

LAW 98
(dated 9 October 2019)

“Which modifies Law 4 of 1994 that establishes the preferential interest rate regime for the agriculture sector, to implement measures to promote the sector”

THE NATIONAL ASSEMBLY

DECREES:

Article 1. Paragraphs 1 and 4 of Article 1 of Law 4 of 1994 shall read:

Article 1. ...

To be entitled to these discounts, the loans will be subject to the following conditions:

1. Maximum amount per productive cycle per item: one million balboas (B/.1,000,000.00);

...

4. Number of operations: maximum three loans per production cycle per item per individual or legal entity;

...

Article 2. Article 1-A is added to Law 4 of 1994 as follows:

Article 1-A. It is understood that loans granted by Banco de Desarrollo Agropecuario (the Agriculture Development Bank) with resources from the Special Interest Compensation Fund for reinforcing the agriculture portfolio are entitled to receive the interest compensation provided herein.

Article 3. Article 2 of Law 4 of 1994 shall read:

Article 2. Interest rates for domestic personal and commercial loans greater than five thousand balboas (B/.5,000.00), granted by banks and finance entities as of the enactment of this Law, will include and withhold an annual amount equal to 1% of the base amount

used for calculating the interest rate. The same withholding will be applied to factoring contracts with or without recourse, in which the 1% annual withholding will be applied to the total amount due by the invoice debtor.

Once the interest rate compensation granted to the agriculture sector by domestic general license banks and finance entities, the payment of claims and up to 1% of the total withholding to pay for the administrative expenses of the Special Interest Compensation incurred by the Superintendency of Banks are completed, the remaining amount will be distributed as follows: 75% to the agriculture sector and the remaining 25% to the National Treasury to pay for the preferential interest rate prescribed for the preferential mortgage loans referred to in Law 3 of 1985. The 25% for the National Treasury will decrease progressively to zero in 2024, as follows:

2021: 80% of the total Special Interest Compensation Fund will be transferred to the agriculture sector.

2022: 90% of the total Special Interest Compensation Fund will be transferred to the agriculture sector.

2023: 95% of the total Special Interest Compensation Fund will be transferred to the agriculture sector.

2024: 100% of the total Special Interest Compensation Fund will be transferred to the agriculture sector.

Excluded from the surcharge in this article equivalent to 1% are:

1. Loans granted to cooperative associations granting loans to their members and to agricultural production association groups recognized by Law 17 of 1997.
2. Interbank loans, loans secured with bank deposits, external loans, financing through the issuance of bonds and securities duly registered with the Superintendency of the Securities Market, as well as loans granted to finance entities regulated by Law 42 of 2001. This Law affects loans secured with bank deposits made before the enactment of Law 49 of 2009, and banks are ordered to return the Special Interest Compensation Fund withholding applied as of 18 September 2009 on loans secured with bank deposits.
3. Loans granted to companies engaged in operating credit card systems, as long as these funds are for direct financing that will subsequently be subject to the withholding.

4. Loans agreed to as automatic loans on life insurance policies secured with the actuarial or cancellation value of the product and used to pay the premiums on this insurance policy to avoid its premature cancellation.
5. Loans, lines of credit or factoring agreements aimed at partially or totally financing the execution of Government contracts awarded to contractors for work, property and/or services, as long as the Ministry of Economy and Finance requires it, agrees that they are in full compliance with Law 34 of 2008 on Fiscal Social Responsibility and confirms that the project represents a social interest. This exemption will be applicable only in cases in which the contractor receives the funding. The Ministry of Economy and Finance reserves the right to reject it if the funding does not conform to the usual terms and conditions agreed to in the Republic of Panama on financings having similar characteristics.
6. Factoring contracts in the amount of up to five thousand balboas (B/.5,000.00) entered into by and between micro, small and medium enterprises duly registered with the Authority for the Micro, Small and Medium Enterprise, as long as they can verify their eligibility.
7. The establishment of criteria for the application of this Law will be determined by a committee, called the FECCI Commission, consisting of the Minister of Economy and Finance, the Minister of Agriculture and the Superintendent of Banks or by the persons appointed by them. This Committee may have a technical secretariat that will address issues related to FECCI Regime. The Committee will establish the administrative regulations necessary for performing the duties of the technical secretariat.
8. The Superintendent is authorized to review and adjudicate, in first instance, the administrative procedures filed as a consequence of the application of this law, including administrative punitive procedures and administrative procedures related to their effects. In the event of administrative procedures related to their effects, the client may be a party.
9. The resolution that decides the process can only be appealed through a recourse of reconsideration to the Superintendent of Banks and an appeal to the Board of Directors of the Superintendency of Banks. Both the recourse and the appeal must be filed and substantiated within five business days from the date the resolution or appeal is served.

10. To decide the appeal, the opinion of the Ministers of Economy and Finance and Agriculture Development will be sought. Copies of the relevant procedural documents will be submitted to them simultaneously, for comment within fifteen business days. Should there be no answer within this period, the board of directors will decide based on the procedural documents. The opinion of the Ministers of Economy and Finance and Agriculture Development will be binding.

Article 4. Article 2-A is added to Law 4 of 1994 as follows:

Article 2-A. The Agriculture Council will distribute the percentage addressed to the agriculture sector with the purpose of promoting its sustained growth; however, Banco de Desarrollo Agropecuario shall not receive a percentage less than 25%.

Article 5. Article 3 of Law 4 of 1994 shall read:

Article 3. The Special Interest Compensation Fund (FECEI, for its acronym in Spanish) is created to compensate banks and finance entities for the discounts made to interest rates agreed on the loans described in Article 1 herein.

FECEI will have the necessary technical and administrative staff for the efficient execution of its functions. Administration and oversight expenses will be covered from its own resources.

Article 6. Article 6 of Law 4 of 1994 shall read:

Article 6. The following activities qualify to receive the interest rate discount referred to in Article 1 for the purposes below:

ACTIVITIES:

1. Agriculture: rice, corn, sorghum, soy, red kidney beans, beans, tomato, peppers, cabbage, lettuce, broad-leaf cilantro (*Eyngium foetidum*), celery, eggplant, broccoli, parsley, cauliflower, garlic chives, yam, potato, new cocoyam or taro, white yam, sweet potato, onion, leek, garlic, yucca, carrot, white turnip, beet, radish, watermelon, cantaloupe, cucumber, pumpkin, pineapple, coffee, sugar cane, papaya, banana, plantain, cocoa, orange, lemon, passion fruit, tangerine, palm oil, plant cultivation, flower cultivation, haybale cultivation and production, mushroom, coriander,

- chayote, achiote, mango, avocado, peach palm, guava, sunflower seeds, and strawberry.
2. Livestock: traditional breeding cattle, high genetic breeding cattle or recipients, dairy cattle, high genetic dairy cattle, fattening cattle, breeding swine, high genetic breeding swine, fattening swine, swine genetic nucleus, breeding sheep, high genetic breeding sheep, fattening sheep, breeding goats, high genetic breeding goats, dairy goats, high genetic dairy goats, and fattening goats.
 3. Poultry farming: poultry breeding and fattening (meat), rearing laying hens (egg consumption), breeding hens (fertile egg-chicken) breeding and fattening ducks (poultry), breeding and fattening quail (poultry), breeding quail (egg consumption) and breeding and fattening turkeys.
 4. Fish farming: fish farming, shrimp farming and artisanal fishing.
 5. Forestry and reforestation: teak cultivation, cedar wood cultivation, oak cultivation, white teak (gmelina) cultivation, eucalyptus cultivation, mahogany cultivation, pine cultivation, cocobolo.
 6. Beekeeping; bee breeding and exploitation.
 7. Production and processing of national sea salt;
 8. Agroindustry using and transforming products that are 100% Panamanian;
 9. Rabbit breeding.

PURPOSES:

1. Purchase of raw materials:
 - a. Capital goods: purchase of agricultural machinery, purchase of equipment, purchase of working trucks for agricultural use, purchase and installation of irrigation systems, purchase of trucks for transportation of agricultural projects, purchase and installation of solar panel systems for electricity, purchase and installation of bio-digesters for electricity, purchase of equipment for shrimp farming, purchase of equipment for fuel dispatch for the project, and purchase and installation of storage silos.
 - b. Workforce: working capital for workforce and payment of specialized and trained workforce.

- c. Raw material: purchase of grains for preparing food and concentrate, purchase of fertilizers, purchase of agrochemical products and purchase of veterinarian products.
 - d. Other: purchase of miscellaneous supplies.
 2. Planting and farming: working capital for farming.
 3. Enhancement of production facilities: construction of warehouses, construction of greenhouses, construction of corrals, cattle pens and chutes, construction of live fences and electric fences, construction of roads and bridges, laser and satellite leveling of land for crops, construction of warehouses and storage warehouses, construction of shrimp tubs, construction of wells, cleaning of pasture lands, cultivation of improved and pasture grass, construction on the farm of housing for laborers, construction of laboratories for shrimp larvae farming, construction of acclimatization ponds for shrimp larvae, construction of underground water reservoirs (with pumps) and nurseries.
 4. Purchase of livestock: purchase of surrogate breeding cattle and purchase of surrogate dairy cattle, purchase of high genetic breeding cattle, purchase of fattening cattle, purchase of surrogate breeding swine, purchase of surrogate swine – genetic nucleus (grandmothers), purchase of fattening piglets, purchase of surrogate breeding sheep, surrogate of goat breeding, purchase of high genetic surrogate goats, purchase of fattening goats, purchase of semen and embryos, purchase of larvae (shrimp), purchase of fry (fishes), purchase of chicken for fattening, purchase of laying hens (commercial eggs) and purchase of breeding hens (fertile eggs).
 5. Purchase of land destined exclusively for the above activities and zoning to carry out those activities.
 6. Reimbursement for investing in the above purposes: investments in any of the activities or purposes prescribed herein, as long as the investments have a maximum period of one year.

The Agricultural Council may increase the activities and purposes and uses indicated herein.

Article 7. Article 7 of Law 4 of 1994 shall read:

Article 7. Infractions of the provisions herein will be penalized by a written admonition or a fine between five thousand balboas (B/.5,000.00) and fifty thousand balboas (B/.50,000.00), depending on the severity of the infraction.

The penalties collected will be deposited in the Special Interest Compensation Fund.

The Superintendency of Banks will determine the type and the amount of the penalty, taking into consideration the severity of the infraction, any repetitive behavior, or the combination of these.

Article 8. Article 7-A is added to Law 4 of 1994 as follows:

Article 7-A. When withheld amounts are not fully used or subsidies are wrongfully applied, the indebted amount must be remitted to the Special Interest Compensation Fund plus the interest relevant to the domestic market interest rate.

Before disbursing the funds, the bank or finance entity will sign a document clarifying the conclusions reached on the classification of the loan, in accordance with the FECI Regime, in order to include the document as evidence in case of lawsuits.

Article 9. Article 9 of Law 4 of 1994 shall read:

Article 9. Personal and commercial loans granted to retirees, pensioners or the elderly favored with the benefits established in Law 6 dated 16 June 1987 are exempt from the application of Article 8.

Withholding on loans granted jointly and severally will be applied only if all joint debtors meet the age or conditions required by Law 6 dated 16 June 1987, except in cases of spouses who are joint co-debtors. Under these circumstances, the exemption is applicable when one of them meets the age or conditions.

In the case of several loans granted jointly, the application of the withholding will proceed only when the debtors meet the age or conditions required by Law 6 dated 16 June 1987 proportionate to the quota belonging to the benefitted borrower and in favor of that borrower.

Personal and commercial loans granted to microenterprises, be they individuals or legal entities, will also be exempt, as long as they provide a certification issued by the

Authority for Micro, Small and Medium Enterprises verifying they are registered in the Authority's commercial registry.

The funds granted as loans pursuant to the provisions of the above paragraph must be fully invested in the ordinary course of business.

Article 10. Paragraph 4 of Article 10 of Law 4 of 1994 shall read:

Article 10. For the purposes of this Law and its regulatory provisions, the following definitions will apply:

...

4. *Personal and commercial loans.* Those loans to sectors other than the agricultural, industrial, main home, nonprofit entities and public sectors.

Main home is understood as that of permanent use by the owner of the property for residential purposes. When the owner is a foreigner, he/she must be a permanent resident in order to apply for the exemption.

...

Article 11. Article 11-A is added to Law 4 of 1994 as follows:

Article 11-A. The Ministry of Economy and Finance and the Superintendency of Banks of Panama must present a detailed report on the distributions and operations of the Fund to the Agricultural Council on an annual basis by the closing of the fiscal period.

Article 12. Active and passive credits that were charged the withholding rate current at that time due to the interpretation of Paragraph 4 of Article 1 of Law 4 of 1994 will be reimbursed from the Fund. The amount of interest paid for the non-application of the discount benefit will also be returned. All of these from the 2014-2015 period to the present, regardless of the beginning date of the loan.

For this purpose, a Committee within the Agricultural Council will be created to analyze each case and determine whether or not the refund of interest is applicable, pursuant to the situation presented in the file. The committee created for this purpose will issue a resolution recommending to the Superintendency of Banks the files to which the refund of interest will be applicable or the return of interest paid due to the non-application of the benefit, as the case may be.

Article 13. The National Assembly will prepare a Sole Text of Law 4 of 1994 containing all of the modifications made up to this date and the provisions herein, as well as any other modification before its publication.

This sole text will be numbered starting with Article 1 and will include all legislative technical and codification elements. Once the sole text is prepared, the National Assembly will order its publication in the Official Gazette.

Article 14. This law amends paragraphs 1 and 4 of Article 1, Articles 2, 3, 6, 7, and 9, and paragraph 4 of Article 10, and adds Articles 1-A, 2-A, 7-A and 11-A to Law 4 dated 17 May 1994.

Article 15. This Law shall become effective the day following its promulgation.

FOR COMMUNICATION AND ENFORCEMENT,

Bill 4 of 2019 approved in Third Reading at Palacio Justo Arosemena, Panama city, on the second day of October, two thousand nineteen.

The President,

(signed)
Marcos E. Castellero Barahona

The Secretary General,

(signed)
Quibian T. Panay G.