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INFORMATIVE NOTE

Volume Controls – Hydrocarbons and Refined Products

With the publication of the Miscellaneous Tax Resolution for 2022 (“**RMF for 2022**”) in the Federal Register (“**DOF**”) on December 27, 2021, we believe it to be important to refresh our analysis on the amendments made by the Federal Congress to the Federal Tax Code (*Código Fiscal de la Federación*) regarding “volume controls (*controles volumétricos*)” of hydrocarbons and refined products.

This Informative Note already considers the publication of Annexes 30, 31 and 32 to the RMF for 2022 on January 13, 2022. Further below we discuss the relevance of these Annexes.

1. What are “volume controls”? / Background.

Since 2004, provision 28 of the Federal Tax Code (“**CFF**”) contemplated those persons who sold various hydrocarbons and refined products for automotive combustion in open-to-the-public establishments were required to have the equipment and computer programs to maintain volume controls.¹

With the opening of importation of Refined Products into Mexico since 2017, and the coming online of multiple storage and distribution terminals of Refined Products, in 2018 the Federal Congress determined to amend article 28 of the CFF to add a sub-section B to section I of said article.²

¹ Before the 2018 amendments to the CFF, the very same article 28 itself defined “volume controls” as the records of volumes used to determine the existence, acquisition, and sale of fuel, which will be part of the taxpayer's accounting records.

² The amendment to the CFF was published in the DOF on June 1, 2018, through the *DECREE amending, adding, and repealing various provisions of the Federal Tax Code, the Customs Law, the*





In terms of sub-section B of section I in article 28 of the CFF, persons who manufacture, produce, process, transport, store (including storage for self-use), distribute, or sell any type of hydrocarbon or refined product are required to have the equipment and computer programs to maintain volume controls, as well as opinions issued by a test laboratory to determine the type of hydrocarbons or refined product. In addition, it was established:

- (i) a new definition of “volume controls” as the records of volume, purpose of their transaction, operations, including stock, same that will be part of the taxpayer's accounting records;
- (ii) that the equipment and software to carry out the volume controls would be those authorized by the Tax Administration Service (“SAT”);
- (iii) that suppliers of equipment and software to maintain volume controls or for the provision of verification services of the correct operation and functioning of such equipment and software, as well as to obtain laboratory opinions, are required to hold an authorization from the SAT; and
- (iv) that the technical characteristics of volume controls and laboratory opinions would be determined in accordance with the general rules (*e.g.*, tax miscellaneous resolution) issued by the SAT, considering the Official Mexican Standards issued by the Energy Regulatory Commission (“CRE”) on hydrocarbons and refined products.

Since the amendment to the CFF in 2018, through the *THIRD Resolution of Amendments to the Miscellaneous Tax Resolution for 2018* published in the DOF on October 19, 2018, Chapter 2.6 regarding volume controls, certificates, and laboratory opinions applicable to hydrocarbons and refined products was added. In addition, the transitory articles provided for different dates of entry into force for volume control obligations

In the Miscellaneous Tax Resolutions for 2019, 2020, 2021, it was established that taxpayers required to comply with the obligations to maintain volume controls in accordance with the provisions of article 28 of the CFF would have a period of six (6) months counted

Federal Criminal Code, and the Federal Law to Prevent and Sanction Felonies Committed in Matters of Hydrocarbons.





as of the day on which the authorizations issued by the SAT to equipment and software suppliers, verification service providers, as well as test or testing laboratories become effective. Such authorizations would become effective the day after their publication on SAT's website (*Portal del SAT*).

1.1. ¿How are volume controls and the Hydrocarbons Law related?

One should not lose sight of the fact that the Seventh Transitory Provision of the Decree³ amending and adding multiple provisions of the Hydrocarbons Law published in the DOF on May 4, 2021 ([here](#) you may access a summary about it), establishes that on the effective date of such Decree, the CRE and the SAT would, within their respective scope of jurisdiction, carry out the conducive action to verify the compliance with the provisions applicable to the measurement of hydrocarbons, refined products and petrochemicals, pursuant to the corresponding legal provisions.

While there are multiple regulations and legal provisions in matters of measurement of hydrocarbons and refined products, the provisions of the RMF for 2022 are part of the legal provisions mentioned by the aforesaid Decree, and which mandates the CRE and the SAT to enforce. Therefore, we believe that the SAT will remain especially vigilant regarding the enforcement of these volume control obligations.

2. Amendments to the Federal Tax Code–November 2021.

On November 12, 2021, the “economic package” for 2022 was published, same that included certain amendments to the CFF in terms of volume controls.

Particularly, sub-section B of section I of provision 28 of the CFF was amended to establish or eliminate, as appropriate:

³ In most of the amparo claims and challenges filed against the Decree mentioned here the federal courts refused to grant the suspension with respect to the Seventh Transitory Provision of said Decree. In this sense, unlike other provisions of the Hydrocarbons Law that were amended through this Decree, as well as other transitory provisions that were actually suspended, the Seventh Transitory Provision of the Decree is and will be one of the legal provisions on the basis of which the current federal administration will likely commence sanction or even permit revocation procedures.



- (i) eliminate the obligation that equipment and software to maintain volume controls must be authorized by the SAT, thereby eliminating provisions regarding the revocation of such authorizations.
- (ii) eliminate the obligation for taxpayers (CRE permit holders, Ministry of Energy (“SENER”) permit holders, contractors and others) to acquire: (a) hardware and software; (b) certificates of correct operation of such equipment or software; and (c) laboratory certificates, exclusively from vendors authorized by the SAT; and
- (iii) it was established that taxpayers (*e.g.*, permit holders of the CRE, of SENER, contractors, and others) are required to generate on a daily and monthly basis volume control information reports that shall contain: (a) volume records from reception, delivery and inventory control transactions obtained from the equipment installed at the points where hydrocarbons or refined products are received, delivered and stored; (b) the data of the CFDIs or tax import documents associated with the acquisition and sale of said products or, where appropriate, the services received; (c) the information of the opinions that determine the type of hydrocarbon or refined products in question; and (d) the certificates that certify the correct operation and functioning of the computer equipment and programs.

3. RMF for 2022 – Volume Controls.

As a result of the amendments suffered by sub-section B of section I in article 28 of the CFF, the RMF for 2022 also underwent significant changes in matters of volume controls.

As we mentioned before, the RMF for 2022 was published in the DOF on December 27, 2021 and **will be in force as of January 1, 2022.**

While Annexes 30, 31 and 32 issued by the SAT for the Miscellaneous Tax Resolutions since the year 2019 were in effect as of the effective date of the RMF for 2022,⁴ on January 13, 2022, the new versions of Annexes 30, 31 and 32 for the RMF for 2022 were published in the DOF.

⁴ See: Third Transitory Provision of the Miscellaneous Tax Resolution for 2021, published in the DOF on December 29, 2020.





The new versions of these Annexes reflect the changes and amendments introduced to the CFF (November, 2021) and to the RMF for 2022 in matters of volume controls, in addition to introducing additional obligations, as well as additional parties to which the obligations included in such Annexes apply to.⁵

3.1. What does Chapter 2.6 of the RMF for 2022 say?

Number 2.6.1.2 of the RMF for 2022 clearly establishes who are the parties (taxpayers) to whom the volume control obligations apply to. These parties are:

- (i) Producers of hydrocarbons under an Entitlement (*e.g.*, Petróleos Mexicanos) or a contract for the exploration and extraction of hydrocarbons (*e.g.*, Petróleos Mexicanos or private parties);
- (ii) Petroleum refiners or natural gas or condensate processors;
- (iii) Persons who carry out compression, decompression, liquefaction, or regasification of natural gas;
- (iv) Transportation companies of hydrocarbons or refined products;
- (v) Storage companies of Hydrocarbons or refined products (including “self-supply” as long as they consume on average a volume greater than or equal to 75,714 liters per month);
- (vi) Distributors of natural gas or refined products; and
- (vii) Natural persons or legal entities who sell natural gas or refined products,⁶ either as: **(a)** retail sales to the public (*e.g.*, gas stations or other fueling stations); **(b)** purchase and sale in terms of the provisions of article 19 of the

⁵ For example, number 32.1 of Annex 32 of the RMF for 2022 was amended to include that the taxpayers holding an authorization to clear customs at a place different than that authorized pursuant to rule 2.4.1 of the General Foreign Trade Rules for 2022 (*Reglas Generales de Comercio Exterior para 2022*) (*i.e.*, an LDA authorization) are also required to obtain the opinions (*dictámenes*) that determine the type of hydrocarbon or refined product.

⁶ Note that Petroleum (crude oil) is not included.





Regulations to the Activities referred in Title Third of the Hydrocarbons Law; or (c) under the protection of a commercialization permit granted by the CRE.

Among many other obligations imposed on matters of volume controls, number 2.6.1.4 of the RMF for 2022 establishes that taxpayers shall:

- (i) Procure the acquisition and installation of equipment and computer programs to carry volume controls that comply with technical specifications of Annex 30 to the RMF for 2022;
- (ii) Procure verification services for the correct operation of the equipment and programs that comply with Annex 31 to the RMF for 2022;
- (iii) Procure the services for the issuance of opinions that determine the type of hydrocarbon or refined product in question, the heat value of the gas and the octane number of gasoline that comply with Annex 32 to the RMF for 2022;
- (iv) Give notice to the SAT, within a maximum period of fifteen (15) business days as of: (a) the equipment and programs to maintain volume controls come into operation; (b) changes, improvements, modifications or replacements are made to the equipment or programs; (c) a certificate of the correct or incorrect operation and functioning of the equipment and programs is received; and (d) the opinion determining the type of hydrocarbon or refined product in question is received;
- (v) Send to the SAT – electronically – the reports referred to in article 28 of the CFF on a monthly basis;⁷
- (vi) Permit holders for compression, decompression, liquefaction or regasification of natural gas, transporters, storage companies and distributors of hydrocarbons or refined products will have the obligation **to provide to the marketers (comercializadores)** who are their clients, “*the information on the records of volume of the hydrocarbons and refined products referred in Annex 30*”; and

⁷ Although article 28 of the CFF establishes that there will be daily and monthly reports, the RMF for 2022 establishes that the reports must be made on a monthly basis only. See numeral 2.8.1.6, section III of the RMF for 2022.





- (vii) Additionally, the producers, refiners or processors, storage companies, distributors, and marketers (*comercializadores*) shall provide to the compression, decompression, liquefaction, regasification of natural gas permit holders, transporters and storage companies with “*the information on the opinions that determine the type of hydrocarbon or refined product in question, the heat value of natural gas and the octane number, in the case of gasoline (...)*”.

Although the RMF for 2022 now eliminates the authorization of the SAT for service providers to evaluate the proper functioning of the equipment and programs, numeral 2.6.1.5 now establishes that the opinion or technical opinion of the correct operation and functioning of the equipment or computer programs must be issued by a person who has obtained an evaluation report approved by an accreditation body.

In the case of reports that determine the type of hydrocarbon or refined product: **(a)** in the case of hydrocarbons, the report must be issued by a third party approved by the National Hydrocarbons Commission; and **(b)** in the case of refined products, the opinion must be issued by a person who has the approval of the CRE.⁸

4. **Effective Date of Volume Control Obligations.**

With the elimination of authorizations by the SAT for the suppliers of computer equipment and programs to maintain volume controls, the certificates regarding the correct operation and other opinions originally provided for in the CFF, the RMF for 2022 also eliminated the transitory article establishing that obligated taxpayers would have a grace period of six (6) months to comply with the obligations on volume controls, including making the reports to the SAT.

In this sense, given that the Decree that amended sub-section B of section I in article 28 of the CFF on November 12, 2021⁹ (whose entry into force is also on January 1, 2022)

⁸ It is important to note that the RMF for 2022 does not include persons authorized by the Ministry of Economy, unlike the way it is allowed in the case of quality certificates in transaction or activities for the import of refined products.

⁹ *Decree amending, adding and repealing various provisions of the Income Tax Law, the Value Added Tax Law, the Law of the Special Tax on Production and Services, and the Federal Law of Taxes on New Cars, of the Federal Tax Code and other ordinances*, published in the DOF on November 12, 2021. See: https://dof.gob.mx/nota_detalle.php?codigo=5635286&fecha=12/11/2021





did not establish a transition period to comply with the obligations on volume controls (in fact, it expressly repealed a provision that conditioned the effective date of sub-section B of section I in article 28 of the CFF to the issuance of authorizations by the SAT), we consider that the taxpayers indicated in numeral 2.6.1.2 of the RMF for 2022 are required to comply with the obligations imposed by the RMF for 2022 in matters of volume controls of hydrocarbons and refined products **as of the effective date of the RMF for 2022 (that is, January 1, 2022).**

It is worth mentioning that on November 2021 the CFF was also amended in order to establish the events that constitute sanctions for not complying with article 28, section I of the CFF, including but not limited to:

- (i) not having the opinion that determines the type of hydrocarbon or refined products, or with the certificate that certifies the correct operation of the equipment or programs to maintain volume controls;
- (ii) not having the equipment and computer programs to maintain volume controls;
- (iii) not having the volume controls, or altering, rendering them useless or destroying them;
- (iv) not sending the information reports to the SAT within the established periodicity; and
- (v) send to the SAT reports with errors or in a way other than that indicated by article 28, section I of the CFF.

It is no less important to mention that article 111 Bis of the Federal Tax Code was also amended in order to establish, among others, that a penalty of 3 to 8 years in prison will be imposed on those who: **(a)** do not have volume controls of hydrocarbons or refined products referred to in article 28, section I, sub-section B of the CFF, or when these are altered, disabled or destroyed; **(b)** do not have the equipment and computer programs to maintain volume controls; **(c)** do not have the certificates that certify the correct operation of the equipment and computer programs; and **(d)** provide false, incomplete, or inaccurate records on volume controls to the tax authorities.





In other words, as of January 1, 2022, the reports, certificates and other obligations imposed by article 28 of the Federal Tax Code (including having the equipment and computer programs) will be applicable to all taxpayers obliged under article 28 of the CFF, including criminal liabilities.

5. Annexes published in the DOF on January 13, 2022.

The new Annexes 30, 31 and 32 are substantially similar to the Annexes that were previously in effect. The main change in all of them is the elimination of the SAT-authorized vendor figure, and the clarification of multiple obligations. However, the periodicity to obtain opinions on the type of hydrocarbon or refined product, as well as other obligations, are maintained in the original terms.

It is important that permit holders, entitlement holders and contractors review and understand the changes made to Annexes 30, 31 and 32 because their content is enforceable as of the effective date of the amendments to the CFF, as well as the effective date of the RMF for 2022.

In the specific case of Entitlement Holders (*Asignatarios*) and Contractors (*i.e.*, oil and gas exploration and production), Annex 30 now establishes that the measurement systems shall be located at the measurement point approved or, as appropriate, determined by the National Hydrocarbons Commission.

If you wish to understand the most relevant changes made to the aforesaid Annexes, do not hesitate to contact us.

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