taxable gases from potential finance costs arising as a result of the period of time that may elapse between payment of the tax and recovery of that amount through the selling price of the gases, **the concept of “person who stores fluorinated gases” has been created.** Where certain requirements are met, this person may benefit from a tax deferral.

In this particular case, the tax will become chargeable when, following the manufacturing of the taxable gases, the “person who stores fluorinated gases” makes the first sale or delivery to a party not holding such status, or when the gases are used.

Tax base and rate

The **tax base** shall be **the weight of the taxable fluorinated gases**, expressed in **kilograms**.

In the case of products, equipment or apparatus containing taxable gases, a certain quantity of kilograms will be presumed, unless demonstrated otherwise, for the gas contained in each product concerned.

The **tax rate** will be the result of multiplying **the global warming potential** of each taxable gas by **0.015** at the time of the taxable event, up to a maximum limit of Euros 100 per kilogram.

Where the global warming potential of the gas contained in the products, equipment or apparatus in question is unknown, the applicable tax rate will be presumed to be Euros 100 per kilogram, unless demonstrated otherwise.

Management of the Tax

Taxpayers must self-assess and pay the tax debt **quarterly**. In the case of imports, the tax will be settled in the manner provided for in customs legislation.

Certain accounting and registry obligations have also been laid down. Specifically, in accordance with the Draft Royal Decree approving the Regulations:

- Manufacturers, importers, intra-Community acquirers and persons who store fluorinated gases must apply to the Management Office for

registration on the Territorial Register for the Tax on Fluorinated Greenhouse Gases. Following registration, the Management Office will issue a card (the *CAF card*) -containing a Fluorinated Gas Activity code- for each activity, as appropriate.

- The taxpayers subject to this tax, with the exception of importers, must keep accounting records for the taxable products, which must be submitted via the State Tax Agency’s website.

Furthermore, taxpayers not established in Spain are required to appoint a natural person or legal entity to represent them before the tax authorities. This representative is also required to register on the aforementioned territorial register.

Infringements and penalties

Alongside the provisions of the General Taxation Law, provision is made for a specific infringements and penalties regime.

Broadly speaking, the following shall be considered **serious tax infringements** for the purposes of this tax:

- failure to register on the Territorial Register for the Tax on Fluorinated Greenhouse Gases, and failure by non-established taxpayers to appoint a representative. The penalty will consist of a **fixed monetary fine of Euros 1,500**.
- the existence of negative differences in the taxable gases at factories or on the premises of persons who store fluorinated gases. The penalty will consist of a proportional monetary fine of 100 percent of the amount of the charge that would have been applicable to those gases.
- the undue enjoyment by the acquirers of the taxable gases of the exemptions established to that end, which will be penalised by means of a proportional monetary fine of 150 percent of the tax benefit unduly received, the minimum amount being Euros 1,000.

How to proceed in relation to the “old” TFGG following the entry into force of the “new” TFGG

Fluorinated gas manufacturers who, under the “old” TFGG were classified as **resellers**, and traders who benefitted from the **exemption for first-time incorporation of the gases concerned into new equipment or apparatus** must notify the STA, in

September 2022, of the amount of fluorinated gases at their premises at 1 September 2022.

Meanwhile, **resellers not classified as persons who store fluorinated gases** must file the relevant self-assessment between 1 September and 30 November 2022 for gas stocks at their premises at 1 September 2022 and simultaneously pay the resulting debt.

Entry into force

As noted above, these new rules ushered in as a result of Law 14/2022 will apply as of 1 September 2022, at which time the Regulations on the Tax on Fluorinated Greenhouse Gases, approved by Royal Decree 1042/2013 of 27 December 2013, will be repealed.

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

Contacts

Juan José Blanco
Partner
KPMG Abogados
Tel. +34 91 456 34 61
jblanco@kpmg.es

Antonio Fernández de Buján
Senior Manager
KPMG Abogados
Tel. +34 91 456 60 01
afernandezdebujan@kpmg.es

Efrem Siles Prieto
Senior Manager
KPMG Abogados
Tel. +34 93 253 29 00
esiles@kpmg.es

KPMG offices in Spain

A Coruña

Calle de la Fama, 1
15001 A Coruña
T: 981 21 8241
Fax: 981 20 02 03

Alicante

Edificio Oficentro
Avda. Maisonnave, 19
03003 Alicante
T: 965 92 07 22
Fax: 965 22 75 00

Barcelona

Torre Realia
Plaça de Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
T: 932 53 2900
Fax: 932 80 49 16

Bilbao

Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
T: 944 79 7300
Fax: 944 15 29 67

Girona

Edifici Sèquia
Sèquia, 11
17001 Girona
T: 972 22 0120
Fax: 972 22 22 45

Las Palmas de Gran Canaria

Edificio Saphir
C/Triana, 116 – 2º
35002 Las Palmas de Gran Canaria
T: 928 33 23 04
Fax: 928 31 91 92

Madrid

Torre de Cristal
Paseo de la Castellana, 259 C
28046 Madrid
T: 91 456 3400
Fax: 91 456 59 39

Málaga

Marqués de Larios, 3
29005 Málaga
T: 952 61 14 00
Fax: 952 30 53 42

Oviedo

Ventura Rodríguez, 2
33004 Oviedo
T: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca

Edificio Reina Constanza
Calle de Porto Pi, 8
07015 Palma de Mallorca
T: 971 72 1601
Fax: 971 72 58 09

Pamplona

Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
T: 948 17 1408
Fax: 948 17 35 31

San Sebastián

Avenida de la Libertad, 17-19
20004 San Sebastián
T: 943 42 2250
Fax: 943 42 42 62

Sevilla

Avda. de la Palmera, 28
41012 Sevilla
T: 954 93 4646
Fax: 954 64 70 78

Valencia

Edificio Mapfre
Paseo de la Alameda, 35, planta 2
46023 Valencia
T: 963 53 4092
Fax: 963 51 27 29

Vigo

Arenal, 18
36201 Vigo
T: 986 22 8505
Fax: 986 43 85 65

Zaragoza

Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
T: 976 45 8133
Fax: 976 75 48 96

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