NATIONAL PROGRAM FOR THE PROMOTION OF USE OF RENEWABLE SOURCES OF ENERGY

31/03/2016 - By Berraondo, Fermín

On March 31st, 2016, the National Decree N° 531/2016 was published, setting forth a long-overdue regulation of the promotion regime for the use of Renewable Sources of Energy for Electric Power Generation.

After Law 26.190 was substantially amended by Law 27.191 on last October, in order to diversify the energy matrix on the short (8% of the electric power consumption until 31/12/2017), medium (with intermediate targets for 2019, 2021 and 2023) and long term (20% until 31/12/2025), such regulation was highly expected in the local energy market.

- The General Legal Framework: Law Nº 26.190 as amended by Law Nº 27.191

Law Nº 26.190 declared the Use of Renewable Sources of Energy for Electric Power as a national concern, and established a Promotion Regime for such use in order to get a contribution from the Renewable Sources of Energy of the 8 % of the Energy Consumption Matrix in the following 10 years since such law entry into force (beginning of the year 2007).

Law Nº 27.191 amended such Promotion Regime by increasing the objectives of diversification of the Energy Consumption Matrix, as well as the Promotional Benefits that the Projects filed under such Regime will be entitled to, and also created a Trust Fund for the Renewable Energy Development (FODER).

- The Projects

The projects that could be filed under such regime include any investment carried out by individuals or companies domiciled in Argentina for the generation, self-generation and co-generation of electric power from renewable sources of energy defined by law (wind, solar, geothermic, biomass, hydraulic up to 50MW, etc, or other non-fossil sources included by the Enforcement Authority). The projects could include the construction of a new plant or the expansion of existing plants, provided that new assets are incorporated in the project.

The Ministry of Energy and Mining will act as the Enforcement Authority, although the Ministry of Treasury and Public Finances will understand in tax issues.

The Enforcement Authority will be responsible of extending the Certificates of Inclusion in the Program to the projects filed under such regime (and also to projects filed under other programs that comply with certain requirements), and of defining the “Merit Order” for the allocation of the promotional benefits.

- The Promotional Benefits

The Promotional Benefits for the first phase of the regime (until 12.31.2017) are subject to the condition that the beneficiary begins the execution of the project before the end of such phase.

Besides the benefits are extended to the second phase of the regime (2018-2025), as sooner the investment is made, the greater the benefits in the VAT and Income Tax treatment will be.

The Benefits include:

i. VAT and Income tax special treatment:

- Refund of the VAT after one fiscal period from the execution of the investments made after the project is approved.

- Accelerated amortization of income, with the condition that the assets purchased remain in the company during three years.

- Special credit lines to finance the cancellation of VAT.

ii. Compensation of losses arising from the promoted activity against profits arising from such activities for 10 years.

iii. Exemptions on the basis of calculation of the Tax on Minimum Presumed Income: the assets involved in the project and the assets of the company that files the project are not considered in the basis.

iv. Financial burden deduction in some cases contemplated by the Companies Act.

v. Tax exemption in the distribution of dividends that are re-invested in local infrastructure.

vi. Tax certificates issued when national components are used in the Project (60% or less if there is lack of national components -up to 30%-)

vii. Import duty exemptions during the first phase of the regime with regard to those assets that are need to implement the project. It will require obtaining the Certificate of Inclusion in order to file it before the Customs Authority and to prove the absence of domestic production regarding such asset.

The failure to comply with the project´s construction deadlines will cause the loss of such benefits and the obligation to pay for any exempted tax plus accrued interests and penalties.

- Users' obligation to diversify their consumption matrix and the PPAs

Although any electricity consumer is obliged to diversify its consumption matrix according to the percentages and deadlines defined by law, Large Energy Consumers with an annual contracted nominal power that equals or exceeds 300 kW, will be subject to penalties in case they fail to comply with those percentages, with a 10% margin per year.

Those consumers will have 3 options:

i. Self-generation or cogeneration

ii. Direct contracts agreed with a generator or trader that produce energy from renewable sources.

iii. Participation in the joint purchases made by CAMMESA (the Wholesale Electric Market´s administrator).

If Large Consumers do not show their willingness to comply with their obligations under the Regime through the first 2 alternatives, before a deadline to be determined by the Enforcement Authority, they will automatically be included in the joint purchase mechanism held out by CAMMESA.

Once such deadline is reached, CAMMESA will call for a public tender in order to award Power Purchase Agreements (PPA). Such PPAs will have a price cap of U$S 113/MWh, that will include a Marketing Cost charge. Also an Administrative cost charge will be part of the agreement but not of the price cap.

- FODER

FODER´s purpose is to lend, make capital contributions and generally provide the Projects filed under the Regime with finance. The Enforcement Authority will be part of the Trust Agreement.

FODER´s assets will be constituted by:

i) resources from the National Treasury (For 2016 the decree allocates AR$ 12.000.000.000) that in no case may be less than 50% of the annual cash savings on fossil fuels by the use of renewable sources;
ii) specific charges to be paid by electricity consumers, which will also function as a guarantee of the PPAs (up to 12 months of the monthly payments to be made under such contracts);
iii) interests, fines and administrative expenses that arise from the finance agreements;
iv) Dividends paid by the companies that filed projects under the Regime, where FODER hold shares as part of the financing scheme;
v) among others.