2021

Colombian Corporate Taxation Overview

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TAX LAW PRACTICE

- Transactional Tax Structuring and Advice
- Corporate Tax Planning
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- Transfer Pricing
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- Latin America Taxation
- Wealth and Estate Planning, and Taxation of Individuals
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- Due Diligence and Compliance
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HIGHLIGHTS

National Level	
Corporate Income Tax ("CIT")	31% (2021); 30% (as of 2022)
Foreign Entities	31% (2021); 30% (as of 2022)
Foreign Entities with PE or Branch	31% (2021); 30% (as of 2022)
Temporary CIT Surcharge for Financial Entities	3% (2021 = 34%; 2022 = 33%)
Free Trade Zones Reduced CIT Rate	20%
Capital Gains Tax	10%
Dividends Tax	
Regular Withholding Taxes on Cross-border Payments:	
- After Tax Dividends (if untaxed at Corporate level)	10% (37,9%, 2021; 37% as of 2022)
- Branch Profits (if untaxed at Corporate level)	10% (37,9%, 2021; 37% as of 2022)
- Interest	The withholding tax rate on inbound credit facilities and leasing transactions varies between 0%, 1%, 15%, or 20%.
- Financial Returns of Public Private Partnerships Funding	5%
- Royalties	20%
- Technical Assistance, Technical Services and Consultancies	20%
- Imports	No withholding
- Tax Havens	31% (2021)
Tax Loss Carry-forward Term	12 years
Tax Loss Carry-back Term	Not available
Transfer Pricing Rules	Yes, OECD-like
Tax-free Reorganizations are available if certain requirements are met.	Statutory Mergers, Statutory Divisions, Transformations and Capital Contributions.
General VAT Rate on Sales, Services and Imports	19%
Consumption Tax (Specific businesses)	4%, 8% and 16%
Regular Custom Duties[1]	0% - 20%
Bank Debits Tax	4 per thousand
National Stamp Tax	0%
Local Level	
Tax on Industrial, Commercial and Service Activities	2-13.8 per thousand
Property Tax (including Real Estate)	0.5%-3.5%
Registration Tax	0.1%-1%
Local Stamp Taxes	Up to 2%

[1] Exceptionally certain products may be subject to higher custom duties.

Income Tax Treaties				
Country	Dividends	Interest	Royalties	In Force
Bolivia	Source	Source	Source	Yes
Canada	Up to 15%	10%	10%	Yes
Chile	Up to 7%	Up to 15%	10%	Yes
Czech Republic	Up to 15%[2]	10%[3]	10%	Yes
Ecuador	Source	Source	Source	Yes
France	Up to 15%[2]	10%[3]	10%	Yes
India	5%[2]	10%[3]	10%	Yes
Italy	Up to 15%	Up to 10%[3]	10%	No
Japan	Up to 15%	Up to 10%	Up to 10%	No
Mexico	0%[2]	Up to 10%[º]	10%	Yes
Peru	Source	Source	Source	Yes
Portugal	10%[2]	10%	10%	Yes
South Korea	Up to 10%[2]	10%[3]	10%	Yes
Spain	Up to 5%	10%[3]	10%	Yes
Switzerland	Up to 15%	10%[3]	10%	Yes
United Arab Emirates	Up to 15%[2]	10%[3]	10%	No
United Kingdom	Up to 15%[2]	10%[º]	10%	Yes

[2] These Treaties to Avoid Double Taxation provide a higher withholding rate when the company distributing the dividends is a Colombian company and the profits out of which the dividend is distributed were not taxed at the corporate level, as follows (i) 25% for the Czech Republic; (ii) 15% for India; (iii) 33% for Mexico, (iv) 33% for Portugal; and (v) 15% for South Korea; (vi) 15% for France; (vii) 15% for United Kingdom; (viii) without limitation for United Arab Emirates.

[3] These Treaties to Avoid Double Taxation provide the non-taxation at the source of the interest paid to the other State or to certain public entities of the other State. The following treaties also provide the non-taxation of certain other activities: (i) Spain: sale on credit of merchandise and loans granted by banks; (ii) Switzerland: sale on credit of merchandise and loans granted by banks; (iii) Czech Republic: sale on credit of merchandise and loans granted by banks for a period not exceeding three years;

1. Corporate Income Tax ("CIT")

1.1. Corporate Residence

In Colombia, resident entities are taxed on their worldwide income and foreign entities' Permanent Establishments ("PE") on their attributable worldwide income, while foreign entities with no PE in the Country are taxed only on their Colombian source income.

If an entity (i) is incorporated in Colombia; or (ii) has its corporate domicile in Colombia; or (iii) is "effectively managed" in Colombia; such entity is deemed Colombian for tax purposes.

An entity is "effectively managed" where the key managing decisions are taken[4]. It is important to highlight that foreign companies that (i) 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 (ii) receive at least 80% of their total income in the country in which they are incorporated; will not be considered Colombian entities (tax residents) even if their place of effective management is located in Colombia.

1.2. Permanent Establishment

Colombian regulations provide a domestic definition of PE partially tracing the PE definition of the OECD-MC. The Colombian PE definition does not include the project PE.[5] Colombian domestic regulation also provides a list of activities considered auxiliary or preparatory, which do, therefore, not give rise to a PE.[6]

PEs are taxed on the worldwide profits attributable to them considering their assets, activities, functions and risks.[7] Therefore, transfer pricing considerations and the elements related with the "OECD report on the attribution of profits to permanent establishments" are to be considered.

Any foreign person or entity having a PE in Colombia is required to file a CIT return and to keep accounting records, for each PE they have in Colombia.[8]

[4] Colombian Tax Code §12-1
[5] Colombian Tax Code §20-1
[6] Decree 3026/2013 §3
[7] Tax Reform Act 2010/2019 §66
[8] Colombian Tax Code §20-2

It is worth noting that, although Colombia has a domestic definition of PE, the rules governing PEs under international treaties executed by Colombia, should always prevail.

1.3. CIT Rate

The general statutory CIT rate applicable both to Colombian companies and to foreign corporate entities receiving Colombian source income, regardless of whether it is attributable to a Permanent Establishment in Colombia or not, is 31% in 2021, and 30% beginning 2022.[9]

1.3.1. Reduced CIT Rates

Certain companies in free trade zones are eligible for a reduced 20% CIT rate.[10]

Additionally certain items of income, that were formerly exempt, are subject to a reduced 9% CIT rate. Some examples are (i) hotel services rendered in newly built or refurbished facilities; and (ii) ecotourism activities.

Likewise, in 2010, Law 1429/2010 was enacted in Colombia, introducing several incentives for small enterprises that complete the registration procedure in the merchants' registry after December 29th, 2010.

Only companies that have less than 50 employees and less than approximately USD 1,2 million in assets are eligible for these benefits. If at any point the company exceeds these thresholds it loses the benefits. Such benefits include a progressive CIT rate, which was modified by the 2016 Tax Reform Act as follows:

First two years	9% + (general CIT rate -9%)*0
Third year	9% + (general CIT rate -9%)*0,25
Fourth year	9% + (general CIT rate -9%)*0,5
Fifth year	9% + (general CIT rate -9%)*0,75
As of the sixth year	100% of the general CIT rate

[9] Colombian Tax Code §240
[10] Colombian Tax Code §240-1

In order to determine whether an entity can benefit from the progressivity on the CIT rate, the individual facts and circumstances of each case should be carefully considered.

1.3.2. Temporary CIT Surcharge for Financial Entities

From 2020 through 2022, a surcharge is levied, exclusively for financial entities that in the corresponding taxable year, have a taxable income equal to or greater than 120,000 UVT (approx. COP 4,356 million or USD 1.2 million[11]), as follows[12].

	2021	2022
Surcharge	3%	3%
Total CIT Rate	34%	33%

1.4. Taxable Base and Income Tax Assessment Process

The taxable base should be multiplied by the applicable statutory CIT rate. The result is the CIT liability, from which applicable tax credits are subtracted to find the CIT charge.

The taxable base of the Colombian CIT is the result from subtracting the taxpayer's specifically exempt items of income from the greater of (i) the Net Taxable Income ("NTI") and (ii) the Alternate Minimum Taxable Income ("AMTI"). The NTI results from the sum of all revenues realized by the taxpayer, minus the sum of all specifically excluded items of income, minus the sum of all costs and expenses allowed as deductions. The AMTI computation is explained in §1.6 below.

The regular CIT assessment process can be illustrated as follows:
Gross Income
(Sum of all items of income, including short-term capital gains)

[-]	Excluded Items of Income
[=]	Gross Taxable Income
[-]	Allowed Deductions
[=]	Taxable Income
[-]	Tax Loss Carry-forward (if applicable)

[11] Using a COP 3,500 Market Representative Rate.
[12] Colombian Tax Code §240, Paragraph 7.

[=]	NTI or AMTI (if greater)
[-]	Exempt Items of Income
[=]	Taxable Base
[*]	CIT Rate
[=]	CIT Liability
[-]	Tax Credits
[=]	CIT Charge

The 2016 Tax Act introduced changes that imply that, as of FY2017, the taxable base of the CIT is calculated using the financial information deriving from the accounting records kept in accordance with International Financial Reporting Standards ("IFRS"). Nonetheless, according with the 2016 Tax Act, various adjustments should be made, in order to avoid that the taxpayer is obliged to pay tax on theoretical income or allowed to deduct theoretical expenses.

Hence, despite the tax assessment process continues unchanged, there are various changes aligning, for accounting and tax purposes, among others, (i) the moment of accrual of income and costs, (ii) the deductible expenses, (iii) the calculation of the useful life of the assets, and (iv) the applicable methods of depreciation.

It is important to note that a large amount of adjustments for tax purposes are comprised in the 2016 Tax Act, which will most likely imply that, notwithstanding IFRS will be the basis both for accounting and tax purposes, (i) the taxpayers will still need to keep, besides the regular accounting records, special accounting records for tax purposes, and (ii) important differences may arise between accounting and tax records, which will most likely generate untaxed profits at the level of the company, taxable therefore at a higher rate at the level of the shareholder.

1.5. Alternate Minimum Taxable Income ("AMTI")

The taxpayer's AMTI is equal to the taxpayer's net-worth (i.e. all assets net of all liabilities and other allowable exclusions, e.g. shares in Colombian corporations) as of December 31st of the year immediately preceding the taxable year, multiplied by the AMTI fixed rate (0%, FY 2021).[13] Although the AMTI rate for FY2021 is 0%, it is important to bear in mind that this regime has not yet been repealed from Colombian legislation.

[13] Colombian Tax Code §188 and 189

If the AMTI is greater than the NTI, the difference between these two items generates a carry-forward against the taxpayer's NTI, which can be used within the following five (5) taxable years. Paired with the repeal of the CREE and its surcharge, the 2016 lawmaker introduced a transition regime, which specifies how the taxpayers will be able to carry-forward the excess AMTI (determined on the net-worth) over the CREE general tax liability.[14]

1.6. CIT Deductions

Unless otherwise provided by the statute, all costs and expenses incurred by the taxpayer are deductible, provided that they are related, proportional and necessary to the taxpayer's income producing activity.[15] Costs or expenses related to specifically excluded and/or exempted items of income are not deductible.[16] Certain costs and expenses may be subject to limitations, depending on the facts and circumstances of each case, (e.g., related party charges and commissions, among others). Special limitations apply to the deduction of expenses incurred outside Colombia (see §1.8. below).[17]

It is worth highlighting that (i) royalties paid to foreign related parties or to related parties operating in a FTZ, with regards to intangible goods formed in Colombia, are not deductible; (ii) royalties paid in consideration for the acquisition of finished products are not deductible; (iii) net-worth tax and normalization tax are not deductible and cannot be compensated according to article 48 of the 2019 Tax Reform Act[18] and (iv) with the exception of CIT, VAT (which is now creditable, as further explained in §5.5.4 below), other taxes and levies paid by Colombian taxpayers are fully deductible, provided that there is a nexus between the payment and the income producing activity carried out by the taxpayer, solving various disputes that have arisen in recent years between the taxpayers and the Tax Authorities on this matter.

1.7. Thin Capitalization Rules

In cases of indebtedness between related parties, only interest derived from indebtedness with an average value not exceeding two times the entity's net equity (on December 31 of the preceding year) are deductible.[19] The proportion of interest that exceeds this limit will not be deductible.

[14] Act 1607/2012 §22-1
[15] Colombian Tax Code §107
[16] Colombian Tax Code §177-1
[17] Colombian Tax Code §121 and 122
[18] Colombian Tax Code §298-6, modified by 2019 Tax Reform Act §48
[19] Colombian Tax Code §118-1, modified by 2019 Tax Reform Act §63

The aforementioned interest deductibility limitation applies on both cross-border inbound indebtedness and local indebtedness, and does not apply only on certain narrowly defined cases (e.g. when the debtor is a financial entity, when the loan is obtained in order to finance infrastructure projects related with activities considered of public interest).[20]

On May 29, 2020, the Colombian Government issued Decree 761/2020, through which the thin capitalization rule is regulated. In accordance with the Decree, the criteria for determining the economic relationship referred to in article 118-1 of CTC, will be those applicable for the transfer-pricing regime. The Decree also indicates that the net equity will be determined in accordance with the provisions of article 282 of the CTC, that is, subtracting the corresponding debts from the gross equity owned by the taxpayer on the last day of the year or taxable period.

1.8. Additional Limitations on Costs and Expenses Incurred Abroad by Colombian Taxpayers

In addition to the regular deductibility requirements, costs and expenses incurred abroad are subject to additional limitations.

Costs and expenses incurred abroad are deductible only to the extent that such deductions do not exceed 15% of the taxpayer's net taxable income assessed without taking into account these deductible items. Exceptionally, this 15% limitation does not apply (i) whenever the payment abroad has been subject to the corresponding statutory withholding tax in Colombia, (ii) on certain interest payments that are deemed not from a Colombian source, and (iii) on payments on imported movable tangible property.[21]

Payments to a home office or parent company abroad are only deductible if they were subject to withholding tax in Colombia and meet the transfer pricing arm's-length criteria. Additionally, the parties should be able to prove that the service was actually rendered.[22] Please bear in mind that cross-border payments to the home office of Colombian branches and subsidiaries in consideration for management are subject to withholding tax, regardless of whether they are deemed to generate Colombian source income or not. There are other limitations for deductibility of payments to foreign related parties, which need to be analyzed on a case-by-case basis. The application of these deducibility limitations should be carefully considered taking into account, among others, the transfer pricing regime and the application of tax treaties.

[20] Act 1607/2012 §22-4
[21] Colombian Tax Code §122
[22] Colombian Tax Code §124 and 260-3

1.9. Depreciation and Amortization

Tangible fixed assets' depreciation is deductible. The applicable depreciation term varies depending on the nature of the asset. Further to the 2016 Tax Reform Act, the depreciation term is no longer set on regulations, and should instead be set by the taxpayer, considering for that purpose the lifespan of the asset. IFRS regulations should be regarded; however, the lifespan of an asset determined for tax purposes may differ from the lifespan determined for accounting purposes.

The maximum depreciation rate varies between 2,22% and 33%. Depreciation rates for specific assets (within the previously mentioned range) are set in the corresponding regulation.[23]

For tax purposes, regular methods commonly used worldwide (e.g. straight-line method, declining balance method, etc.) are accepted in Colombia. When using the declining balance depreciation method, the following limits should be observed: (i) the salvage value should be pursuant to IFRS, depending on the type of asset, and (ii) the depreciation rate cannot be accelerated by the application of additional shifts.[24]

When an asset that has been in use is acquired, the acquirer can reasonably calculate the remaining probable lifespan to depreciate its acquisition cost. The lifespan thus calculated, added to that elapsed during the previous owners' use, cannot be less than that contemplated for new goods in the applicable regulations.[25]

If the machinery and equipment are daily used at least for 16-hour shifts, depreciation can be accelerated, increasing the depreciation rate in 25%.[26]

Unless specifically restricted, double and triple shift accelerated depreciation is also available and might be implemented when the asset needs to be depreciated in full in the first years of its useful lifespan. As mentioned before, as of FY2013 the 2012 Tax Reform Act prohibited the combination of the accelerated depreciation with the declining balance method.

Certain assets, including acquired intangibles, and certain costs and expenses deemed as necessary investments for the taxpayer's income producing activity that must be capitalized can be amortized throughout a minimum

[23] Colombian Tax Code §137
[24] Colombian Tax Code §134 and 140
[25] Colombian Tax Code §139
[26] Colombian Tax Code §140

5-yr. period using any generally accepted amortization method.[27] It is worth highlighting that, although under IFRS preoperative expenses are deductible when completed, for tax purposes the taxpayer should register and deduct its value via amortization.

1.10. Transfer Pricing

Colombia has OECD-like transfer pricing rules that are applicable to all transactions between a Colombian party and (i) a foreign related party; or (ii) a related party located in a free trade zone (as explained in §3 a different set of rules applies to transactions between two Colombian related parties).[28]

Under these rules, the Colombian party exceeding certain statutory net assets or revenues thresholds must keep and file with the tax authorities supporting documentation, and a transfer pricing study showing whether the corresponding prices or profit margins are arm's-length.[29] The supporting documentation shall include a master file containing all relevant global information in connection to the multinational group, as well as a local report with all information with regards to the operations carried out by the taxpayer.

The Colombian transfer-pricing regime has a catalogue of situations where two parties are deemed related. This catalogue is complex and its application requires a detailed case-by-case analysis. Parties domiciled in tax havens are deemed as related parties for transfer pricing purposes.[30]

Sale or exchange of stock or quotas in Colombian companies by foreign holders to a related party located abroad is subject to transfer pricing rules.

Lastly, whenever a Colombian taxpayer transfers functions, assets or risks to a related party abroad, it is expected to obtain an arm's length remuneration. This provision is based on the OECD report on business restructurings.

As of FY 2016, a country-by-country report shall be filed in Colombia by:

a. Colombian taxpayers that are controlling entities of multinational groups of companies; or

[27] Colombian Tax Code §142 and 143
[28] Colombian Tax Code §260-2
[29] Colombian Tax Code §260-5 and Decree 3030/2013 §2
[30] Colombian Tax Code §260-1

b. Entities (resident or non-resident) that have been designated by the controlling entity as responsible for the filing of the country-by-country report; or

c. One or more entities and/or permanent establishments pertaining to the same multinational group and having a foreign home office, provided that (i) the income generated by these entities and/or permanent establishments corresponds to at least 20% of the total income of the multinational group; (ii) the home office did not file a country-by-country report in its country of residence; and (iii) the total income of the multinational group in the previous year was equal or higher than USD 840.270.000 (approx.).

The country-by-country report should contain all information relating to the allocation of income and the taxes paid by the multinational group globally. Certain indexes in connection to the economic activity carried out by the multinational group should also be included.

1.11. Certain Exempt Items of Income

Subject to eligibility and compliance by the taxpayer of the statutory requirements, the following CIT exemptions are available (among others):[31]

a. A fifteen (15) year exemption on income from power generation activities based on wind, biomass and agricultural waste technologies;32.

b. A fifteen (15) year exemption on income from fluvial transportation services using low draught boats;

c. Use of qualified new forestry plantations or investment in new sawmills for the use of said plantations.

d. A 7-year exemption for income from creative industries, i.e. the so-called orange businesses. This exemption applies to companies incorporated and carrying out business activity before December 31st, 2021, which have their domicile in Colombia. Only companies that are exclusively engaged in the development of one of the 27 business activities defined as a creative industry are eligible for this regime. The previously

[31] Colombian Tax Code §235-2

[32] In addition to the income tax exemption benefit, taxpayers investing in research and development related to renewable energy projects are eligible for a 50% bonus depreciation or amortization deduction. Furthermore, these taxpayers should also be entitled to opt for an accelerated 5-year depreciation method.

mentioned business activities include, but are not limited to: (i) Jewelry manufacturing;

(ii) Book publishing;

(iii) Film, music, radio and television production;

(iv) Software development; (v) Architecture and engineering and other activities related to technical consultancy;

(vi) Theatre and other cultural activities; and

(vii) Cultural tourism activities.

Eligible companies shall (i) submit their project to the Orange Business Committee of the Ministry of Culture for approval, and (ii) be willing to invest in a 3-year period at least COP 150 million (USD 46,000) in the development of the orange business. If this threshold is not met, the CIT exemption will not be applicable from the third year onwards.

Please bear in mind that a special deduction of 165% of the value of investments or donations for the development of these activities is also granted.[33]

1.12. Certain Special Tax Frameworks

1.12.1. Research and technological investment special deduction and tax credit ("RTISD&C")

In Colombia taxpayers are allowed to deduct their investments in research and technological projects. [34] This deduction can be coupled with a tax credit equal to 25% of the amount invested.[35] In order to benefit from the RTISD&C, the investment should be completed through centers and entities approved by the Colombian Science and Technology Department "Colciencias" and registered with the same authority. Donations to specific scholarship funds are also a way to access this treatment. This last issue is pending regulation.

[33] Currently, the benefit of exempt income has been regulated through Decree 286/2020. On the other hand, the special deduction benefit has been regulated by the Decree 697/2020

[34] Colombian Tax Code §158-1

[35] Colombian Tax Code §256

According to Law 2069/2020, the 25% tax credit will also be applicable to donations to INNpulsa Colombia (National Government institution, created in February 2012, to support and promote extraordinary business growth and entrepreneurial projects, that is, business initiatives that can grow quickly, profitably and sustainably).

Furthermore, the equipment imported by research or technological development centers recognized by Colciencias, as well as the institutions of basic primary, secondary, middle or higher education recognized by the Colombian Ministry of Education and that are intended for the development of scientific, technological or innovation projects according to the criteria and conditions defined by the National Council of Tax Benefits in Science, Technology and Innovation, will be exempt from VAT.[36]

1.12.2. Performing Arts and Cinema

Performing arts enjoy a series of tax benefits, which include, among others, the possibility to deduct 100% of the investment made in the necessary infrastructure for the performance.[37] A special withholding rate as well as a differential VAT treatment may also apply. Please note that individual basis analysis would be needed in order to determine the applicability of the law to a specific case.

Regarding the cinema industry, taxpayers that make investments or donations to cinematographic projects approved by the Ministry of Culture have the possibility to deduct 165% of the amount of the investment or donation.[38]

1.12.3 Leasing Tax Treatment

As a general rule, leased assets must be initially accounted for their value, both as an asset and a liability. The lease payments portion allocated to principal decreases the liability while the portion allocated to interest is a deductible expense. Depreciation and amortization deductions are available, as applicable. [39]

The 2016 Tax Reform Act introduced (i) a definition of financial leasing agreements, including the features of this type of agreements, and

[36] Colombian Tax Code §428-1
[37] Law 1493/2011 §4
[38] Law 814/2003 §16
[39] Colombian Tax Code §127-1

its particular tax treatment and (ii) a definition of operative leasing agreements, with its own tax rules. It is worth highlighting that the features listed by the provision as requirements for a leasing to be classified as a financial leasing for tax purposes do not necessarily match the definition of leasing agreements provided by the Colombian financial rules and the commercial regulation.

The 2016 Tax Reform Act introduced special accounting recognition rules, based on the new accounting frameworks and other particular considerations.

The new framework is intended to apply to all leasing agreements executed as of January 2017.

1.12.4. Public Private Partnerships and Concession Agreements

The 2016 Tax Act introduced a new special tax framework for Public Private Partnerships and Concession Agreements. This new framework aims to arrange a previously existing mismatch between the moment of accrual of the income with the moment in which the amortization and depreciation expenses could be deducted by the taxpayer. This new tax framework applies whenever the concession agreement comprises both the construction and the operation and administration stages.

Whenever a concession agreement is granted only with regards to one of the stages the new rules are not applicable and the general rules for the accrual of income, depreciation and amortization deductions should be applied.

It is important to bear in mind that according to article 408 of Colombian Tax Code, payments regarding financial returns or interest, made to non-residents, originating in credits or credit securities, for a term equal to or greater than 8 years, destined to the financing of infrastructure projects as Public Private Partnerships introduced by Law 1508/2012, will be subject to a 5% withholding tax on the value of the payment or credit account.

1.12.5. Regulated Fiduciary Arrangements

The 2016 Tax Act enhanced the transparency of the Fiduciary Arrangements to a full transparency tax regime, by stating that the beneficiary should report in its CIT return the income, costs and

expenses accrued at the level of the fiduciary arrangement[40]. Under the former tax framework (partial transparency) the beneficiary only had to report in its CIT return the profit or loss accrued at the level of the fiduciary arrangement.

New rules on income accrual have been enacted and should be carefully reviewed on a case-by-case basis, as they could have important tax implications for beneficiaries and settlors of the fiduciary arrangements.

1.12.6. Carbon Dioxide Tax

The 2016 Tax Reform Act[41] created a "Carbon Dioxide Tax" which is triggered by the first sale or import of fossil fuels, including oil-derived products and all types of gas that may be used as energy sources. This tax is levied only once, either on the import or on the first sale made by the local producer. Neither exports, nor subsequent sales or operations are taxed.[42]

The rate is COP 15.000 (Approximately USD 5) per ton of CO2 that a determined fossil fuel is estimated to generate. This rate will be annually readjusted. In order to ease the taxable base of this Tax, the government included the following table, which contains an already calculated estimate of the tons of CO2 produced by each of these common fuels, and therefore, already has a fix rate per unity.

Taxpayers that certify to be carbon neutral, in accordance with the regulations issued by the Ministry of Environment and Sustainable Development (Art. 221, Law 1819/2016), are not subject to this tax. In addition, fuels exports are not subject to this tax.[43]

Fossil Fuel	Unit of Measure	Rate/unity (COP)
Natural gas	Cubic meter	$29
Oil liquefied gas	Gallon	$95
Gasoline	Gallon	$135
Kerosene and Jet Fuel	Gallon	$148
Diesel	Gallon	$152
Fuel Oil	Gallon	$177

[40] Colombian Tax Code §102 and §271-1
[41] Law 1819/2016 §221
[42] Act 1819/2016 §221 and 222
[43] According to Decree 1680/2020, those responsible for the Carbon Dioxide Tax, must declare and pay the tax corresponding to the taxable year 2021 every two months.

1.12.7. Joint Ventures

The 2016 Tax Reform Act[44] established a common fiscal treatment for joint venture agreements, applicable to consortium agreements, associations (temporary company union), other joint ventures and joint accounts agreements, among others. Joint venture agreements, under the 2016 Tax Reform, continue to be regarded as non-taxpayers for CIT purposes and, therefore, as fully transparent from the tax perspective; however, additional formal obligations are established. It is important to highlight that under the 2016 Tax Reform Act the parties of the joint venture agreements maintain the obligation to report the assets, liabilities, income, costs and deductions of the joint venture in their CIT returns, according to their participation in the agreement. The parties to the joint venture can decide whether the agreement should keep accounting records.

Commercial relationships between the joint venture and its parties that imply a fixed remuneration for one of the parties should not be considered as contributions to the joint venture. The implications of this provision should be carefully reviewed on a case-by-case basis.

1.12.8. Stock Options

The 2016 Tax Reform Act[45] introduced a new chapter dedicated to the tax treatment of stock options.

The tax regime applicable to (i) stock options, i.e. when shares of a company are offered to employees and the employee has the right to decide whether to accept the offer or not; and (ii) shares transferred to an employee as part of his labour remuneration.

The applicable provision establishes rules for accrual of taxable income and the method to calculate the taxable base both for the company offering the stock option or transferring the shares and for the employee receiving either the stock option or the shares.

[44] Act 1819/2016 §20
[45] Act 1819/2016 §64

1.12.9. Adjustment due to the Fluctuation of the Exchange Rate of Foreign Currencies[46]

With the entry into force of the 2016 Tax Reform:

a. Income, expenses, costs, assets and liabilities in foreign currency should be accounted for at the exchange rate of the day of its initial recognition.

b. For tax purposes, exchange differences shall be recognized as income or expense for the fiscal year in which (i) the asset is sold or exchanged; or (ii) the liabilities are liquidated or paid.

The taxable income or the deductible costs or expenses correspond to the difference between the exchange rate at the initial recognition and the exchange rate at the day of the payment or accrual of the payment.

Considering that the 2016 Tax Reform Act substantially modified the previous regime (formerly the relevant regulation stated that the adjustment to be made due to the fluctuations in the exchange rate of assets in a foreign currency owned by a taxpayer on the last day of the fiscal year or taxable period constituted income in such fiscal year), the 2016 Tax Reform Act provided a transitional regime that should be reviewed on a case-by-case basis.[47]

1.12.10. Colombian Holding Company Regime[48]

The 2019 tax reform introduced a new regime, for Colombian Holding Companies ("CHC") dedicated to (i) investing in securities, (ii) investing in shares of foreign and/or Colombian companies, and/or (iii) the management of such investments. Colombian companies carrying out these activities may opt- in for the CHC Regime, provided that they meet the following requirements:

a. Minimum Holding Requirement: The CHC shall have, directly or indirectly49, held at least a 10% stake in the capital of at least 2 foreign

[46] Colombian Tax Code §288, added by 2016 Tax Reform Act §123

[47] According to Decree 1453/2018, when transactions are carried out in a currency different from the United States Dollar (USD), the conversion to this currency must be made, applying the applicable exchange rate on the day the operation takes place. Once the exchange rate is expresses in USD, it will be converted to Colombian pesos (COP).

[48] Colombian Tax Code §894-898; Decree 598/2020.

[49] Decree 598/2020 establishes that for purposes of determining the percentage of indirect participation of the CHC, it will be necessary to multiply the percentage of direct participation of the CHC in the first level entity in which it has a direct participation, by the percentage of participation in the second level entity in which it has an indirect participation.

or Colombian companies, for at least a 12-month period.

b. Minimum Economic Substance Requirement: The CHC shall have at least 3 employees, an address in Colombia (belonging to the CHC, not to a third party), and shall be able to prove that the strategic decisions in connection with the investments and assets of the CHC are taken in Colombia (please note that only carrying out the Shareholders' meetings in Colombia is not enough to meet this requirement).

In the following tables we summarize the main tax benefits (i) for the shareholders of a CHC, and (ii) for a Colombian company subject to the CHC Regime:

Tax Benefits for the Shareholders of the CHC		
	Colombian Tax Resident	Foreign Tax Resident
CHC distributes dividends to	Taxed in Colombia, with right to a Foreign Tax Credit on any tax paid abroad by the company that distributed dividends to the CHC.	Exempt from Dividends Tax in Colombia, provided that the income out of which the dividends were distributed (i) is attributable to activities carried out by foreign entities; (ii) is not covered by the Colombian Controlled Foreign Entities Regime; and (iii) the shareholder is neither resident in a non cooperative jurisdiction, nor subject to a preferential tax regime.
Sale of shares of the CHC by	Exempt from Capital Gains Tax and CIT in Colombia, provided that (i) the price received in consideration for the shares is attributable to value created by foreign entities[50]; and (ii) the company from which the CHC is selling the shares does not qualify as a Colombian Controlled Foreign Entity.	Exempt from Capital Gains Tax and CIT in Colombia, provided that (i) the price received in consideration for the shares is attributable to value created by foreign entities; (ii) the company from which the CHC is selling the shares does not qualify as a Colombian Controlled Foreign Entity; and (iii) the shareholder is neither resident in a non-cooperative jurisdiction, nor subject to a preferential tax regime.

Benefits for the Company Subject to the CHC Regime		
	Colombian Company	Foreign Company
Dividends received by the CHC from	Taxable in Colombia with CIT, but not subject to Dividends Tax.	Exempt from CIT in Colombia, provided that the income out of which the dividends were distributed (i) is attributable to activities carried out by foreign entities; and (ii) is not covered by the Colombian Controlled Foreign Entities Regime.
CHC sells its shares in a	Taxable in Colombia, under the Capital Gains Tax or CIT, as applicable, depending on the circumstances.	Exempt from Capital Gains Tax and CIT in Colombia, provided that the income out of which the dividends were distributed (i) is attributable to activities carried out by foreign entities; and (ii) is not covered by the Colombian Controlled Foreign Entities Regime.

1.12.11. Mega-Investments

The 2019 Tax Reform Act introduced a Mega-Investments special tax regime.[51] The Mega-Investment special tax regime requires generating at least 400 direct workplaces and makes new investments of at least 30,000,000 UVT (approx. COP 1,000,000 million or USD 270 million).

This regime implies: (i) a reduced CIT rate of 27% (9% for any income derived from hotel services); (ii) a reduced 2-year depreciation term, (iii) exclusion of the obligation to assess the CIT liability using the AMTI method; (iv) that dividend distributions will not levy Dividends Tax if originated in income taxed at the corporate level, and will be taxed at a reduced 27% Dividend Tax rate if the dividends are originated in income that was untaxed at the corporate level; and (v) projects qualified as Mega-Investments would be disregarded when assessing the Net-Equity Tax.

This special regime will be applicable for a term of 20 years to investments made before 2024. Investments related to the evaluation and exploration of non-renewable natural resources will not be eligible for this regime.

[50] The amount of profits generated as a consequence of activities carried out in Colombia by the CHC is considered as value not created by the foreign entity, and is therefore not covered by the Capital Gains Tax/CIT exemption.
[51] Colombian Tax Code §235-3, added by Act 2010/2019 §75

In order to enforce this regime, the investor and the State will enter into legal stability contracts. Through these contracts, the State guarantees that the above mentioned special tax conditions will be applicable for the investor throughout the term of the contract. In consideration for executing the legal stability contract, the investor will be obliged to pay, during the first 5 years, a premium of 0.75% of the value of the yearly investment.

Through Decree 1157/2020, the Government regulated the special tax regime applicable to Mega-Investment projects. The relevant legislation establishes the definitions and pertinent aspects of investment projects that can be classified as Mega-Investments, as well as the documents necessary to prove compliance with the respective requirements.

1.12.12. SIMPLE Tax Regime

In order to promote the formalization of enterprises the 2019 Tax Reform introduced a new simplified tax ("SIMPLE tax") for small and medium enterprises.[52] Under the 2019 Tax Reform, the SIMPLE tax would replace the CIT, local Turnover Tax and the Consumption Tax for any individual or entity who opts- in. In order to be eligible for this regime the taxpayer's gross income shall be lower than 80,000 UVT (approx. COP 2,904 million or USD 830,000). The SIMPLE Tax establishes fix rates applicable to the gross income. Such rates vary depending on the economic sector in which the enterprise operates, which may range between 1.8% and 14.4%.

In addition, taxpayers who opt for the SIMPLE tax, must adopt the electronic invoicing system within two (2) months following their registration in the Tax Registry ("RUT").

In accordance with the applicable legislation, any individual or entity who opts-in, must develop a business. Decree 1091/2020, whereby the SIMPLE Tax Regime is regulated, consecrates that an individual is considered to develop a business whenever he/she: (ii) develops an economic activity based on business freedom and private initiative; and (ii) exercises their economic activity with business criteria, that is, the activity does not configure the elements of an employment or subordinated relationship.

[52] Colombian Tax Code §903-§916, added by Act 2010/2019 §74

1.13. Tax Loss Carry-forward

On January 1st, 2007 an evergreen tax loss carry-forward against the taxpayer's NTI was introduced in Colombia[53] for CIT purposes. The 2016 Tax Reform Act, which modified article 147 of Colombian Tax Code, limited this carry-forward to the 12 fiscal years following the year in which the tax loss is accrued. A transitory regime was introduced, according to which tax losses generated before January 1st, 2017 will continue to be subject to the previous regime.

The tax loss must arise from an income producing activity commonly taxable under the regular income taxation rules. Should the tax loss lack such nexus, i.e. be related to a non-taxable or exempt income producing activity, the tax loss carry-forward would not be available. The credited amount cannot be greater than the taxpayer's NTI on the year the carry-forward is credited, i.e., a tax loss carry-forward cannot generate further tax loss. Carry-back is not available.

Except as provided for reorganizations, tax losses are neither transferrable to share or quota holders, nor to other taxpayers.

In the case of tax-free mergers and spin-offs the abovementioned general limitations continue to apply. Nonetheless, in these cases part (not all) of the tax losses is transferable to the beneficiary entity(ies); i.e. only the part proportionally corresponding to the participation of the beneficiary entities in the net-worth of the new, surviving or resulting entities, should be deductible. In order to qualify for the tax losses transfer under reorganization tax rules, the corporate purpose of the merging/dividing entity should be the same as that of the beneficiary entity(ies).[54] The tax loss expiration term (when applicable) is not renewed by a reorganization event.

Colombian tax law limits (or in some cases sets special conditions) for the assessment and deduction of tax losses other than net operating losses. We list some of these cases:

a. Loss generated by acts of god damaging taxpayer's assets;

b. Loss generated in the sale of fixed assets;

c. Loss generated in the sale of assets (fixed or current) between related parties, or a corporation and its shareholders – not deductible;

[53] Colombian Tax Code §147
[54] Colombian Tax Code §147

d. Losses in the sale of shares- not deductible.

It is worth mentioning that under 2019 Tax Reform, public utility companies that are subject to intervention processes by the Superintendence of Public Services and as part of this process create new corporations whose purpose is the preservation and continuity in the public service provision, may grant these new societies the right to compensate the balance of tax losses that the intervened company would not have compensated in previous fiscal periods. Consequently, for accounting and commercial purposes the contribution or input will consist of the transfer of the corresponding deferred tax asset. The new companies receiving the aforementioned contribution may compensate, against their NTI obtained in the fiscal period of the contribution or in the following fiscal periods, the tax losses that would have been transferred to them by the intervened company, without taking into account the time limitation established in article 147 of Colombian Tax Code.

1.14. Statutory Foreign Tax Credit ("FTC")

Individuals and corporate persons that are Colombian tax residents and are obliged to pay income tax abroad with regards to their foreign source income, have the right to a FTC. In accordance with the FTC, the tax paid abroad can be credited against the CIT, provided that the amount to be credited does not exceed the CIT liability in Colombia. Pursuant to the 2019 Tax Reform Act, the income tax paid abroad may be treated as a discount in the taxable year in which the payment was made, or carried forward in any of the following taxable periods, if certain requirements are met.[55]

Certain conditions need to be met in order for a taxpayer to benefit from the foreign indirect tax credit (i.e. shares not granting voting rights cannot benefit from the credit, a minimum 2- year holding period is required).

1.15. Income Tax Treaties

Colombia's belated development of a network of OECD-like treaties has led to the execution of income tax treaties with the United Kingdom, Spain, Chile, Switzerland, Canada, Mexico, India, Italy, Czech Republic, South Korea, Portugal, France, the United Arab Emirates and Japan. All these treaties, except the treaties with Italy, United Arab Emirates and Japan are already enforceable. Please bear in mind that Colombia is a signatory of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent base erosion ("BEPS") since June 7th, 2017.

[55] Colombian Tax Code §254, modified by Act 2010/2019 §93

Colombia is also a member of the Andean Pact. Therefore, it benefits from the Andean Pact Tax Directive 578 to avoid double income taxation, enacted in 2004. With isolated exceptions, this Tax Directive provides for exclusive source taxation among member countries (Colombia, Peru, Ecuador and Bolivia). Unlike OECD-like treaties (which benefits residence taxation), Directive 578/2014 privileges taxation in favor of the country where the income is sourced.

Additionally, Colombia currently has limited scope income tax treaties to avoid double taxation on sea and air transportation activities with Argentina, Brazil, France (air), Germany, Italy, Panama (air), Chile, the United States of America, and Venezuela.

Lastly, it is worth noting that besides the treaties to avoid double taxation on income and capital, Colombia has also signed information exchange tax treaties with the United Arab Emirates, Barbados and the United States of America. Furthermore, Colombia is an early adopter of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters and, therefore, Colombia will be exchanging tax information under the Common Reporting Standard with over 90 jurisdictions.

1.16. Consolidated Group Taxation

Colombian Tax Law does not provide for a consolidated group taxation mechanism.

1.17. Tax-Free Reorganizations

The Tax Code's reorganizations chapter determines specific anti-avoidance rules, in an effort to curtail M&A transfer strategies that resulted in acquisitions of corporate assets and businesses in Colombia that, due to loopholes that previously existed in the statutes, avoided local taxation.

1.17.1. Tax-Free Capital Contributions of Property

According to the applicable rules, unless otherwise provided by the Tax Code, property transfers to companies, as capital contributions, are deemed tax-free. Therefore, the stock received by the transferor will inherit the tax cost in the transferred property, while the transferee corporation keeps the same tax cost in the property that the transferor had.[56]

[56] Colombian Tax Code §319

All capital contributions of property, including stock, where the transferor is a Colombian national individual or entity and the transferee corporation is an offshore entity (a) will be deemed as taxable without exception, and (b) must observe transfer pricing rules, regardless of (i) the existence of a related-party relationship between transferor and transferee and (ii) the value attributed to the contributed property.[57]

1.17.2. Tax Free Statutory Mergers and Spin-Offs Restricted

In an effort to prevent the use of statutory mergers and spin-offs as a means of achieving tax-free status for certain acquisitions of corporate assets and businesses in Colombia, there are certain statutory requirements for these types of reorganizations to qualify for tax-free treatment. In order to achieve the tax-free treatment, the applicable rules provide for a tax cost rollover concerning both the transferred assets and the new shares issued to the shareholders.

These requirements are based on a continuity of interest ("COI") and on continuity of business enterprise ("COBE"), in absence of which the reorganization will not qualify for tax-free treatment.

In addition to the adoption of COI and COBE requirements, the statute differentiates acquisitional mergers and spin-offs[58] from organizational mergers and spin-offs[59]. For the former type of reorganizations, the participating entities are not considered related-parties under Colombian regulations, while in the latter the participating entities are deemed related-parties. The difference would consist on the adoption of stricter COI and COBE requirements for the organizational mergers and divisions.

In a reorganization between foreign entities entailing the transfer of assets located in Colombia, the transfer of the Colombian assets is taxable in Colombia, unless the Colombian assets transferred as a result of the reorganization represent 20% or less of the worldwide combined assets of the participating entities. In the latter case, the resulting transfer of the Colombian assets could be eligible for tax-free treatment observing the COI and COBE requirements and related rules, as discussed above.[60]

[57] Colombian Tax Code §319-2
[58] Colombian Tax Code §319-3 and 319-4
[59] Colombian Tax Code §319-5 and 319-6
[60] Colombian Tax Code §319-8

Lastly, it is important to highlight that, for tax purposes, Colombian rules provide for joint and several liability of the entities participating in reorganizations.[61]

1.18. Indirect Sales

The 2019 tax reform introduced a special anti-abuse provision aimed at taxing in Colombia indirect sales of shares and assets located in Colombia.

Under the previous regime, indirect sales of shares of Colombian companies and assets located in Colombia, via the sale of shares in a foreign holding company, were not taxable events in Colombia. This was due to the fact that under the previous regulation, the sale of shares of foreign companies generated foreign source income, even if all the assets owned by the foreign company whose shares were sold were located in Colombia.

Under 2019 Tax Reform Act, the indirect sales of shares in companies, rights or assets located in the national territory, through the disposal, to any title, of shares, participations or rights of foreign entities, is taxed in Colombia as if the sales of the underlying asset had been done directly. The tax cost applicable to the underlying asset, as well as the tax treatment and conditions will be the one held by the underlying asset holder as if it had been disposed directly in the country and the sale price or disposal value must correspond to its market value. When a subsequent indirect transfer is made, the fiscal cost will be the value proportionally paid for the shares, participations or rights of the foreign entity that owns the underlying assets located in Colombia.[62] In the case of mergers and spin-offs between foreign entities, which involve indirect disposal or sale of assets, the provisions of article 319-8 of the Tax Statute will apply.

Exceptions to the new anti-abuse provision comprise (i) the sale of shares of foreign companies listed in a recognized stock exchange (provided that no more than 20% of such shares are owned by the same real beneficiary) and (ii) cases in which the underlying asset(s) located in Colombia represent 20% or less of the book and market value of the total assets owned by the alienated entity.

It is worth mentioning that Decree 1103/2020, whereby the Indirect Sales Regime is regulated, determines that the fiscal cost for indirect sales will be that of the owner of the underlying asset. To determine the tax cost when the entire entity that owns the underlying asset is not sold and/or the entire underlying asset is not sold, the following rule applies: (i) the entity's percentage subject

[61] Colombian Tax Code §319-9
[62] Colombian Tax Code §90-3

to sale will be multiplied by the total underlying assets' ownership's percentage; (ii) the result obtained will be multiplied by the total tax cost of the underlying asset that will be indirectly disposed of or sold.

1.19 Controlled Foreign Entities ("CFE") Regime

The 2016 Tax Reform Act introduced Controlled Foreign Entities rules ("CFE rules").[63] Individuals and national companies subject to income tax in Colombia that directly or indirectly control a foreign entity and hold participation equal or higher than 10% in it are subject to this regime.

CFEs are defined as investment vehicles (such as corporations, regulated fiduciary arrangements, trusts, mutual funds, other types of trusts), and business and private foundations, that are incorporated or domiciled abroad, regardless of whether they have legal personality, and/or whether they are transparent for tax purposes.

A CFE is deemed controlled by one or more Colombian residents when any of the following criteria is met:

a. The CFE is subordinated of a Colombian resident according to §260-1 of the Colombian Tax Code;

b. The CFE is a related party of one or various Colombian residents according to §260-1 of the Colombian Tax Code; or

c. The CFE is domiciled in a non-cooperative jurisdiction (tax haven).

d. The CFE should not be a tax resident in Colombia. Income, costs and deductions relating to passive income obtained by the CFE are deemed accrued at the level of the Colombian residents that directly or indirectly control the CFE, in the same taxable year in which such income, costs and deductions accrued in the CFE. The tax recognition of these assets, costs and deductions should be made in proportion to the participation held by each Colombian resident in the CFE. However, it is important to highlight that the applicable provisions explicitly forbid the use by the controlling Colombian tax resident of any tax losses accrued at the level of the CFE.

[63] Colombian Tax Code §882-893, added by Act 1819/2016 §139

Passive income comprises:

a. Dividends or any other form of distribution, except for profits that have their origin in real economic activities carried out by the CFE or its subsidiaries. This rule shall be carefully considered on a case-by-case basis;

b. Proceeds except those obtained by either a CFE controlled by a company that is subject to "surveillance" from the Colombian Superintendence of Finance, or a foreign financial institution, not domiciled in a non-cooperative jurisdiction;

c. Royalties;

d. Income from the alienation of the CFE's participation in a passive-income-producing entity;

e. Income derived from alienation or rental of immovable property;

f. Income from the trade of goods that (i) are acquired from, on behalf or for a related party; (ii) are produced, manufactured, built, farmed, or extracted in a jurisdiction different from that of residence of the CFE; and (iii) are consumed, used or disposed of in a jurisdiction different from that of residence of the CFE;

g. Income from intercompany services (technical assistance, and technical, management, engineering, architectonic, scientific, qualified, industrial or commercial services) rendered for or on behalf of a related company in a jurisdiction different from that of the CFE.

This regime is not applicable to profits from active income. However, all revenues, costs and deductions of the CFE are presumed to give rise to passive income, when passive income represents 80% or more of the total revenues of the CFE. Likewise, as of FY2019, all revenues, costs and deductions of the CFE are presumed to give rise to active income, when active income represents 80% or more of the total revenues of the CFE.

The fact that (i) the income from trading and from the provision of services is deemed passive income, and (ii) entities controlled by Colombian tax residents are deemed CFEs, regardless of whether they are subject to a low or high level of taxation in their tax residence, is rare and implies the need to review the

impact of this new regime on a case-by-case basis for taxpayers with operations abroad.

1.20. Disclosure of Beneficial Ownership

According to article 631-4 of the Colombian Tax Code, added by article 132 of the 2016 Tax Reform Act, Colombian companies owned by Colombian or foreign companies, as well as the Colombian permanent establishments of foreign companies, regulated fiduciary arrangements and mutual funds owned by foreign companies, shall report to the Tax Service information in connection to their beneficial owners. For instance, they shall report the following information: name, date of birth, identification number, and participation in the capital of the company, among others.

The concept of beneficial owner comprises individuals that meet any of the following conditions:[64]

a. Have effective, direct or indirect, control of a Colombian company, an agent, a regulated fiduciary arrangement, an investment fund or a permanent establishment of the foreign company; or

b. Be a direct or indirect beneficiary of the operations and activities carried out by the Colombian company, agent, regulated fiduciary arrangement, investment fund or permanent establishment of the foreign Company.

Certain entities, to be defined by the Government, will collect and disclose information in connection with the beneficial owners of financial accounts.

1.21. General Anti-Avoidance Rule ("GAAR")[65]

Traditionally, the Colombian tax service has attempted to challenge tax abusive transactions based on the constitutional principle of substance over form and based on general law abuse considerations.

Additionally, as of December 27th, 2012 a GAAR was adopted. This GAAR was modified by the 2016 Tax Reform and currently states that tax abuse comprises the use or implementation of one or more contrived acts or legal transactions, without an apparent economic or commercial purpose, in order to obtain a tax

[64] Colombian Tax Code §631-5, added by Act 1819/2016 §133
[65] Colombian Tax Code §869

benefit, which is defined as the alteration, disfigurement or modification of the tax effects, for instance, the elimination, reduction, or deferral of a tax due, or increasing the balances or tax losses, or the extension of tax benefits and/or exemptions.

This GAAR introduces the following non-exhaustive list of cases in which a business is deemed to lack commercial or economic purpose:

a. The legal act or transaction is executed in a way that, in economic and/or commercial terms, is unreasonable;

b. The legal act or transaction results in a higher tax benefit that is not proportional to the economic or business risks borne by the taxpayer; or

c. An act or business apparently correct hides the true and real intention of the parties.

The Tax Service always bears the burden of proof. Additionally, the 2016 Tax Reform Act established a new administrative procedure for these cases and an increased inaccuracy penalty of 160%.[66]

The new rule maintains the provisions according to which the Tax Service could (i) re-characterize or reconfigure every transaction or series of transactions that are deemed abusive for tax purposes, as well as disregard their effects in order to prove the reality of the transaction; and (ii) pierce the corporate veil from the companies or entities that were part of the transaction(s) considered abusive.

The 2019 Tax Reform establishes that the persons involved in transactions with evasion or tax abuse purposes are jointly and severally liable for any tax, interest or penalties that the Tax Administration had not collected. Likewise, the persons who custody, administrate or manage assets in funds or vehicles used by their owners for purposes of tax evasion or abuse are jointly and severally liable for the sums that the Tax Administration had not collected.

[66] Please note that the general inaccuracy penalty is 100% of the officially added tax liability in accordance to Colombian Tax Code §648

1.22. Filing and Payment

The taxpayer must file the income tax return and pay the corresponding tax liability on the year immediately succeeding the fiscal year for which the return was prepared. Every year, the tax authorities issue a filing and payment schedule with specific deadlines that vary depending on the last number of the taxpayer's Tax Identification Number. Usually, filing and payment dates are similar year after year.

For FY2020[67], all entities including corporations must file their income tax return between April and May 2021. The taxpayer can pay the Income Tax Charge in two (2) 50% installments: The first installment on the filing date, and the second installment on June 2021, observing the yearly payment schedule issued by the tax authorities[68].

There are special filing and payment schedules issued by the tax authorities for certain companies in the list of "grand income taxpayers." For FY2020 all "grand income taxpayers" must file their return between February and April 2021. "Grand income taxpayers" benefit from a three (3) installments payment facility. For FY2020 these installments are due on February, April and June 2021.[69]

1.22.1. Foreign Held Assets Return

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.[70]

1.22.2. Statute of Limitations

Through the 2016 Tax Reform Act, the statute of limitations that the Tax Service has to audit taxpayer's returns was modified. Prior to the 2016 Tax Reform Act, with only few exceptions, the Colombian Tax Service had a 2-year term to audit tax returns. The general statute of limitations was extended to a 3-year term and special 6-year term statute of limitations for income tax returns of taxpayers obliged to comply with the transfer-pricing regime was set.[71]

[67] Decree 1680/2020
[68] Decree 1625/2016 §1.6.1.13.2.12.
[69] Decree 1625/2016 §1.6.1.13.2.11.
[70] Colombian Tax Code §607
[71] Colombian Tax Code §714

The statute of limitations of tax returns that report tax losses or carry them forward was also extended. Formerly, the statute of limitations to audit these tax returns was 5 years and such term was extended to 6 years. Please bear in mind that the 6-year statute of limitations for tax returns reporting losses would be extended for 3 additional years if the taxpayer offsets the tax losses during the last two years of the initial 6-year term.

It is important to highlight that under an alternative interpretation, which might be defended by the Tax Authorities, the statute of limitations for returns in which tax losses are reported could be of 12 years. This new rule lacks clarity and is extremely complex and could, therefore, be construed in different ways.

1.22.3. Non-payment and Lateness Penalties

Unpaid taxes are subject to daily interests at a rate equal to the highest legally accepted three (3) month rate certified by the Financial Regulatory Agency. The 2012 Tax Reform Act changed the interest calculation from a composed interest to a simplified one.[72]

Depending on the facts and circumstances of each case, other penalties apply, e.g., for non-filing, late filing, or inaccurate filing, which may range from 5% up to 100%[73] of the corresponding tax liability.[74] The general inaccuracy penalty is 100% of the officially added tax liability.[75]

1.22.4. Tax Evasion as a Criminal Offence

The 2016 Tax Reform Act introduced two new criminal offences, one in connection with income tax and one in connection with VAT.

1.22.4.1. Income Tax: Criminal Offence for Omitting Assets or Reporting Non-Existent Liabilities[76]

The corresponding provision establishes a Criminal Penalty for taxpayers that affect their income tax due or their reported income tax balance by (i) omitting assets or filing inaccurate

[72] Colombian Tax Code §634 and 635
[73] The highest 200% rate is applicable for unreported foreign held assets, as of January 1st, 2018.
[74] Colombian Tax Code §641 to 650
[75] Colombian Tax Code §648
[76] Colombian Penal Code §434A

information regarding their assets; or (ii) reporting non-existent liabilities, or filing inaccurate information regarding their liabilities. The omitted assets or non-existent liabilities should be equal to or higher than 5,000 minimum wages (approx. COP 4,543 million or USD 1.3 million).

It is worth mentioning that under 2019 Tax Reform Act[77], the materialization of the criminal offense does not require that the conduct is committed with intent or under a deceitful and malicious manner by the taxpayer; therefore, it eliminates the previous condition established by 2019 Tax Reform, whereby the taxpayer was only liable whenever the conduct was committed wilfully and intentionally.

The penalty comprises imprisonment from 48 to 108 months. If the tax value of the omitted assets, or the lower value of the declared assets or of the non-existent liabilities is greater than 7,250 minimum wages (approx. COP 6,586 million or USD 1.9 million) but less than 8,500 minimum wages (approx. COP 7,722 million or USD 2.2 million), the penalty will be increased by 1/3; in events that exceed 8,500 minimum wages, the penalty will be increased by 1/2.

The criminal liability would extinguish when the taxpayer presents or corrects the tax return and performs the corresponding payments, as long as it is within the term to correct the tax statements provided for in the Colombian Tax Code and, in any case, make the respective tax payments, tax penalties and corresponding interest.

The criminal prosecution may be initiated by special request of the Director General of the National Tax Authority ("DIAN") or the competent authority, or its delegate or special delegates, based on reasonableness and proportionality criteria. The corresponding authority shall refrain from presenting this petition, when there is a reasonable interpretation of the applicable law, provided that the facts and figures declared by the taxpayer are complete and true.

[77] Act 2010/2019 §71

1.22.4.2. VAT and Consumption Tax: Criminal Offence for not Collecting VAT or Consumption Tax[78]

Formerly there was a criminal offence referring only to taxpayers that, having collected taxes, did not pay them to the Tax Service. This provision continues to apply but was broadened to comprise taxpayers that having the obligation to collect and pay to the Tax Service VAT or Consumption Tax fail to do so.

The penalty comprises (i) imprisonment from 48 to 108 months and (ii) double of the amount of the unpaid VAT/ Consumption Tax. The criminal liability would extinguish when the taxpayer presents or corrects the tax return and performs the corresponding payments.

It is important to highlight that the corresponding provision explicitly states that if the criminal offence is committed by an entity, the natural persons in charge of fulfilling the tax obligations of the entity would be held liable.

1.22.4.3. Tax Fraud[79]

The 2019 Tax Reform Act established a new criminal offence applicable to (i) the non- filing of any tax return, (ii) the lack of report of income or the report of inexistent costs or expenses in any tax return, and (iii) or the claim of non-applicable tax credits, withheld taxes or pre-paid taxes.

This criminal offence is applicable in case the tax authorities determine a higher tax due in an amount equal to or exceeding 250 minimum wages (approx. COP 227 million or USD 65,000) and less than 2,500 minimum wages (approx. COP 2,271 million or USD 650,000).

The penalty comprises imprisonment from 36 to 60 months. This penalty can increase 1/3 or 1/2 depending on the amount of the offence.

[78] Colombian Penal Code §402
[79] Colombian Penal Code §434B

The criminal liability would extinguish when the taxpayer presents or corrects the tax return and performs the corresponding payments, as long as it is within the term to correct the tax statements provided for in the Colombian Tax Code and, in any case, make the respective tax payments, tax penalties and corresponding interest.

The criminal prosecution may be initiated by special request of the Director General of the National Tax Authority ("DIAN") or the competent authority, or its delegate or special delegates, based on reasonableness and proportionality criteria. The corresponding authority shall refrain from presenting this petition, when there is a reasonable interpretation of the applicable law, provided that the facts and figures declared by the taxpayer are complete and true.

2. Dividends Tax / Branch Profits Tax

For three decades Colombia did not tax dividend distributions, provided that the distributed profits had previously been taxed at the level of the distributing entity. However, the 2016 Tax Reform Act modified this system by taxing both the distributing company and the shareholder receiving the distributed dividends, as explained herein below.

2.1. Definition of Dividend

Dividend distributions comprise any distribution of benefits, in cash or in kind, out of equity (and not only out of profits) made by a company to its shareholders. The transfer of profits from permanent establishments in favor of their home office is a deemed dividend distribution.[80]

Distributions corresponding to paid-in capital or share premiums paid-in by the beneficiary of the distribution are not deemed dividends and are, therefore, not taxable.

[80] Colombian Tax Code §30

2.2. Rates[81]

Beneficiary	Profits Taxed at the Corporate Level	Profits Untaxed at the Corporate Level	
		2021 (31%)	As of 2022 (30%)
Colombian companies	7.5%	36.175%	35.25%
Resident individuals[82]	0% or 10%	31% or 37.9%	30% or 37.0%
Foreign companies	10%	37.9%	37.0%
Non-resident individuals	10%	37.9%	37.0%
Permanent Establishments (including branches)	10%	37.9%	37.0%

It is worth highlighting that:

a. Dividends paid out of profits that were not taxed at the corporate level, are subject to an additional withholding, after applying the general CIT withholding. This provision should be carefully reviewed under the treaties to avoid double taxation that have been executed by Colombia, particularly considering that in many of them a 0% withholding on dividends has been agreed upon.

b. Dividends received by a Colombian Company would be taxed only on the first dividends distribution, and the tax credit will be transferred until the last beneficiary of the dividends (individual or foreign investor). Dividend distributions to CHCs or within groups of companies duly registered with the Chamber of Commerce are not subject to this dividends tax withholding.

c. The fact that non-resident individuals are always subject to a 10% rate, while resident individuals can be subject to either a 0% or a 10% rate could be considered discriminatory.

[81] Colombian Tax Code §242-245

[82] The first 300 UVT (COP 10.9 million or USD 3,000) of the dividend distributed to resident individuals are exempt from Dividends Tax according to §242 of Colombian Tax Code.

d. Distributions of profits generated on of before December 31st, 2016 would be subject to the previous regime, even if distributed in 2017 or thereafter.

3. Capital Gains

The general statutory long-term (2-year holding period required) capital gains tax rate for the sale or exchange of property (including stock in Colombian corporations) is 10%[83]. Short-term capital gains are deemed as a regular item of income subject to income tax.

The taxable base of the capital gains tax is the result of the amount realized, minus the taxpayer's adjusted tax basis on the asset, plus any recaptured depreciation, amortization or deductions, as applicable. Capital gains can be offset with capital losses only.

Except in certain isolated cases, the taxpayer's capital gains tax is assessed, filed and paid with the taxpayer's regular yearly income tax assessment.

The tax authorities can challenge, through an audit, the amount that the taxpayer reported as realized in the sale or exchange of assets. Such an audit is authorized by law only when there is evidence that the taxpayer breached certain statutory pricing thresholds that use criteria such as (i) the asset's fair market value; (ii) the greater of its cadastral appraisal or the owner's self-appraisal in the case of real estate; and (iii) 130% of the "intrinsic" value in the case of stock or quotas[84].

In the case of intangibles, taxpayers must be on the lookout, because the 2016 Tax Reform Act introduced new rules to assess capital gains in the sale or exchange of intangibles, depending on whether the intangible is formed or acquired, among others[85].

Special thresholds and valuation methods apply if the operation takes place between a Colombian taxpayer and a foreign related party (see §1.11).

[83] Colombian Tax Code §300 and 313
[84] Colombian Tax Code §90
[85] Colombian Tax Code §74 and 75

4. Withholding Tax on Cross Border Payments

When Colombian source income is remitted abroad to a beneficiary that is a non-resident individual or entity, the payment should be subject to a withholding tax.

4.1. Dividends

As explained in §2 above, a withholding tax on cross-border payments of dividends/branch profits applies, at the following rates for FY2021: 10% or 37,9%.

In fact, if the corresponding profits were taxed at the corporate level, a 10% withholding tax applies; otherwise a 37,9% withholding tax would be applicable to all non-resident entities/individuals. In the case of PE's of foreign companies, the same withholding rates would be applicable on distributions of profits to the home office.[86]

4.2. Royalties

Outbound royalty payments are subject to a 20% withholding tax.[87]

It is worth highlighting that as a consequence of the 2016 Tax Reform Act, royalties paid (i) to foreign related parties or to related parties operating in a Free Trade Zone, with regards to intangible goods formed in Colombia, are not deductible; and (ii) in consideration for the acquisition of finished products are not deductible.

4.3. Technical Services, Technical Assistance, Consulting Services and Management Services

Outbound payments for technical services, technical assistance and consultancy services rendered by non-residents, in Colombia or abroad, are subject to a 20% withholding tax[88].

Cross-border payments to the home office of management fees are subject to a 33% withholding tax, regardless of whether they are deemed to generate Colombian income or not.

[86] Colombian Tax Code §407
[87] Colombian Tax Code §408, 410 and 411
[88] Colombian Tax Code §408

4.4. Other Services

Other services, different from technical services, technical assistances and consultancy services, if rendered from abroad, are not subject to withholding tax[89]. Conversely, if rendered in Colombia, a 20% withholding tax applies, unless otherwise provided by special rules.

4.5. Interest and Leasing Payments

Pursuant to the 2019 Tax Reform Act, except otherwise provided by applicable regulations, cross-border interest payments on credit facilities will be subject to a 15% withholding tax, if the term of the agreement is longer than a year, and to a 20% withholding tax otherwise. Only few exceptions as: (i) payments made in consideration for leased equipment (i.e. provided that the equipment is a vessel, helicopter or an airplane), case in which the reduced applicable withholding tax rate is 1% and (ii) financial returns from the funding of Public Private Partnerships, which are subject to a 5% withholding, as further explained in §4.6. below.

4.6. Financial Returns of Public Private Partnerships Funding

A special 5% withholding tax rate applies on cross-border payments of interest and other financial returns, in connection to loans granted to fund infrastructure projects under a Public Private Partnership structure, which are granted for an 8-yr. term, or longer. It is worth highlighting that the general withholding tax rate on cross-border payments of financial returns is 15%, or 20%, depending on the case (see §4.5. above).[90]

4.7. Capital Contributions Repatriation

For the foreign share or quota holders, reimbursements of capital contributions not corresponding to dividend or profit distributions are non-taxable items of income. Therefore no withholding tax should apply.

4.8. Tax Havens (Non-Cooperative Jurisdictions)

Payments directed to a tax haven beneficiary corresponding to items of income deemed from a Colombian source, are subject to withholding tax at a 31% rate for the FY2021.[91] Otherwise the corresponding deduction will not be allowed.

[89] Colombian Tax Code §418
[90] Colombian Tax Code §408
[91] Colombian Tax Code §408

This higher withholding tax rate should not be applicable to certain payments related with financial operations duly registered with the Central Bank, provided that they meet the criteria to be deemed as income from a foreign source.[92]

Colombian transfer pricing regulations apply on all the transactions involving a person or entity located, resident or domiciled in a tax haven, regardless of whether between related or unrelated parties. Whenever a Colombian taxpayer has operations of that kind exceeding certain thresholds, it must keep and file with the tax authorities supporting documentation, and a transfer pricing study.[93]

On October 2013 the Government published a list (updated on October 2014) indicating what countries are considered as tax havens for Colombian tax purposes[94]. The 2016 Tax Reform replaced the concept of tax havens' by the concept of "non- cooperative jurisdictions, with no or low imposition and preferential tax regimes".

The Government may continue to define which jurisdictions are non-cooperative (previously "tax havens"), according to the following criteria: (i) absence of imposition or low imposition in contrast to that applicable in Colombia for similar operations; (ii) lack of effective information exchange; (iii) absence of transparency at a legal or regulatory level; (iv) absence of a requirement of either a substantive presence, or the exercise of a real activity which has economic substance; and (v) other criteria internationally accepted for the identification of non-cooperative jurisdictions. Not all of the criteria need to be met; meeting only one criterion could be enough for a jurisdiction to be classified as non-cooperative.[95]

On the other hand, the taxpayer will have to identify the preferential regimes. For that purpose, the relevant provision of the 2016 Tax Reform Act states that preferential regimes are those that meet at least 2 out of the following 5 criteria: (i) absence of imposition or low imposition in contrast to that applicable in Colombia for similar operations; (ii) lack of effective information exchange; (iii) absence of transparency at a legal or regulatory level; (iv) the absence of a requirement of either a substantial presence, or the exercise of a real activity which has economic substance; and (v) the fact that the regime is available only for non-residents (ring fencing). Notwithstanding the above, the Government could issue a list of preferential regimes, based on the aforementioned criteria and on any other internationally accepted criteria.

[92] Colombian Tax Code §124-2
[93] Colombian Tax Code §260-7
[94] Decree 1966/2014 (as modified by Decree 2095/2014)
[95] Colombian Tax Code §260-7

In order to determine whether tax havens' regulation is applicable in a certain case, the individual facts and circumstances should be carefully considered.

4.9. Capital Gains

Outbound payments taxable in Colombia as long-term capital gains (according to §3 above) are subject to a 10% withholding tax (i.e. the same rate as that of the final tax). Taking into account that the withholding is performed on the gross payment, while the tax is assessed on a net basis, the taxpayer will always have a balance, which can only be recovered by claiming it back from the Tax Authorities.[96]

5. Value Added Tax ("VAT")

5.1. Tax Rates

VAT's general rate is 19%.[97] A reduced 5% rate applies for certain goods and services.[98]

5.2. Taxable Transactions

The sale and importation of movable tangible property, the sale and licensing of intangible assets associated to industrial property (such as: trademarks, industrial designs, patents for inventions, among others), as well as the provision of services in Colombia or from abroad, are subject to VAT. As a general rule, the sale of fixed assets does not levy VAT[99]. Certain public entities of the national and local territorial level are not subject to VAT.[100]

In most cases of services provided to a Colombian party from abroad, a reverse charge applies and, thus, it is the Colombian party that is obliged to perform VAT back-up withholdings and directly pay to the tax authorities 100% of the accrued VAT.[101]

[96] Colombian Tax Code §415
[97] Colombian Tax Code §468
[98] Colombian Tax Code §468-1 and 468-3
[99] Colombian Tax Code §420
[100] Act 21/1992 §100 and Act 30/1992 §92
[101] Colombian Tax Code §437-2

Nonetheless, the foreign service provider may be subject to VAT registration and filing obligations, whenever the Colombian beneficiary of the services is not obliged to perform the reverse charge.[102]

Certain goods and services are exempted ("zero-rated")[103] or not taxable with VAT ("excluded")[104]. In the case of excluded goods and services, any input VAT paid by the taxpayer to its goods and services suppliers has to be capitalized as part of the cost of the excluded goods sold. In the case of zero-rated goods and services, any input VAT paid by the taxpayer to its goods and services suppliers generates a VAT credit[105] (See §5.4. below). In certain cases VAT credits from zero-rated transactions may result in a refundable VAT balance. Exports are VAT exempt (exempt with credit).

The lists of zero-rated and excluded goods are extensive and should be reviewed in detail on a case-by-case basis.

5.2.1. Digital Services

The 2016 Tax Reform Act established a presumption under which any service rendered from abroad but with a beneficiary located and resident in Colombia is deemed as a service rendered inbound, and therefore, subject to VAT unless otherwise provided.[106] This presumption especially has an impact over electronic services rendered to Colombian beneficiaries through software, mobile applications, and satellite broadcasting, among others.

Foreign service providers may voluntarily elect to be subject to VAT withholdings, on all payments received through Colombian credit cards or debit cards issuers, and/or Colombian sellers of gift cards or prepaid cards for such services, and/or any other Colombian entity or person designated by DIAN who receive payments on behalf of such foreign service renderers.

Foreign service providers who elect the VAT withholding system must file VAT returns and pay the corresponding VAT until the withholding agents begin to practice the corresponding VAT tax withholdings.

[102] Colombian Tax Code §437-2, Paragraph 2
[103] Colombian Tax Code §477 to 481
[104] Colombian Tax Code §423-428
[105] Colombian Tax Code §489
[106] Colombian Tax Code §420, Paragraph 3

Under applicable regulations, the following digital services are subject to VAT.[107]

a. Streaming services (including movies, TV shows, music, sports and any other kind of streaming).

b. Digital platform for the digital distribution of mobile applications.

c. Supply of online marketing/advertisement services.

d. Educational or instructional electronic supply.

e. Although pursuant to the 2019 Tax Reform cloud computing and hosting shall remain untaxed, further digital services were added to the list of taxable services, including (i) services rendered through digital platforms, (ii) the assignment of the rights of use or the right to exploit intangibles, and (iii) a catch all provision referring to "other digital services destined to users located in Colombia".

5.2.2. Franchises

Franchisees who are currently subject to consumption tax can opt-out from such treatment (until June 2019). Franchisees opting out of consumption tax will be subject to VAT. As of the entry into force of the 2019 Tax Reform Act all franchised restaurant sales will levy VAT instead of consumption tax.

5.3. Taxable Base

As a general rule, the taxable base is the price or value of the consideration paid for the goods or services; this consideration should correspond the fair market value of such goods or services.[108]

There are cases in which certain items must be either included or excluded from the taxable base and/or cases with either mandatory or optional taxable bases, which should be analyzed on a case-by-case basis.

[107] Colombian Tax Code §437-2 Section 8
[108] Colombian Tax Code §447

5.4. Creditable VAT

Unless otherwise provided, all VAT paid to suppliers of goods and services that constitute a cost or expense of the taxpayer's income producing activity, is creditable towards the VAT collected by the taxpayer from its clients.[109]

VAT paid by the buyer on the acquisition, construction and importation of tangible fixed assets used in the taxpayer's income producing activity is creditable against income tax.[110]

There are certain limitations on the VAT credits available for zero-rated transactions.

5.5. Selected VAT Incentives

The following are some of the available statutory VAT incentives:

5.5.1. Temporary Importation of Heavy M&E

Temporary importation of "heavy" M&E not produced in Colombia and effectively used in a "basic industry" in Colombia, should not be subject to import VAT.[111]

5.5.2. Environmental Monitoring and Control Systems

Any domestic or imported equipment or devices to be used in the construction of control and monitoring systems required by environmental law and standards in any activity, are not subject to VAT. Access to this exemption requires certification of the environmental authority qualifying the specific equipment or devices acquired.[112]

[109] Colombian Tax Code §484-1 and 485
[110] Colombian Tax Code §258-1
[111] Colombian Tax Code §428
[112] Colombian Tax Code §428

5.5.3. Tax Credit for VAT paid in the Acquisition, Construction or Import of Tangible, Fixed Assets Used in the Taxpayer's Income Producing Activity

The 2019 Tax Reform Act states that as of FY2020 taxpayers have the right to a full tax credit against income tax of the VAT paid in the acquisition, import or construction of tangible fixed assets used in the taxpayer's income producing activity.[113]

This is an important benefit for businesses because previous law only granted a deduction of the VAT paid in the acquisition or import of capital assets. Hence, instead of recovering up to 31% of the VAT paid, under the current rule, businesses will recover 100% of the VAT paid in the acquisition, import or construction of a fixed asset. Consequently, the VAT paid will not be considered as part of the asset's cost for depreciation purposes.

5.5.4. Renewable energy

Certain services (not all), rendered in Colombia or abroad, as well as the purchase of certain goods, equipment and merchandise, related to the investment and pre-investment in projects aiming to the generation or utilization of renewable energy, may be eligible for a VAT exemption. For purposes of benefitting from this VAT exemption, the applicable regulations provide for a number of lengthy and cumbersome requirements that include, among others, that the specific service has to be included in a list issued by the Authorities, a certification issued by the Environmental Authority and filing an application that meets the requirements included in the regulations issued by the Administration of Mines and Energy. The evaluation of the eligibility of the VAT exemption should be reviewed on a case-by-case basis.[114]

5.5.5. VAT Exclusion for eligible Imported M&E not produced in Colombia used in the treatment of atmospheric emissions

The VAT exclusion referred to in this section is restricted to imported M&E, as long as: (i) there is no national production of the said M&E, (ii) it is used for the depuration or treatment of atmospheric emissions, and (iii) are part of an Environmental Program approved by the Ministry of Environment aimed at improving the environment. This VAT exclusion

[113] Act 2010/2019 §95
[114] Act 1715/2014 §12

also applies to equipment used within an Environmental Control System ("ESC"), including those necessary to comply with the Montreal Protocol. Thus, the Project needs to qualify as an ECS.

Applicable regulation defines ECS as the organized set of national or imported equipment, elements and machinery, used for carrying out actions aimed at achieving measurable and verifiable results in: (i) reducing the demand for renewable natural resources; or (ii) the prevention or reduction of the volume of atmospheric emissions, or the improvement of their quality, among others (that in our view do not apply to the Project). ECS can occur within a productive process or activity ("environmental control at source").

The applicable regulation defines Environmental Program as a set of actions directed to the development of the national environmental plans and policies set forth within the National Development Plan and/or formulated by the Ministry of Environment or directed at the implementation of regional environmental plans prescribed by the Environmental Authorities.[115]

As in the previous case, it is important to bear in mind that for purposes of this VAT exclusion and in accordance with the applicable regulations, there is an exhaustive list of M&E and elements that are not eligible for the environmental certification from the competent Environmental Authority.

5.5.6. VAT Exclusion for M&E used in projects and activities previously registered with the RENARE

Article 26 of Law 1931/2018, states that as part of the National Information System on Climate Change, the National Registry for the Reduction of Greenhouse Gas Emissions ("RENARE") is established as one of the necessary instruments for managing the information regarding GEI mitigation initiatives.

In accordance with the provisions of section 16 of article 424 of the Colombian Tax Code, the sale of M&A for the development of projects or activities that are registered in the RENARE will be excluded from VAT, according to regulations issued by the Ministry of Environment and Sustainable Development.

[115] Decree 1625/2016, §1.3.1.14.4

5.6. Payment and Filing

VAT is paid on a bimonthly basis or every four months, depending on the taxpayer's gross income from the previous year.[116] The VAT return must be filed and paid in full on the filing dates scheduled by the government for these purposes.[117]

5.7. Andean Pact VAT Harmonization

Andean Pact Directive 599 establishes the framework for the harmonization of the VAT regimes in member countries, which is expected to take place in the future.

6. Consumption Tax

Certain economic activities are subject to a non-creditable consumption tax at a general statutory 8% rate, and not to VAT.[118]

Services taxed at the general 8% consumption tax rate include restaurant services, bar, grills, pubs and franchised restaurant sales. Franchisees opting out of consumption tax will be subject to VAT.

Mobile internet services provided by the carriers are subject to consumption tax at a reduced 4% rate. This is on top of the already existing 4% for the telephone service component of the mobile plans.

Most sales of immovable property (not only housing) for a price exceeding approximately USD 275.000 will levy a 2% consumption tax.

[116] Colombian Tax Code §600
[117] Decree 1680/2020
[118] Colombian Tax Code §512-3

7. Bank Debits Tax

This is a national level tax. Colombian banks (and other savings institutions) must withhold the tax at source. It applies on any funds deposited that are either withdrawn or transferred from checking or savings accounts.[119] The taxable base is the amount withdrawn or transferred. The tax rate is 4 per thousand. There are very limited exemptions to this tax. It is an important tax to keep in mind when structuring a transactions' cash flow.

8. Net-Equity Tax

The 2019 Tax Reform Act introduced for 2020 through 2021 a Net-Equity Tax ("NET").[120] Resident and non-resident individuals, as well as foreign entities that on January 1st, 2020 had a net-equity equal to or higher than COP 5.000 million (approx. USD1.6 million), will be subject to the NET at a 1% rate. Contrary to past similar taxes, Colombian entities (corporations and partnerships) will not be subject to this tax.

NET's taxable base is determined by subtracting the taxpayer's debts from its equity. Additionally, NET taxpayers are allowed to subtract:

a. In the case of individuals, the first 13.500 UVT (approx. COP 480.6 million or USD 143,490) of the value of the house of residency of the taxpayer provided that it is taxable; and

b. 50% of the assets that are subject to the complementary regularization tax that have been declared in the FY2020 and that have been repatriated to Colombia and invested permanently in the country.

In this edition of the NET the triggering event and the dates in which the obligation to pay the tax arises are separated. Therefore, for NET taxpayers the NET base for 2021 may increase or decrease with respect to the original tax base determined for 2020 only by 25% of the previous year's inflation rate.

[119] Colombian Tax Code §871
[120] Colombian Tax Code §292-2 added by Act 2010/2019 §43

9. Local tax on industrial, commercial and service activities

This is a municipal (local) level tax applicable to income deriving from all industrial, commercial and services activities performed in the territory of a district or municipality.[121] The taxable base is the sum of the taxpayer's gross revenue from the activity carried out in the relevant municipality. The tax rates vary from one district or municipality to the next and range from 2 per thousand to 13,8 per thousand. This tax is usually paid and a return is filed yearly, with the exception of some municipalities that have adopted a two (2) month taxable period (e.g., Bogota). Incentives for this tax are created and regulated by each district or municipality. Therefore, the availability of incentives must be confirmed on a case-by-case basis.

According to article 115 of the Colombian Tax Statute, which was modified by article 86 of the 2019 Tax Reform Act, as of FY2020, 50% of the turnover tax will be creditable against the taxpayer's Income Tax liability. As of the FY2022, 100% of the turnover tax will be creditable against the taxpayer's Income Tax liability.

10. Property Taxes

There are municipal (local) level taxes on real estate and vehicles. Each district or municipality adopts the applicable tax rates. Therefore, they vary from one municipality to the next. Real estate tax rates usually range between 0,5% and 1,6%, however, certain exceptions may apply.[122] Motor vehicles tax rates range between 1,5% and 3,5%.[123] Unless otherwise specified, the taxable base in the case of real estate is the cadastral value of the property, and in the case of motor vehicles is their fair market value. Unless otherwise specified in the corresponding municipal ordinances, filing and payment is usually on a yearly basis.

Available local tax incentives, if any, are regulated by the relevant municipal ordinance, applicable in the municipality in which the property is located or registered. Therefore, the availability of incentives must be confirmed on a case-by-case basis.

[121] Act 14/1983 §32
[122] Act 1450/2011 §23
[123] Act 488/1998 §145

11. Registration Tax

A taxpayer registering acts and documents with the cadastral registry or merchants' registry offices is subject to this tax. Depending on the type of act or document, the tax rate ranges from 0,5% to 1% when the registration is with the cadastral registry office, and from 0,1% to 0,7% when the registration is with the merchants' registry office.[124] Unless otherwise provided, the taxable base is the amount of the price or consideration reflected in the document. Very few documents subject to registration are exempt from this tax. If one of the parties to the document is a public entity, the taxable base is reduced to 50% of the regular taxable base.

12. Local Stamp Taxes

Certain laws authorize departments to enact local stamp taxes to support investments in hospitals, universities and other public entities and activities. Such local stamp taxes are usually levied at a 1% rate on the gross income attached to the taxable event.

Pursuant to a revenue ruling from the Colombian Tax Service, in some cases the amounts paid by the taxpayer that correspond to stamp taxes can be deducted from CIT.

Before engaging in activities, agreements or transactions with effects within the jurisdiction of any department in Colombia, the taxpayer should confirm whether a local stamp tax that could be triggered by such activity, agreement or transaction is in place, as well as the applicable rate of any relevant stamp tax.

13. Royalties on Natural Resources Exploration Activities

Unless otherwise provided, all natural resources exploration activities are subject to the payment of royalties. This summary does not cover the royalty regime. Prior to engaging on any natural resources exploration activity in Colombia, it is advisable to seek qualified legal advice on the royalty regime applicable to the specific activity and jurisdiction.

[124] Act 223/1995 §230

14. Welfare Contributions

14.1. Retirement Contributions

The employee can choose between private or public pension funds.[125] The contribution must be equal to at least 16% of the employee's wage; both employer and employees can make additional voluntary contributions. Contributions must be computed and paid to the pension funds monthly. The employer must cover 12%, and the employee the remaining 4%. The employer must withhold the employee's part of the contribution and deposit 100% of the monthly contribution in the pension fund.[126]

14.2. Health Contributions

The employee must be affiliated to a general Health Care Plan ("HCP"). Contributions to the HCP must be equal to 12,5% of the employee's wage. Contributions must be computed and paid monthly. The employer must cover 8,5% and the employee the remaining 4%. The employer must withhold the employee's part of the contribution and pay 100% of the monthly health contribution.[127]

14.3. Employment Risks Insurance System

The employee must be affiliated to an employment risk insurance system of its election. The contribution varies between 0,348% and 8,7% of the wage of the employee (depending on the activity) and are computed and paid monthly. The employer must cover and pay to the insurer 100% of the contribution.[128]

14.4 Contributions to Child and Family Protection Services, Public Training System, and Compensation Funds

These contributions were mostly eliminated as a consequence of the introduction of the CREE (see §1.4. above).

[125] Act 100/1993 §59
[126] Act 797/2003 §7 and Decree 4982/2007 §1
[127] Act 100/1993 §204
[128] Decree 1772/1994 §13

14.5. Unemployment Fund Contribution

The employer must contribute an amount equal to one monthly wage per year to the employee's unemployment fund of choice[129]. In addition, the employer must pay to the employee a 12% yearly interest on the amount of that yearly contribution[130]. Both the contribution and the interest must be paid on a yearly basis.

14.6. Incidence on Wages Deductibility

Payment of the abovementioned welfare contributions is a requirement for the corresponding wages paid by the employer to be deductible.[131]

15. Customs Imports Regime

The following sections summarize some (not all) general aspects of the Colombian customs imports regime.

15.1. Imports Custom Duties

Unless exempted, zero-rated or exceptionally subject to a different rate, importation of goods is subject to a 19% import VAT.[132] In addition to import VAT, imports are also subject to custom duties generally ranging between 5% and 20%.[133] Colombia has entered into Preferred Custom Duties Agreements with many countries, reducing the applicable custom duties for certain goods.

15.2. Taxable Base

Unless otherwise provided, custom duties are computed on the CIF value of the goods, while import VAT is computed on the CIF value plus the corresponding custom duties.[134]

[129] Colombian Labor Code §249
[130] Act 52/1975 §1
[131] Colombian Tax Code §108
[132] Colombian Tax Code §468
[133] Decree 2153/2016
[134] Colombian Tax Code §459 and Colombian Customs Code §26

15.3. Customs Valuation

Colombian custom valuation rules are those of the WTO valuation rules. For valuation purposes, the Andean Pact valuation rules in Directives 378 and 379 apply. These rules are also similar to the first mentioned rules.[135]

15.4. Filing and Payment

An import return must be filed upon nationalization of the goods. As a general rule in the ordinary importation regime, custom duties and import VAT must be paid and an imports return filed within the first month following the arrival of the goods to Colombia. In certain cases the importer can request to the custom authorities a one (1) month filing extension.[136]

15.5. Used M&E

Importing used M&E (and spare parts) requires a previous import license that is granted by the foreign trade authorities if the M&E are not produced locally or in an Andean country. In practice, the importation of used spare parts is hardly authorized.[137]

15.6. Free Trade Agreements ("FTA")

Colombia currently has sixteen (16) Free Trade Agreements in force, including, among others, FTAs with various Latin-American countries, an FTA with the United States of America, an FTA with Canada and an FTA with the European Union. Although these FTAs differ in the details of the specific regulation therein, the structure of most of them is quite similar.

The FTAs are divided by chapters, each regulating a particular area that affects trade. Some of the main chapters regulate: (i) National Treatment and Market Access – establishing main rules for market access of goods and tariff elimination schedules, (ii) Rules of Origin – establishing rules to consider a product's origin, (iii) Traditional Trade issues – comprising rules on technical barriers to trade, and sanitary and phytosanitary measures, (iii) Trade Remedies – regulating

[135] Colombian Customs Code §167
[136] Colombian Customs Code §115
[137] Decree 925/2013 §14

subsidies, safeguards, and antidumping and countervailing measures, (iv) Investment – establishing investment protection and international arbitration for solving investment disputes under the FTA, (v) Trade in Services – liberalizing market access in services, and (vi) Intellectual Property – providing for further protection and regulation on intellectual property. Other issues such as government procurement, labor, environmental matters, among others, are also dealt with in some of these FTAs.

It is important to take into account that each FTA differs on the specific regulation of the areas mentioned. For instance, tariff elimination schedules vary for each FTA, as well as the rules of origin, services liberalization schedules, and most of the rules and procedures established in each agreement.

15.7. Selected Custom Duties Imports Regimes Available

In addition to the ordinary importation regime, a variety of special customs regimes are available for M&E imports. The applicable duties and VAT vary depending on the applicable regime.

Both the ordinary and the temporal imports regimes are available for M&E importations whether leased, on free bailment, or contributed in kind to a Colombian company or branch. Purchased M&E can only be imported through the regular importation regime. Below, some of the features of the different importation regimes are described.

Please bear in mind that on 2019, the Colombian government issued a new Customs Code ("Decree 1165/2019"), which introduces some changes regarding the imports regimes described below, which entered into force as of August of 2019.

15.7.1. Regular Imports Regime

It applies to all goods that will remain permanently in Colombian territory without restrictions.[138] Upon nationalization, full payment of custom duties and import VAT is required. For foreign exchange purposes, these imports may be reimbursable or non-reimbursable. Non-reimbursable imports require an importation license.

[138] Colombian Customs Code §173-192

15.7.2. Long-Term Temporary Imports Regime

It applies to M&E and spare parts listed as "Capital Goods" in the applicable regulation. This regime is used whenever the temporally imported goods are expected to remain in Colombia for a period between 10 months and 5 years. Under special circumstances, the Customs Administration has the authority to approve a longer importation period. During the importation period, the payment of custom duties and import VAT will be deferred, being payable in equal installments every six months.

It is important to keep in mind that the value of the customs duties and the import VAT must be computed upon the temporary nationalization and that the customs return must be filed within the above-stated one (1) month period. Regardless of whether the Customs Administration authorizes an extension of the importation, the duties and VAT must be paid within the initial 5-year period.

The importer must extent a compliance bond, guaranteeing payment default or delays. For foreign exchange purposes, the temporary importation may be reimbursable or non-reimbursable. Non-reimbursable imports require an importation license. Upon expiry of the term, the importer can either re-export or nationalize the goods without paying any additional amounts for custom duties or import VAT.[139]

15.7.3. Long-Term Temporary Imports Regime for Leased Equipment

The rules of this regime are similar to the above-explained rules. Nevertheless, given that for foreign exchange purposes lease payments are treated as foreign debt payments, the imports should be treated as non-reimbursable. In addition, this regime allows the substitution of the goods initially imported and the importation of the corresponding spare parts (if any).[140]

15.7.4. Short-Term Temporary Imports

This regime applies to specific goods that will be used for certain activities taking no longer than six (6) months. The

[139] Colombian Customs Code §145 and 203
[140] Colombian Customs Code §211

customs service can authorize a three (3) months extension. At the expiration of the authorized importation period, the goods must be re-exported or the importer must apply for a long-term importation regime; otherwise the goods are forfeited and/or a 200% fine will be imposed. Although for control purposes an imports return must be filed, the operation triggers neither customs duties nor VAT, provided that a guarantee for 150% of the VAT and customs duties amount is subscribed.[141]

15.7.5. VAT Incentives

The VAT incentives mentioned above are available for imported goods, only if the legal requirements are met.

15.7.6. Free Trade Zones ("FTZ")

Colombia has an attractive FTZ regime that should be carefully explored by importers and investors interested in operating in Colombia. Besides the logistic advantages of operating in a FTZ, the Colombian FTZ regime implies, among others, the following benefits: (i) There are neither customs duties nor import VAT upon the "introduction" of foreign goods to the FTZ, (ii) Qualified FTZ users are subject to a special 20% income tax rate (instead of 34%), (iii) If the legal requirements are met, the sale of goods from the rest of the territory to FTZ users, which were acquired to develop their corporate purpose, are VAT exempt.[142]

Please note that transfer-pricing regime is applicable between FTZ users and related taxpayers located in Colombia (outside the FTZ).

15.7.7. "Plan Vallejo" Special Imports Regime (special Draw-back mechanism)

After meeting certain requirements, under the "Plan Vallejo", raw materials and other goods can be temporarily imported without triggering custom duties and enjoying a preferential VAT treatment. Both agricultural and services activities could be covered with the "Plan Vallejo".[143]

[141] Decree 1165/2019 §202, §205 and §615
[142] 1004/2005 §1 to 4 and Colombian Tax Code §240-1
[143] Resolution 1860/1999

15.7.8. International Trading Companies ("Sociedades de Comercialización Internacional")

The qualification as an International Trading Company is available for those companies whose main purpose is the commercialization and sale of Colombian products abroad. In this regard, an International Trading Company can buy or acquire goods in the national market issuing a certificate to the seller, without paying the corresponding VAT, as long as these products are exported within 6 months as of the date of issue of the corresponding certificate. In order to obtain this qualification, the company must accredit minimum net assets, constitute a guarantee and must not have been subject to tax or customs penalties during the 5 years prior to the filing of the application, among others.[144]

[144] Decree 1165/2019 §65-74

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