

On 28 December 2018, Colombia's 2019 finance bill was enacted as Law 1943 of 2018. The law introduces significant reforms to both direct and indirect taxation and modifies many provisions of the tax code.

The following summarizes some of the measures applicable as from 1 January 2019.

### **Income tax**

- Gradually reduction of corporate income tax rates: (i) 33%, 2019, (ii) 32%, 2020, (iii) 31%, 2021; and (iv) 30%, 2022.
- The minimum basis (presumptive income tax system) will be reduced to 1.5% on 2019 and 2020. Upon 2021 the rate will be 0%.
- An additional CIT surcharge is introduced for financial entities with annual income exceeding 120,000 UVT (tax value units, the value of which is COP 34,270 for 2019). The rate is 4% for taxable year 2019, 3% for taxable year 2020 and 3% for taxable year 2021.
- Profits derived from the indirect transfer of shares in Colombian entities and rights or assets located in Colombia through the transfer of shares, participations or rights of foreign entities are taxed in Colombia as if the underlying Colombian asset had been directly transferred. Where the seller fails to report the deemed income arising on the indirect transfer as net income or capital gains on the income tax return the "subordinate" Colombian company is jointly and severally liable for the tax payable, as well as any associated interest and penalties. The purchaser also is jointly and severally liable if it becomes aware that the transaction constitutes an abuse for tax purposes. These provisions do not apply where the underlying Colombian assets (i) are shares that are listed on a stock exchange or that are not more than 20% owned by a single beneficial owner or (ii) represent less than 20% of both the book value and the commercial value of the total assets held by the foreign entity being transferred.
- The "conclusive presumption" principle in the controlled foreign companies (CFC) regime is modified such that where the active income of the CFC represents more than 80% of its total income, the full amount of income, costs and deductions are deemed to relate to active income.
- The definition of foreign-source income is modified, mainly to include the new rules applicable to the Colombian holding companies (CHC) regime.
- Taxes are deductible in full if they are effectively paid during the taxable year and are directly related to the taxpayer's income-producing activity, subject to the following exceptions: (i) the levy on financial transactions (50% deductible); (ii) income tax, equity tax and normalization tax (nondeductible); and (iii) the 50% of the industry and commerce tax effectively paid (available as a tax credit provided it is directly related to the taxpayer's income-producing activity).
- Amended thin capitalization provisions apply only to debts between related parties, either directly or indirectly via an unrelated third party. Interest on debt that exceeds twice the net

equity of the taxpayer as at 31 December of the preceding taxable year is not deductible for income tax purposes (a 3:1 debt-to-equity ratio previously applied).

- The rules for the realization of income by capital funds are amended so that in certain cases and subject to the fulfilment of strict conditions, income from such funds will be deemed to arise when the profits are distributed to the beneficiary. Transitional provisions also are introduced.
- The foreign tax credit rules are adjusted. Colombian resident individuals and entities that receive foreign-source income subject to income tax in the source country generally are entitled to a tax credit for the foreign tax paid attributable to the foreign-source income, net of any associated costs and expenses. The foreign tax credit may not exceed the Colombian tax attributable to the income and the Colombian taxpayer must obtain certification of the foreign tax paid.
- VAT paid on the acquisition, import, creation or construction of real productive fixed assets may be treated as a credit for income tax purposes in the year of acquisition or in future years.

### **Withholding tax**

- A special 7.5% withholding tax (WHT) rate applies to dividends distributed as nontaxable income to resident companies (increased from 5% in the original finance law bill). The WHT is payable only when an initial distribution is made to a resident company, and is treated as an imputed tax credit on a subsequent distribution to a Colombian resident individual or an investor resident abroad. Tax on dividends paid out of profits that were not taxed at the corporate level is levied at the general income tax rate (33% for taxable year 2019). The 7.5% WHT also applies after deducting the tax paid at the general rate, resulting in an effective rate of 38.025% for taxable year 2019. These rates also apply to dividends distributed to nonresident individuals and foreign entities, subject to certain exceptions.
- For foreign portfolio investments, a 30.625% WHT rate applies to dividends paid out of profits that were not taxed at the corporate level (comprising 25% WHT on the full amount of the dividend plus 7.5% on 75% of the dividend, i.e. the amount net of the 25% WHT). The WHT rate is 7.5% on dividends paid out of profits taxed at the corporate level. These rules do not apply if the ultimate beneficial owner of the dividends is a Colombian resident with control over the underlying investments.
- Some income withholding tax rates applicable to payments abroad are increased from 15% to 20%, including those on interest, royalties, leasing, and technical, consulting and technical assistance services. However, the 15% WHT rate continues to apply to interest payable on a loan of at least one year. Fees for management and related services paid directly or indirectly to a foreign parent company are subject to a WHT rate of 33% on the gross amount of the payment.

### **VAT**

- The remote maintenance of programs and equipment is brought within the scope of VAT.
- The government may increase the VAT withholding rate from 15% to up to 50% of the tax due. If no increased rate is announced, the 15% rate applies.

### **Miscellaneous**

- The extraordinary equity tax originally proposed to be introduced for taxable years 2019 and 2020 is extended to 2021. The tax applies at 1% on net equity exceeding COP 5,000 million (approximately USD 930,000) on 1 January 2019. (The original finance law bill proposals were for variable tax rates from 0.5% to 1% on net equity exceeding COP 3,000 million on 1 January 2019.)
- The “normalization tax” (effectively similar to a tax amnesty) at a 13% rate (reduced from 14% as originally proposed) applies for income taxpayers that, on 1 January 2019, either have omitted to report assets to the Colombian authorities, or claimed relief for nonexistent liabilities. Foreign trust rights are treated as trust rights owned in Colombia and are potentially subject to the tax.
- The departure tax payable when an individual leaves Colombia by air is extended to apply also to Colombian nationals. The tax is payable at a maximum of USD 1 on the purchase of the airline ticket. Tourism tax also is modified and is payable at a maximum of USD 15 at the time of purchase of airline tickets by passengers whose final destination is Colombia.
- A “SIMPLE” tax regime is introduced for taxpayers with gross income in the previous taxable year of less than 80,000 UVT. A single rate of between 2.6% and 13.6% applies in place of income tax, VAT (in certain cases), consumption tax, consolidated industry and commerce tax, and payments to the pensions system.
- Consumption tax does not apply to taxpayers operating under franchise agreements, who are instead subject to VAT. Consumption tax is levied on the transfer of title to real estate, other than rural property intended for agricultural activities whose value does not exceed 26,800 UVT.
- Other than in exceptional circumstances, electronic invoices must be subject to prior authentication by the tax authorities.
- Electronic invoices are required to claim a deduction for an expense for income tax purposes and to recover any input VAT suffered. Alternative documents such as those generated by POS machines are not accepted for these purposes.

## **Tax incentives**

- A special tax regime is introduced for taxpayers that generate at least 250 direct jobs and make new investments of at least 30 million UVT in a commercial, industrial and/or service activity in Colombia. The employment and investment requirements in the original bill were 50 direct jobs and investment of at least 50 million UVT. The regime provides the following benefits for a period of 20 years: a reduced 27% income tax rate, accelerated asset depreciation, exclusion from the presumptive minimum income provisions and exemption from the equity tax and the dividend tax if the profits were taxed at the corporate level; otherwise a 27% tax rate applies. The regime does not apply to taxpayers in the hydrocarbon sector.
- The CHC regime is introduced for resident companies one of whose main activities is holding securities, investing in foreign or Colombian shares, or administering such investments, and that comply with certain additional requirements. The following rules apply under the CHC regime (i) dividends received by a CHC from a nonresident entity are exempt from tax in Colombia; (ii) dividends distributed by a CHC to a nonresident individual or foreign company are considered foreign-source income and, therefore, not taxed in Colombia (but dividends

distributed by a CHC to a resident individual or Colombian entity are taxed at the normal rate); and (iii) the distribution of premiums for the placement of shares is subject to the same treatment as ordinary dividends, i.e. as exempt income when the beneficiary is a CHC, or as foreign-source income if distributed by the CHC to a nonresident, or taxable income if distributed to a Colombian resident.

- Guidelines are included in the tax code to clarify the terms and conditions for the “works for taxes” mechanism, which allows taxpayers to satisfy a portion of their tax liability through investments in certain projects or infrastructure.

### **Tax administration and procedural issues**

- Where taxpayers omit income, report nonexistent costs or deductions, or claim inadmissible tax credits, WHT or advances, and the tax authorities determine the actual tax payable to be greater than that based on the return as submitted and also more than 250 times the minimum wage (for 2019, the minimum wage is COP 828,116), the taxpayer must pay a fine equal to 50% of the higher tax value and may face imprisonment.
- Taxpayers may request assistance under the mutual agreement procedure (MAP) in Colombia’s tax treaties by making a formal request to the tax authorities. An agreement reached by the competent authority under the MAP is equivalent to a court decision.
- For taxable years 2019 and 2020, where a taxpayer’s net income tax liability is at least 30% higher than that of the previous year, the statute of limitations is six months after filing the relevant tax return and 12 months if the net income tax liability is increased by at least 20%, but not more than 30%, over the previous year.
- The tax authorities are empowered to accelerate procedures to agree on tax, customs and exchange control matters with the taxpayer at the judicial stage and also may agree to settle a disputes without a full tax audit and before the commencement of judicial proceedings in exchange for the prompt payment by the taxpayer of tax, interest and penalties due.