

EXONERATION FROM THE PAYMENT OF CUSTOMS DUTIES ON THE IMPORTATION OF CERTAIN GOODS.

Last December 26, 2019, Decree No. 4,080, hereinafter the "Decree", was published in the Official Gazette of the Bolivarian Republic of Venezuela No. 6,497 Extraordinary, through which the illegitimate government of Nicolás Maduro established tax incentives for the import of certain goods, based, as provided in its recitals, on the need to satisfy the national demand of goods required for manufacturing, agricultural and agro-industrial production and the distribution of basic necessities, among other aspects.

Said normative instrument is entitled "Decree No. 4. 080 whereby the National Executive exonerates from the payment of the Value Added Tax, Import Tax and the Rate for Determination of the customs regime, under the terms and conditions set forth in this Decree, the definitive imports of new or used tangible personal property, as applicable, made by the bodies and entities of the National Public Administration, as well as those made with their own resources, by individuals or legal entities, classified in the tariff codes indicated in Appendix I which is an integral part of this Decree". In this sense, we will proceed to analyze its most important aspects as follows:

I. LEGITIMACY OF THE DECREE:

Nicolás Maduro is an illegitimate and de facto president, who does not comply with the conditions set forth in the Constitution of the Bolivarian Republic of Venezuela. Although he is the de facto president and rules "de facto" in Venezuela, there is no doubt that the elections that took place on May 2018 are not valid, since it was a flawed electoral process and with the absence of the Venezuelan democratic opposition. That said, it must be considered that Nicolás Maduro usurps the power and his acts and decisions lack legitimacy, and a clear example of this is this exoneration decree.

For these purposes, the Constitutional President of the Bolivarian Republic of Venezuela is Juan Guaido, who, in view of the existing power vacuum, was temporarily appointed President of Venezuela by the legitimate National Assembly until such time as free, direct, secret and democratic elections are held to allow a new President of Venezuela to be elected.

II. THE OBJECT OF THE DECREE:

To exonerate until June 30, 2020, from the payment of the Value Added Tax, Import Tax and Customs Regime Determination Fee the "definitive" imports of certain tangible personal property. In this regard, it is worth mentioning the following:

The Customs Organic Law , defines in its article 28 the term import as "the customs regime by which goods are introduced into the national territory, for their definitive use or consumption in the country (...)". By virtue of this, the definition per se of "import" implies that the entry of the goods will be definitive. This is in contrast to temporary admission, which is defined in article 31 of the Regulations of the Organic Customs Law on Release, Suspension and other Special Customs Regimes as "the regime by which goods are introduced into the national customs territory, with suspension of the payment of import duties and other applicable surcharges or taxes, for a specific purpose, provided that they are re-shipped after their use, without having undergone any modification". Consequently, it is considered that, in light of the customs regulations, the purpose of the Decree would be the total exemption of customs duties applicable to imports of certain goods, which, in accordance with the above definition, will enter on a definitive basis, since if such condition is not met, we would be in the presence of a temporary admission.

III. PEOPLE SUBJECT TO THE BENEFIT OF EXEMPTION: Organs and entities of the National Public Administration, as well as individuals and legal entities that carry out imports with their own resources.

IV. OF THE TARIFF CODES SUBJECT TO THE BENEFIT OF EXEMPTION: Unlike the exoneration regime that was in force during 2018 and 2019, this normative instrument contains, in its Appendix I, the list of the 3289 tariff codes that may enjoy the total exemption of the Value Added Tax, Import Tax and the Rate for Determination of the Customs Regime. In this list of tariff codes, we can find: Live animals and products of the animal kingdom; products of the vegetable kingdom; food products; chemical products; petroleum oils or oils of bituminous material; pharmaceutical products; rubber and its manufactures; machines and electrical appliances, among others.

Now, if the list of tariff codes provided for in the Decree is contrasted with the exoneration regime that was in force until December 31, 2019, a considerable reduction of the tariff subheadings affected by the total release of taxes generated on the occasion of the import activity can be appreciated. In this sense, the previous regime covered a total of 8,288 tariff subheadings, as opposed to the 3,289 subheadings of the Decree, thus representing a reduction of 60.32%.

However, the Decree delegates to the Minister of Finance the power to modify, by means of a Resolution, the tariff codes contained in such normative instrument.

V. REQUIREMENTS AND CONDITIONS:

For the purposes of the enjoyment of the exoneration, the beneficiaries must present before the respective customs office the following documents:

- A. Descriptive list of the goods to be imported; and,
- B. Commercial invoice issued in the name of the beneficiary in charge of the acquisition of the tangible personal property.

VI. COMPLIANCE WITH THE LEGAL REGIMES:

The Decree provides for the exemption from compliance with some of the legal regimes provided for in the Venezuelan Customs Tariff , this implies that importers shall not be required to submit, before the corresponding Customs Office, the permits, certificates, constancias and licenses indicated in numerals 4, 9, 11, 14, 15, 16 and 20 of article 21 of the Customs Tariff, namely:

- A. Legal Regime 4: Permit from the Ministry of the People's Power with jurisdiction over Industries.
- B. Legal Regime 9: Import License administered by the Ministry of the People's Power with competence in matters of Commerce.
- C. Legal Regime 11: Permit issued by the Ministry of the People's Power with competence in Petroleum and Mining.
- D. Legal Regime 14: Permit issued by the Ministry of the People's Power with competence in matters of Food.
- E. Legal Regime 15: Permit from the Ministry of the People's Power with competence in Science, Technology and Innovation.
- F. Legal Regime 16: Import License administered by the Ministry of the People's Power with competence in matters of Industries.
- G. Legal Regime 20: Certificate of Registration of Venezuelan COVENIN Norm or Registration of Technical Regulation administered by the National Autonomous Service of Normalization, Quality, Metrology and Technical Regulations.

Likewise, importers are exempted from presenting the Certificate of National Production or Insufficient National Production.

VII. OF THE LOSS OF THE TAX BENEFIT: Any failure to comply with the obligations established in the Decree with Rank, Value and Force of Law of the Organic Tax Code and other tax regulations, as well as in the Decree with Rank, Value and Force of Organic Law of Customs and its Regulations, will lead to the loss of the exoneration benefit.

VIII. VALUE OF THE DECREE: Within the period corresponding to January 1, 2020 until June 30 of the same year. It should be noted that, for purposes of the application of the exoneration benefit, the date of registration of the respective customs declaration shall be considered, regardless of the date of arrival to the national territory.

For illustrative purposes, the publication in the Official Gazette of the respective Decree is attached marked "1".

Paulina Palacios

Lawyer/Consultant

Correo electrónico: info@abogadapaulinapalacios.com

