DECREE NO. 462

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

WHEREAS:

I. - The Constitution of the Republic establishes that the State shall promote the economic and social development of the country by increasing production, productivity and the rational use of resources.

II. - It also establishes that it will promote the various sectors of production, for which reason it is necessary to encourage the use of renewable energy sources, in order to reduce dependence on the purchase of fossil fuels.

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

IV. - The country has ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which aims to promote sustainable development, to protect and enhance, among others, the sinks and reservoirs of greenhouse gases.

V. - That it is necessary to issue a law that promotes the use of renewable sources in the generation of electric energy, and at the same time allows investments that make possible the sustainable development of projects that use this type of energy resources available in the country.

VI. - In light of the considerations outlined above, it is necessary to issue legal provisions that promote investment in renewable energy-based electricity generation projects in the country, fostering activities related to research, exploration, and project development, while also granting fiscal incentives to make investments in these sectors of the economy more attractive.

THEREFORE,

in exercise of its constitutional powers and at the initiative of the President of the Republic, through the Ministers of Finance, Economy and Environment and Natural Resources and with the support of the Representatives: 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 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 Cortéz 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, Osmín 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:

LAW ON TAX INCENTIVES FOR THE PROMOTION OF RENEWABLE ENERGIES IN ELECTRICITY GENERATION

CHAPTER I
GENERAL PROVISIONS

Art. 1.- The purpose of this law is to promote investments in projects based on the use of renewable sources of energy, through the use of resources such as hydraulic, geothermal, wind, solar, marine, biogas and biomass; as well as any other source that in the future will be identified as renewable for the generation of electric energy. (1)

Art. 2.- The promotion of the use of renewable energy sources is hereby established, in order to contribute to the protection of the environment, the use of the renewable resources existing in the country and the supply of quality electricity.

Art. 3.- Natural or legal persons who, as of the effectiveness of this law, are owners of new investments in projects for the installation of power generation plants or in projects for the expansion of existing generation plants, using renewable sources of energy, as provided in section 1. 1 of this law, shall enjoy the following tax benefits and incentives exclusively in relation to the costs and expenses of the investment corresponding to such projects:

a) During the first ten years, they will enjoy total exemption from payment of import duties on machinery, equipment, materials and supplies destined exclusively for pre-investment and investment work in the construction and expansion of power generation plants, including the construction or expansion of the substation, transmission or sub-transmission line necessary to transport the energy from the generation plant to the transmission and/or distribution networks.

The exemption from the payment of import duties must be requested to the *Ministerio de Economía* at least fifteen days prior to the importation of the machinery, equipment, materials and inputs necessary and exclusively destined to develop the renewable energy projects, in accordance with the project documentation endorsed in the certification issued by the *Superintendencia General de Electricidad y Telecomunicaciones*, which in the text of this law may be called SIGET .

The following acquisitions are excluded from the benefit provided in this paragraph: Household furniture and appliances, as well as vehicles for individual or collective passenger transport.

b) Income derived directly from the generation of energy based on renewable sources will enjoy total exemption from the payment of income tax for a period of five years in the case of projects of more than 10 megawatts (MW); and ten years in the case of projects of 10 megawatts (MW) or less; in both cases, counted from the fiscal year in which it obtains income derived from the generation of energy based on renewable sources; and,

c) Total exemption from the payment of all types of taxes on income directly derived from the sale "reduced emission certificates", hereinafter referred to as CER, under the clean development mechanism (CDM) of the Kyoto protocol, or similar carbon markets, obtained by projects qualified and benefited under this law.

In order to enjoy the benefits referred to in the previous paragraph, the beneficiary must comply with the following conditions:

i. The projects are duly registered and certified in accordance with the modalities and procedures of the Clean Development Mechanism (CDM) under the Kyoto Protocol, or similar carbon markets;

ii. The holders of the projects qualified under this law include in their income tax declaration a detailed report of the Certified Emission Reductions (CERs) issued and the income obtained from their sale, specifying the names of the purchasers;

iii. Submit a certified copy of the purchase agreement for the Certified Emission Reductions (ERPA), specifying the quantity of such reductions sold and the price of the sale; and,

iv. Submit a certificate issued by the Ministry of Environment and Natural Resources specifying the quantity of Certified Emission Reductions (CERs) issued.

In the case of geothermal power plants, the costs and expenses related to the activities related to the process of total reinjection of the geothermal resource may be deducted from income tax for a maximum period of ten years. This deduction may not exceed twenty percent of the gross income generated in previous year and will be carried out by means of annual installments that do not exceed twenty-five percent of the income obtained in each fiscal year, until its total amortization.

For purposes of the deduction of the corresponding tax credits contained in Art. 65 of the law on the tax on the transfer of movable goods and the rendering of services, with respect to projects for the installation or expansion of power plants for the generation of electric energy, using renewable energy sources, the deduction referred to in said norm may be made in the case of pre-investment work and investment work in the construction of the necessary works that are part of the process of degeneration of electric energy, including those carried out on real estate, whether by adhesion or destination.

The tax benefits described in this article will be granted only to the activities corresponding to the projects of installation or expansion of generation plants, benefited by this law, which imply a new investment.

For the purposes of this law, new investments are understood to be those that represent an acquisition of additional assets that allow the installation of an electric power generating plant in the country or the expansion of an existing generating plant.

In such case, the tax benefit will only apply if it is possible to identify and prove that with the new investment made, the additional generation of electric energy has been achieved, for which reason the respective measuring equipment or mechanisms must be available.

SIGET shall verify that the metering equipment to be installed or the metering mechanisms identified by the interested party are sufficient to comply with the provisions of the preceding paragraph, at the time of evaluating the project certification request. SIGET is also empowered to carry out verification and control activities with respect to such equipment or mechanisms after the project has been qualified.

Natural or legal persons that enjoy any of the exemptions granted by this act, shall use accounting systems that allow the identification of income, costs and expenses related to the new investment subject to the tax benefits established in this act. (1)

CHAPTER II
POWERS

Art. 4.- It is the responsibility of the SIGET to ensure compliance with the application of this Law, for which reason it may issue the necessary regulations related to technical specifications to characterize the projects that take advantage of renewable energy sources in the generation of electric energy, in accordance with this Law.

Art. 5.- The SIGET shall certify the projects that comply with the requirements established in the present Law and its Regulations; likewise, it shall issue a technical opinion based on the regulations for characterizing the projects on goods, inputs and services that benefit from tax incentives established in the present Law; the referred technical opinion must be attached. For the purposes of the certification, the interested party must submit to SIGET, in addition to the documentation required by the regulations to characterize the projects, a list of the machinery, equipment, materials and inputs, as well as the description of the research, exploration and project preparation activities. Both the list and the description of the activities must contain the corresponding documentation supporting the costs, subject to the exemptions referred to in this Law.

Art. 6.- The *Ministerio de Hacienda*, through the Direccion General de Impuestos Internos and Aduanas, may prepare orientation guides related to the benefits and incentives referred to in this Law.

Art. 7.- The Executive Body in the Treasury Branch, through the Internal Revenue and General Customs Directorates, shall be competent to qualify the enjoyment of the tax benefits and incentives contained in this Law, as well as to exercise the surveillance, control and supervision of

the tax regime of the incentivized activities and the application of penalties defined in this Law. The *Superintendencia General de Electricidad y Telecomunicaciones* shall be competent under the terms specifically regulated.

CHAPTER III
OBLIGATIONS OF THE BENEFICIARIES

Art. 8.- The natural or legal persons that benefit from the tax incentives established in the present Law, must comply with the following obligations:

a) Make use of the tax incentives granted, for the exclusive purposes of the incentivized activity.

b) Communicate to the SIGET and to the General Directorates of Internal Taxes and Customs, the modifications in the plans and projects on the company's line of business, within ten working days after the modification and inform of the sale or transfer of its assets or shares within ten working days after the sale or transfer, in order to liquidate the respective taxes.

c) Allow and facilitate the practice of inspections or audits by duly accredited delegates, both from SIGET and the Dirección General de Impuestos Internos and *Dirección General de Aduanas*, providing access to the documentation and information related to the incentivized activity, which in the exercise of their functions may be requested.

d) Register in electronic and magnetic media, as well as in any other media required by SIGET or the Dirección General de Impuestos Internos or *Dirección General de Aduanas*, all the information related to the operations carried out and any other information deemed necessary for the respective tax control.

CHAPTER IV
VIOLATIONS AND PENALTIES

Art. 9.- For the purposes of this Law, infringements are divided into minor, serious and very serious infringements, the following being considered very serious infringements:

a) Apply the exemptions, tax incentives, and benefits granted by this Law to activities unrelated to the projects eligible for such benefits.

b) To use the goods imported the incentives granted by this Law for a different purpose than the one declared.

c) Failure to identify the goods imported under this Law.

d) Providing false data to SIGET, to the *Dirección General de Impuestos Internos and Aduanas*, in respective procedures.

e) Failure to send the information required by SIGET, or by the *Dirección General de Impuestos Internos and Aduanas*.

Failure to comply with the provisions of Art. 8 (b), (c) and (d) are considered serious infractions.

It is considered a minor infraction to refuse to appear without just cause to the summons made to them in legal form by the institutions mentioned in this Law.

Recidivism in a minor infringement shall be considered as serious, and in a serious infringement shall be considered as very serious.

Art. 10.- Violations of this Law shall be sanctioned as follows:

a) MINOR infractions will be sanctioned with a fine of twenty minimum monthly salaries of the highest amount.

b) SERIOUS infractions will be sanctioned with a fine of thirty minimum monthly salaries of the highest amount.

c) VERY SERIOUS infractions will be sanctioned with a fine of forty minimum monthly salaries of the highest amount. In the event of a repeat offense, the benefit granted in this Law will be revoked.

CHAPTER V
PROCEDURES, APPEALS AND VALIDITY

Art. 11.- To avail the benefits granted by this law, the interested party must submit a written application to SIGET, complying with the requirements required by the law, its regulations and other regulations issued by SIGET.

Within fifteen working days following the submission of the application, SIGET may request additional clarifications from the interested party, which must be delivered within a maximum period of fifteen working days.

SIGET shall resolve the pertinent matter within forty-five working days, counted from the working day following the day of the presentation of the request or the presentation of the additional clarifications.

In the event that there are substantive grounds for denying certification, SIGET shall have the same term to issue a reasonable resolution denying the request, which shall be notified to the interested party, who may file the appeal established in article 17 of this law(1).

Art. 12.- Upon obtaining the favorable certification pursuant to the provisions of the preceding article, the interested shall apply for the tax benefits to the *Ministerio de Hacienda*, which, based on the certification issued by SIGET containing the technical opinion on the goods, inputs and services that enjoy the tax incentives and on the verification that the parties owning the investments have no

outstanding tax obligations, shall qualify the enjoyment of the tax benefits and incentives contained in this law by means of the corresponding executive agreement, within a maximum term of forty-five working days as of the business day following the day following the day on which the tax benefits and incentives contained in this law were granted, will qualify the enjoyment of the benefits and tax incentives contained in this law, by means of the corresponding executive agreement, within a maximum term of forty-five working days, counted from the working day following the day of the presentation of the request, which must be published by said ministry in the Official Gazette.

If there are substantive reasons for denying the qualification, the *Ministerio de Hacienda* will have the same term to issue a reasoned resolution denying the request, which will be notified to the interested party. (1)

Art. 13.- In the case of a legal person, the applications referred to in the preceding articles shall be submitted by the legal representative or attorney empowered to do so, complying with the legal and regulatory formalities established.

Art. 14.- The *Dirección General de Aduanas* shall be responsible for sanctioning the infringement of the following subparagraphs b) and c) of Article 9 of this Law, and to the SIGET to the General Directorates of Internal Taxes or Customs on the rest of the infractions, as the case may be, when the corresponding infraction has been committed in the proceedings before its institution.

Art. 15.- The SIGET or the Internal Revenue or Customs Directorates, as the case may be, having knowledge of the possible infringement of the present Law, shall order the initiation of the sanctioning procedure by means of a resolution in which the identification of the alleged infringer, the circumstances of the commission of the infringement attributed to him/her, as well as the legal provisions infringed shall be indicated. The same shall order the interested party to be heard for a term of three working days as from the day following the respective notification.

Upon notification of the resolution, a copy of the initial resolution and of the documents available to the Tax Administration or to SIGET that have served as the basis for charging the infraction must be delivered to the alleged offender.

Art. 16.- Once the period referred to in the preceding article has elapsed, the proceedings shall be opened for evidence for eight working days. At the end of said term, it shall issue a final decision within the following eight working days.

Art. 17.- An appeal may be filed against the final decision within three working days following notification, which must be submitted to the official who issued it.

The respective official shall send the written document by which the appeal is filed, with the original of the respective file, to the Court of Appeals of the Internal Taxes, which shall be competent to hear the appeal if the sanction was imposed by one of the Directorates of the *Ministerio de Hacienda*; or to the Board of Directors of the SIGET , if the sanction was imposed by the latter, the following working day, which shall decide on the admissibility of the Appeal within a term of three days. Once the appeal is admitted, and if so requested by the interested party, it shall be opened for evidence for a term of five days.

The *Tribunal de Apelaciones de los Impuestos Internos* or the Board of Directors of SIGET will confirm, modify or revoke, as the case may be, the challenged act, within thirty days after the date of filing of the appeal.

Art. 18.- The President of the Republic shall issue the Regulations for the application of the present Law, within 90 days as of its effective date.

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

RUBEN ORELLANA,
PRESIDENT.

ROLANDO ALVARENGA ARGUETA,
VICEPRESIDENT.

FRANCISCO ROBERTO LORENZANA DURÁN,
VICEPRESIDENT.

JOSE RAFAEL MACHUCA ZELAYA,
VICEPRESIDENT.

RODOLFO ANTONIO PARKER SOTO,
VICEPRESIDENT.

ENRIQUE ALBERTO LUIS VALDÉS SOTO,
SECRETARY.

MANUEL ORLANDO QUINTEROS AGUILAR,
SECRETARY.

JOSE ANTONIO ALMENDÁRIZ RIVAS,
SECRETARY.

NORMAN NOEL QUIJANO GONZÁLEZ,
SECRETARY.

ZOILA BEATRIZ QUIJADA SOLÍS,
SECRETARY.

NOTE: In compliance with the provisions of Article 97, paragraph 3 of the Internal Regulations of this Organ of the State, it is hereby stated that this Decree was returned with observations by the President of the Republic on the 27th of the present, and this Legislative Assembly resolved to accept said observations in a Plenary Session held on November 29, 2007.

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

ZOILA BEATRIZ QUIJADA SOLÍS,
SECRETARY.

PUBLISH,

Elías Antonio Saca González,
President of the Republic.

William Jacobo Hándal Hándal,
Minister of Finance.

Blanca Imelda Jaco de Magaña,
Vice Minister of Trade and Industry,
Office Manager.

Carlos José Guerrero Contreras,
Minister of Environment and Natural
Resources.

D. O. NO. 238
Volume No. 377
Date: December 20, 2007

Amendments:
(1) D. L. No. 148, OCTOBER 15, 2015,
D. O. No. 200, T. 409. 30 OCTOBER, 2015.

CGC/adar
FN
01/12/15

GLOSARY

1. **Dirección General de Aduanas**: General Directorate of Customs
2. **Dirección General de Impuestos Internos:** General Directorate of Internal Taxes
3. **Ministerio de Economía:** Ministry of Economy
4. **Ministerio de Hacienda:** Ministry of Finance of Electricity and Telecommunications
5. **Superintendencia General de Electricidad y Telecomunicaciones**: General Superintendence
6. **Tribunal de Apelaciones de los Impuestos Internos:** Court of Appeals for Internal Taxes