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NEW TAX REFORM BILL INTRODUCED TO CONGRESS

On April 15th, 2021 the Colombian Government introduced a new Tax Bill to Congress. In this issue, Colombian Tax Flash summarizes some of the main changes proposed in the 2021 Tax Bill, in connection with Corporate Income Tax, and Dividends Tax. Additionally, we refer to changes that will impact foreign digital services providers, power generation projects and non-residents investing via portfolio investments, private equity funds and other collective vehicles. Lastly, we refer to the proposed amendments in connection with the disclosure of beneficial ownership.

I CORPORATE INCOME TAX

Amongst other changes, the 2021 Tax Bill proposes

A. The introduction of a progressive marginal corporate income tax rate. Currently, the applicable rate is 31% for all entities. Under the 2021 Tax Bill, any corporate person obtaining a net income of up to COP 500.000.000 (approximately USD 137.908) would be taxed at a 24% rate; any income in excess would be taxed at a 30% rate.

B. A 3% surcharge applicable to all corporate taxpayers, for FY 2022 and 2023.

C. Replacing the corporate income tax credit of VAT paid in the acquisition, construction and import of tangible fixed assets for a VAT credit. In fact, currently, the VAT paid by the purchaser on the acquisition, construction and import of tangible fixed assets used in the taxpayer's income producing activity is creditable against income tax. The Tax Reform Bill is proposing that such VAT would be treated as input VAT, creditable against output VAT, which may generate a balance that, under certain circumstances, may be refundable.

D. The elimination of the increase (from 50% to 100%) in the corporate income tax credit of the turnover tax paid, which under current regulation was expected to occur as of FY 2022. This implies that, if the Tax Bill is approved, only 50% of the turnover tax (ICA) will continue to be creditable against the payable income tax liability.

E. The elimination of several income tax exemptions, including, among others, the ones applicable to income from (i) power generation, referred to in §IV(A) below, (ii) fluvial transportation, (iii) forestry plantations and sawmills. A remarkable exception is the exemption for income from creative industries.

II DIVIDENDS TAX

The Tax Reform Bill proposes an increase in the dividends tax rate, from 10% to 15%.

III DIGITAL SERVICES PROVIDERS

The following proposed changes would impact Colombian taxation on foreign digital services providers:

A. Income from advertising services rendered from abroad would be deemed as Colombian source income and, therefore, be subject to a 20% withholding tax.

B. Cloud computing and hosting, which are currently not subject to VAT, would be added to the list of taxable services at the 19% general VAT rate.

IV POWER GENERATION PROJECTS

In the case of power generation projects, the 2021 Tax Reform Bill proposes:

A. The elimination of the fifteen (15) year exemption on income from power generation activities based on wind, biomass and agricultural waste technologies.

B. The increase in the VAT rate applicable to solar panels, controllers and other equipment used in the generation of solar energy, from 0% to 5%.

C. Taxing energy with VAT at the general 19% rate. Currently energy is qualified as a good excluded from VAT.

D. Taxing at the general 19% VAT rate the provision of energy as a public utility, for certain consumers.

E. That machinery and equipment for the development of projects or activities that are registered at the National Registry for the Reduction of Greenhouse Gas Emissions (RENARE) would no longer be excluded from VAT and be subject to a 5% VAT rate instead.

However, please note that most incentives applicable to renewable energy projects, including the 50% bonus deduction, the accelerated depreciation term, the VAT exclusion and the customs duties exclusions (if the project is elegible pursuant to Law 1715/2014) as well as other benefits currently in place would remain unchanged.

V PRIVATE EQUITY FUNDS, COLLECTIVE INVESTMENT VEHICLES AND FOREIGN PORTFOLIO INVESTMENTS

A. Private equity funds and other collective investment vehicles, in Colombia, are deemed as disregarded entities for income tax purposes. Therefore, all the activities and investments performed by them are taxed at the level of the investor, as if it had directly undertaken the activity.

Currently, and subject to meeting a series of requirements, income must only be recognized upon distribution of profits to the investors, and distributions are first deemed to be a reimbursement of capital and only once the capital has been fully reimbursed the distributions are taxed as profits. One of the current requirements for achieving deferral is that no more than 50% of the participation rights in the collective investment vehicle (including private equity funds) is held by the same beneficial owner.

The Tax Reform Bill proposes modifying this requirement, reducing the threshold from 50% to 10% of an investor's participation rights.

B. In the case of foreign portfolio investments, the 2021 Tax Reform Bill is proposing the reduction of the withholding tax rate applicable on yields of public or private fixed income securities, from 5% to 0%.

VI BENEFICIAL OWNERSHIP

Since 2017, 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. The Tax Reform Bill proposes replacing the current definition of "beneficial owner", with a definition of "final beneficiary", which is broader. In general terms, a final beneficiary is the individual who, directly or indirectly, owns or controls a client or an individual on whose behalf a transaction is carried out. Those who, directly or indirectly, exercise effective or final control over an entity are also considered as final beneficiaries.

If you have any queries, please contact your trusted partner at Lewin & Wills, or directly:

Cristina Stiefken (Partner) cstiefken@lewinywills.com
Daniela Garzon (Associate) dgarzon@lewinywills.com