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On December 15th, 2014, the Colombian Congress enacted the 2014 Tax Reform Act (“2014 TRA”) that entered into force on December 23rd, 2014.

In this issue, **Colombian_Tax_Flash®** brings our readership a summary of the main changes that this reform brings regarding the following issues:

(1) Wealth Tax; (2) Equality (Income-Based) Tax – CREE; (3) Income Tax; (4) Statutory Foreign Tax Credits; (5) Special Return of Assets Held Abroad; (6) Bank Debits Tax; (7) Anticipated Termination of Tax Controversies; (8) Income Tax Deduction of VAT paid in the acquisition and Import of Capital Assets; (9) Acquisition and Permanent Importation of Heavy Machinery and Equipment; and (10) Tax on Gasoline and Diesel Fuel.

Please bear in mind that this is a selective summary, for informational purposes only, that focuses on certain topics of interest. Therefore, it is not intended to be a detailed and comprehensive dissertation of the topics listed above. Although not featured herein, there are other aspects of the 2014 TRA, which have been regulated and are also important for our readers to keep in mind. Therefore, it is advisable that our readers do not exclusively rely on this document and thoroughly review the measures and changes that could affect them, seeking qualified advice from professional tax attorneys duly admitted to the practice of law in Colombia.

For more information on other changes in other pieces of legislation both at a national and local level, which are not featured in this issue of **Colombian_Tax_Flash®**, you can visit us on twitter [@colombiatax](https://twitter.com/colombiatax).

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1. Wealth Tax (assessed on the net-worth)

The 2014 TRA act recently approved by the Congress introduced a new Wealth Tax that applies on companies from 2015 to 2017, and on individuals from 2015 to 2018.

In general, Colombian entities and resident individuals, as well as foreign entities and non-resident individuals owning a gross-worth net of liabilities equal or higher than COP \$1,000,000,000 (approx. USD \$425,000) on January 1st 2015 are subject to this tax.

1.1. Taxable Base

In general, the taxable base of the Wealth Tax corresponds to the result of subtracting from the taxpayer's net-worth the value of the shares directly or indirectly owned by the taxpayer in Colombian companies.

Foreign entities are subject to the tax on the wealth they own directly or through Permanent Establishments. Notably, in contrast to the net-worth tax that was in place in previous years, the Wealth Tax covers foreign entities that do not file an income tax return in Colombia (i.e. entities exclusively taxed via withholding taxes). This has an important impact concerning inbound inter group loans (nevertheless the application of this rule in a tax-treaty context should be reviewed).

Foreign entities that have Permanent Establishments in Colombia are taxed on the net-worth attributable to such Permanent Establishments. This should be determined based on an attribution study elaborated considering the assets used, the functions performed, the personnel involved and the risks assumed by the Permanent Establishment.

Foreign companies can subtract from the taxable basis the value of international leasing operations and its yields, if the underlying assets of the leasing operation are located in Colombia

Foreign Financial Institutions can subtract from the taxable basis the value of the loans granted to Colombian taxpayers.

Foreign individuals that have resided in Colombia for less than 5 years can subtract from the tax their non-Colombian net-worth.

Individuals can subtract COP \$335,000,000 (approx. USD \$143,000) from the value of their private home.

1.2. Tax Rate

The tax rate varies depending on whether the taxpayer is an individual or a corporate entity, and differs from year to year, as follows:

(A) For Corporate Entities:

Taxpayer's net-worth		Marginal Tax Rate		
Minimum	Maximum	2015	2016	2017
>0	<2,000,000,000	0,20%	0,15%	0,05%
>=2,000,000,000	<3,000,000,000	0,35%	0,25%	0,10%
>=3,000,000,000	<5,000,000,000	0,75%	0,50%	0,20%
>=5,000,000,000	Onwards	1,15%	1,00%	0,40%

(B) For Individuals:

Taxpayer's net-worth		Marginal Tax Rate
Minimum	Maximum	2015, 2016, 2017 and 2018
>0	<2,000,000,000	0,125%
>=2,000,000,000	<3,000,000,000	0,35%
>=3,000,000,000	<5,000,000,000	0,75%
>=5,000,000,000	Onwards	1,50%

Please bear in mind that in this edition of the Wealth Tax, the lawmaker introduced a taxable base lock-mechanism, aiming to prevent positive or negative variation of the taxable base first reported in 2015, higher than 25% of the inflation of the corresponding year.

1.3. Normalization Tax

For the years 2015 to 2017, the 2014 TRA introduced a tax on the value of non-reported assets, when an obligation to report them exists. This tax should be assessed, paid and filed with the Wealth Tax return.

Hence, this Normalization Tax only applies to taxpayers who, either mandatorily or voluntarily, file a Wealth Tax return.

It is worth noting that the applicable regulation introduces a special provision indicating how rights in foreign trusts and foreign private interest foundations should be reported.

The tax rate of the Normalization Tax varies from year to year as follows:

2015	2016	2017
10%	11,5%	13%

The Normalization Tax should be paid and filed one time only, and the assets that have formerly been omitted should be taken into account in the assessment of the income tax and the Equality Tax (CREE) of the year in which the Normalization Tax is paid and onwards.

No penalty in connection to (i) income tax, (ii) CREE, or (iii) the breach of foreign exchange regulations, should be imposed as a consequence of not having reported the omitted assets in previous tax returns, provided that such assets are reported in the Normalization Tax return and the corresponding tax is paid.

2. Equality (Income Based) Tax – CREE

The 2014 TRA brings various provisions in connection to the Equality Tax (CREE). In this regard the following should be noted:

The CREE's tax rate will be 9% as of 2016. Additionally, from 2015 to 2018, a surcharge will apply on CREE taxable income equal or higher than COP \$800,000,000 (approx USD \$340,000); it is worth noting that the CREE does not apply to free trade zone companies that operate in free trade zones qualified before 2013 and that this surcharge does not apply to taxpayers located in offshore free trade zones.

The applicable surcharge will be paid in two equal yearly payments, and the applicable rate varies from year to year, as follows:

Taxpayer's taxable base		Marginal Tax Rate			
Minimum	Maximum	2015	2016	2017	2018
>0	<800,000,000	0%	0%	0%	0%
>=800,000,000	Onwards	5%	6%	8%	9%

Additionally, as of 2015 (A) an evergreen tax loss carry-forward for losses incurred in 2015 and onwards against the taxpayer's CREE tax liability is available; and (B) a 5-year carry-forward is available for the excessive alternate minimum taxable income (determined on the net-worth) over the CREE general tax liability (determined on the profits ascertained based on the applicable provisions).

Lastly, the 2014 TRA establishes that the deductibility of interest payments (for CREE purposes) is covered by the thin capitalization rules contained in article 118-1 of the Colombian Tax Code, and that the Colombian transfer pricing rules apply in connection to the CREE. .

3. Income Tax

With respect to Income Tax the 2014 TRA introduces the following changes:

3.1. Corporate Income Tax Rate for Foreign Companies

Between 2015 and 2018 foreign corporate entities receiving Colombian source income not attributable to a Colombian Permanent Establishment, will be subject to the following general Corporate Tax Rates. As of 2019 the general tax rate will continue to be 33%.

2015	2016	2017	2018
39%	40%	42%	43%

Please bear in mind that this change should not override currently applicable reduced withholding tax rates for certain cross-border payments.

3.2. Place of Effective Management

According to the 2014 TRA, the foreign companies that (A) are listed in the Colombian Stock Exchange (or in another recognized Stock Exchange), or that have issued bonds that are negotiated through such a Stock Exchange; or (B) receive at least 80% of their total income in the country in which they were incorporated; will not be considered Colombian entities (tax residents) even if its place of effective management is located in Colombia.

3.3. Tax Residence of Individuals

Until before the enactment of the 2014 TRA, Colombian nationals domiciled abroad, were automatically considered Colombian tax residents if they met one of the following criteria: (A) their spouse or their under age offspring are Colombian tax residents; or (B) 50% or more of their income is from a Colombian source; or (C) 50% or more of their assets are managed in Colombia; or (D) 50% or more of their assets are located in Colombia; or (E) they are not able to prove that they are tax residents elsewhere, when required by the tax authorities; or (F) they are residents in a tax haven.

Nonetheless, the 2014 TRA determines that Colombian individuals that are domiciled abroad should not be considered Colombian tax residents if either (A) the source of 50% or more of their yearly income is in the country where they are domiciled; or (B) 50% or more of their assets are located in the country where they are domiciled; regardless of whether they meet one or more of the criteria listed above.

3.4. Withholding Tax on Financial Returns of Public Private Partnerships Funding

The 2014 TRA establishes a special withholding tax rate of 5% that applies on cross-border payments of interest and other financial returns in connection to loans that have been granted to fund infrastructure projects under a Public Private Partnership structure and that are granted for a term of 8 years or longer. It is worth highlighting that the general withholding tax rate on cross-

border payments of financial returns is 14% or 33%, depending on the case.

4. Statutory Foreign Tax Credits

New rules concerning the tax credit were approved. In general, the new provisions attempt to: (i) Adapt the tax credit to the new rates and to the new income taxation structure (Income Tax + CREE), (ii) Limit the carry-forward of the excess tax credit, (iii) Ratify that the creditable foreign tax cannot exceed a percentage of the taxpayers' alternate income tax liability ("*renta presuntiva*") which is determined in the taxpayer's tax net-worth; the latter could generate double taxation situations.

5. Special Return of Assets Held Abroad

As of 2015, taxpayers who pay income tax in Colombia with respect to their worldwide income and hold assets abroad should yearly file a special return disclosing such assets.

6. Bank Debits Tax

According to the 2014 TRA, until 2019 the bank debits tax rate will be 4 per thousand, and the sunset of this tax through a phase-out tax rate scale that should start on 2015 is postponed, to begin in 2019, as follows:

2019	2020	2021
3 x 1,000	2 x 1,000	1 x 1,000

As of 2022 the Bank Debits Tax should be repealed.

7. Anticipated Termination of Tax Controversies

In addition to offering special payment conditions for defaulting debtors, the 2014 TRA introduces various mechanisms of anticipated termination of tax controversies, both judicial and administrative, as explained below.

7.1. Anticipated Termination of Tax Controversies at the Administrative Level

The possibility to terminate undergoing tax controversies as follows:

(A) The 2014 TRA allows the settlement of up to 100% of the penalties and accrued interest, provided that the taxpayer pays 100% of the tax under discussion.

(B) If there is no tax under discussion the 2014 TRA allows the settlement of up to 50% of the penalties, provided that the taxpayer pays the remaining 50% of the penalties under discussion.

(C) If the proceeding relates to a penalty for not having filed a tax return, the 2014 TRA allows the settlement of up to 70% of the penalties and accrued interest, provided that the taxpayer pays 100% of the tax under discussion and pays the remaining 30% of the penalties and accrued interest.

(D) If the proceeding relates to an inappropriate return or offsetting of taxes, the 2014 TRA allows the settlement of up to 30% of the penalties, provided that the taxpayer pays the remaining 70% of the penalties under discussion and returns the taxes that were inappropriately returned or offset.

7.2. Anticipated Termination of Tax Controversies at the Judicial Level

It is possible to settle undergoing tax controversies as follows:

(A) If the proceeding is being held before a lower court, the 2014 TRA allows the settlement of up to 30% of the penalties and accrued interest, provided that the taxpayer pays 100% of the tax under discussion and the remaining 70% of the penalties and accrued interest.

(B) If the proceeding is being held in appeal, the 2014 TRA allows the settlement of up to 20% of the penalties and accrued interest, provided that the taxpayer pays 100% of the tax under discussion and the remaining 80% of the penalties and accrued interest.

(C) If there is no tax under discussion, or if the proceeding relates to an inappropriate return or offsetting of taxes, the 2014 TRA allows the settlement of up to 50% of the penalty, provided that the taxpayer (i) pays the remaining 50% of the penalty under discussion and (ii) returns the taxes that were inappropriately returned or offset (when the proceeding involves a discussion about an inappropriate return or offsetting of taxes).

8. Income Tax Deduction of VAT Paid in the Acquisition and Import of Capital Assets

2% of the VAT paid in the acquisition or import of capital assets can be credited against the taxpayer's corporate income tax, in the year in which the assets were acquired. The latter provided that the taxpayer is a corporate entity and that the capital assets were taxed with VAT at the general tax rate (currently 16%).

The provision also indicates that if the asset is sold before the end of its useful lifespan a proportional recapture applies.

9. Acquisition and Permanent Importation of Heavy Machinery and Equipment

The 2014 TRA extends to acquisitions the formerly only applicable to imports VAT deferral benefit in connection to the payment for Heavy Machinery and Equipment. This means that, with the entry into force of the 2014 TRA, taxpayers acquiring (and not merely importing) Heavy Machinery and Equipment that have a value exceeding USD \$500,000 and that will be used in a basic industry, will be able to: (A) defer the VAT payment as follows: 40% upon acquisition and 30% in each of the following two years; and (B) Credit the VAT paid against the taxpayer's income tax, in the year in which the VAT was paid, or in the subsequent years if the VAT cannot be initially credited in full.

The provision also indicates that if the asset is sold before the end of its useful lifespan a proportional recapture applies.

10. Tax on Gasoline and Diesel Fuel

The 2014 TRA brings changes in connection to this tax that should be carefully reviewed on a case-by-case basis. Generally, the changes relate to the taxation of temporary imports of gasoline and diesel fuel for active improvement and the creation of a special contribution with the purpose of attenuating the effects deriving from the fluctuations on the prices of gasoline and diesel fuel.

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