

NOTES ON THE 2021 TAX REFORM APPROVED BY CONGRESS: SOCIAL INVESTMENT LAW

Hereinbelow, we highlight some tax issues related to Act 2155 of 2021 (Social Investment Act) recently approved by Congress.

AMENDMENTS INTRODUCED BY THE SOCIAL INVESTMENT LAW

1. CORPORATE INCOME TAX (CIT) RATE INCREASE FOR LEGAL ENTITIES

- ➔ Increase of the general CIT rate from 30% to 35%.
- ➔ For financial entities, the rate will be 38% between 2022 and 2025.
- ➔ Only 50% of the local turnover tax paid will be creditable from CIT.
- ➔ No modification of special regime with reduced CIT rates such as free trade zones, mega-investments and hotel activities.

2. SIMPLE TAXATION REGIME (SIMPLE)

The SIMPLE replaces the income tax, local turnover tax and the consumption tax. Also, it establishes fixed rates applicable to the gross income. Such rates could be lower than Income Tax rates. From now on, a greater number of individuals and legal entities may access this regime. As of 2022 those who obtain a gross annual income of less than COP 3,630,800,000, and who meet the other requirements to access the SIMPLE, will be eligible for this regime.

3. REGULARIZATION TAX 4.0

Fourth version of the regularization tax at a rate of 17%. The tax will be levied on undisclosed assets or non-existent liabilities held by January 1st, 2022.

4. MUTUAL AGREEMENT TERMINATION PROCEDURES

As in previous tax reforms, Congress introduced mutual agreement termination of controversies with DIAN. These facilities grant a temporary reduction of penalties and interest in exchange for an acceptance of the tax liability from the taxpayer.

5.

ANTI-EVASION PROVISIONS

Employers would receive a government stimulus of 25% of the minimum monthly wage (approx. COP 227,000 (USD 59)) for each new worker between 18 and 28 years.

- ➔ DIAN may register in the National Tax Registry (RUT) any individual who is subject to tax obligations and not yet registered.
- ➔ A system is created which incorporates electronic documents such as electronic invoices and electronic equivalent documents.
- ➔ Based on crosschecks of information reported by third parties, DIAN could assess the income tax payable by taxpayers through the issuance of an invoice.
- ➔ Unification of the definition of final beneficiary based on international exchange of information standards, and creation of a Registry of Beneficial Owners.

6.

REDUCED STATUTE OF LIMITATIONS

A reduced statute of limitations is established for taxable periods 2022 and 2023. The reduced statute of limitations apply for taxpayers that increase their net income tax liability by at least 35% or 25% with respect to the net income tax assessed on the return of the immediately preceding year. The statute of limitations will apply after 6 or 12 months, respectively, if the Tax Administration has not formally started an audit process.

7.

INCENTIVES FOR THE CREATION OF NEW JOBS

- ➔ Employers would receive a government stimulus of 25% of the minimum monthly wage (Approx. COP 227,000 (USD 59)) for each new worker between 18 and 28 years.
- ➔ Companies affected by the National Strike would receive a government stimulus of 20% of the minimum monthly wage (Approx. COP 182,000 (USD 47)) for each employee.

8.

OTHER NEW ASPECTS INTRODUCED DURING THE LEGISLATIVE PROCESS

- ➔ From now on, the automatic refund mechanism for VAT purposes will only apply to producers of exempt goods if the deductible taxes and the exempt operations are supported by electronic invoices.
- ➔ Extension of VAT and consumption tax exemption benefits during 2022 to those who develop food and beverage selling activities and belong to the SIMPLE Regime.

ASPECTS ELIMINATED OR NOT INCLUDED IN THE APPROVED TEXT OF THE SOCIAL INVESTMENT LAW

We highlight some measures that were included in this bill or past tax reform bills and were not approved by Congress this time.

1. ASPECTS ELIMINATED DURING THE LEGISLATIVE PROCEDURE

➔ Withholding Tax on Profits Obtained from Foreign Investments in Fixed-income Securities.

A proposed provision reducing the withholding tax on profits obtained from foreign capital investments in this type of securities from 5% to 0% was eliminated.

➔ Notarial Georeferencing System

Real estate transfers would not be subject to a georeferencing mechanism to verify the commercial value of the property.

2. ASPECTS NOT INCLUDED

➔ Net-Worth Tax

Unlike the first tax reform bill presented by the Government in March 2021, the approved Social Investment Act did not establish a new net-worth tax.

➔ Green taxes and taxes on sugar-sweetened beverages.

The Act did not incorporate amendments to the "green taxes" that tax the consumption of single-use plastics or carbon emissions, which were included in the last reform bill. Nor were taxes on sugared beverages included.

➔ Capital Gains Tax

We highlight that the Social Investment Act did not include any changes regarding the taxable base or rate of the capital gains tax, even though the first reform bill filed by the Government in 2021 proposed a change to the taxable base of the tax for donations, inheritances, and other operations, according to which the base would be comprised by the commercial value and not the tax cost of the assets.