



Tax Reform Newsletter No. 01

December, 2022

Colombian Tax Reform for 2022

With the purpose of channeling social expenditure to thrive for equality and social justice, as well as consolidating the fiscal adjustment, on December 13 2022, the National Congress approved the tax reform proposed by the new government of Colombia.

This reform alters the income tax applicable to individuals and entities, modifies the carbon tax, and creates taxes on single-use plastics, sugary drinks and ultra-processed foods. Additionally, it includes a series of measures to counteract tax evasion and avoidance, among others. Most changes introduced will enter into force as of January 1, 2023.

Per the above, please find below a summary of the main changes below:

Corporate income tax

- The withholding tax rate on dividends paid by Colombian companies to nonresident companies and other nonresident entities will be increased to 20 % (from 10 %). The tax rate on payments remitted abroad by a Colombian branch to a foreign parent will be 20% when paid out of profits that have been taxed at the branch level.
- The withholding tax rate on dividends paid by Colombian companies to Colombian resident entities out of profits

taxed at the corporate level will be increased to 10% (from 7.5 %).

- The capital gains tax rate will be increased to 15 % (from 10 %).

The standard corporate income tax (CIT) rate will remain at 35 %. However, a new net tax rate (TDD per its acronym in Spanish) will be introduced, under which Colombian companies, including free trade zone users, will be subject to a minimum 15 % effective tax rate, calculated based on financial net profit, in accordance with the OECD Pillar Two global minimum tax rules. TDD is determined by dividing net tax (ID per its acronym in Spanish) by net profit (UD per its acronym in Spanish). The legislation will define and determine the method of calculation of both ID and UD. If the TDD is less than 15 %, an additional “top-up” tax (IA per its acronym in Spanish) must be calculated so that the TDD equals at least 15 %. Taxpayers whose financial statements are subject to consolidation in Colombia must follow additional procedures to determine the group’s ID and the “top-up” tax applicable to the group and each member individually, depending on whether the group’s ID is less than 15 %. Taxpayers who produce consolidated financial statements in Colombia must make the calculation for each group taxpayer who is tax resident in Colombia and producing consolidated financial statements. The TDD will

not apply to: (i) companies that currently hold ZESE (special economic zone) status, for the period that their corporate tax rate is 0%; (ii) companies that apply the tax incentive for the areas most affected by the armed conflict (ZOMAC per its acronym in Spanish); (iii) industrial and commercial state-owned companies, and companies that are at least 90 % owned by the state and that have a monopoly in the gambling industry or the selling of alcohol; and (iv) loss making taxpayers.

- The corporate income tax surcharge for financial institutions; insurance and reinsurance companies; stock exchange brokerage firms; agricultural and livestock brokerage firms; agricultural, agroindustrial, or other commodities exchanges; and stock market infrastructure, with annual taxable income of at least 120,000 tax units (UVT, the value of which is COP 38,004 for 2022), will be increased to 5% (from 3 %) from 2023 through 2027, resulting in a CIT rate of 40 %. In the previous tax reform legislation (Law 2155 of 2021, enacted on 14 September 2021) the rate had been fixed at 38% from 2022 through 2025.
- Domestic companies, foreign companies, and permanent establishments of foreign companies with a taxable income of more than 50,000 UVT, involved in the extraction of hard coal, coal lignite, or crude oil, will be subject to a surcharge of up to 15 % on their CIT rate for an indefinite period,



depending on the nature of the activity and the price of the natural resource. Differential rates apply for each resource, e.g., 10 % for coal.

- From 2023 through 2026, companies that engage in hydroelectric energy generation, with taxable income of at least 30,000 UVT, will be subject to a CIT rate of 38 %. This provision will not apply to small hydroelectric power plants with an installed capacity not exceeding 1,000 kilowatts.
- A special CIT rate of 15 % (currently 9 %) will apply to income derived from hotel services, ecotourism parks, theme parks, and agrotourism services, provided in facilities that are newly built or renovated for a term of 10 years from the beginning of the provision of the service. Several conditions must be met for the special rate to apply.
- The CIT rate applicable to publishing companies incorporated in Colombia, exclusively involved in the publishing of books, under the terms of Law 98 of 1993, will be increased to 15 % (from 9 %).
- The CIT exemptions established in section 235-2 of the Tax Code for income derived from: (i) creative and technological added-value industries (known as the “orange economy”); (ii) social and priority housing; (iii) the management of new forest plantations; and (iv) river transport using boats and rafts, will be abolished.
- The special income tax rate of 2 % for income from international maritime transportation services performed by ships registered in Colombia will be abolished.
- The CIT tax credit for 50 % of the municipal industry and commerce tax (ICT) paid will be repealed. A deduction of 100 % of the tax paid will continue to be available. ICT is payable

at rates varying between 0.2 % and 1 % on gross receipts from industrial and commercial activities and services carried out within a municipal territory in Colombia.

- Royalties paid to the government for the exploitation of nonrenewable natural resources no longer will be a deductible expense for corporate income tax purposes. These royalties also will not be recognized for tax purposes as a reduction in the value of income or as income for third parties.
- Certain special deductions for nontaxable income, exempt income, and tax credits, will be capped at 3 % of ordinary net income (taxable income before the deduction of exempt income) per year.
- The transitional regime of amortization on a five-year straight line basis for investments in certain assets specified in section 74-1 of the Tax Code as from 1 January 2017 through 31 December 2027 by companies operating in the oil and mining industry, will be repealed.
- Profits from the sale of shares listed on a recognized domestic or foreign stock exchange will continue to be treated as nontaxable income, provided the shares sold do not represent more than 3 % (currently 10 %) of the total shares of the company that issued the shares.
- The tax credit provided in article 256 of the Tax Code for investment in research and development, as determined by the National Council of Science and Technology Tax Benefits, will be increased to 30 % (from 25 %). However, expenses related to the investment covered by the tax credit no longer will be deductible. The tax credit currently is not covered by

the 3 % cap on tax benefits but the increased credit will be subject to the cap.

- The restriction on concurrent tax benefits (i.e., the receipt of more than one benefit simultaneously for the same economic event) will be extended also to include exempt income, nontaxable income, and special CIT rates. Currently, the restriction covers only special deductions and tax credits.
- Profit distributions in the form of shares or quotas of other entities without a share capital (e.g., cooperatives) will be treated as taxable income.
- Payments for membership of social clubs, costs of household help, or expenses incurred in connection with other activities unrelated to the income-producing activity of the company, and personal expenses of partners, participants, shareholders, customers, and their families will not be deductible expenses for the taxpayer.
- The mega investments regime set out in section 253-3 of the Tax Code, that provides significant tax incentives to taxpayers that meet specified investment and employment generation criteria, will be abolished.
- The element of the proceeds of life insurance policies deemed to be nontaxable income will be reduced, in line with article 303-1 of the Tax Code.
- Resident individuals and legal entities obliged to file income tax returns, carrying out hotel and tourism activities in San Andres Island, Providencia, or Santa Catalina before 16 November 2020, and currently employing workers, will be able to deduct 150 % of salaries and social security payments made during 2023.



- The tax credit for donations to fund the immunization of the Colombian population against COVID-19 and any other pandemic, will be abolished.

International Tax

- Nonresident individuals and entities with an SEP in Colombia (triggered by maintaining a “deliberate and systematic interaction” with users or clients in Colombia and obtaining gross income of at least 31,000 UVT from sales or the provision of services to users located in Colombia), will be subject to income tax on income derived by the SEP from the sale of goods or the provision of digital services listed in article 20-3 of the Tax Code, to clients or users in Colombia, which will be treated as Colombian-source income. The income will be subject to a 10 % withholding tax deducted by the payer, in accordance with the eighth paragraph added to article 408 of the Tax Code. A “deliberate and systematic interaction” is presumed to exist where either (i) the nonresident person maintains an interaction or marketing deployment with at least 300,000 clients and/or users in Colombia during the current or previous taxable year or (ii) the nonresident person or entity not domiciled in Colombia displays prices in Colombian pesos (COP) or allows payment in COP. This measure will apply as from 1 January 2024.
- Instead of the deduction of the 10 % withholding tax by the payer, taxpayers with an SEP in Colombia may choose to file an income tax return and pay tax at a rate of 3 % on total gross income derived from the sale of goods or the provision of digital services from abroad to Colombian users. This would be a final tax liability.
- Credit and debit card issuers, and payment service processors, are authorized to withhold taxes on payments

facilitated to suppliers with an SEP in Colombia. Nonresident taxpayers with an SEP will not be subject to the formal tax reporting obligations applicable to tax residents.

Individual income tax

- The tax exemption for 25 % of total employment income will be limited to 790 UVT per year. Currently the exemption is capped at 240 UVT per month.
- Instead of being assessed separately, dividend income will be aggregated with an individual’s other income and taxed at the marginal rates under section 241 of the Tax Code of up to 39%. A 19% tax credit will be allowed on dividends that are subject to a marginal income tax rate of at least 19%. Additionally, the withholding tax rate on dividend payments to resident individuals will be 0% when the payment does not exceed 1,090 UVT and 15% for payments in excess of this amount.
- The withholding tax rate on dividends paid to nonresident individuals will be increased to 20% (from 10 %).
- The capital gains tax rate will be 15% (currently 10 %) for both resident and nonresident individuals.
- An annual deduction of 72 UVT per dependent will be available, with a maximum limit of four dependents per person.
- All income tax exemptions and deductions are limited to 1,340 UVT per year (currently 5,040 UVT).

Wealth tax

- A new wealth tax will be introduced as a permanent tax on individuals with net worth as of 1 January of the relevant tax year exceeding 72,000 UVT. This amount will be calculated as the aggregate value of assets owned (real estate,

investments, vehicles, financial products, accounts with financial institutions, etc.), less the liabilities and debts. The tax will apply to the worldwide assets of resident individuals; nonresident individuals will be subject to wealth tax only on their Colombian assets.

- The wealth tax will have marginal tax rates of 0 %, 0.5 %, or 1 %, with the 1 % rate applicable to individuals with net worth in excess of 239,000 UVT. A temporary marginal rate of 1.5 % will apply from 2023 through 2026 for assets that exceed 239,000 UVT.
- Taxpayers subject to the wealth tax will include: (i) individuals and estates subject to the Colombian income tax or similar regimes; (ii) nonresident individuals with respect to assets owned in Colombia directly or through a permanent establishment; (iii) estates of deceased persons who at the time of death were nonresidents in Colombia, with respect to assets directly owned in the country; and (iv) foreign companies or entities that are not income tax payers in Colombia, if they own assets located in Colombia other than shares, accounts receivable from Colombian debtors, or portfolio investments.
- For individuals, 12,000 UVT of the value of housing costs will be excluded from the tax base.
- For unlisted shares, the wealth tax will be calculated by applying an adjustment allowed under article 73 of the Tax Code, unless the adjustment is greater than the intrinsic value, in which case the intrinsic value will be used. In the case of listed shares, the value will be the average market quotation value of the year or part of the year immediately prior to the date on which the tax is triggered.



Penalty Regime and Institutional Strength Measures

- Extraordinary powers will be granted to the president for a six-month period to issue regulations to: (i) improve the operation of the tax authorities to achieve efficiency in tax, customs, and exchange management; and (ii) issue a new sanctioning and goods confiscation regime for customs matters. A study of the tax authorities' staffing structure will be conducted and the number of personnel increased.
 - Amendments will be introduced addressing criminal actions such as the omission of assets, inclusion of nonexistent liabilities, fraud, or tax evasion.
 - Withholding tax returns will be deemed filed where the amount of tax withheld does not exceed 10 UVT and is paid within one year. Returns not exceeding this threshold that are not finalized by the date of entry into force of the law may be deemed filed by paying the total amount owed (including interest), no later than 30 June 2023.
 - WHT returns with a withheld tax value of less than 10 UVT that were deemed incomplete for not being paid in full, will be held as complete if the missing amounts are filed and paid, together with any default interest payable, within a year of being deemed incomplete, and no later than 30 June 2023.
 - Penalties for failure to submit tax reporting information, submission of incorrect information, or late submission, will be reduced to 1 %, 0.7 %, and 0.5 % (from 5 %, 4 %, and 3 %, respectively). For the incorrect submission of information other than amounts with a monetary value, the penalty will be 0.5 UVT for each incorrect item, instead of being a percentage of income or equity. The maximum penalty will be reduced to 7,500 UVT (from 15,000 UVT). Finally, the penalty for voluntary amendment will be reduced to 10% (from 20 %) of the penalty that would have otherwise been charged.
- The interest rate applied to outstanding tax and customs duties paid in full by 30 June 2023 will temporarily be reduced to 50 % of the rate specified in article 635 of the Tax Code.
 - VAT returns that have been disregarded before 30 November 2022 for having been filed late, may be refiled within the four months following the effective date of the tax reform, without paying late filing penalties or interest.
 - A temporary reduction of sanctions and interest rates for omissions in declarations administered by the National Tax Administration will be introduced for taxpayers that file outstanding returns before 31 May 2023.

Other measures

- The scope of the carbon tax will be extended to include the sale, import, and mining of thermal coal (exports will remain exempt), for which the tax rate will increase progressively as from 2025 through 2028 to reach 35 %, with rates of 25 %, 50 %, 75 %, and 100 % of the value of the full tariff in 2025, 2026, 2027, and 2028, respectively. The tax rate for other elements subject to the carbon tax also will be increased. However, the rate will be nil for gasoline, diesel fuel, and jet fuel in the following departments: Amazonas, Caquetá, Guainía, Guaviare, Putumayo, Vaupés, and Vichada, and the following municipalities: Acandí, Alto Baudó, Bahía Solano, Bajo Baudó, Bojayá, Juradó and Carmen del Darién (Chocó), Litoral de San Juan, Medio Atrato, Río Sucio, Sipí, and Unguía.
- The tax reimbursement certificate issued by the government to taxpayers that increase investments in hydrocarbon exploration and mining, enabling these taxpayers to receive certain payments from the government as nontaxable income, will be abolished.
- The rates of unified tax under the "SIMPLE" regime available to small taxpayers will be amended and will range from 1.2 % to 11.6 %, depending on the annual gross income and the business activity. Currently the highest tax rate is 14.5% and applies to the upper income bracket for professional services. A new category of eligibility will be created to cover education, health care, and social assistance activities.
- The stamp tax on the sale of real estate with a value in excess of 20,000 UVT will be reintroduced at rates of 0 %, 1.5 %, or 3 %, depending on the value of the sale, with the 3 % rate applying where the value exceeds 50,000 UVT.
- A new procedure to credit GMF (a levy on financial transactions) is implemented for taxpayers under the SIMPLE regime.
- The transport of valuables will be subject to VAT at 19 % (currently excluded from VAT with no right to deduct related input VAT).
- New taxes will be introduced on single-use plastics, sugary drinks, and ultra-processed foods.
- The following items will be excluded from VAT: (i) the sale of tickets to movies, sporting, and cultural events, including musical and family recreation events and public shows of the performing arts; (ii) the commercialization of products that are developed, prepared, manufactured, and produced inside jails; (iii) the provision of vehicular access rights to wholesale supply centers destined for commercial agricultural and fishing activities; (iii) the supply of live animals, except for domestic pets; and (iv) slaughtering services. The VAT liability of several goods also will be changed from exempt to excluded.
- The annual three-day VAT-free period during which no VAT is payable on certain goods that otherwise would be subject to VAT will be abolished.



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