

LEWIN & WILLS

1978

RECENT FAVOURABLE COURT DECISIONS

Lewin & Wills represented clients in **tax litigation** that recently concluded **favorably** with rulings of the Colombian Council of State. These rulings established relevant jurisprudential criteria that we would like to share with our clients and peers:

1.

TAX CONSEQUENCES OF CONTRIBUTIONS TO NATIONAL COMPANIES: RULING 26226 OF JULY 28, 2022

- In this ruling, the Council of State determined that a **cash contribution** made to a national company **cannot be considered taxable income for the recipient company**, even if the documents that record such contribution do not contain an express mention of the intention to adhere to the neutral contribution regime established in article 319 of the Tax Code.

2.

TRANSFER PRICING: RULING 24637 OF JULY 14, 2022

- In a transfer pricing case, the **Council of State accepted our position regarding the adjustment of costs declared by the taxpayer.**
- Specifically, this Court decision confirmed that: (i) the comparability adjustment for market risk made by the taxpayer was due to a shortfall in income with a non-related party, and not to excessive or manipulated costs that would have been incurred with related parties, since the prices agreed with these did not generate losses in the exercise; and (ii) in order to make comparability adjustments it is possible to use controlled companies, provided that it is demonstrated that such control did not representatively affect the results, that is, that the differences between the situations compared do not affect the conditions analyzed in the methodology, such as price or margin.

3.

VAT ON MEMBERSHIPS TO SHOPPING CLUBS
RULING 25410 OF JUNE 16, 2022:

- The Colombian Council of State determined that the payment of a membership to a shopping club is **not subject to VAT** since it is a **right** provided to costumers to enter the site where products are offered and not a service.

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