

Colombia

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1.0 OVERVIEW

The Colombian tax system comprises taxes at the national, departmental and municipal levels. Resident individuals and companies are taxed on worldwide income and assets. Non-resident individuals, non-resident companies and permanent establishments of foreign companies are subject only to their Colombian-source income. The corporate income tax (CIT) rate is 33% for Colombian companies and foreign entities. This rate will be gradually reduced as follows:

Year	CIT rate
2020	32%
2021	31%
After	30%

Most payments made abroad are subject to withholding tax at 20%, whereby the Colombian taxpayer must collect the withholding tax.

The main territorial taxes (departmental and municipal taxes) are industry and commerce tax, real estate tax and registration tax. In regards to avoiding double taxation and preventing tax avoidance, Colombia has increased the number of signed double taxation treaties and has implemented certain Base Erosion and Profit Shifting (BEPS) measures.

2.0 LEGAL SYSTEM

The Colombian legal system is based on codes and laws rather than jurisprudence as a result of civil legal traditions. However, some decisions made by high courts in Colombia are considered a source of law for the interpretation

of controversial matters. The legislative authority is the Congress, which makes law for the entire nation. Additionally, Colombia is divided in territorial entities called departments, municipalities and districts that have to right to regulate some tax matters.

3.0 TAXATION AUTHORITIES

The Colombian tax system is administrated by National Tax and Customs Directorship (DIAN, in its Spanish acronym), a national entity ascribed to the Ministry of Finance. National taxes such as corporate tax and value-added tax (VAT) are administered by the DIAN. Local tax departments or municipalities are responsible for collecting local taxes such as real estate tax, industry and commerce tax, among others.

4.0 BUSINESS VEHICLES

A foreign investor may use Colombian business entities or operate directly through a foreign entity (with or without a permanent establishment). For permanent activities in Colombia, a foreign investor may incorporate a company (limited liability or unlimited liability), or establish a branch or partnership agreement.

4.1 Partnership agreements

Partnership agreements have neutral tax effects. The partners are subject to income tax and must report the assets, liabilities, incomes, costs and deductions in accordance with their participation. Non-resident partners pay specific rates of income tax: 35% for non-resident individuals and 33% for foreign companies (to be reduced as described in section 1.0).

4.2. Corporations

Corporations are required to have at least five shareholders, none of whom may have 95% or more of the outstanding shares of the company. A board of directors must have a minimum of three members, with their respective alternates. There is no minimum capital to incorporate a corporation, but the shareholders are required to subscribe for at least 50% of the authorized capital and to pay at least one-third of the subscribed shares at incorporation. The remaining balance has to be paid during the year following the incorporation.

4.3 Simplified stock companies

The most used business vehicle in Colombia is the simplified stock company, which does not require a minimum number of shareholders to be incorporated. The subscribed shares can be paid during the two years after the incorporation. A board of directors is not required, nor is any minimum amount of subscribed shares. The incorporation and amendment of bylaws may be made by a private document. The shareholders are liable only up to the amount of their capital.

4.4 Limited liability companies

Limited liability companies must have at least two partners and no more than 25. Any change in the capital composition has to be approved by the partners representing at least 70% of the capital. The total amount of the contributions shall be paid when the company is incorporated. Unless otherwise agreed at the time of incorporation, all partners carry out the representation of the company. Partners are liable up the amount of their contribution; however, they are

jointly and severally liable for labor and tax obligations.

4.5 Branch of foreign entity

The branch of a foreign entity is considered a commercial establishment that must be registered in Colombia by means of a public deed, which includes (i) the activities that the branch will perform in the country; (ii) the capital assigned to the branch; (iii) the domicile of the branch; (iv) the term during which the branch will conduct business in the country and the grounds to terminate them; (v) the appointment of a general proxy, with one or more alternates; and (vi) the external auditor, who shall be an individual residing in Colombia. The assigned capital has to be paid entirely before the branch starts its operation. Additional capital may be assigned as supplementary investment.

4.6 Private equity funds investments

Foreign entities may participate as investors in private equity funds investments. Securities brokerage and trading companies, trust management companies or investment managing companies supervised by the Superintendence of Finance are the only types of entities allowed to manage these funds, but may appoint an independent manager to undertake investment decisions. The funds are required to invest at least two-thirds of their resources in non-publicly traded securities (startups and infrastructure, among others). The minimum investment is 600 minimum monthly wages (approximately US\$150,000). Private

equity funds are required to have at least two investors, an investment committee and an audit committee. Private equity funds may be comprised by more than one separate investment compartment.

4.7 Foreign corporations

A permanent establishment of a foreign company or individual is defined as a fixed place in Colombia where the foreign entity has a level of permanence and performs all or part of its activities. The permanent establishment will be taxed on its income, assets and capital gains attributable to a Colombian source.

Foreign corporations are taxed on their Colombian-source income and capital gains only. As a general rule, the withholding tax rate on payments made to non-residents in respect of services rendered in Colombia is 20%.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

The capital of a company can be increased in cash or in kind. In both cases the investor receives shares.

5.1.2 Contributions without taking additional shares

It is necessary to issue shares when the investor makes contributions. Contributions may be made for a higher value than the face value of the shares if the shares are issued at a premium.

Capital contributions are subject to a 0.7% registration tax on the amount contributed, and surplus is subject to a 0.3% registration tax.

5.1.3 Distributions of paid-up capital

The distribution of paid-up capital to non-resident shareholders must be made in accordance to commercial laws and is not taxable. Nevertheless, the distribution of any amount in excess of the paid-up capital is subject to a capital gains tax at 10% when the liquated company had existed for two years or more.

5.2 Debt financing

5.2.1 Withholding tax implications

The payment or accrual of interests should be subject to withholding tax and comply with Colombia exchange rules. Withholding tax rate will be 15% for loans with a term longer than one year and 20% if less. The rate of withholding tax can be reduced or eliminated under an applicable double taxation treaty signed by Colombia¹.

There is a 5% withholding tax rate for the interest paid on loans with a term of eight years or more for financing public private partnerships (PPP). Furthermore, if the loans are granted by a non-resident related party or an entity located in tax havens, the loans would be subject to the Colombia transfer pricing regime. Loans granted by an entity located in a tax haven will be subject to a withholding tax rate equal to the corporate income tax rate. Tax havens are currently the countries listed by the Colombian government in article 1.2.2.5.1. of Decree 1625 of 2016.

5.2.2 Thin capitalization

According to regulation, there is a limit on the deduction of interest on debt in favor of related companies that exceeds two times

¹ Colombia has signed double taxation treaties with Canada, Chile, the Czech Republic, France, India, Mexico, Portugal, South Korea, Spain, Switzerland, the United Arab Emirates and the United Kingdom.

the tax equity of the taxpayer (as of December 31 of the previous year). The interest that exceeds the cap referred to above is not deductible.

5.3 Stamp tax

Colombian tax law provides for a stamp tax. As of 2010, the stamp tax rate is 0%.

6.0 CORPORATE INCOME TAX

6.1 Corporate income tax rate

The corporate income tax rate is 33% for Colombian companies and foreign entities. This rate will be gradually reduced as follows:

Year	CIT rate
2020	32%
2021	31%
After	30%

For companies located in free trade zones that are industrial users of goods and services, the CIT rate is 20%.

Financial entities with a tax base of 120,000 UVT, or Tax Unit Value, (approximately US\$1,370,000) or more are subject to the following CIT rates:

Year	Tax rate
2013	37%
2020	35%
2021	34%

6.5 Dividends

The distribution of dividends to foreign individuals or companies from profits not taxed at the corporate level is subject to these combined rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

If the dividends are paid from profits that were taxed at the corporate level, the tax rate is 7.5%. Inter-corporate dividends distributed to a local company from profits taxed at the corporate level are taxed at a rate of 7.5%. This tax rate may be used by the final beneficiary (individual or foreign entity) If the inter-corporate dividends were paid from profits not taxed at the corporate level, the tax rate will be the combined rates described above. Dividends distributed to branches or permanent establishments of foreign companies from profits that were taxed at a corporate level are subject to a 7.5% tax rate. If the dividends were not taxed at the corporate level, the dividends will be taxed at combined rates described above.

6.2 Capital gains

Income sources that constitute capital gains are specifically defined in tax law, including:

- Sale of fixed assets held for more than two years
- Gift, inheritances and legacies
- Income from lotteries, prizes or similar events
- Gains from gratuitous agreements between living parties
- Gains from liquidation of companies.

The current capital gains tax rate is 10%. In the case of income from lotteries, prizes and similar events, the rate is 20%.

6.3 Branch tax

The profits paid by a Colombian branch to a foreign parent are subject to a 7.5% withholding tax rate when the profits have been taxed at the branch level. If the dividends were not taxed at the branch level, they are subject to the following rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

6.4 Computation of taxable income

6.4.1 Taxable base

Resident entities are taxed on worldwide income, while permanent establishments as branches of foreign companies are taxed only on their Colombian-source income. The attribution of income to permanent establishment depends on several criteria, including functions, assets, risks and personnel involved in obtaining the income.

Companies resident in Colombia or permanent establishments have two ways of determining their taxable base of income tax: the regular system and the presumptive income system. The taxpayer must compare both systems and the higher taxable income payable applies.

In the regular system, taxpayers are subject to corporate income tax on their ordinary and extraordinary revenues. Returns, rebates and discounts are subtracted from revenues. The costs are expenditures directly attributable to such income. These costs are deductible from income tax as long as they are necessary, proportionate, related to the company's activities and accrued or paid during the taxable year.

In applying the presumptive income system, the taxable income cannot be less than 3.5% of the net worth held in the year immediately preceding the taxable year. This rate will be 1.5% in 2019 and 2010 and 0% as of 2021.

The following amounts may be deducted from this base: (i) net equity value of contributions or shares held in Colombian entities; (ii) net equity value asset affected by events of force majeure; (iii) net equity value of assets associated with companies undergoing the initial unproductive stage.

6.4.2 Deductions

Some expenditures are permitted to be deducted if they meet the criteria of causality, proportionality and necessity. The tax system establishes following costs and expenses as deductible:

- Salaries paid to employees when the employer has paid all payroll taxes and social security contributions
- 100% of real estate tax as long as the payment of this tax is related to the taxpayer's income-producing activity

- Amortization of investments
- Depreciation of fixed assets used in producing income
- Expenses incurred abroad when they have been subject to withholding taxes
- Foreign exchange rate gains and losses.

The following expenditures may be used as a credit for corporate income tax:

- 50% of the industry and commerce tax paid in the fiscal year
- VAT paid acquisition of fixed productive assets

6.5 Income tax reporting

Colombian resident companies and non-resident corporations with permanent establishments in Colombia must file an annual income tax return within three months of the end of the tax year. If resident entity is liquidated during the taxation year, income tax is reported and payable for a portion of the year. The penalty for late filing is 5% per month of the tax payable, up to 100% of the tax payable or withholding tax due. The taxpayer is responsible for computing and paying any interest incurred for late filing.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

The transfer pricing regime is based on the arm's length principle of the Organisation for Economic Co-operation and Development (OECD). Colombian entities that, during a fiscal year, carried out transactions with related entities located abroad, related entities located in free trade zones, and/or related entities or third parties located

in non-cooperating jurisdictions or in low- or no-tax jurisdictions, must determine their revenues, deductible costs and expenses. Entities must use prices and profit margins that would have been used in comparable transactions with or between unrelated parties. The taxpayers have to file an annual transfer pricing return and prepare a transfer pricing analysis. Law 1819 of 2016 determines that some taxpayers have to file the master file and country-by-country report.

7.2 Withholding tax on passive income

Royalty and rent payments made by Colombian resident entities to foreign companies are subject to withholding tax at a rate of 20%. In the case of dividends paid to a foreign company, the withholding tax rate is 7.5%. The distribution of dividends to foreign individuals or companies from profits not taxed at the corporate level is subject to the following rates:

Year	Tax rate
2019	38.025%
2020	37.100%
2021	36.175%
After	35.250%

7.3 Withholding tax on service fees

Fee payments for consulting, technical assistance and technical services are subject to a 20% withholding tax rate. Under a double taxation treaty, a non-resident may be able to claim an exemption from Colombian income tax if the entity does not have a permanent establishment in Colombia.



8.0 PAYROLL TAXES

8.1 Colombian general pension system

Employers and employees are liable to make contributions to the general pension system. The employer's contribution is equal to 12% of the employee's monthly salary. The employee contributes up to 6% of their monthly salary. The employer is responsible for withholding the employee's contribution. The maximum contribution base is 25 minimum monthly wages, which is COP \$19,531,050.

8.2 Health care contributions

Contributions to government health care entities are paid on a monthly basis and are equal to 12.5% of the employee's salary, of which 8.5% is assumed by the employer and 4% by the employee.

8.3 Payroll taxes

Employers must contribute 9% of their total payroll every month into payroll taxes, which includes 3% to the Colombian Family Welfare Institute 2% to the National Apprenticeship System and 4% to the Family Funds. Under specific circumstances, payroll tax is not applicable for employees who earn

less 10 minimum legal monthly wage, which is approximately US\$ 2,760.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Value-added tax is an indirect national tax on (i) services rendered in Colombia and from abroad; (ii) sales and imports of physical movable goods; (iii) sales or transfers of intangible assets related to industrial property; and (iv) gambling sales and operations, except for lotteries and online gambling. As a general rule, VAT does not apply to the sale of fixed assets and export of good and services.

The general VAT rate is 19%. However, some goods or services are subject to rates of 5% or 0%. VAT is not applicable when the goods/services have been expressly excluded (not taxed) or exempted (0% rate). In the case of exporters and producers of exempt goods/services, input VAT can be recovered via a tax refund.

9.2 Annual property tax

There is an annual property tax on the ownership of real estate; the rate will vary depending on the value and authorized use of the land. The annual property tax varies by

municipality, but it typically ranges between 0.3% and 1.6%. If the land is not urbanized, a maximum of 3.3% tax rate might apply.

9.3 Industry and commerce tax

Industry and commerce tax accrues on the performance of commercial or industrial activities or the rendering of services within a municipal jurisdiction. The rate varies depending on the activity or service involved. The highest rate is 1.4% on total revenues.

9.4 Financial transactions tax

Financial transactions tax is accrued by the performance of financial transactions any time there is a debit in an account held in a local bank. The financial transaction will be subject to a tax rate of 0.4%.

9.5 Registration tax which applies to documents

Legal acts registered with the Chamber of Commerce are subject to a tax of 0.3% to 0.7% on transaction amounts stated in the document. Documents registered with the Register of Public Deeds are subject to a tax of 0.5% to 1% on the transaction amounts stated in the document or the value of real estate.