



Global Rewards Update Colombia – New Legislation Surrounding Share-Based Incentive Plans

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Key Points to Know

Colombian lawmakers have adopted Act 1819 of 2016 ("the Act"), which took effect on January 1, 2017. Article 108-4, of which, may impact employer share plan withholding and reporting requirements for companies which have share plan participants in Colombia. The Act confirms that, in the case of share plan awards granted by a non-Colombian entity to employees in Colombia, where a Colombian entity claims a corporate tax deduction with respect to such share-based compensation, the Colombian entity should operate income tax

and social tax withholding on such share awards at the individual tax point.

While this legislation largely reflects our understanding of the tax treatment applicable in Colombia to date, the legislation is significant in that no formal legislation had existed previously to address the tax treatment of share plan awards granted by a foreign parent company. To summarize:

- Where Colombian plan participants receive share plan awards and are directly compensated by a non-Colombian parent company, if plan costs are charged out to the Colombian entity, and reimbursed by the local Colombian entity, payroll reporting and income tax and social tax withholding obligations should exist with respect to such awards.

However, where plan costs are not charged out to the local Colombian entity, no income tax withholding, social tax withholding, or payroll reporting requirement exists, though employees should be subject to income tax on the income realized from their share plan award via their annual personal tax return.

Overview

The Act aims to provide guidance and clarification with respect to the employee and employer tax treatment of equity awards, due to the previous lack of explicit legislation addressing share-based compensation. To be certain, this legislative guidance generally aligns with previous tax reporting and withholding advice issued by Deloitte, though should be confirmed on an individual issuer basis.

Main Legislative Updates

New Guidance in the Act

The newly implemented legislation specifically states that:

- With respect to share-based payments where an individual either:

- a) acquires the right to exercise an option for the acquisition of shares of the employer; or
- b) receives as part of their remuneration shares of the employer company;

The value to be deducted for corporate income tax purposes shall be the corresponding value of the shares at the time the option is exercised or shares are delivered; and

Such a deduction for corporate income tax purposes will generally result in an income tax withholding and social tax withholding obligations with respect to the awards.

- Additionally, the Act provides guidance with respect to the point of taxation to the employee and the amount of income realized by the employee (largely, share delivery), though to confirm, this guidance is principally viewed as a clarification rather than tax treatment change.

To confirm, the fact that a Colombian entity may be required to record a compensation expense with respect to awards granted to its employees by a foreign parent company, does not in itself result in a payroll reporting or income tax/social tax withholding obligation in Colombia. In other words, the recognition of a compensation expense in the Colombian entity's financial statements is not in itself sufficient to claim a corporate tax deduction for such awards, nor is it sufficient to trigger a payroll compliance obligation which would not otherwise exist.

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Deloitte's view

This new tax legislation is a welcome update in Colombia, due to the previous lack of explicit guidance regarding employer tax withholding and reporting obligations for share-based compensation. Non-Colombian parent companies which deliver shares to Colombian plan participants and do not charge out costs should not see any new requirements. Non-Colombian parent companies who do charge out costs should also not have any new requirements but continue to operate payroll reporting and withholding. To be certain, it is our understanding that withholding on share awards in Colombia in the absence of a recharge of share plan costs, and corresponding reimbursement to the issuer company, is not required. Withholding should only apply to Colombian parent companies issuing shares of a Colombian company to Colombian employees, or in the case a foreign parent charges plan costs out to the local Colombian entity and is reimbursed for such costs by the Colombian entity. We will continue monitoring the legislative environment in Colombia and provide updates in case additional clarifications are made with respect to the Act.

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