2024

Colombian Corporate Taxation Overview

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ACRONYMS

AMTI	Alternate Minimum Taxable Income
CFE	Controlled Foreign Entities
CHC	Colombian Holding Companies
CIT	Corporate Income Tax
COBE	Continuity of business enterprise
COI	Continuity of interest
CTC	Colombian Tax Code
DTT	Double Tax Treaty
ESC	Environmental Control System
FTC	Foreign Tax Credit
FTZ	Free Trade Zone
FY	Fiscal Year
GAAR	General Anti-Avoidance Rule
HCP	Health Care Plan
IFRS	International Financial Reporting Standards
M&E	Machinery & Equipment
NTI	Net Taxable Income
OECD-MC	OECD Model Tax Convention
PE	Permanent Establishment
PoEM	Place of Effective Management
RENARE	National Registry for the Reduction of Greenhouse Gas Emissions
RUB	Unique Register of Ultimate Beneficial Owners
RUT	National Tax Registry
SEP	Significant Economic Presence
SIESPJ	Identification System for Non-Legal Entity Structures
VAT	Value-added Tax
WT	Wealth Tax

HIGHLIGHTS

National Level

INCOME TAX	
General CIT rate	35%
Foreign Entities CIT rate	35%
Foreign Entities with PE or Branch CIT rate	35%
CIT surcharge on coal entities	Up to 10%
CIT surcharge on oil entities	Up to 15%
Temporary CIT surcharge on hydroelectric entities (until 2026)	3%
Temporary CIT surcharge on financial entities (until 2027)	5%
Capital gains tax	15%
Tax loss carry-forward term	12 years
Tax loss carry-back term	Not available
Transfer pricing rules	Yes, OECD-like
Tax-free reorganizations if specific requirements are met	Statutory Mergers Statutory Divisions Transformations Capital Contributions

REGULAR WITHHOLDING TAXES ON CROSS-BORDER PAYMENTS	
After-tax dividends, if taxed at the corporate level	20%
After-tax dividends, if untaxed at the corporate level	48%
Branch profits, if taxed at the corporate level	20%
Branch profits, if untaxed at the corporate level	48%
Interest	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	35%

OTHER TAXES	
Wealth tax rate	0.5% - 1.5% (Up to 1% starting 2026)
General VAT rate	19%
Consumption tax rate (specific businesses)	4%, 8% and 16%
Regular customs duties[2]	0% - 20%
Bank debits tax	0.4%
National stamp tax rate	Up to 3%

Local Level	
Tax on industrial, commercial, and service activities rate	0.2% - 1.38%
Property tax rate (including Real Estate)	0.5% - 3.5%
Registration Tax rate	0.1% - 2%
Local stamp taxes rate	Up to 2%

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

DOUBLE TAX TREATIES				
Country	**Dividends**	**Interest**	**Royalties**	**In force**
Bolivia	Source	Source	Source	Yes
Brazil	Up to 15%	Up to 15%	Up to 15%	No
Canada	Up to 15%	10%	10%	Yes
Chile	Up to 7%	Up to 15%	10%	Yes
Czech Republic	Up to 15%*	10%**	10%	Yes
Ecuador	Source	Source	Source	Yes
France	Up to 15%*	10%**	10%	Yes
India	5%*	10%**	10%	Yes
Italy	Up to 15%	Up to 10%**	10%	Yes
Japan	Up to 15%	10%**	Up to 10%	Yes
Luxembourg	Up to 15%	Up to 10%	10%	No
Mexico	0%*	Up to 10%**	10%	Yes
Netherlands	Up to 15%*	Up to 10%**	Up to 10%	No
Peru	Source	Source	Source	Yes
Portugal	10%*	10%	10%	Yes
South Korea	Up to 10%*	10%**	10%	Yes
Spain	Up to 5%*	10%**	10%	Yes
Switzerland	Up to 15%	10%**	10%	Yes
United Arab Emirates	Up to 15%*	10%**	10%	No
United Kingdom	Up to 15%*	10%**	10%	Yes
Uruguay	Up to 15%	15%	10%	No

* These DTTs 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; (v) 15% for South Korea; (vi) 15% for France; (vii) 15% for the United Kingdom; and (viii) without limitation for United Arab Emirates, Uruguay, and the Netherlands.

** These DTTs provide non-taxation at the source of the interest paid to the other State or certain public entities of the other State. The following treaties also provide non-taxation of certain other activities: (i) Spain: a sale on credit of merchandise and loans granted by banks; (ii) Switzerland: a sale on credit of merchandise and loans granted by banks; (iii) Czech Republic: a sale on credit of merchandise and loans granted by banks for a period not exceeding three years; (iv) France: a sale on credit of merchandise or industrial, commercial or scientific equipment, loans granted by banks for a period not exceeding three years, or loans granted by a financial institution to another financial institution; (v) Netherlands: loans granted by a financial institution to another financial institution, loans to finance exports, sale on credit of merchandise that does not exceed 183 days, interests paid to a pension fund; (vi) Italy: a sale on credit of merchandise or industrial, commercial or scientific equipment, loans granted by banks for a period not exceeding three years; (vii) Japan: loans granted by banks for a period not exceeding three years, or loans granted by a financial institution to another financial institution, interests paid to a pension fund, sale on credit of merchandise; (viii) United Kingdom: interests paid to a pension fund, sale on credit of merchandise or industrial, commercial or scientific equipment, loans granted by banks for a period not exceeding three years, or loans granted by a financial institution to another financial institution; and (ix) Uruguay: interests paid to a pension fund, or loans granted by a financial institution to another financial institution.

1. CORPORATE INCOME TAX

1.1. CORPORATE RESIDENCE

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

If an entity (i) is incorporated in Colombia; (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 decisions necessary to undertake the daily activities of the entity the take place[2]. It is important to highlight that foreign companies that (i) are listed in the Colombian Stock Exchange (or in another recognized Stock Exchange), 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 for tax purposes 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 nor the services PE[3]. Colombian domestic regulation also provides a list of activities considered auxiliary or preparatory, which do, therefore, not give rise to a PE[4].

PEs are taxed on the profits attributable to them, considering their assets, activities, functions, and risks[5]. Therefore, transfer pricing considerations and the elements related to 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[6].

Although Colombia has a domestic definition of PE, the rules governing PEs under international treaties executed by Colombia should prevail in some cases.

[2] Colombian Tax Code §12-1. The 2022 Tax Reform broadened the definition of Place of Effective Management to include the place where the decisions necessary to conduct the daily activity of the company take place and not only the place where the key decisions are made.
[3] Colombian Tax Code §20-1.
[4] Decree 3026/2013 §3.
[5] Law 2010/2019 §66.
[6] Colombian Tax Code §20-2.

1.3. CIT RATE

The general statutory CIT rate applicable to Colombian companies and foreign corporate entities receiving Colombian-sourced income is 35%, regardless of whether it is attributable to a Permanent Establishment in Colombia or not.[7]

1.3.1. REDUCED CIT RATES

Certain companies in free trade zones are eligible for a reduced 20% CIT rate[8]. Additionally, certain items of income that were formerly exempt are subject to a reduced 15% CIT rate. Some examples are (i) hotel services rendered in newly built or refurbished facilities; and (ii) ecotourism activities[9].

Legal entities whose economic activity is exclusively book publishing under the terms of Law 98/1993 are subject to a reduced 15% CIT rate[10].

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

1.3.2. CIT SURCHARGES

Some entities are required to pay, in addition to the general CIT rate, a surcharge, as follows:

1.3.2.1. CIT SURCHARGE ON COAL AND OIL ENTITIES

As of 2023, companies involved in coal and crude oil extraction are subject to an additional surcharge in the corresponding taxable year, which will be determined according to the level of the international price of crude oil and coal. This surcharge is levied for taxpayers that have a taxable income equal to or greater than 50,000 UVT (approx. COP 2,353 million or USD 588,000[11]), as follows[12]:

[7] Colombian Tax Code §240.
[8] Colombian Tax Code §240-1.
[9] Colombian Tax Code §240, paragraph 5.
[10] Colombian Tax Code §240, paragraph 7.
[11] Using a COP 4,000 Market Representative Rate.
[12] Colombian Tax Code §240, paragraph 3.

a) Coal extraction

Surcharge	TOTAL CIT RATE	AVERAGE PRICE
0%	35%	Below the 65´ percentile
5%	40%	Between the 65´ and 75´ percentiles
10%	45%	Above the 75´ percentile

b) Crude oil extraction

Surcharge	Total CIT Rate	Average price
0%	35%	Below the 30´ percentile
5%	40%	Between the 30´ and 45´ percentiles
10%	45%	Between the 45´ and 60´ percentiles
15%	50%	Above the 60´ percentile

1.3.2.2. TEMPORARY CIT SURCHARGE ON HYDROELECTRIC ENTITIES

From 2023 to 2026, a surcharge is levied for taxpayers whose main economic activity is the generation of electrical energy through water resources, who in the corresponding taxable year have a taxable income equal to or greater than 30,000 UVT (approx. COP 1,411 million or USD 353,000)[13], as follows[14]:

Surcharge	Total CIT Rate
3%	38%

1.3.2.3. TEMPORARY CIT SURCHARGE ON FINANCIAL ENTITIES

From 2023 through 2027, 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 5,647 million or USD 1,41 million), as follows[15]:

[13] The Constitutional Court has clarified that the surcharge is applicable only if the entity's income derived from hydroelectric power generation is equal to or exceeds 30,000 UVT. Consequently, this threshold does not encompass the entirety of the entity's income (Sentence C-389/2023).

[14] Colombian Tax Code §240, paragraph 4.

[15] Colombian Tax Code §240, paragraph 2.

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 of 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 expressly excluded items of income, minus the sum of all costs and expenses allowed as deductions. The AMTI computation is explained in §1.5 below.

The general CIT assessment process can be illustrated as follows:

Gross Income (Sum of all items of income, including short-term capital gains)	
[-]	Excluded items[16]
[=]	Gross taxable income
[-]	Allowed deductions
[=]	Taxable income
[-]	Tax loss carry-forward
[=]	NTI
[-]	Exempt items of income[17]
[=]	Taxable base
[*]	CIT rate
[=]	CCIT liability
[-]	Tax credits (such as withholding and foreign tax credits
[+]	Advance Payment of Income Tax
[-]	Advance Payment of Income Tax paid the previous year
[=]	CIT charge or credit balance

Since 2017, the taxable base of the CIT has been calculated using the financial information derived from the accounting records kept under IFRS. Nonetheless, various adjustments should be made to avoid the taxpayer being obliged to pay tax on theoretical income or allowed to deduct theoretical expenses.

[16] In Spanish, this refers to "Ingresos no constitutivos de renta ni ganancia ocasional" such as compensations from damages insurance or certain capital reimbursements from a company, among other specific types of income expressly designated by the tax law.

[17] Exempt items of income refer to specific incomes that are not subject to Income Tax, such as activities related to social housing.

Hence, although the tax assessment process continues unchanged, various changes are 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.

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.

The 2022 Tax Reform introduced a minimum effective tax rate of 15% applicable to legal entities, except for foreign legal entities without residence in Colombia. The minimum effective tax rate is the result of dividing the Total Net Tax by the Total Net Profit. If a taxpayer has an effective rate of less than 15%, the CIT rate will be increased until the minimum tax rate is reached.

1.5. ALTERNATE MINIMUM TAXABLE INCOME

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.

Although the AMTI rate for FY2024 is 0%, it is important to bear in mind that this regime has not yet been removed from Colombian legislation.

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[18] 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 by the net worth) over the CREE general tax liability[19].

1.6. CIT DEDUCTIONS

Unless otherwise provided by the Tax Code, 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[20]. Costs or expenses associated with specifically excluded and/or exempted items of

[18] CREE was a type of income tax on the income of legal entities. The CREE tax was intended to contribute to Child and Family Protection Services, Public Training System, and Health Care System. It was repealed as of 2017.

[19] Law 1607/2012 §22-1.

[20] Colombian Tax Code §107.

income are not deductible[21]. 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)[22].

Neither royalties paid to foreign related parties, related parties operating in a Free Trade Zone regarding intangible goods formed in Colombia, nor royalties paid in consideration for the acquisition of finished products are deductible.

Although Law 2277/2022 established that as of 2023, royalties paid by companies extracting non-renewable natural resources would not be deductible for Income Tax purposes, the Constitutional Court declared this provision unconstitutional. [23]

As a general rule, all 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. Exceptionally, CIT, wealth tax, and normalization taxes are not deductible. Only 50% of the tax on financial transactions paid is deductible.

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) is deductible[24]. The proportion of interest that exceeds this limit is not deductible.

The aforementioned interest deductibility limitation applies to both cross-border inbound indebtedness and local indebtedness and does not apply only in certain narrowly defined cases (e.g. when the debtor is a financial entity, and the loan is obtained to finance infrastructure projects related to activities considered of public interest)[25].

On May 29, 2020, the Colombian Government issued Decree 761/2020, through which the thin capitalization rule is regulated.

According to the regulation of the thin capitalization rul[26], the determination of related parties for the application of this rule must follow the transfer-

[21] Colombian Tax Code §177-1.
[22] Colombian Tax Code §121 and 122.
[23] Constitutional Court. Ruling C-489/2023.
[24] Colombian Tax Code §118-1.
[25] Colombian Tax Code §118-1, paragraph 5.
[26] Decree 761/2020

pricing regime definition related parties. Besides, the net equity to determine the application of the thin capitalization rule must follow the provisions set in article 282 of the CTC, that is, subtracting the corresponding debts from the gross equity on the last day of the period.

1.8. ADDITIONAL LIMITATIONS ON EXPENSES INCURRED ABROAD BY COLOMBIAN TAXPAYERS

Besides being subject 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 considering these deductible items. Exceptionally, this 15% limitation does not apply (i) whenever the payment abroad has been subject to 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[27].

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 rendered[28]. Cross-border payments to the home office of Colombian branches and subsidiaries for management services are subject to withholding tax, regardless of whether they are deemed to generate Colombian source income or not.

There are other limitations to the deductibility of payments to foreign related parties, which need to be analyzed on a case-by-case basis. The application of these deductibility limitations should be carefully considered considering, among others, the transfer pricing regime, and the application of DTTs.

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, the depreciation term is no longer set by regulations and should instead be set by the taxpayer, considering 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.

[27] Colombian Tax Code §122.
[28] Colombian Tax Code §124 and 260-3.

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[29].

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 under IFRS, depending on the type of asset; and (ii) the depreciation rate cannot be accelerated by the application of additional shifts[30].

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[31].

If the machinery and equipment are daily used at least for 16-hour shifts, depreciation can be accelerated, increasing the depreciation rate by 25%[32]. 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 2013, the 2012 Tax Reform prohibited the combination of 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 5-year period using any generally accepted amortization method[33]. 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 apply to all transactions between a Colombian party and (i) a foreign-related party; or (ii) a related party located in a FTZ (a different set of rules applies to transactions between two Colombian-related parties)[34].

[29] Colombian Tax Code §137.
[30] Colombian Tax Code §134 and 140.
[31] Colombian Tax Code §139.
[32] Colombian Tax Code §140.
[33] Colombian Tax Code §142 and 143.
[34] Colombian Tax Code §260-2.

Under these rules, the Colombian party exceeding certain statutory net assets or revenue 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 at arm's length[35]. The supporting documentation shall include a master file containing all relevant global information in connection to the multinational group and a local report with all information about the operations carried out by the taxpayer.

The Colombian transfer-pricing regime has a catalog of situations where two parties are deemed related. This catalog 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[36].

The 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 restructuring.

Transfer pricing formal duties include the preparation of a country-by-country report that shall be filed in Colombia by:

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

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 PEs of the same multinational group and having a foreign home office provided that (i) the income generated by these entities and/or PEs 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 approx. COP 3,812,265 million (USD 953 million).

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.

[35] Colombian Tax Code §260-5 and Decree 3030/2013 §2.
[36] Colombian Tax Code §260-1.

1.11. CERTAIN EXEMPT ITEMS OF INCOME

Subject to eligibility and compliance by the taxpayer with specific requirements, the following CIT exemptions are available (among others)[37]:

a. A f 15 year exemption on income from power generation activities based on wind, biomass, and agricultural waste technologies[38].

b. Some income derived from the sale of social housing or land for its construction.

c. Income received by authors and translators, both Colombian and foreign residents in Colombia, for copyright related to scientific or cultural books edited and printed in Colombia.

1.12. CERTAIN SPECIAL TAX FRAMEWORKS

1.12.1. PERFORMING ARTS AND CINEMA

Performing arts enjoy a series of tax benefits, including the possibility of deducting 100% of the investment made in the necessary infrastructure for the performance[39]. In addition, a special withholding rate and a differential VAT treatment may also apply. An individual basis analysis would be needed to determine the applicability to a specific case.

Regarding the cinema industry, taxpayers who make investments or donations to cinematographic projects approved by the Ministry of Culture can deduct 165% of the amount of the investment or donation[40].

1.12.2. 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 the principal decreases the liability while the portion allocated to interest is a deductible expense. Depreciation and amortization deductions are available, as applicable[41].

[37] Colombian Tax Code §235-2.
[38] Taxpayers investing in research and development related to renewable energy projects are eligible for a higher depreciation or amortization deduction.
[39] Law 1493/2011 §4.
[40] Law 814/2003 §16.
[41] Colombian Tax Code §127-1.

The 2016 Tax Reform introduced (i) a definition of financial leasing agreements, including the features of this type of agreement and its tax treatment, and (ii) a definition of operative leasing agreements, with its own tax rules. However, the features listed by the provision as requirements for leasing to be classified as financial leasing for tax purposes do not necessarily match the definition of leasing agreements provided by the Colombian financial rules and commercial regulation.

1.12.3 PUBLIC-PRIVATE PARTNERSHIPS AND CONCESSION AGREEMENTS

A special tax framework for Public-Private Partnerships and Concession Agreements is in place to avoid a mismatch between the moment of accrual of the income with the moment in which the taxpayer could deduct the amortization and depreciation expenses. It applies whenever the concession agreement comprises the construction and operation and administration stages.

Whenever a concession agreement is granted only with regard 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 the CTC, 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.

1.12.4. REGULATED FIDUCIARY ARRANGEMENTS

Fiduciary Arrangements are subject to a transparent tax regime that states that the beneficiary should report in its CIT return the income, costs, and expenses accrued at the level of the fiduciary arrangement[42]. Formerly, a partial transparency regime was applied, indicating that the beneficiary only had to report in its CIT return the profit or loss accrued at the level of the fiduciary arrangement.

[42] Colombian Tax Code §102 and §271-1.

1.12.5. JOINT VENTURES

A common fiscal treatment is applicable to joint venture agreements, consortium agreements, associations (temporary company unions), other joint ventures, and joint accounts agreements, among others. Under this treatment, joint venture agreements are regarded as non-taxpayers for CIT purposes and, therefore, as fully transparent from the tax perspective.

The parties of the joint venture have the obligation to report the joint venture's assets, liabilities, income, costs, and deductions 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 contributions to the joint venture. The implications of this provision should be carefully reviewed on a case-by-case basis.

1.12.6. STOCK OPTIONS

The CTC contains special rules on the tax treatment of stock options. This regime applies 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 labor remuneration.

The applicable provision establishes rules for the 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.

1.12.7. ADJUSTMENTS REGARDING THE EXCHANGE RATE OF FOREIGN CURRENCIES[43]

The fluctuation of the exchange rate of foreign currencies is treated as follows:

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

[43] Colombian Tax Code §288, added by 2016 Tax Reform §123.

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.

c. 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 on the day of the payment or accrual.

1.12.8. COLOMBIAN HOLDING COMPANY REGIME[44]

The Colombian Holding Companies Regime is in place since 2020, applying to companies 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 held, directly or indirectly[45], at least a 10% stake in the capital of a minimum 2 foreign or Colombian companies for no less than 12 months.

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. Only carrying out the Shareholders' meetings in Colombia is not enough to meet this last 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:

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

[45] Decree 598/2020 establishes that to determine 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.

TAX BENEFITS FOR THE SHAREHOLDERS OF THE CHC		
	Colombian Tax Resident	**Foreign Tax Resident**
CHC distributes dividends to	Taxed in Colombia, with the 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 ; 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.

TAX BENEFITS FOR THE SHAREHOLDERS OF THE CHC		
	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.

1.12.9. MEGA INVESTMENTS

Mega-Investments made until 2022 benefited from a 20 years special tax regime intended to promote large new investments in the country.

The application of the Mega-Investment special tax regime required generating at least 400 direct workplaces and making new investments of at least 30,000,000 UVT (approx. COP 1,411,950 million or USD 353 million).

This regime implied: (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 were disregarded when assessing the Net-Equity Tax.

Investments related to the evaluation and exploration of non-renewable natural resources were not eligible for this regime.

1.12.10. SIMPLE TAX REGIME

The SIMPLE tax introduced in 2019 seeks to promote the formalization of small and medium taxpayers (individuals or companies)[46]. Taxpayers who opt for this regime would replace the CIT or personal income tax, the local Turnover Tax, and the Consumption Tax with a SIMPLE tax calculated on their gross income. To be eligible for this regime, the taxpayer's gross annual income shall be lower than approx. COP 4,700 million (USD 1,176 million). The SIMPLE Tax establishes fixed rates applicable to the gross income. Such rates

[46] Colombian Tax Code §903-§916, added by Law 2010/2019 §74.

vary depending on the economic sector in which the taxpayer operates, which may range between 1.2% and 14.5%.

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

Any taxpayer in the SIMPLE Regime must engage in a business. According to Decree 1091/2020, which governs the SIMPLE Tax Regime, an individual is deemed to conduct a business when they (i) undertake an economic activity under business freedom and private initiative; and (ii) conduct their economic activity with business criteria, ensuring that the activity does not exhibit elements characteristic of an employment or subordinate relationship.

1.12.11. SPECIAL TAX REGIME

The Special Tax Regime ("STR") applies to a group of non-profit entities that execute meritorious activities, such as education, health, culture, science, technology, and innovation, environmental protection, among others. These entities can access income tax benefits and are allowed to receive donations with a direct tax benefit for the donor.

Entities that belong to STR are subject to an income tax rate of 20% on the net profit or surplus determined in a taxable period. Additionally, this profit can be exempt when directly or indirectly allocated to programs that pursue a social purpose in the following years.

1.12.12. CRYPTO ASSETS

Colombian tax regulation currently does not provide for a specific regulation applicable to crypto assets. However, the Colombian Tax Authority has referred to the tax treatment appropriate to these types of assets[48], defining them as intangible goods owned by the taxpayer that are susceptible of being valued and generating income. The increase in the price of these assets in the market shall not be considered taxable income until the moment of their transfer[49].

The Tax Authority has also indicated that when virtual wallets are managed by intermediaries, the principals and owners of the crypto

[47] The profits generated as a consequence of activities carried out in Colombia by the CHC are considered as value not created by the foreign entity, and is therefore not covered by the Capital Gains Tax/CIT exemption.

[48] Through Opinion 915014 of 14/10/2022, the Colombian Tax Authority compiled the current doctrine on this subject.

[49] DIAN, Opinion 1621 of 17/10/2023.

assets are obliged to report and declare the income obtained in proportion to their participation in the respective shared wallets. In contrast, the agents will only be taxed on their income for the intermediation activity performed[50].

1.13. TAX LOSS CARRY-FORWARD

The tax loss carry-forward against the taxpayer's NTI introduced in Colombia in 2007[51] for CIT purposes was later limited by the 2016 Tax Reform to 12 fiscal years following the year in which the tax loss is accrued. A transitory regime was introduced in 2016, according to which tax losses generated before January 1, 2017, continue to be subject to the previous regime.

The tax loss must arise from a commonly taxable income-producing activity 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 a further tax loss. Carry-back is not available.

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

In the case of tax-free mergers and spin-offs, the abovementioned general limitations continue to apply. Nonetheless, in these cases, only a part (not all) of the tax losses is transferable to the beneficiary entity (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). 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[52]. 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) the assessment and deduction of tax losses other than net operating losses. We list some of these cases:

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

b. Loss generated in the sale of fixed assets.

[50] DIAN, Opinion 014244 of 05/06/2019.
[51] Colombian Tax Code §147.
[52] Colombian Tax Code §147.

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

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

Public utility companies that are subject to intervention processes by the Superintendence of Public Services and, as part of this process, create new companies whose purpose is the preservation and continuity of the public service provision may grant these new companies the right to compensate the balance of tax losses that the intervened company would not have compensated in previous fiscal periods. Consequently, the new companies may compensate, against their NTI obtained in the fiscal period of the contribution or the following fiscal periods, the tax losses that would have been transferred to them by the intervened company without considering the general 12-year carry-forward time limitation.

1.14. STATUTORY FOREIGN TAX CREDIT

Individuals and legal entities that are Colombian tax residents and are obliged to pay income tax abroad regarding their foreign source income have the right to an FTC. Under 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.

If specific requirements are met, the income tax paid abroad may be credited in the taxable year in which the payment was made or carried forward in any of the following taxable periods[53].

Certain conditions need to be met for a taxpayer to benefit from the foreign indirect tax credit (i.e. shares that do not grant voting rights cannot benefit from the credit, and 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, Luxembourg, Japan, Uruguay, the Netherlands, and Brazil. However, the treaties with Luxembourg, Uruguay, the Netherlands, the United Arab Emirates, and Brazil are not enforceable yet. In addition, Colombia is a signatory of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion ("BEPS") since June 7th, 2017.

[53] Colombian Tax Code §254, modified by Law 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. This Tax Directive provides exclusive source taxation among member countries (Colombia, Peru, Ecuador, and Bolivia) with isolated exceptions. Unlike OECD-like treaties (which benefit 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. Therefore, Colombia will be exchanging tax information under the Common Reporting Standard ("CRS") 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 Colombian Tax Code delineates precise anti-avoidance regulations designed to counteract M&A transfer strategies leading to the acquisition of corporate assets and businesses in Colombia. These strategies, capitalizing on erstwhile statutory loopholes, allowed entities to evade local taxation.

1.17.1. TAX-FREE CAPITAL CONTRIBUTIONS OF PROPERTY

Unless otherwise provided by the Tax Code, property transfers to companies as capital contributions are deemed tax-free, as long as the transferor and transferee corporation comply with the applicable (mostly formal) requirements. 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[54].

[54] Colombian Tax Code §319.

All capital contributions of property, including stock, where the transferor is a Colombian tax resident 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[55].

1.17.2. TAX FREE STATUTORY MERGERS AND SPIN-OFFS RESTRICTED

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. 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 continuity of business enterprise ("COBE"), in the absence of which the reorganization will not qualify for tax-free treatment.

In addition to adopting COI and COBE requirements, the statute differentiates acquisitional mergers and spin-offs[56] from organizational mergers and spin-offs[57]. For the former type of reorganization, the participating entities are not considered related parties under Colombian regulations, while in the latter, the participating entities are deemed related parties. Stricter COI and COBE requirements are adopted for organizational mergers and divisions.

In a reorganization between foreign entities, the transfer of assets located in Colombia is taxable in this jurisdiction, unless the abovementioned 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[58].

Lastly, it is important to highlight that, for tax purposes, Colombian rules provide for joint and several liability of the entities participating in reorganizations[59].

[55] Colombian Tax Code §319-2.
[56] Colombian Tax Code §319-3 and 319-4.
[57] Colombian Tax Code §319-5 and 319-6.
[58] Colombian Tax Code §319-8.
[59] Colombian Tax Code §319-9.

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 because, 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 the 2019 Tax Reform, the indirect sales of shares in companies, rights, or assets located in Colombia, through the disposal, at any title, of shares, participations, or rights of foreign entities, are taxed in Colombia as if the sales of the underlying asset had been made directly. Accordingly, the tax cost applicable to the underlying asset and the tax treatment and conditions will be the one held by the underlying asset holder as if it had been disposed of 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[60].

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 assets located in Colombia represent 20% or less of the book and market value of the total assets owned by the alienated entity.

Decree 1103/2020, which regulates the Indirect Sales Regime, 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 percentage of the entity subject to sale will be multiplied by the percentage of the underlying Colombian assets the abovementioned entity owns; (ii) the result obtained will be multiplied by the tax cost of the underlying asset that will be indirectly disposed of or sold.

[60] Colombian Tax Code §90-3.

1.19. CONTROLLED FOREIGN ENTITIES REGIME

The Controlled Foreign Entities rules ("CFE rules") introduced in 2016[61] apply to Colombian tax resident individuals and companies subject to income tax in Colombia that directly or indirectly control a foreign entity and hold participation equal to or higher than 10%.

CFEs are defined as investment vehicles (such as corporations, regulated fiduciary arrangements, trusts, mutual funds, and other types of trusts) and business and private interest 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 are met:

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

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

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

For an entity to be a CFE, it cannot 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 are accrued in the CFE. Therefore, the tax recognition of income, 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.

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

[61] Colombian Tax Code §882-893.

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

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 does not apply 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, since 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) income from trading and 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. SIGNIFICANT ECONOMIC PRESENCE

The 2022 Tax Reform introduced the concept of Significant Economic Presence[62], to tax the profits of foreign companies that do not have a physical presence in Colombia but own some business connection with the country due to their digital existence or interaction with the Colombian market.

[62] Colombian Tax Code §882-893.

As of January 1, 2024, foreign companies have a SEP when they meet the following requirements:

a. Maintain a deliberate and systematic interaction with users or clients located in Colombia. This requirement is presumed if the foreign company displays prices in COP or allows payments in COP and interacts with more than 300,000 Colombian users during the fiscal year; and

b. Obtain gross income equal to or greater than approx. COP 1,473 million (USD 368,000).

Providers of mobile applications, electronic books, online services on intermediation platforms, and digital subscriptions to audiovisual media, among other services, are also subject to the tax if they meet these requirements.

Foreign companies with a SEP in Colombia may opt-in for filing and paying income tax at a 3% rate of the gross income derived from the sale of goods and/or provision of digital services from abroad, sold or rendered to users in Colombia, or a 10% withholding tax on the total payment amount[63].

1.21. DISCLOSURE OF THE ULTIMATE BENEFICIAL OWNERSHIP

The 2021 Tax Reform unified the definition of ultimate beneficial owners based on international exchange of information standards and created a Unique Register of Ultimate Beneficial Owners ("RUB") and the Identification System for Non-Legal Entity Structures ("SIESPJ").

An ultimate beneficial owner is an individual who owns or controls, directly or indirectly, a legal entity or other non-legal entity structure. It also includes the individual(s) who exercise effective and/or ultimate control, directly or indirectly, over a legal entity or other non-legal entity structure[64].

To implement and keep the RUB and the SIESPJ updated, the following individuals and entities are obliged to provide information related to the beneficial owners:

a. For-profit or non-profit national companies and entities, including those registered or listed on one or more stock exchanges.

b. Permanent establishments.

[63] Colombian Tax Code §408.
[64] DIAN, Resolution 164 of 27/12/2021 regulates §631-5 - §631-6 of Colombian Tax Code.

c. Non-legal entity structures that (i) are incorporated or managed in Colombia, (ii) are governed by Colombian law, and (iii) their trustee or equivalent is a Colombian tax resident.

d. Foreign legal entities that own investments in Colombia, when such investments were not made through legal entities, permanent establishments, and/or non-legal entity structures or similar obliged to provide information in the RUB[65].

The following criteria must be considered to determine the ultimate beneficial owners of a legal entity:

a. An individual who, acting individually or jointly, holds, directly or indirectly, five percent (5%) or more of the capital or voting rights of the legal entity and/or benefits from five percent (5%) or more of the assets, yields or profits of the legal entity; and,

b. An individual who, acting individually or jointly, controls the legal entity, by any means other than those outlined in section (a); or,

c. When no individual is identified in the terms of sections (a) or (b), the legal representative will be considered the ultimate beneficial owner unless there is another individual who holds greater authority in relation to the management or direction functions of the legal entity.

According to the relevant provisions, the ultimate beneficial owner of a non-legal entity structure or a similar structure are the individuals who hold the status of:

a. Trustor(s), settlor(s), constituent(s), or similar or equivalent position.

b. Trustee(s) or similar or equivalent position.

c. Fiduciary committee, finance committee, or similar position or equivalent.

d. Trustee(s), beneficiary(ies), or conditional beneficiary(ies); and,

e. Any other individual exercising effective and/or ultimate control over the unincorporated structure or having the right to enjoy and/or dispose of the assets, benefits, results, or profits.

[65] DIAN, Resolution 37 of 17/03/22.

When individuals, legal entities, non-legal entity structures, or similar entities fail to provide information and/or provide false information to the obligated party responsible for supplying information to the RUB, they may be subject to civil and/or criminal sanctions under Colombian law.

1.22. GENERAL ANTI-AVOIDANCE RULE[66]

Colombia adopted a GAAR in 2012. In the past, the Colombian Tax Authority attempted to challenge tax-abusive transactions based on the constitutional principle of substance over form and based on general law abuse considerations.

The existing 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, to obtain a tax 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 apparently correct act or business hides the true and real intention of the parties.

The Tax Authority always bears the burden of proof. Additionally, the 2016 Tax Reform established a new administrative procedure for these cases and an increased inaccuracy penalty of 160%[67].

The Tax Authority 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 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.

[66] Colombian Tax Code §869.
[67] The general inaccuracy penalty is 100% of the officially added tax liability in accordance with Colombian Tax Code §648.

The 2019 Tax Reform establishes that those 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, those 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 Authority had not collected.

1.23. 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. The filing and payment schedule contains specific deadlines that vary depending on the last number of the taxpayer's Tax Identification Number.

For FY2023[68], all entities including corporations must file their income tax return between April and May 2024. The taxpayer can pay the Income Tax Charge in two 50% installments: the first installment on the filing date, and the second installment in July 2024, observing the yearly payment schedule issued by the tax authorities[69].

The tax authorities issue special filing and payment schedules for certain companies on the list of "grand income taxpayers". For FY2023, all "grand income taxpayers" must file their returns in April 2023. "Grand income taxpayers" benefit from a three-installment payment facility. For FY2023, these installments are due in February, April, and June 2024[70].

1.23.1. FOREIGN HELD ASSETS RETURN

Taxpayers who are subject to income tax in Colombia on their worldwide income and hold assets abroad should yearly file a special return disclosing such assets[71]. The deadline for filing the foreign held assets return is the same as the one set for the income tax return.

1.23.2. STATUTE OF LIMITATIONS

The general statute of limitations is a 3-year term. A special 5-year term applies for income tax returns of taxpayers obliged to comply with the transfer-pricing regime was also set[72]. Prior to the 2016 Tax Reform, with only a few exceptions, the Colombian Tax Authority had a 2-year term to audit tax returns.

[68] Decree 2229/2023.
[69] Decree 1625/2016 §1.6.1.13.2.12.
[70] Decree 1625/2016 §1.6.1.13.2.11.
[71] Colombian Tax Code §607.
[72] Colombian Tax Code §714.

The statute of limitations for tax returns that report tax losses or carry them forward is 5 years. However, this term will be extended for 3 additional years if the taxpayer offsets the tax losses during the last two years of the initial 5-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 12 years. This rule lacks clarity and is extremely complex, and could, therefore, be construed in different ways.

1.23.3. NON-PAYMENT AND LATENESS PENALTIES

Unpaid taxes are subject to daily interests at a rate equal to the highest legally accepted three-month rate certified by the Financial Regulatory Agency. The 2012 Tax Reform changed the interest calculation from a composed interest to a simplified one[73].

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%[74] of the corresponding tax liability[75]. However, the general inaccuracy penalty is 100% of the officially added tax liability[76].

1.24. TAX EVASION AS A CRIMINAL OFFENCE

1.24.1. CRIMINAL OFFENCE FOR OMITTING ASSETS OR REPORTING NON-EXISTENT LIABILITIES[77]

The regulation 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 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 1,000 minimum wages (approx. COP 1,300 million or USD 325,000). 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 the non-existent liabilities is greater than 2,500 minimum wages (approx. COP 3,250 million or USD 812,500) but less than 5,000 minimum wages (approx. COP 6,500 million or USD 1.6

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

million), the penalty will be increased by 1/3. In events that exceed 5,000 minimum wages, the penalty will be increased by 1/2.

The criminal liability may be extinguished when the taxpayer pays the taxes due plus applicable penalties and the corresponding interest if it is the first or second transgression of the individual. The commission of the criminal offence on a third occasion will only entitle the reduction of the penalty up to half, in which case, the criminal offence would not be extinguished, and the principle of opportunity would not be applicable[78].

The criminal prosecution may be initiated by special request of the Director General of the National Tax Authority or its delegate as long as the administrative process is concluded, or when there is no reasonable interpretation of applicable law, provided that the facts and figures filed by the taxpayer are complete and true.

1.24.2. CRIMINAL OFFENCE FOR NOT PAYING WITHHOLDINGS, VAT OR CONSUMPTION TAX[79]

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

The penalty comprises (i) imprisonment from 48 to 108 months and (ii) double of the amount of the unpaid tax. The criminal liability would be extinguished when the taxpayer files or corrects the tax return and pays the tax due plus applicable penalties and interests.

It is important to highlight that the regulation states that if an entity commits that criminal offence, the individuals in charge of fulfilling the tax obligations of the entity would be held liable.

1.24.3. TAX FRAUD[80]

The 2019 Tax Reform established an additional 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/or (iii) the claim of non-applicable tax credits, withholding taxes or pre-paid taxes.

[78] Principle of opportunity is regulated through Law 1316/2009. It is a Colombian constitutional principle that allows for the public prosecution to suspend, interrupt, or stop prosecuting offences due to criminal policy considerations and according to the specific grounds set forth by applicable law.

[79] Colombian Criminal Code §402.

[80] Colombian Criminal Code §434B.

This criminal offence is applicable if the tax authorities determine a higher tax due in an amount equal to or exceeding 100 minimum wages (approx. COP 130 million or USD 32,500).

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

The criminal liability may be extinguished when the taxpayer pays the taxes due plus applicable penalties and interest if it is the first or second transgression of the individual. The commission of the criminal offence on a third occasion will only entitle the reduction of the penalty up to half, in which case, the criminal offence would not be extinguished, and the principle of opportunity would not be applicable.

The criminal prosecution may be initiated by special request of the Director of Tax Authority or its delegate, as long as the administrative process is concluded, or when there is no 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, from 2017 this system was modified by taxing the distributing company and the shareholder receiving the distributed dividends, as explained below.

2.1. DEFINITION OF DIVIDEND

Dividends comprise any distribution of benefits, in cash or kind, made by a company to its shareholders. The transfer of profits from permanent establishments in favor of their home office is deemed dividend distribution[81].

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

[81] Colombian Tax Code §30.

2.2. RATES[82]

BENEFICIARY	PROFITS TAXED AT THE CORPORATE LEVEL	PROFITS UNTAXED AT THE CORPORATE LEVEL
Colombian companies	10%	41,5%
Resident individuals[83]	0% to 20%	35% to 48%
Foreign companies	20%	48%
Non-resident individuals	20%	48%
Permanent Establishments (including branches)	20%	48%

It is worth highlighting that:

a. Dividends paid out of profits that were not taxed at the corporate level are subject to additional withholding after applying the general CIT withholding. This provision should be carefully reviewed under the treaties to avoid double taxation that has 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 distribution and the tax credit will be transferred up to the last beneficiary of the dividends (individual or foreign investor). Dividend distributions to CHCs or within groups of companies duly registered before the Chamber of Commerce are not subject to this dividends tax withholding.

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

[82] Colombian Tax Code §242-245.

[83] Dividends for resident individuals will be taxed at a rate between 0% to 39% with a tax credit of 19%, according to §241 and §254-1 of Colombian Tax Code.

3. CAPITALS 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 15%[84]. SShort-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 gains 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 return.

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.[85]

For intangibles, taxpayers must be on the lookout because the 2016 Tax Reform Act introduced new rules to assess capital gains in their sale or exchange, depending on whether the intangible is formed or acquired, among others.[86]

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

4. WITHHOLDING TAX ON CROSS BORDER PAYMENTS

When Colombian source income is remitted abroad to a non-resident individual or entity beneficiary, 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 FY2024: 20% or 48%.

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

If the corresponding profits were taxed at the corporate level, a 20% withholding tax applies; otherwise, a 48% withholding tax would apply to all non-resident entities/individuals. In the case of PEs of foreign companies, the same withholding rates would be applicable on distributions of profits to the home office[87].

4.2. ROYALTIES

Outbound royalty payments are subject to a 20% withholding tax[88]. Royalties are not deductible when paid (i) to foreign related parties or related parties operating in a Free Trade Zone, with regards to intangible goods formed in Colombia; and (ii) for the acquisition of finished products.

4.3. TECHNICAL SERVICES, TECHNICAL ASSISTANCE, CONSULTING, 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[89].

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.

4.4. OTHER SERVICES

Other services, different from technical services, technical assistance, and consultancy services, if rendered abroad, are not subject to withholding tax[90]. Conversely, if rendered in Colombia, a 20% withholding tax applies unless otherwise provided by special rules.

4.5. INTEREST AND LEASING PAYMENTS

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 a few exceptions as (i) payments made in consideration for leased equipment (i.e. provided that the equipment is a vessel, helicopter, or an airplane), cases 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.

87 Colombian Tax Code §407.
88 Colombian Tax Code §408.
89 Colombian Tax Code §408.
90 Colombian Tax Code §418.

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-year 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)[91].

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 made to a tax haven beneficiary corresponding to items of income deemed from a Colombian source are subject to withholding tax at a 35% rate for FY2024[92]. Otherwise, the corresponding deduction will not be allowed. This higher withholding tax rate should not apply to certain payments related to financial operations duly registered before the Central Bank, provided that they meet the criteria set forth by applicable law to be deemed as income from a foreign source[93]. Colombian transfer pricing regulations apply to 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 Authority supporting documentation and a transfer pricing study[94].

In October 2013, the Government established a list (updated in October 2014) indicating what countries are considered tax havens for Colombian tax purposes[95]. The 2016 Tax Reform replaced the concept of tax havens with the concept of "non-cooperative jurisdictions, with no or low imposition and preferential tax regimes".

[91] Colombian Tax Code §408.
[92] Colombian Tax Code §408.
[93] Colombian Tax Code §124-2.
[94] Colombian Tax Code §260-7.
[95] Antigua and Barbuda, Svalbard Archipelago, Collectivity of Saint Pierre and Miquelon, State of Brunei Darussalam, State of Kuwait, State of Qatar, State of Western Samoa, Grenada, Hong Kong, Qeshm Island, Cook Islands, Henderson, Ducie, and Oeno Islands, Solomon Islands, Labuan, Macao, Commonwealth of Dominica, Commonwealth of The Bahamas, Kingdom of Bahrain, Hashemite Kingdom of Jordan, Cooperative Republic of Guyana, Republic of Angola, Republic of Cape Verde, Republic of the Marshall Islands, Republic of Liberia, Republic of Maldives, Republic of Mauritius, Republic of Nauru, Republic of Seychelles, Republic of Trinidad and Tobago, Republic of Vanuatu, Republic of Yemen, Lebanese Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Helena, Ascension, and Tristan da Cunha, Saint Lucia and Sultanate of Oman. Decree 2095/2014.

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[96].

On the other hand, the taxpayer will have to identify the preferential regimes. For that purpose, the relevant legal provision 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 any other internationally accepted criteria.

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

Long-term capital gains are subject to a 15% withholding tax. Considering that the withholding is performed on the gross payment, while the tax is assessed on a net basis, the taxpayer could have a balance, which can only be recovered by claiming it back from the Tax Authoritie

5. VALUE ADDED TAX

5.1. TAX RATES

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

[96] Colombian Tax Code §260-7.
[97] Colombian Tax Code §468.
[98] Colombian Tax Code §468-1 and §468-3.

5.2. TAXABLE TRANSACTIONS

The sale and importation of movable tangible property, the sale and licensing of intangible assets associated with the industrial property (such as trademarks, industrial designs, and 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 is not subject to VAT[99]. Certain public entities at the national and local territorial levels are not subject to VAT[100].

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

Any service rendered abroad but with a beneficiary located and resident in Colombia is deemed as a service rendered inbound and, therefore, is subject to VAT unless otherwise provided[106]. This presumption impacts especially 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

[99] Colombian Tax Code §420.
[100] Law 21/1992 §100 and Law 30/1992 §92.
[101] Colombian Tax Code §437-2.
[102] Colombian Tax Code §437-2, paragraph 2.
[103] Colombian Tax Code §477 to §481.
[104] Colombian Tax Code §423 to §428.
[105] Colombian Tax Code §489.
[106] Colombian Tax Code §420, paragraph 3.

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 that receives payments on behalf of such foreign service renderers.

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

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 under 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

As of the entry into force of the 2019 Tax Reform, 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 price paid for the goods or services. The price should correspond to the fair market value of such goods or services[108].

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

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.

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].

5.5.3. TAX CREDIT FOR VAT PAID IN THE ACQUISITION, CONSTRUCTION, OR IMPORT OF TANGIBLE, FIXED ASSETS.

[109] Colombian Tax Code §484-1 and §485.
[110] Colombian Tax Code §258-1
[111] Colombian Tax Code §428.
[112] Colombian Tax Code §424.

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 the previous regulation only granted a deduction of the VAT paid in the acquisition or import of capital assets. Hence, instead of recovering up to 35% 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 part of the asset's cost for depreciation purposes.

5.5.4. RENEWABLE ENERGY

Certain services rendered in Colombia or abroad and the purchase of certain goods, equipment, and merchandise related to the investment and pre-investment in projects aiming at the generation or utilization of renewable energy, including green and blue hydrogen projects[114], may be eligible for a VAT exclusion.

For purposes of benefitting from this VAT exclusion, the applicable regulations provide for several requirements that include, among others, that the specific service is included in a list issued by the competent Authorities, a certificate issued by the Environmental Authority, and filing an application that meets the requirements included in the regulations issued by the Ministry of Mines and Energy. Therefore, the evaluation of the eligibility of the VAT exclusion should be reviewed on a case-by-case basis[115].

5.5.5. VAT EXCLUSION FOR ELIGIBLE M&E 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 recycling and processing garbage or waste, and 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 also applies to equipment used within an Environmental Control System ("ESC") or Environmental Monitoring System ("EMS"), including those necessary to comply with the Montreal Protocol. Thus, the Project needs to qualify as an ECS[116].

[113] Law 2010/2019 §95.
[114] Law 2099/2021 §21, paragraph 2.
[115] Law 1715/2014 §12.
[116] Colombian Tax Code §428, section f.

Applicable regulations define 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. ECS can occur within a production process or activity ("environmental control at source").

The EMS is also defined as the systematic set of national or imported elements, equipment, or machinery, intended for obtaining, verifying, or processing information on the state, quality, or behavior of renewable natural resources, and emissions, among others[117].

The applicable regulation defines an Environmental Program as a set of actions aimed at developing 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 .

For purposes of this VAT exclusion and under the applicable regulations, there is an exhaustive list of M&E and elements that are not eligible for environmental certification from the competent Environmental Authority[118].

5.5.6. VAT EXCLUSION FOR M&E USED IN PROJECTS AND ACTIVITIES PREVIOUSLY REGISTERED IN THE RENARE.

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 Greenhouse Gas Emissions mitigation initiatives[119].

The sale of M&E 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[120]. This incentive is also applicable to investments, goods, and M&E intended to capture, use, and store carbon[121].

[117] Decree 1625/2016 §1.3.1.14.4.
[118] Decree 1625/2016 §1.3.1.14.4.
[119] Law 1931/2018 §26.
[120] Colombian Tax Code §424, section 16.
[121] Law 2099/2021 §22, paragraph 2.

5.6. PAYMENT AND FILING

VAT is paid bimonthly or every four months, depending on the taxpayer's gross income from the previous year[122]. The VAT return must be filed and paid in full on the filing dates scheduled by the government for these purposes[123].

5.7. ANDEAN PACT VAT HARMONIZATION

Andean Pact Directive 599 establishes the framework for the harmonization of the VAT regimes in member countries (Colombia, Ecuador, Peru, and Bolivia), 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[124].

Services taxed at the general 8% consumption tax rate include restaurant services, bars, grills, and pubs. The sale of beverages and food under the franchise model is subject to VAT.

The carriers' mobile internet services 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.

7. BANK DEBITS TAX

This is a national-level tax. Colombian banks (and other savings institutions) must withhold the tax. It applies to any funds deposited that are either withdrawn or transferred from checking or savings accounts[125].

The taxable base is the amount withdrawn or transferred, and the rate applicable is 0.4%. There are very limited exemptions to this tax.

8. WEALTH TAX

The 2022 Tax Reform introduced a permanent Wealth Tax ("WT")[126]. Resident and non-resident individuals as well as foreign entities that have a net equity equal to or higher than approx. COP 3,388 million (approx. USD 847,000) on January 1st of each tax year will be subject to the WT at a marginal rate that ranges from 0.5% to 1.5%.

[122] Colombian Tax Code §600.
[123] Decree 1680/2020.
[124] Colombian Tax Code §512-3.
[125] Colombian Tax Code §871
[126] Colombian Tax Code §292-2

A 1.5% WT tax rate will be in force until 2026. As of 2027, the maximum WT tax rate will decrease to 1.0%.

The WT base for individuals and decedent estates deemed as Colombian residents for tax purposes will be calculated considering their worldwide-owned assets. Meanwhile, individuals who are non-Colombian tax residents will be taxed upon their net worth located or possessed in Colombia, directly or through a permanent establishment. Foreign entities' WT base will be calculated considering the assets that such entity owns which are located or possessed in Colombia, other than shares, accounts receivable and/or qualified portfolio investments.

The tax base for the WT may vary from the net worth value that a taxpayer reports in its income tax return since special rules are applicable due to the type of assets owned. Thus, its determination should be analyzed on a case-by-case basis.

Under certain DTTs signed by Colombia, assets held by tax residents in certain jurisdictions may have limitations on being taxed by this tax. This should be reviewed for each specific case.

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 service activities performed in the territory of a district or municipality[127]. The taxable base is the sum of the taxpayer's gross revenue from the activity carried out in the relevant municipality. Tax rates vary from 0.2% to 1.38%.

This tax is usually paid yearly, except for some municipalities that have adopted a two-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.

This tax is currently deductible for income tax purposes.

10. PROPERTY TAXES

There are municipal (local) level taxes levied on the ownership of real estate and vehicles. Each district or municipality adopts the applicable tax rates. Therefore, they vary from one municipality to another.

Real estate tax rates usually range between 0.5% and 1.6%, however, certain exceptions may apply[128]. Motor vehicle tax rates range between 1.5% and 3.5%[129].

[127] Law 14/1983 §32.
[128] Law 1450/2011 §23.
[129] Law 488/1998 §145.

Unless otherwise specified, the taxable base in the case of real estate is the cadastral value of the property. Meanwhile, the taxable base for vehicles is their fair market value, appraised by the Ministry of Transportation. Unless otherwise specified in the corresponding municipal ordinances, property taxes filing, and payment are carried out annually.

If any, available tax incentives are regulated by each local authority. Therefore, the availability of incentives must be confirmed on a case-by-case basis.

If any, available local tax incentives 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.

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 2% when the registration is done before the cadastral registry office, and from 0.1% to 0.7% when the registration is carried out before the Chamber of Commerce[130].

Unless otherwise provided, the taxable base is the amount of the price or consideration established 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. NATIONAL STAMP TAX

Aside from the fact that multiple local stamp taxes levy different acts (see 14, below), a national stamp tax is applicable to public deeds through which real estate or ships whose value is equal to or greater than approx. COP 941 million (USD 235,000) are transferred. The tax will also be applied to the constitution and cancellation of mortgages over these types of assets. The rate for the National Stamp Tax ranges from 1.5% up to 3%, depending on the value of the transaction.

[130] Law 223/1995 §230

13. CARBON DIOXIDE TAX

The Carbon Dioxide Tax 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[131].

The current rate is COP 23,394.6 (Approx. USD 6) per ton of CO2 that determined fossil fuel is estimated to generate. This rate is annually readjusted. 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 fixed rate per unit.

FOSSIL FUEL	UNIT OF MEASURE	RATE/UNITY (COP)
Natural gas	Cubic meter	$36
Oil liquefied gas	Gallon	$152.92
Gasoline	Gallon	$169
Kerosene	Gallon	$224,82
Jet fuel	Gallon	$230,52
Diesel	Gallon	$191
Fuel Oil	Gallon	$271,61
Carbon	Ton	$59,587,76

Following the regulations issued by the Ministry of Environment and Sustainable Development, carbon-neutral-certified taxpayers are not subject to 50% of this tax. In addition, fuel exports are not subject to this tax.

14. LOCAL STAMP TAXES

Certain laws authorize departments and municipalities 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 a taxable event. In some cases, the amounts paid by the taxpayer that correspond to stamp taxes can be deducted from CIT.

[131] Law 1819/2016 §221 and §222.

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.

15. ROYALTIES ON NATURAL RESOURCES EXPLORATION ACTIVITIES

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

16. WELFARE CONTRIBUTIONS

16.1. RETIREMENT CONTRIBUTIONS

The employee can choose between private or public pension funds[132]. 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[133].

16.2. HEALTH CONTRIBUTIONS

The employee must be affiliated with a general Health Care Plan ("HCP"). In general, contributions to the HCP must be equal to 12.5% of the employee's wage. Contributions must be computed and paid monthly.

Usually, the employer must cover 8.5% for employees with salaries that exceed 10 minimum wages 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[134].

16.3. EMPLOYMENT RISKS INSURANCE SYSTEM

The employee must be affiliated with its election's employment risk insurance system. The contribution varies between 0.348% and 8.7% of

[132] Law 100/1993 §59.
[133] Law 797/2003 §7 and Decree 4982/2007 §1.
[134] Law 100/1993 §204.

the employee's wage (depending on the activity) and is computed and paid monthly. The employer must cover and pay the insurer 100% of the contribution [135].

16.4. CONTRIBUTIONS TO CHILD AND FAMILY PROTECTION SERVICES (ICBF), NATIONAL LEARNING SERVICE (SENA), AND COMPENSATION FUNDS

The employer must cover and contribute to Compensation Funds for all of its employees.

Additionally, the employer has to pay contributions to Child and Family Protection Services (ICBF) and National Learning Service (SENA) for employees with salaries that exceed 10 minimum wages. Those contributions must be paid monthly and are equivalent to 9% of the employee's wage136.

16.5. UNEMPLOYMENT FUND CONTRIBUTION

The employer must contribute an amount equal to one monthly wage per year to the employee's unemployment fund of choice137. In addition, the employer must pay the employee a 12% yearly interest on the amount of that yearly contribution138. Both the contribution and the interest must be paid every year.

16.6. INCIDENCE ON WAGES DEDUCTIBILITY

Payment of the abovementioned welfare contributions is a requirement for the corresponding wages paid by the employer to be deductible for income tax purposes139.

17. CUSTOMS IMPORTS REGIME

The following sections summarize some general aspects of the Colombian customs import regime:

17.1. IMPORT CUSTOMS DUTIES

Unless exempted, zero-rated, or exceptionally subject to a different rate, importation of goods is subject to a 19% import VAT[140]. In addition to import VAT, imports are also subject to customs duties generally ranging between

[135] Decree 1772/1994 §13.
[136] Law 21/1982 §12 and Law 89/1988 §1.
[137] Colombian Labor Code §249.
[138] Law 52/1975 §1.
[139] Colombian Tax Code §108.
[140] Colombian Tax Code §468.

5% and 20%[141]. Colombia has entered into Preferred Customs Duties Agreements with many countries, reducing the applicable customs duties for certain goods.

17.2. TAXABLE BASE

Unless otherwise provided, customs duties are computed on the CIF value of the goods, while import VAT is computed on the CIF value plus the corresponding customs duties[142].

17.3. CUSTOMS VALUATION

Colombian custom valuation rules are those set forth by the WTO. For valuation purposes, the Andean Pact valuation rules in Directives 378 and 379 apply. These rules are also similar to the aforementioned rules[143].

17.4. FILING AND PAYMENT

An import return must be filed upon nationalization of the goods. As a general rule, in the ordinary importation regime, customs duties and import VAT must be paid and an import return filed within the first month following the arrival of the goods to Colombia. In certain cases, the importer can request to the customs authorities a one (1) month filing extension[144].

17.5. 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 is not produced locally or in an Andean country[145]. In practice, the importation of used spare parts is hardly authorized.

17.6. FREE TRADE AGREEMENTS

Colombia currently has 17 Free Trade Agreements in force, including, among others, FTAs with various Latin-American countries, the United States of America, Canada, and 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 into chapters, each regulating a particular area that affects trade. Some of the main chapters regulate: (i) National Treatment

[141] Decree 1881/2021.
[142] Colombian Tax Code §459 and Decree 1165/2019 §16.
[143] Decree 1165/2019 §320.
[144] Decree 1165/2019 §171.
[145] Decree 925/2013 §14.

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 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, and environmental matters, among others, are also dealt with in some of these FTAs.

It is important to consider that each FTA differs in 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.

17.7. SELECTED CUSTOMS DUTIES IMPORT 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 import 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 in 2019, the Colombian government issued a new Customs Code, which introduced some changes regarding the import regimes described below, which entered into force in August 2019.

17.7.1. REGULAR IMPORTS REGIME

It applies to all goods that will remain permanently in Colombian territory without restrictions[146]. Upon nationalization, full payment of customs 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.

[146] Decree 1165/2019 §173-192.

17.7.2. 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 customs 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 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 extend 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 customs duties or import VAT[147].

17.7.3. LONG-TERM TEMPORARY IMPORTS REGIME FOR LEASED EQUIPMENT

The rules of this regime are similar to the above-explained rules. Nevertheless, given that lease payments are treated as foreign debt payments for foreign exchange purposes, 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)[148].

17.7.4. SHORT-TERM TEMPORARY IMPORTS

This regime applies to specific goods that will be used for certain activities taking no longer than 6 months. The customs service can authorize a three-month 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 fine will be imposed.

[147] Decree 1165/2019 §203.
[148] Decree 1165/2019 §211.

17.7.5. FREE TRADE ZONES

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 35%); (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[149].

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

To access the preferential tax rate of 20%, the 2022 Tax Reform established that entities located in a FTZ must formulate an internationalization plan. This plan should outline maximum objectives for net income from operations of any nature within the national customs territory, as well as other income obtained by the industrial user unrelated to the development of its main activity.

The Constitutional Court clarified that this provision only applies to taxpayers who had not met the requirements to access the 20% rate before December 13, 2022[150].

17.7.6. "PLAN VALLEJO" SPECIAL IMPORTS REGIME

After meeting certain requirements, under the "Plan Vallejo", raw materials and other goods can be temporarily imported without triggering customs duties and enjoying preferential VAT treatment. Both agricultural and services activities could be covered with the "Plan Vallejo"[151].

17.7.7. INTERNATIONAL TRADING COMPANIES

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 by issuing a certificate to the seller, without paying the corresponding

[149] Law 1004/2005 §1 to 4 and Colombian Tax Code §240-1.
[150] Constitutional Court. Sentence C-384/2023.
[151] Resolution 1860/1999.

VAT, as long as these products are exported within 6 months as of the date of issue of the corresponding certificate.

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 before the filing of the application, among others[152].

[152] Decree 1165/2019 §65-74.

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