

Name: RENEWABLE ENERGY TAX INCENTIVES LAW  
Subject matter: Tax Law            Category: Tax Law

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Comments: This law has the purpose to promote the execution of investments in projects based on the use of renewable energy sources, through the use of hydraulic, geothermal, wind power, as well as biomass, for electricity generation.

## Content

DECREE Number 462  
THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

### WHEREAS:

I. The Constitution of the Republic of El Salvador, establishes that the State shall promote the economic and social development of the country through an increase in production, productivity and the rational use of resources.

II. Also establishing, that it will promote the various sectors of production and for that reason it is necessary to encourage the use of renewable energy sources, in order to reduce dependence on the purchase of fossil fuels.

III. That at the same time the use of renewable energy sources for the generation of electricity will contribute to reduce environmental pollution in the country and significantly improve the national balance of payments.

IV. That the country has ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which is intended to promote sustainable development, to protect and improve, among others, sinks and reservoirs of greenhouse gases.

V. That it is necessary to pass a law that promotes the use of renewable energy sources for electricity generation, and at the same time fostering investments that allow the sustainable development of projects that use these kind of energy sources that are available in the country.

VI. In light of what has been stated above, it is necessary to enact legal dispositions which allow the promotion of investments in power generation projects based on renewable energy available in the country, fostering research, exploration and development projects,

and at the same time granting tax incentives, that make the investments in these areas of the economy more attractive.

THEREFORE:

In exercise of their constitutional powers, and by initiative of the President of the Republic, through the Ministers of Finance, Economy and Environment and Natural Resources, with the support of the Legislative Assembly Members: Julio Antonio Gamero Quintanilla, José Mauricio Quinteros Cubías, Juan Enrique Perla Ruiz, Mariella Peña Pinto, Manuel Orlando Quinteros Aguilar, Humberto Centeno Najarro, Calixto Mejía Hernández, José Salvador Arias Peñate, José Francisco Merino López, Alejandro Dagoberto Marroquín, Mario Antonio Ponce López, José Salvador Cardoza López, Douglas Alejandro Alas García, Ernesto Antonio Angulo Milla, Federico Guillermo Ávila Qüehl, Fernando Alberto José Ávila Quetglas, Ingrid Berta María Bendix de Barrera, Noel Abilio Bonilla Bonilla, Roberto José d'Aubuisson Munguía, María Patricia Vásquez de Amaya, Fernando Antonio Fuentes, Guillermo Antonio Gallegos Navarrete, César Humberto García Aguilera, Marco Aurelio González, José Nelson Guardado Menjívar, Fernando Gutiérrez Umanzor, Manuel de Jesús Gutiérrez Gutiérrez, Carlos Walter Guzmán Coto, Mario Marroquín Mejía, Manuel Vicente Menjívar Esquivel, Julio César Portillo Baquedano, Francisco Antonio Prudencio, Norman Noel Quijano González, Dolores Alberto Rivas Echeverría, Abilio Orestes Rodríguez Menjívar, Alberto Armando Romero Rodríguez, Herberth Nestor Menjívar Amaya, Irma Segunda Amaya Echeverría, Darío Alejandro Chicas Argueta, Carlos Cortez Hernández, Luis Alberto Corvera Rivas, Walter Eduardo Durán Martínez, Antonio Echeverría Veliz, Enma Julia Fabián Hernández, Luis Arturo Fernández Peña, Argentina García Ventura, Ricardo Bladimir González, Jorge Alberto Jiménez, Elio Valdemar Lemus Osorio, Vicenta Liliana Martínez Bernabé, Misael Mejía Mejía, Osmin Romeo Molina Ríos, Guillermo Antonio Olivo Méndez, Inmar Rolando Reyes, Othon Sigfrido Reyes Morales, Ana Daysi Villalobos de Cruz, José Antonio Almendáriz Rivas, Elizardo González Lovo, José Rafael Machuca Zelaya, Alexander Higinio Melchor López, Rodolfo Antonio Parker Soto, Valentín Arístides Corpeño, Carlos Rolando Herrarte Rivas, Julio Milton Parada Domínguez y Sandra Marlene Salgado García.

DECREES the following:

RENEWABLE ENERGY TAX INCENTIVES LAW

CHAPTER I

GENERAL PROVISIONS

Art 1.- The present Law aims to promote investment in projects based on the use of renewable energy sources, through resource utilization such as hydraulic, geothermal, wind, solar, marine, biogas and biomass sources; as well as any other source that might be identified in the future as renewable for the generation of electricity”.

Art. 2. Promotes the use of renewable energy sources, in order to contribute to the protection of the environment, the use of renewable energy sources in the country and quality electrical supply.

Art. 3.- Natural or legal persons that once the Law goes into effect, be holders of new investments in projects for the installation of power plants for electricity generation, or in projects for the expansion of existing power plants, using for it renewable energies, as provided under Art. 1 of this Law will enjoy the following benefits and fiscal incentives, exclusively in relation to the costs and expenses of the investment corresponding to these projects:

a) During the first ten years, they will be totally exempt from payment of Import Duties on machinery, equipment, materials and supplies destined exclusively for pre-investment work and investments in construction and expansion of works at the electric power plants, including the construction or expansion of sub-stations, transmission or sub-transmission lines, necessary to transport electricity from the power plants to the transmission and/or distribution networks.

Exemption from Import Duties must be requested to the Ministry of Treasury at least fifteen days prior to the importation of the necessary machinery, equipment, materials and supplies and destined exclusively to developing the renewable energy projects, in accordance with the project documentation authorized in the certification issued by the Superintendence of Electricity and Telecommunications, which in the text of this Law may be called SIGET.

Acquisition of the following is excluded from the benefit stated above: furniture and household furnishings, as well as vehicles for the individual or collective transportation of people.

b) Income derived directly from power generation from a renewable source will be totally exempt from Income Tax payment for a period of five years, for projects above 10 megawatts (MW); and for ten years in the case of projects of 10 or less megawatts (MW); in both cases, starting from the fiscal year in which the income derived from power generation from a renewable source is generated.

c) Total exemption from payment of any type of taxes on income generated directly from the sale of "Reduced Emissions Certificates", hereon after called REC, in the framework of the Clean Development Mechanism (CDM) of the Kyoto Protocol or similar carbon markets, obtained by qualified beneficiary projects in accordance with the present Law.

To enjoy the benefits referred to above, the beneficiary must fulfill the following conditions:

- i. That the projects be duly registered and certified according to the modalities and procedures for the Clean Development Mechanism (CDM) of the Kyoto Protocol, or similar carbon markets.
- ii. That according to this law, the owners of qualified projects add in their income tax declarations a detail of the REC issued and the income obtained

through their sale, stating the name of the purchasers.

- iii. To submit a certified copy of the purchase contract of the Emission Reduction Purchase Agreement (ERPA), that states the number of said reductions sold, and their selling price.
- iv. To submit a certification from the Ministry of the Environment and Natural Resources regarding the number of ERC issued.

In the case of geothermal power plants, the income tax might be reduced for a maximum period of ten years, costs and expenses related to activities involved in the process of total re-injection of the geothermal resource. This deduction may not exceed twenty per cent of the gross income generated in the previous year, and will be made through annual installments not to exceed twenty-five percent of the income from each fiscal year, until its total amortization.

For the purpose of deducting the corresponding tax credits stated in Art. 65 of the Law for the Transfer of Chattel and Performance of Services, regarding projects for the installation or expansion of power plants to generate electricity through renewable sources, the deduction referred to in that regulation might be applied when dealing with pre-investment and investment work for the construction of works necessary and part of the electricity-generating process, including investments made in real estate, whether by adherence or destination.

The tax benefits described in this article shall be granted only to the activities corresponding to projects for installation or expansion of power plants for electricity generation, benefited by this Law, that involve a new investment.

For the purposes of this Law, "new investments" refer to those that represent an acquisition, in any title, of additional assets that allow the installation of a power plant in the country, or the expansion of an existing power plant.

Said expansion may consist of the acquisition of assets for the optimization, re-potentialization and rehabilitation of previously existing power plants; in that case, the tax benefit will only apply if it is possible to identify and prove that the new investment made has resulted in additional generation of electricity, so the corresponding measuring equipment or mechanisms must be in place.

The SIGET must verify that the measuring equipment to be installed, or the measuring mechanisms identified by the interested party suffice to comply with the provision above, at the time when the project certification application is evaluated. Besides, it will have the authority to perform verification and control activities related to said equipment or mechanisms after the qualification of the project.

Natural or legal persons that enjoy any of the exemptions granted through this Law must use accounting systems that allow the identification of income, costs, and expenses related to the new investment subject to the tax benefits established in the present Law.

## CHAPTER II LEGAL COMPETENCE

Art. 4. It is SIGET's task to ensure the compliance of this law, for which it may issue the necessary norms in regard to technical specifications, to characterize projects that exploit renewable energy sources for the generation of electricity, in accordance with this Law.

Art. 5. SIGET shall certify the projects that comply with the requirements established under this Law and its Regulation; likewise, it will issue a technical opinion based on the norms on project characterization of goods, inputs and services that can benefit from tax incentives established under this Law; such technical opinion shall be attached to the issued certification. In order to obtain the certification, the interested party shall submit to SIGET in addition to the documentation required by the norms to characterize projects, a list of the machinery, equipment, materials and inputs, as well as the description of the research, exploration and preparation activities. Both, the list and the description of the activities shall include its corresponding supporting documentation for costs that are subject of tax exemptions referred to in this Law.

Art. 6. The Ministry of Finance through its Directorate-General for Internal Revenue (Dirección General de Impuestos Internos) and Directorate-General for Customs (Dirección General de Aduanas), may issue the orientation guides related to the benefits and incentives referred to in this Law.

Art. 7. The Executive Branch through the Ministry of Finance, via the Directorate-General for Internal Revenue and Directorate-General for Customs, shall be the competent authority to bestow of the benefits and tax incentives contained in this Law, as well as to exercise vigilance, control and audit of the tax regime of activities being incentivized and the application of sanctions defined in this Law. The General Superintendence of Electricity and Telecommunications shall have legal competence under the terms specified in this Law.

## CHAPTER III

### OF OBLIGATIONS OF THE BENEFITED SUBJECTS

Art. 8. The natural or legal persons who benefit from tax incentives established under this Law, shall comply with the following obligations:

- a) Make use of the granted tax incentives, for the exclusive purpose of the incentivized activity.
- b) Communicate to SIGET and to the Directorate-General for Internal Revenue and Directorate-General for Customs, the modifications executed in plans and projects related to the company's line of business, within the period of ten business days after such modification, and report within ten business days of any sale or transfer of assets or shares, in order to pay the respective taxes.

c) Allow and facilitate inspections or audits by the duly accredited delegates from SIGET, as well as from the Directorate-General for Internal Revenue and Directorate-General for Customs, providing access to documentation and information concerning the incentivized activity, that under the exercise of their duties are requested.

d) Save in electronic and magnetic media, as well as on any other means demanded by SIGET or the Directorate-General for Internal Revenue or the Directorate-General for Customs, all the information concerning the operations that are performed and any other information deemed necessary for the corresponding fiscal control.

#### CHAPTER IV INFRINGEMENTS AND PENALTIES

Art. 9. Under this law, infringements are divided into minor, serious and very serious infringements. The following are considered very serious infringements:

a) To apply exemptions, tax incentives and benefits granted under this Law, to activities not corresponding to the projects benefitting from it.

b) To use in a different manner than otherwise declared, the goods that have been imported under the incentives granted by this Law.

c) Not having duly identified the goods imported under this Law.

d) Provide false information to SIGET, to the Directorate-General for Internal Revenue or Directorate-General for Customs, in the corresponding procedures.

e) Not sending the information required by SIGET, by the Directorate-General for Internal Revenue or Directorate-General for Customs.

Non-compliance to Art. 8 letters b), c) and d) of this Law, is considered as serious infringement.

Refusal to appear without justified cause to the summons that in legal manner are made by the institutions mentioned under this Law, is considered a minor infringement.

Recidivism of a minor infringement will be considered as serious, and recidivism of a serious infringement, will be considered as very serious.

Art. 10. Infringements under this law will be penalized in the following way:

a) MINOR infringements will be penalized with a fine of twenty monthly minimum wages of greater amount.

b) SERIOUS infringements will be penalized with a fine of thirty monthly minimum wages of greater amount.

c) VERY SERIOUS infringements will be penalized with a fine of forty monthly minimum wages of greater amount. In case of recidivism of this infringement, the benefit conferred by this Law will be revoked.

## CHAPTER V PROCEDURES, RECOURSES AND ENTRY INTO FORCE

Art. 11.- To make use of the benefits granted by this Law, the interested party must submit a written application to the SIGET, complying with the requirements demanded by the Law, its Rules and other regulations issued by the SIGET.

Within fifteen business days after the application has been submitted, the SIGET may request additional clarifications from the interested party, which must be delivered within fifteen business days, at the latest.

The SIGET must resolve the matter within forty-five business days, starting from the next business day following the presentation of the application, or the presentation of the additional clarifications, depending on the case.

If there were sound motives to deny the certification, SIGET will have an equal term to issue a grounded resolution rejecting the application, which will be notified to the interested party, and who may file an appeal as established in Article 17 of the Present Law

Art 12.- If a favorable certification were obtained according to the provisions of the previous article, the interested party will request the tax benefits from the Ministry of Treasury, which, based on the certification issued by the SIGET, which states the technical opinion on the goods, supplies and services that are covered by the tax incentives, and on the verification that the owners of the investments do not have any pending tax obligations, will qualify the right to the tax benefits and incentives stated in this Law, through the corresponding Executive Agreement, within forty-five business days, at the latest, following the next business day following the presentation of the application. The Ministry shall publish the Agreement in the Official Gazette.

If there were sound motives to deny the qualification, the Ministry of Treasury will have an equal term to issue a grounded resolution rejecting the application, which will be notified to the interested party.

Art. 13. If it were a legal person, the requests referred to in the above articles shall be filed by the legal representative or authorized agent for that matter, complying with the established legal and regulatory formalities.

Art. 14. It will be the legal duty of the Directorate-General for Customs, to penalize the infringements of letters b) and c) of Article 9 of this Law, and of SIGET, the Directorate-General for Internal Revenue or Directorate-General for Customs of the rest of the infringements as it may apply, when the corresponding infringement has been committed in the procedure filed at each institution.

Art. 15. When SIGET, the Directorates-General for Internal Revenue or Customs, as it may apply, have knowledge of the possible infringement of this Law, will order the start of the penalizing procedures by a resolution in which the alleged infringer, the circumstances of the performance of the infringement that is being attributed to him, as well as the corresponding legal dispositions that have been violated shall be identified. In this resolution, the interested party will be granted a period of three business days from the next day of notification of the resolution to answer to the alleged infringement. When the notification of the above resolution is served, a copy of the initial resolution shall be delivered to the alleged infringer, as well as any other documents which the Tax Administration or SIGET may have, which may have been used as basis for determining the alleged infringement.

Art. 16. After the period mentioned in the article above has concluded, the procedure will be open for the admission of evidence for a period of eight business days. Concluded that period, the final resolution shall be issued within the next eight business days.

Art. 17. Of this final resolution, an appeal may be filed within three business days following the corresponding notification; such appeal shall be filed before the government official that issued such resolution.

The corresponding government official shall submit the appeal request, with the original respective file of the case on the next business day, to the Appeal Tribunal for Internal Revenue (Tribunal de Apelaciones de los Impuestos Internos), which will be competent to decide if the penalty was imposed by one of the Directorates-General of the Ministry of Finance; or to the Board of Directors of SIGET if the penalty was imposed by SIGET, which will decide on the admissibility of the Appeal within the period of three days. After the Appeal has been admitted and if it has been requested by the interested party, the procedure will be open for admission of evidence for a period of five days.

The Appeal Tribunal for Internal Revenue or the Board of Directors of SIGET, will confirm, modify, or revoke as appropriate, the appealed resolution, within thirty days after the filing date of such appeal.

Art. 18. The President of the Republic shall issue the regulation for the application of this Law, within a period of 90 days from the date of entry into force of this Law.

Art. 19. This Law shall enter into force, eight days after its publication in the Official Journal.

ISSUED IN THE BLUE ROOM OF THE LEGISLATIVE PALACE. San Salvador, on this eight day of November, two thousand seven.

RUBÉN ORELLANA,  
PRESIDENT.

ROLANDO ALVARENGA ARGUETA,  
VICEPRESIDENT.

FRANCISCO ROBERTO LORENZANA DURÁN,  
VICEPRESIDENT.

JOSÉ RAFAEL MACHUCA ZELAYA,  
VICEPRESIDENT.

RODOLFO ANTONIO PARKER SOTO,

VICEPRESIDENT.

ENRIQUE ALBERTO LUIS VALDÉS SOTO,  
SECRETARY.

MANUEL ORLANDO QUINTEROS AGUILAR,  
SECRETARY.

JOSÉ ANTONIO ALMENDÁRIZ RIVAS,  
SECRETARY.

NORMAN NOEL QUIJANO GONZÁLEZ,  
SECRETARY.

ZOILA BEATRIZ QUIJADA SOLÍS,  
SECRETARY.

ANNOTATION: In compliance with what has been mandated in Art. 97, 3rd paragraph of the Internal Regulations of this Branch of State, it is hereby noted that this Decree was returned with observations by the President of the Republic on the 27th day of November of this year. This Legislative Assembly has decided to accept such observations at Plenary Session of November 29th of the year 2007.

ZOILA BEATRIZ QUIJADA SOLÍS  
SECRETARY.

PRESIDENTIAL HOUSE: San Salvador, on this eleventh day of December, two thousand seven.

IT SHALL BE PUBLISHED,

ELIAS ANTONIO SACA GONZÁLEZ,  
PRESIDENT OF THE REPUBLIC.

WILLIAM JACOBO HÁNDAL HÁNDAL,  
MINISTER OF FINANCE.

BLANCA IMELDA JACO DE MAGAÑA,  
VICEMINISTER OF TRADE AND INDUSTRY,  
CHARGE D'AFFAIRES.

CARLOS JOSÉ GUERRERO CONTRERAS,  
MINISTER OF ENVIRONMENT AND NATURAL RESOURCES.