TAX

Tax Effects Due to Commotion in the Catatumbo Region

Analysis of the tax measures in the State of Internal Commotion decreed by the Nationl Government

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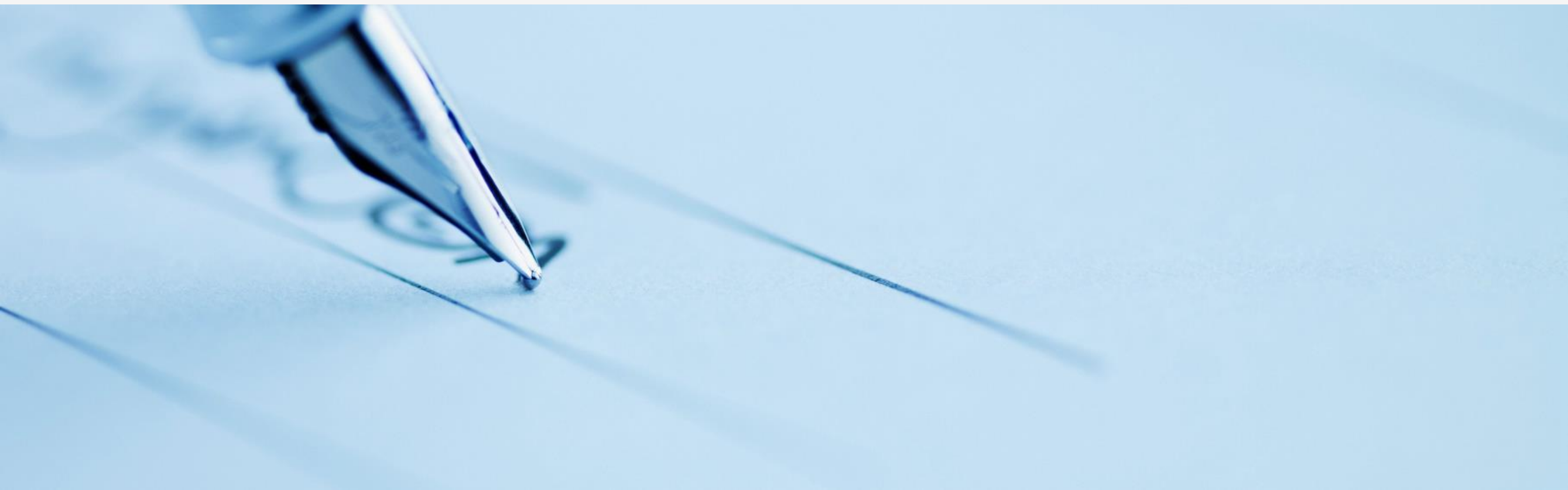
KEY ASPECTS

- On February 14th, 2025, the National Government issued Decree 0175, which established extraordinary tax measures to address the expenses of the General Budget of the Nation in response to the state of internal commotion decreed in the Catatumbo region.
- The internal commotion in Catatumbo is due to severe public order disturbances, such as the presence of armed groups, violence, forced displacements, and humanitarian crises, which affect essential public services and may cause a food crisis.
- The National Government justifies the need for additional resources to face the internal commotion due to the insufficiency of local funds and the rigidity of the national budget.
- The adopted tax measures are: Value Added Tax (VAT) on Online Gambling, a special tax for Catatumbo, and an increase in the Stamp Tax rate from 0% to 1%.



I. Justification for the State of Internal Commotion and the Need to Obtain Economic Resources to Resolve It

On February 14th, 2025, the National Government issued Decree 0175 (the "Decree 0175"), which establishes a series of extraordinary fiscal measures to address the expenses of the General Budget of the Nation in response to the state of internal commotion decreed in the Catatumbo region, the metropolitan area of Cúcuta, and the municipalities of Río de Oro and González in the department of Cesar. Below is a detailed analysis of these measures.

Reasons for Decreeing the Internal Commotion

The National Government bases the need to decree the internal commotion in the Catatumbo region and surrounding areas on a series of severe public order disturbances that threaten institutional stability, state security, and citizen coexistence. These disturbances include: (i) the presence of armed groups in the area, (ii) the existence of situations of violence and hostility, and (iii) a humanitarian crisis represented by forced displacements, disappearances, and homicides. The National Government points out how these factors have impacted the provision of essential public services and threaten the risk of a food crisis.

Justification for the Need to Obtain Additional Economic Resources through Taxes

The National Government justifies the need to obtain additional economic resources to address the internal commotion for the following reasons, which, in its opinion, justify implementing tax measures to obtain additional resources: (i) insufficiency of resources in the hands of territorial authorities to address the crisis and inflexibility in the expenditure of the General Budget of the Nation to divert resources for that purpose, and (ii) the need to make additional investments in humanitarian, stabilization, and security programs; including the need to finance military and police operations, as well as the provision of essential services to the displaced and confined population.

II. Creation of Temporary Taxes to Address the State of Internal Commotion

Article 338 of the Political Constitution establishes that, in times of peace, only Congress, departmental assemblies, and district and municipal councils can impose fiscal or parafiscal contributions; under any state of exception (external war, internal commotion, or economic and social emergency), this limitation could be lifted to allow the President of the Republic, along with all his ministers, to impose contributions.

On this occasion, the National Government argues that the severe public order disturbance in the Catatumbo region has generated an unforeseen demand for resources in the General Budget of the Nation, which justifies that, among the measures taken to resolve the crisis, revenue-raising measures are included.

Constitutionality of the Measures Taken

It will be up to the Constitutional Court to analyze the constitutionality of the declaration of the state of exception, as well as the fiscal measures created by Decree 0175 of 2025. It is important to point out that there are aspects that could lead to considering the measures unconstitutional. Indeed, although the existence of the state of internal commotion relaxes some elements related to taxes (for example, the fact that they do not have to be approved by law, or the fact that they can have a specific destination), there are other elements that must still be met. In this regard, we consider that taxing a specific group of companies in such a special manner (those in the extractive sector) shows signs of unconstitutionality

The Constitutional Court must also decide whether it is constitutional to decree taxes that apply not during the period of exception but beyond its termination, given that Decree 0175 states that the taxes will be in force for the remainder of the year. It is undoubtedly questionable that taxes intended to address a specific situation can continue to be collected beyond the period for which the internal commotion can be decreed. By its exceptional nature, this period is limited in time by the Political Constitution itself.

III. Tax Measures Adopted by the National Government

1. Value Added Tax (VAT) on Online Gambling

It is established that online gambling, both within the national territory and from abroad, will be subject to the value-added tax (VAT). This is achieved by temporarily suspending part of article 420 literal e), which excludes from VAT the circulation, sale, or operation of online gambling, operated exclusively through the Internet.

- **Taxable Base:** The taxable base corresponds to the value of the money deposit made by the betting user in their user account, divided by 1.19. This deposit can be in cash, money transfers, or crypto-assets.
- **Rate:** The applicable rate will be the general VAT rate, that is, 19%.
- **Operator Responsibility:** Online gambling operators, both national and foreign, are responsible for collecting and declaring the corresponding VAT. For foreign operators, the existing provisions for service providers from abroad apply.
- **Blocking of Unauthorized Platforms:** The capabilities of Coljuegos EICE are strengthened to order the blocking of channels, internet pages, and means that in any way serve the exploitation, operation, sale, payment, advertising, or commercialization of unauthorized gambling.

2. Special Tax for Catatumbo

A temporary tax is created for individuals or legal entities that definitively export or sell hydrocarbons and/or coal within or from the national territory, classified under tariff headings 27.01 and 27.09.

- **Taxable Event:** The tax is triggered on the first sale within or from the national territory and with the submission and acceptance of the request for authorization of shipment to the rest of the world.
- **Taxable Base:** The taxable base will be the value of the sale or the FOB value in the case of exports.
- **Rate:** The rate will be 1% of the value of the sale or export.
- **Collection in the Case of Exports:** The exporter must submit the request for authorization of shipment. The tax is paid through the Official Payment Receipt or the means determined by the Special Administrative Unit Directorate of National Taxes and Customs (DIAN). The amount paid must correspond to the value of the tax that covers the shipment authorization. In case the request for authorization of shipment is submitted with provisional data, the exporter must settle and pay the missing tax within ten (10) business days following the submission of the export declaration with final data. If the FOB value of the export declaration is lower than the value declared in the request for authorization of shipment, the exporter can request a refund of the excess payment.
- **Collection in the Case of National Sales**: Individuals or legal entities that make sales within or from the national territory must consolidate the sales operations of the previous month. The tax is paid through the Official Payment Receipt or the means determined by the DIAN, within the first five business days of the following month.

3. Temporary Modification of the Stamp Tax

Law 1111 of 2006 established a gradual reduction of the stamp tax rate, which from 2010 remained at 0%. Decree 0175 sets the stamp tax rate at 1%.

- **Taxable Event:** The tax is triggered by the subscription of public instruments and private documents, including securities, that are granted or accepted in the country, or that are granted outside the country but executed in the national territory or generate obligations in it. This includes documents in which the constitution, existence, modification, or extinction of obligations is recorded, as well as their extension or assignment. The tax applies if the amount is greater than six thousand (6,000) Tax Value Units, UVT (for 2025 = COP $298,794,000). It also applies when a public entity, a legal entity or assimilated, or a natural person who has the status of a merchant, in the immediately preceding year had gross income or gross assets greater than thirty thousand (30,000) Tax Value Units, UVT (for 2025 = COP $1,493,970,000), intervenes as grantor, acceptor, or subscriber.

- Decree 0175 clarifies that the stamp tax rules regarding the granting of public deeds for the transfer of real estate are not modified.
- Since the provision consists of increasing the rate of an existing tax, the other existing rules on stamp tax, referring to exemptions and collection methods, among others (article 519 and following of the Tax Statute), continue to apply.

For additional information, please contact our Knowledge and Innovation Group lawyers or your regular contact person at Cuatrecasas.