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PORTFOLIOS™

FOREIGN INCOME

Business Operations in Colombia

by

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Business Operations in Colombia

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Colombia*, No. 7090-2nd, contains information enabling foreign investors to determine the best method of conducting their operations in Colombia from both a tax and a general legal point of view. It analyzes in detail the statutory and procedural framework of Colombian income taxation as it applies to individuals and corporations. The analysis also covers many of the other legal details vital to the organization of a Colombian company. In addition to providing a detailed explanation of the Colombian system of income taxation, the Portfolio discusses indirect taxation (VAT), basic tax and financial accounting, and corporate, trade, customs, labor, and foreign investment and exchange-related law issues.

The Portfolio analyzes the practical issues that confront foreign businesses operating in Colombia. A guide to the Detailed Analysis is provided by a Table of Contents.

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DETAILED ANALYSIS

I. Colombia — General Background

A. Political/Governmental Organization

1. The Country

Colombia is a unitary republic[1] divided into 32 departments (or provinces), which are managed by the central government.

Colombia borders the Atlantic Ocean to the north, the Pacific Ocean to the west, Ecuador and Peru to the south, Venezuela and Brazil to the east, and Panama to the northwest.[2] The archipelagoes of San Andres and Providencia lie to the north in the Caribbean Sea.[3] Bogotá D.C., the capital, is located at an altitude of 2,648 meters on a plateau that is wedged in between two mountain ranges of the Andes.

Spanish is the official language of Colombia.[4] While Native Colombian and/or Aboriginal languages and dialects spoken in various areas of particular departments are also considered official languages, government and business operations are conducted in Spanish.[5]

2. End of Civil War and FARC

On November 24, 2016, Colombia's then President, Juan Manuel Santos, entered into a final peace agreement with the Revolutionary Armed Forces of Colombia (commonly referred to as the "FARC"). This agreement, which ended the 54-year long civil war in which the country had been engaged, was a revised version of the initial agreement, signed on September 26, 2016, and rejected by a narrow margin (0.4%) in a public referendum held a few days later. The final agreement was approved by the Colombian Congress.

In August 2019, a small group of former FARC guerrillas in the process of reincorporation opted to rearm and declare war on the Colombian Government. Colombia's then President Iván Duque reiterated his commitment to the implementation of the peace agreement and the process of reintegration of former guerrillas into civilian life, and ordered the military forces to redouble their efforts to capture members of terrorist groups and to spare no effort to guarantee the country's security and stability.

3. Political Organization

The current Colombian Constitution was ratified in 1991 as a result of the National Constitutional Convention. This convention enacted a new constitution superseding the prior constitution, which was enacted in 1886. Under the 1991 Constitution, Colombia is organized as a unitary Republic, under popular sovereignty, with a national government that follows the principle of separation of powers (into the legislative, executive, and judicial branches),[6] with a certain degree of administrative and financial decentralization.

The legislative power is exercised by a bicameral Congress comprised of the Chamber of Representatives and the Senate.[7] Members of Congress are elected for terms of four years.[8] There are currently 108 Senators and 172 Representatives. Under the peace agreement with FARC, five seats in the Colombian Senate and five seats in the House of Representatives are granted to the *Comunes* party, composed of FARC members who laid down their arms.

The executive power is exercised by the president, who serves as the commander in chief, the head of government, and the chief administrative authority of the nation.[9] In 2015, the Colombian Congress voted to limit the term that the president can serve to one four-year term, removing the possibility for the president to be re-elected.[10] This amendment came shortly after ex-President Juan Manuel Santos was elected for a second term, on June 16, 2014. The President supported this reform, which was a reversal of a policy that had been put in place by his predecessor, Álvaro Uribe, who had advocated for the initial amendment, allowing him to run for a second term in 2006, and who had tried to run for an additional third term, in 2010, but was prevented from doing so by the Constitutional Court.

The executive branch also comprises a vice president and 18 ministers, who oversee the following Ministries: Agriculture and Rural Development; Health and Social Protection; Labor; Justice; Internal Affairs; Technologies, Information and Communications; Commerce, Industry and Tourism; Treasury and Public Finance; Environment and Sustainable Development; Housing; Culture; Defense; National Education; Mines and Energy; Foreign Affairs; Transportation; Sports and Science; and Technology and Innovation.[11]

B. Judicial System

1. Sources of Law

The supreme law of Colombia is the Constitution, promulgated in 1991. The Constitution may be amended by Congress through a legislative act, by a Constituent Assembly or by the People through a referendum.

Jurisprudence incorporated the notion of "Block of Constitutionality" into the legal system whereby certain international norms (including international human rights treaties and funda-

[1] Constitution of Colombia, Constitución Politica de Colombia 1991, art. 1 (Col. Const.).

[2] Colombia's constitution dictates that Colombia's territorial limits are established under international treaties and conventions duly approved by the country's congress and ratified by the President of the Republic. Col. Const., art. 101.

[3] Col. Const., art. 101.

[4] Col. Const., art. 10.

[5] Col. Const., art. 10.

[6] Col. Const., art. 113.

[7] Col. Const., art. 114.

[8] Col. Const., art. 132.

[9] Col. Const., art. 189

[10] Legislative Act 02 of 2015.

[11] Col. Const., art. 189(13).

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mental rights non-derogable in states of emergency) form part of the Constitution.

The main sources of law in Colombia are the Constitution, the legislation, decrees and other legal acts of a general nature issued by the Executive Branch.

Congress is responsible for enacting laws. Only laws issued by Congress may regulate certain matters such as fundamental rights, general division of the territory in accordance with the Constitution, approving treaties entered into by the government or imposing taxes. Exceptionally, Congress may grant the President extraordinary powers to issue decrees with the force of law. This power is limited to specific matters explicitly defined by Congress. The President is prohibited from suspending fundamental rights and issuing codes.

The Constitution grants the Executive Branch regulatory power to issue decrees, resolutions and orders necessary for the execution of the laws. Decrees are hierarchically below the laws enacted by Congress. Their purpose is to clarify and/or develop the laws to facilitate their application and implementation.

Equity, jurisprudence, general principles and doctrine are not sources of law in Colombia. They serve as aids in the interpretation of the legislation.

2. Court System

In cases involving private persons, judicial power is exercised by the Supreme Court of Justice and the Circuit Tribunals.[12] Cases between individuals and the Government are heard by the Administrative Supreme Court of Justice (known as the Council of State).[13] Cases involving constitutional issues, such as actions of unconstitutionality against laws, are heard by the Constitutional Court.[14]

The Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz, JEP*) is the transitional justice mechanism established by the Peace Agreement (November 2016). The JEP has jurisdiction over the crimes committed before December 1, 2016 in the context of the conflict with the former Revolutionary Armed Forces of Colombia – Popular Army (*Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC-EP*).[15]

In 2015, the Colombian Congress passed Legislative Act 02 of 2015 intended to reinforce the separation of powers and achieve greater balance between the three branches of Government. In addition to limiting the number of terms a president may serve, this Act also imposes limits on the re-election of other holders of key public offices (e.g., Attorney General, Public Defender and General Comptroller); establishes a new system of judicial oversight; modifies the process for electing magistrates; increases the minimum qualifications a magistrate must have; and prevents granting certain positions to family members.

3. Arbitration System

Arbitration is a form of alternative dispute resolution. Colombia has a well-established legal framework for arbitration, including the Arbitration Act (Act 1563 of 2012) and the Commercial Code. In March 2020, the President of the Arbitration Center of the Bogota Chamber of Commerce announced the establishment of the Colombian International Court of Arbitration.

Arbitration is widely used in Colombia, especially in the commercial sector and industries such as construction, energy and telecommunications, where specific technical expertise is required to resolve disputes effectively. It is typically used to resolve large complex multilateral disputes between private individuals and public entities. Disputes arising from distribution and supply agreements are also often settled by arbitration when an international or multinational company is involved. Fast resolution, low cost, flexibility and confidentiality often make arbitration the preferred choice for many parties.

[12] Col. Const., arts. 228, 234.
[13] Col. Const., art. 236.
[14] Col. Const., arts. 239, 241.
[15] Legislative Act 01 of 2017, art. 5.

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II. Operating a Business in Colombia

A. Foreign Investment Regulation

1. In General

The Colombian Government recognizes the need for foreign investment.[16] As such, the cornerstone of the country's foreign investment law is the principle of equal treatment of foreign capital entering the country, i.e., that such foreign capital should be treated as if it were domestic capital.[17] This means that special conditions within the Colombian marketplace may not be created through the promulgation of new laws to disfavor or negatively target a foreign investor, and that conditions for the reimbursement of investments and the remittance of profits in force on the date on which an investment is registered may not be changed in any way that could be detrimental to the investor, except on a temporary basis, based on a substantial decrease in the country's international reserves (to less than three months of imports).[18] A foreign investor is any nonresident person for exchange purposes,[19] whether an individual or an entity, that has title to either a direct capital or a portfolio investment in Colombia.[20]

Conversely, foreign investors may not be granted special treatment by being given disproportionate advantages over Colombian investors.[21] International investments subject to the rules of the foreign investment law consist of foreign capital investments made by non-Colombian residents (either individuals or entities) in the territory of Colombia and investments made abroad by Colombian residents.[22] Colombia recognizes two types of foreign capital investment: direct capital investment and portfolio investment.[23] Direct foreign capital investment includes:[24]

> (i) The acquisition of shares, participation quotas, contributions to the capital of a company, or investments in the form of bonds convertible into shares (BOCEAS), that are neither registered in the National Registry of Securities and Issuers (RNVE) nor registered in a system for the quotation of foreign securities;
>
> (ii) The acquisition of shares of the kinds referred to in (i), in a company resident in Colombia and registered with the RNVE, if the investor declares that the shares have been acquired for the purposes of creating a permanent involvement with the country;
>
> (iii) The acquisition of property rights in an autonomous patrimony (which is similar to an Anglo-Saxon trust) created by way of a mercantile fiduciary (trust) instrument, except when the purpose of the trust is to engage in making portfolio investments;
>
> (iv) The acquisition of real estate assets, whether directly or through trusts, construction projects or titles to participation issued as a result of a securitization process (provided the titles are not registered with the RNVE);
>
> (v) Contributions made by investors in the form of contracts or corporate resolutions, such as concessions, the rendering of administrative services, and the licensing of intellectual property rights or rights implying the actual transfer of technology, when the contribution does not entail a capital participation in a company and the profits realized by the title holder depend on the recipient company's profits;
>
> (vi) Supplementary investment in the capital assigned to a foreign branch incorporated in Colombia and investment in a private equity fund; and
>
> (vii) The acquisition of intangible assets for the purposes of using them to obtain an economic benefit in Colombia.

Portfolio investments are investments in securities and instruments registered with the RNVE or listed in the Foreign Securities Listing Systems, participations in collective investment vehicles, and participations in certificate programs with respect to negotiable deposits representing securities.[25]

The law does not consider a transaction involving indebtedness to be a foreign investment.[26] Moreover, Colombian residents that conduct foreign indebtedness operations with foreign currency initially reported as foreign investment are deemed to be in violation of the country's foreign exchange control regime.[27] Foreign indebtedness operations are discussed further below.

2. Investment Restrictions

Foreign investment is allowed in Colombia in almost every sector of the economy, except: (i) the defense and national security sectors; (ii) toxic and radioactive waste processing and the disposal industry, where the waste concerned is not produced in the country;[28] and (iii) surveillance and the activities of private security companies.[29]

In addition, foreign investors may not hold more than 40% of the capital of television service concessionaires. As a general rule, foreign investors do not need approval from governmental entities to invest in Colombia, except in the case of investments in the financial and insurance sectors. Investments in the hydrocarbon and mining sector are subject to a special regime

[16] Law 9 of 1991, art. 9, and General Foreign Investment Regime.

[17] Decree 119 of 2017, art. 2.17.2.2.1.1.

[18] Decree 119 of 2017, art. 2.17.2.2.3.2. However, it should be noted that this has never happened.

[19] In accordance with Decree 119, 2017, art. 2.17.1.2, residents under the Colombian exchange regime are (i) any individual that remains in the country for more than 183 calendar days; and (ii) public law entities and legal entities, including nonprofit entities, that have their main domicile in the country. Likewise, the branches of foreign companies established in Colombia have also the status of residents for exchange purposes. Nonresidents are any (i) Colombian national or foreigner that does not comply with the condition of permanence aforementioned; (ii) legal entity that does not have its main domicile within Colombia, including nonprofit entities; and, (iii) other entity that does not have legal status or domicile within Colombia.

[20] Decree 119 of 2017, art. 2.17.2.2.1.2.

[21] Decree 119 of 2017, art. 2.17.2.2.1.1.

[22] Decree 119 of 2017, art. 2.17.2.1.1.

[23] Decree 119 of 2017, art. 2.17.2.2.1.2.

[24] Decree 119 of 2017, art. 2.17.2.2.1.2 (a).

[25] Decree 119 of 2017, art. 2.17.2.2.1.2 (b).

[26] Decree 119 of 2017, art. 2.17.2.2.1.2, ¶1.

[27] Decree 119 of 2017, art. 2.17.2.2.1.2, ¶1.

[28] Decree 119 of 2017, art. 2.17.2.2.2.1.

[29] Decree 356 of 1994, art. 12.

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and may require prior authorization from the Ministry of Mines and Energy.

3. Registration of Foreign Investments

All foreign direct investment and portfolio investment in Colombia must be registered with the Central Bank.[30]

Registration of a foreign investment provides the investor with the rights to:[31]

(i) Remit abroad any business profits associated with the investment (for example, dividends, as evidenced in the periodic balance statements relating to the investment and the relevant corporate resolution, or in the account statement prepared by the local administrator of a portfolio investment);

(ii) Reinvest business profits in its operations in Colombia;

(iii) Capitalize any amounts with remittance rights, which include resources in local currency or any other asset or right, as a result of obligations derived from the investment; and

(iv) Remit abroad amounts received as a consequence of the disposition or sale of the foreign investment, or as a result of the liquidation of, or a reduction in the capital of, the recipient entity or portfolio.

A foreign investment (whether direct or portfolio) must be registered by the investor or a representative in Colombia that represents the investor's interests.[32] General registration with the Central Bank is effected when a foreign exchange declaration is filed or a request for registration is filed with the Central Bank.[33] Direct foreign investment made through the transfer of currency is automatically registered by the filing of a foreign exchange declaration for international investment transactions, which indicates the amount of foreign currency invested, converted into Colombian Pesos, through the Colombian exchange market (i.e., a commercial bank or compensation accounts).

An investment supplementary to the capital assigned to a branch of a foreign company engaged in activities relating to exploration for, and the exploitation of, oil, natural gas, coal, ferronickel or uranium, or providing exclusive services to the oil and gas industry is registered by the filing of a special form within six months following the expiration of the fiscal period in which the relevant investment was made.

An investment made in the form of a contribution in kind or the capitalization of profits or accounts receivables and equity is registered by the filing of an electronic form through the Central Bank System.

On the other hand, the substitution of the foreign investment must be registered with the Central Bank by filing an electronic form through the Central Bank System within six months from the relevant transfer. Similarly, if the investment is sold to a Colombian resident, liquidated or otherwise cancelled, the investor must register the cancellation of the foreign investment within a six-month period.

Late registration of an investment is a violation of the foreign exchange regulations and is subject to penalties. However, this does not prevent the Central Bank from registering such an investment extemporaneously, provided the investment has been effectively made and is in compliance with the law.[34]

4. Representation, Controversies, Controls, and Sanctions

a. Representation and Notice

A foreign investor in Colombia is required to name a representative in the country via a power of attorney for the purposes of due process among others matters.[35]

Investments by foreign individuals and companies in securities registered with the RNVE and collective portfolio investments must be made through local administrators (i.e., stock brokerage firms or investment management entities), which must be appointed as representatives for the investors and must comply with the applicable registration requirements.

b. Sanctions

The Superintendence of Companies has jurisdiction to investigate and order the closing and liquidation of business activities relating to foreign investments made in sectors that are prohibited to foreign investors or that have not been duly authorized (as applicable). The Superintendence of Companies may also require the Central Bank to cancel the registration of any such investment and impose fines, in the event of non-registration or extemporaneous registration of direct investment, of up to 200% of the amount of the investment concerned.[36]

5. Special Foreign Investment Regimes

a. Financial Sector

Foreign investors may invest capital in Colombian financial institutions. Such investment may take the form of subscription for or acquisition of shares, BOCEAS, or capital contributions made through labor associations or cooperatives.[37]

Foreign investments in the financial sector must be registered with the Central Bank like all foreign investments. They also require authorization from the Superintendence of Finance if new shareholders are to be introduced or if any investor acquires more than 10% of the issued and outstanding shares in any financial institution.

b. Fossil Fuels and Minerals Sectors

(1) In General

Foreign investors involved in exploration for and exploitation, refining, and distribution and transportation of hydrocarbons and/or minerals are subject to both the general rules related to those activities and the conditions set forth in the respective operating agreements entered into with the Colombian Government agencies, such as the National Oil Company (ECOPETROL), the National Mining Agency, and the National

[30] Cen. Bank Ext. Res. 1, May 25, 2018, art. 41.
[31] Decree 119 of 2017, art. 2.17.2.2.3.1.
[32] Decree 119 of 2017, art. 2.17.2.2.2.3.
[33] Decree 119 of 2017, art. 2.17.2.5.1.1.
[34] Decree 119 of 2017, art. 2.17.2.2.2.3.
[35] Decree 119 of 2017, art. 2.17.2.2.2.3.
[36] Decree 1746, 1991, art. 1.
[37] Decree 119 of 2017, art. 2.17.2.3.1.1.

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Hydrocarbons Agency.[38] Such foreign investment must be registered in accordance with the General Foreign Investment Regime.[39]

Colombian foreign exchange regulations provide for a special regime applicable to branches of foreign companies that engage in activities related to exploration for, and exploitation of, oil, natural gas, coal, ferronickel and uranium, or that provide exclusive services to the oil and gas industry.

Branches that access the special regime have certain special rights, including:

(i) The right to make and receive payments in foreign currency to and from companies that are engaged in activities related to exploration for, and the exploitation of, oil, natural gas, coal, ferronickel and uranium, or that provide exclusive services to the fossil fuels industry;

(ii) The right to receive payments from the sale of their products or services abroad in foreign currency; and

(iii) The right to reflect negative balances in the supplementary investment account and to record the availability of goods or services in the supplementary investment account.

However, such branches may neither acquire foreign debt with foreign residents nor purchase foreign currency on the Colombian exchange market, except for purposes of expressly authorized operations.

(2) Special Regime

A special foreign exchange control regime applies to branches in the hydrocarbon and mining sector. This regime does not reinstate a mandatory exchange market for foreign exchange originating from the sale of foreign currency by branches of foreign companies engaged in:

(i) Exploration for, and the exploitation of, oil, natural gas, coal, ferronickel, or uranium; or

(ii) Providing services intrinsic to the hydrocarbon sector, in accordance with article 16 of Law 9 of 1991 and articles 2.2.1.2.3.2 and following of Decree 1073 of 2015, as well as regulations that amend or supplement the requirements therein.[40]

Instead, such a company is required to convert only enough foreign currency to cover expenses in Colombian pesos.[41] It therefore does not have access to the exchange market to purchase foreign currency for exchange operations and is required to have its own supply of foreign currency to cover such expenses.[42] There are some exceptions to this rule relating to the acquisition of foreign currency to be remitted abroad that apply with respect to: (i) amounts received as legal tender from the domestic sale of oil, natural gas, ferronickel or uranium, or services intrinsic to the hydrocarbon sector; (ii) amounts derived from the liquidation of the company concerned; or (iii) other amounts received in legal currency related to the company's operations, including but not limited to operations involving the resources referred to in (i). These amounts can be used for current transactions entered into abroad by a parent company and accounted for as supplementary capital assigned to the branch.[43]

Oil companies involved in exploration and exploitation, oil service companies falling within this category or sector as recognized by the Ministry of Mines and Energy, and companies dedicated to exploration for, and the mining of, coal, ferronickel, or uranium in Colombia may enter into and settle contractual obligations with one another, in foreign currency. Colombian residents are also allowed to make payments in foreign currency for the purchase of natural gas produced in Colombia by companies that finance oil and natural gas exploration and exploitation with foreign capital.[44]

Entities covered by the special foreign exchange regime can opt to be subject to the regular exchange regime by submitting a request to the Central Bank. The change, however, must be maintained for a minimum, nonnegotiable, period of 10 years.[45]

c. Foreign Portfolio Investment

Investments made by foreign individuals and companies in securities registered with the RNVE, as well as investments in collective portfolios, must be made through local administrators (stock brokerage firms or investment management entities that are subject to the surveillance of the Superintendence of Finance), which must be appointed as representatives of the investors and comply with the applicable registration requirements.

The foreign exchange regime also establishes certain special registration procedures for investments made under integration agreements between various stock exchanges, programs concerning certificates representing depositary receipts (ADRs, GDRs), and exchange traded funds (ETFs).

The return, profits, yield and dividends of portfolio investments must be channeled by the portfolio investment manager, together with the minimum data required for exchange operations for international investments, using exchange operation code number 4571, "Return, profits, yield and dividends of capital investment from outside the portfolio."[46]

Generally, to register foreign portfolio investments made via transfers of foreign currency, the administrators will need to file an exchange form, based on the type of foreign exchange intermediary being used.[47]

There are two general types of foreign investment funds:

(i) Institutional funds, where the resources derive from the public or private placement abroad of participation quotas or units, and whose main purpose is to make investments in one or more capital markets. There is a special type of institutional fund called an "omnibus fund" that is organized under the modality of collective accounts without an undivided participation in the equity of the institutional in-

[38] Decree 119 of 2017, art. 2.17.2.3.2.2.
[39] Decree 119 of 2017, art. 2.17.2.3.2.1.
[40] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 94.
[41] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[42] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[43] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[44] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 97.
[45] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 96.
[46] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.2.1.
[47] Cen. Bank Ext. Reg. DCIP 83.

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vestor and administered by international financial entities; and

(ii) Individual funds, which channel treasury balances in capital markets as a consequence of financial strategies, but whose main purpose is something other than carrying out transactions in capital markets.

B. Currency and Exchange Controls

1. In General

Currently, Colombia has foreign exchange controls promulgated by a resolution issued by the Board of Directors of the Colombian Central Bank.[48] Under the existing foreign currency and exchange regime, any individual or legal entity domiciled in Colombia is deemed to be a resident of Colombia.[49] Branches of foreign companies operating in Colombia also qualify as residents, as do individuals (whether Colombian or foreign) who remain in the country, whether continuously or not, for more than 183 calendar days, including the days of entry into and exit from the country, in a period of 365 consecutive calendar days.

2. Channeling of Foreign Currency

There are two markets for transacting foreign exchange operations in Colombia: the exchange market and the free market. Colombian regulations[50] set out an exhaustive list of operations that must be carried out through the foreign exchange market and, as a result, must be channeled through authorized intermediaries, such as commercial banks and local administrators (stock brokerage firms or investment management entities that are subject to the surveillance of the Superintendence of Finance), or through a *Cuenta de Compensación*.[51]

a. The Exchange Market

The exchange market comprises all foreign currency transferred through authorized exchange intermediaries (banking institutions and other financial entities), or a *Cuenta de Compensación*.[52]

The following transactions must be carried out via the exchange market:

(i) Imports and exports of merchandise;[53]

(ii) Foreign indebtedness operations carried out by Colombian residents, including related financing costs;[54]

(iii) Foreign capital investments, including related profits;[55]

(iv) Colombian foreign capital investments abroad, including related profits;[56]

(v) Financial investments in securities issued abroad, investments in assets located abroad and related profits, except in cases where the initial investment is made with foreign currency from transactions that do not have to be carried out via the authorized exchange market;[57]

(vi) Endorsements and guaranty bonds in foreign currency;[58] and

(vii) International derivatives transactions.[59]

Foreign exchange transactions must be performed through authorized intermediaries or a *Cuenta de Compensación*.[60]

(1) Exchange Market Transactions

(a) Imports and Exports of Merchandise

Residents are able to channel their payments for imports through the foreign exchange market.[61]

Imports can be financed by foreign exchange intermediaries, the supplier of the merchandise or other nonresidents.[62] Additionally, the law provides that the temporary importation of capital goods/assets may be financed through international lease operations.

Residents must channel foreign currency derived from exports through the exchange market, including amounts received directly from a foreign purchaser in cash, within six months of the date such amounts were received. This obligation is met by selling foreign currency through exchange market intermediaries, or by making a deposit in a *Cuenta de Compensación* registered with the Central Bank, both in the case of currency received for exports already delivered and currency received by way of advance payments for future exports of goods.[63] Additionally, exporters must channel currency corresponding to guarantees relating to export operations through the exchange market.[64] The relevant amount may be reduced by any foreign currency used for the payment of freight, insurance and other costs associated with the export.[65]

Exporters may obtain loans from exchange market intermediaries or nonresidents to finance their exports of goods. Such loans must be reported to the Central Bank as external debt of the resident concerned prior to disbursement.[66] Export prepayments, i.e., foreign currency received from buyers abroad on accounts of future exports of goods, do not constitute financial obligations that generate interest, do not generate obligations for the exporter other than the delivery of the relevant goods and are not considered as foreign debt. For these reasons, these payments must be channeled as exports of goods and, therefore, the minimum information required for exportation purposes must be provided in the exchange return, using the corresponding code.[67]

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[48] Col. Const., art. 372.

[49] Decree 119 of 2017, art. 1.

[50] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 36.

[51] I.e., foreign bank accounts opened abroad by Colombian residents that are subject to registration and periodic reporting before the Colombian Central Bank when used for foreign exchange purposes.

[52] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41.

[53] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(1).

[54] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(2).

[55] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(3).

[56] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(4).

[57] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(5).

[58] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(6).

[59] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(7).

[60] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 69.

[61] Cen. Bank Ext. Res. No. 1/May 5, 2000, art. 10.

[62] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 69.

[63] Cen. Bank Ext. Reg. DCIP 83, art. 4.

[64] Cen. Bank Ext. Reg. DCIP 83, Chapter 4.

[65] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 78.

[66] Cen. Bank Ext. Reg. DCIP 83, art. 4.3.

[67] Cen. Bank Ext. Reg. DCIP 83, art. 4.1.3.

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Colombian residents may receive payments for exports or pay for imports in Colombian currency. However, such payments must be made via an authorized foreign exchange intermediary or a clearing account (*Cuenta de Compensación*).[68]

(b) Foreign Indebtedness Operations

Colombian residents may obtain credit in foreign currency from Colombian foreign exchange intermediaries or foreign residents, including foreign financial entities. In addition, they may obtain credit in foreign currency by placing bonds on foreign stock markets. Colombian residents are also allowed to grant loans to foreign residents. The entry and exit of foreign currency arising from foreign debt transactions must be channeled through the foreign exchange market. Foreign loans must be reported to the Central Bank by filing an electronic form with a foreign exchange intermediary. Payments with respect to such loans (disbursements, and payments of capital and interest) must be made through the exchange market and reported by filing a foreign exchange declaration of foreign indebtedness with the authorized intermediary or the Central Bank if the payments are made through a *cuenta de compensación*.[69]

Residents and foreign exchange intermediaries may grant external credits disbursed in legal currency in favor of nonresidents. Credits granted by residents are not reported to the Central Bank.[70]

(c) Foreign Capital Investment

Foreign currency for capital investments in Colombia must be transferred through an authorized exchange intermediary or a *Cuenta de Compensación*.[71] Direct investments made in a foreign currency must be recorded by filing a foreign exchange return for international investments. In cases where channeling took place through a *Cuenta de Compensación*, the amounts channeled are understood to be registered on payment into the account and the furnishing of the respective statement of exchange.[72] Certain forms of foreign investment, such as contributions-in-kind (whether of tangible or intangible assets), are not automatically regarded as registered with the presentation of a form or the declaration of funds, but instead require compliance with a special procedure before the Central Bank (*Sistema de Información Cambiaria*).[73] Failure to register foreign capital investments will affect the exchange rights of the investor (including remittance rights) and can result in fines being imposed on the investor and/or the company receiving the investment.[74]

Likewise, payments for utilities that generate regular investments of foreign capital in Colombia and amounts raised by way of sale of an investment within the country, or from the liquidation of a portfolio, the liquidation of a company or a reduction of capital or supplementary capital in an allocated investment must also be channeled through the exchange market.[75]

Additionally, an operation involving the replacement of foreign investors (for example, the sale of investments, a merger, or the liquidation of an investment entity) must be registered with the Central Bank[76] and also requires the filing of a special purpose tax return whereby a duty is charged on the operation that resulted in the substitution; such filing may be required by the Central Bank, even in the event that no tax liability is generated by the operation.[77]

Transfers of foreign currency between a foreign entity and its branch in Colombia may only be conducted by way of a transfer of assigned or supplementary capital, the reimbursement/return of assigned or supplementary capital or the remittance of profits, or for the payment of reimbursable foreign trade operations (transactions) related to goods and services.[78]

(d) Colombian Investment Abroad

The foreign exchange regime provides for two types of Colombian investments abroad: (i) investments of Colombian capital abroad; and (ii) investments in financial assets.[79] Investments in corporate capital made abroad by Colombian residents must be conducted on the exchange market through an authorized foreign exchange intermediary or using a registered *Cuenta de Compensación*.[80] Moreover, an investment of this type requires Central Bank registration and subsequent filings as to fluctuations and activity related to the investment.[81]

(e) Endorsements and Guarantees

Foreign exchange intermediaries, residents and nonresidents, may grant endorsements and guarantees.[82] Endorsements and guarantees may be granted to support compliance with another endorsements. Commission payments in foreign currency derived from the contracting of endorsements and guarantees may be channeled through the foreign exchange market by supplying the foreign exchange declaration for services, transfers and other transactions.[83]

(2) Exchange Declaration

To conduct foreign exchange transactions properly, an exchange declaration must be filed, and such transactions must be conducted through an exchange intermediary or a registered *Cuenta de Compensación*. The foreign exchange declaration form is a document that is filled out and subscribed to by the person conducting the foreign exchange transaction or by its legal representative. The form contains basic information on the transaction that must be reported to the Central Bank.[84]

In the case of transactions conducted through an authorized exchange intermediary, the exchange declaration is pre-

[68] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 70 and 77.
[69] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 44 and 45.
[70] Cen. Bank Ext. Reg. DCIP 83, Sec. 5.2.6.
[71] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 54.
[72] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.1.1.
[73] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.1.2.
[74] Decree 119 of 2017, art. 2.17.2.5.1.1.
[75] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 55.
[76] Decree 119 of 2017, art. 2.17.2.5.1.1 .
[77] *Estatuto Tributario Nacional* (Colombian Tax Code or Col. Tax C.), art. 326; Decree 4907/2011, art. 1.
[78] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 56.
[79] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 58, 60.
[80] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 58; and Cen. Bank Ext. Reg. DCIP 83, Sec. 7.3.
[81] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 59.
[82] Under terms provided in lit. k) of numeral 1 of art. 8 and in arts. 52 and 53 of the Cen. Bank Ext. Res. No. 1/May 25, 2018.
[83] Cen. Bank Ext. Reg. DCIP 83, Chapter 6.
[84] Cen. Bank Ext. Reg. DCIP 83, Sec. 1.1.

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sented to the intermediary.[85] In the case of transactions involving a clearing account, the foreign exchange declaration is electronically transmitted to the Central Bank with the monthly report on the account.[86] The person conducting the transaction in compliance with the foreign exchange regulations has the sole responsibility for the information contained in the declaration.

The exchange declaration form and all supporting documents must be kept for a period equal to that of the statutory period for violations of the exchange rate regime, which depends on the type of transaction in question and, as a general rule, may be up to five years.[87]

(3) Authorized Foreign Exchange Intermediaries

Foreign Exchange Intermediaries are financial institutions authorized to conduct a series of exchange transactions, such as purchasing and selling foreign currency, depositing foreign currency received from qualified entities for such purpose, sending or receiving payments in foreign currency, etc. The operations in which each type of intermediary is authorized to partake depends on the type of entity (bank, financial corporation, stock brokerage company, etc.) and its level of wealth.[88] Intermediaries are required, among other things, to submit exchange statements for operations they carry out and to provide information to the Central Bank regarding such operations.[89] The entities authorized to act as Foreign Exchange Intermediaries are banks, financial corporations, commercial finance companies, the *Financiera Energética Nacional* (FEN), BANCOLDEX, financial cooperatives, brokerage firms and other entities subject to the surveillance of the Superintendence of Finance.

Rates of exchange for the purchase and sale of foreign currency are decided freely by the parties and may not involve the charging of any fee, except in the case of transactions carried out by brokerage firms entering into and performing brokerage agreement contracts.[90]

Foreign exchange intermediaries may receive demand deposits in checking accounts, savings, electronic deposits, and term deposits in Colombian legal currency, of nonresidents individuals or legal or similar persons.[91]

(4) Cuentas de Compensación

Residents of Colombia are permitted to open foreign bank accounts in which they can deposit foreign currency acquired in the exchange market or currency that was not required to be channeled through the exchange market. Amounts deposited in such accounts may be used for transactions other than those that must be channeled through the exchange market.[92] The accounts may also be used for compulsory operations that must be channeled through the exchange market, in which case the foreign bank account must be registered with the Central Bank as a *Cuenta de Compensación*.[93]

Payments between Colombian residents are in principle not allowed to be made in foreign currency. However, a *Cuenta de Compensación* may be used for payments in foreign currency for operations between Colombian residents, if so agreed by the parties to the relevant transactions. In such case, both Colombian residents must maintain a *Cuenta de Compensación*.[94]

For purposes of the foreign exchange regulations, the flow of currency to and from these accounts is considered to be an exchange transaction that is part of the regulated exchange market (as opposed to the free market) and, therefore, operations that must be channeled through the regulated exchange market (such as direct foreign investment) may be channeled through these accounts.[95]

The balance in these accounts may be used to make investments abroad that must be reported to the Central Bank.[96]

In addition to a *Cuenta de Compensación* having to be registered with the Central Bank, any financial transactions carried out through such an account (including the payment of any funds out of or into the account) must be reported to that entity on a monthly basis (by submitting a Transactions Information Form), even if no financial transaction was performed through the account.[97] This requirement does not relieve a person of the obligation to provide to the Central Bank exchange declarations for transactions carried out through such an account that relate to external debt or international investments.[98]

The registration of a *Cuenta de Compensación* that does not show financial transactions for 12 continuous months will be canceled by the Central Bank.[99]

b. Foreign Free Market Exchange

Foreign exchange transactions not classified as exchange market transactions may be carried out on the free market.[100]

(1) Utilization of Foreign Currency from the Free Market

Foreign currency received by residents in relation to transactions that are not required to be channeled through the exchange market may still be voluntarily channeled through the free market, which may also be used to conduct foreign exchange market operations.

In the event such transactions are not channeled through the exchange market, foreign currency may be used for foreign investments and assets and operations other than those that must be channeled through the exchange market, and for payments expressly authorized.

(2) Transactions between Colombian Residents

Unless expressly authorized (such as, for example, payments made through a duly registered *Cuenta de Compen-*

[85] Cen. Bank Ext. Reg. DCIP 83, Sec. 1.1.
[86] Cen. Bank Ext. Reg. DCIP 83, art. 1.1; Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[87] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 90; Decree 1746/1991, art. 6; Decree 2245/2011, art. 5.
[88] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 98.
[89] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 9.
[90] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 38.
[91] Cen. Bank Ext. Reg. DCIP 83, Sec. 10.4.2.
[92] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 81.
[93] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[94] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[95] Cen. Bank Ext. Reg. DCIP 83, arts. 8.3.1, 8.3.2.
[96] Cen. Bank Ext. Reg. DCIP 83, art. 8.3.3.
[97] Cen. Bank Ext. Reg. DCIP 83, art. 8.2.
[98] Cen. Bank Ext. Reg. DCIP 83, art. 8.4.1.
[99] Cen. Bank Ext. Reg. DCIP 83, art. 8.2.2.
[100] Cen. Bank Ext. Res. No. 1/May 25, 2018, Art. 41 defines the transactions that must be conducted through the Exchange Market.

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sación, transactions in the hydrocarbon sector and the payment of freight rates, among other transactions), contracts for transactions between Colombian residents are not deemed to be foreign exchange transactions. Therefore, payments derived from such contracts must be paid in Colombian Pesos at the representative market exchange rate as of the effective date of the contract, unless the parties have otherwise agreed to an alternate date or reference rate.[101]

(3) Ordinary Foreign Currency Accounts

A Colombian resident (whether an individual or a legal entity) may open a bank account abroad in foreign currency to be used exclusively for free-market transactions. Such an account does not require authorization from the Colombian authorities or the filing of any documentation.[102] It may not be used for operations (transactions) that are required to be channeled through the exchange market (otherwise such an account is deemed to be a *Cuenta de Compensación*, requiring registration, as explained above).

C. Trade and Commerce Regulation

1. Imports and Exports

a. International Trade Agreements

(1) In General

In the last few years, Colombia has entered into a number of Free Trade Agreements (FTAs) to meet the demands of global markets. These FTAs have introduced tools to simplify the procedures for trading in goods and services.

As a result of its entry into these FTAs and because it is an attractive country for carrying out foreign trade operations, Colombia is expected to become a platform for capital investment to and from different countries.

(2) Andean Community of Nations/Cartagena Agreement

Operating under the ALADI umbrella, the Andean Community of Nations (CAN), which comprises Bolivia, Colombia, Ecuador, and Peru, is one of Colombia's most important integration agreements. It is a sub-regional organization, endowed with international legal status.

CAN dates back to 1969, when a group of South American countries signed the Cartagena Agreement, also known as the Andean Pact, with the purpose of establishing a customs union within a period of 10 years. The main objectives set out by the Cartagena Agreement include the liberalization of trade in goods in the sub-region, the adoption of a common external tariff, and the harmonization of foreign trade instruments and policies and economic policy. As a consequence, Colombia may trade freely with the other member countries of CAN.[103] Under institutional reforms, the scope of integration was broadened to cover other areas beyond trade, such as intellectual property and double taxation between members of the Community (see XVIII.B.2., below).

CAN commenced operations on August 1, 1997. The Community's executive body is the General Secretariat, the headquarters of which are in Lima, Peru. The Council of Presidents and the Council of Foreign Ministers have been formally established as new policy-making and leadership bodies.

(3) Free Trade Agreements

Colombia has enacted FTAs with Canada, Chile, the European Free Trade Association (EFTA) States (Iceland, Liechtenstein, Norway and Switzerland), the European Union, Mexico, the United States, Venezuela, South Korea, Costa Rica, the countries in the Northern Triangle of Central America (i.e., El Salvador, Guatemala and Honduras), the Caricom Countries, CAN, Israel, the United Kingdom, the United Arab Emirates, Panama and CAN-Mercosur. Colombia has other commercial agreements with Cuba, South Korea, Nicaragua, and the Alianza del Pacifico countries (i.e., Chile, Mexico, and Peru).

Additionally, Colombia is in negotiations with Singapore and Turkey. It is also currently involved in the Trade in Services Agreement (TiSA) negotiations.

Under these FTAs, Colombia obtains access to various industrial markets, as well as guaranteed access to necessary capital goods, through the elimination or reduction of customs duties. The agreements negotiated and signed by Colombia generally cover issues such as market access, intellectual property, investment regimes, government procurement, dispute resolution, competition, commerce, services, labor, and the environment. Specific provisions in some of the FTAs are described in (a) to (n), below.

(a) Colombia-United States Free Trade Agreement

The FTA with the United States is a comprehensive agreement that covers topics such as trade in goods and services, intellectual property, the investment regime, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures. Regarding the trade in goods, the FTA reduces tariffs and taxes to allow producers of the two countries to trade freely. Under the treaty, Colombia has eliminated tariffs for entry into the country for about 82% of industrial products produced in the United States, while the United States has eliminated tariffs for almost all Colombian products that cross its borders.

Nevertheless, pursuant to the U.S. reciprocal tariffs policy, as announced by the U.S. Administration in Executive Order 14257 of April 2, 2025, the United States has imposed an additional ad valorem duty on all imports from all of its trading partners, including on some goods from Colombia, starting at 10%. The rates of duty are in addition to any other duties, fees, taxes, exactions, or charges applicable to imports. These duties are to remain in place until such time as the U.S. President determines that the conditions related to the U.S. goods trade deficits are satisfied, resolved, or mitigated. For some trading partners, the additional ad valorem duty will increase at the rates set forth in Annex I two of the Executive Order 14257, but Colombia is not included in this group of countries.

[101] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 86; Law 9/1991.

[102] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 81.

[103] See Andean Community Decision 507/June 22, 2001; Andean Community Decision 477/June 8, 2001; Andean Community Decision 379/June 19, 1995; Andean Community Decision 378/June 19, 1995.

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(b) Colombia-Canada Free Trade Agreement

The FTA with Canada includes three separate but interrelated agreements: the Free Trade Agreement, which covers trade agreements and the reciprocal granting of tariff preferences; the Labour Cooperation Agreement, which sets out obligations with regard to the protection of labor rights and compliance with internal rules; and the Agreement on the Environment, which sets out the obligations of the parties with regard to environmental protection standards to be applied within their territories.

(c) Colombia-Mexico Free Trade Agreement

The Colombia-Mexico FTA, formerly known as the Group of Three (G3), was created in 1995 between Colombia, Mexico and Venezuela. It is now known as the G2, following Venezuela's withdrawal in 2006. The integration initiative under the agreement is based on an asymmetrical tariff-reduction schedule, which was intended to equalize the tariffs of the three countries within a 10-year period and in many respects accomplished this goal.

(d) Colombia-Chile Free Trade Agreement

The FTA between Colombia and Chile, which became effective on May 8, 2009, phases out customs duties and non-tariff barriers between the two countries.

(e) Colombia-Venezuela Free Trade Agreement

With the denunciation by Venezuela of the Cartagena Agreement (CAN) on April 22, 2006, it was necessary to establish a legal framework regulating the bilateral trade relationship between Colombia and Venezuela. Although tariff preferences under the scheme of CAN stopped completely as of April 22, 2011 (i.e., five years after the date of Venezuela's denunciation), bilateral trade flows continued to benefit from preferential tariffs under unilateral concessions granted by Venezuela and under reciprocal trade preferences granted by Colombia in accordance with Decision 746 of 2011.

A bilateral Agreement signed on November 28, 2011, as complemented by annexes and appendices adopted on April 15, 2012, with effect from October 19, 2012, defines the applicable preferential treatment applicable to exports from Colombia to Venezuela and vice versa. Such preferential treatment is defined based on historical trade that existed between the two countries, covering all product categories that were the object of trade between 2006 and 2010.[104]

(f) Colombia-South Korea Free Trade Agreement

The FTA between Colombia and South Korea became effective on July 15, 2016. The FTA covers issues such as national treatment and market access for goods, investment, services, trade in services, electronic commerce, cooperation, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures.

(g) Colombia-Costa Rica Free Trade Agreement

The FTA between Colombia and Costa Rica, which became effective on August 1, 2016, phases out customs duties and non-tariff barriers between the two countries.

(h) Northern Triangle Free Trade Agreement

An FTA was signed between Colombia, El Salvador, Guatemala and Honduras, on August 9, 2007. The FTA is in force from November 12, 2009, with respect to Guatemala, from February 1, 2010, with respect to El Salvador and from March 27, 2010, with respect to Honduras. The FTA covers issues such as national treatment and market access for goods, investment, services, trade in services, electronic commerce, cooperation, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures.

(i) Colombia-European Free Trade Association Free Trade Agreement

An FTA was signed between Colombia and EFTA on November 25, 2008. The FTA entered into force on July 1, 2011, with respect to Switzerland and Liechtenstein, on September 1, 2014, with respect to Norway, and on October 1, 2014, with respect to Iceland.

The agreement with the EFTA States includes a free trade agreement applicable between the four EFTA countries and three complementary bilateral agreements, negotiated and signed individually with Switzerland, Norway, and Iceland. This treaty has among its objectives to create a commercial environment free of restrictions and to promote the economic development of the signatory countries.

(j) Colombia-Caribbean Community

The Caribbean Community (Caricom) is a trade liberalization program that began on January 1, 1995. Colombia is regarded as the country with the greatest level of relative economic development among the nations that participate in Caricom. The member countries of Caricom are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Surinam, and Trinidad & Tobago. Colombia has eliminated tariffs on all items on an agreed Caricom list. In 1999, the more developed Caricom countries (Barbados, Guyana, Jamaica and Trinidad & Tobago) began a tariff reduction program designed to eliminate or lower the duty on a negotiated list of products exported by Colombia. The less-developed member countries are under no obligation to make tariff concessions to Colombia.

(k) Andean Community-Mercosur

An FTA between CAN and the Mercosur nations (Argentina, Brazil, Paraguay, and Uruguay) was concluded in 2005. The FTA calls for the elimination of all trade tariffs among the member countries of both trade blocks within the next 10 to 15 years.[105]

[104] Ministry of Commerce, Industry and Tourism, available at: http://www.mincit.gov.co/tlc/publicaciones.php?id=2573.

[105] Decree 141 issued by the Ministry of Commerce in Jan. 2005.

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(l) European Union

An FTA between Colombia, Peru, and the European Union was concluded in June 2012. The FTA calls for the preferential entrance of Colombian and Peruvian products into the territory of the EU Member States. It also calls for the elimination of trade tariffs, and the simplification of certification procedures and of requirements established for the entrance of products into the territory of the parties to the FTA, plus the elimination of unnecessary procedures that are obstacles to free trade between the parties.

The FTA also calls for free trade in the context of the cross-border supply of services.

(m) Cuba

The Economic Cooperation Agreement concluded between Colombia and Cuba entered into force in July 2001. It calls for tariff preferences by a reduction of tariffs with respect to the importation of goods arising from the territory of one of the parties. Under this agreement, the Colombian products that can enter the Cuban market subject to preferential tariffs include: live animals, beef, dairy products, flowers, potatoes, vegetables, bananas, coffee, rice, palm oil, margarine, candy, confetti, baked chocolate products, jams, mineral and aerated water, beer, poultry and meat, fish fillets, birds' eggs, natural honey, onions, beans, cheese, canned meat, canned fruit, fruit juices, alcoholic beverages, and animal feed.

(n) Nicaragua

The commitments to which Colombia agreed in the Partial Scope Agreement concluded with Nicaragua were adopted in Decree 2500 of 1985. Colombia, unilaterally, granted tariff preferences to the goods classified in 25 customs subheadings contained in Annex I of the agreement.

(o) Israel

An FTA between Colombia and Israel was concluded in accordance with Article XXIV of the WTO General Agreement on Tariffs and Trade 1994 and Article V of the WTO General Agreement on Trade in Services.

The objectives of the Agreement are to:

(i) Eliminate trade barriers in relation to goods and services and facilitate the movement of goods between the parties;

(ii) Promote conditions of competition relating to economic relations between the parties;

(iii) Increase investment opportunities;

(iv) Create effective procedures for the application and joint administration of the FTA as well as ensuring compliance with the Agreement; and

(v) Promote further bilateral and multilateral cooperation to expand and enhance the benefits of the Agreement.

(p) United Kingdom

The objective of the Trade Continuity Agreement between Colombia and the United Kingdom is to guarantee that the existing conditions of integration and preferential access are maintained following the United Kingdom's exit from the European Union. The agreement provides that the current tariff preferences for both agricultural and industrial products will continue to apply as per the agreement with the European Union.

(4) Pacific Alliance

The Pacific Alliance (*Alianza del Pacifico*) is a regional integration initiative composed of four countries: Chile, Colombia, Mexico, and Peru. The Alliance was formed following the Lima Declaration, which was signed on April 28, 2011, and legally constituted on June 6, 2012, with the signing of the framework agreement.

The objective of the Pacific Alliance is to create a space of deep integration that promotes further growth, development and competitiveness of the economies it comprises, by progressively seeking free movement of goods, services, capital, and people; with a projection towards the Asia-Pacific region.

(5) Latin American Integration Association

The Latin American Integration Association (ALADI) provides preferential access to a variety of products from the sub-region, which includes Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela, based on bilaterally negotiated lists and considerations relating to the balanced development of the countries in the region.

ALADI encourages the creation of an area of economic preferences in the region, with the ultimate goal of achieving a Latin American common market, through the following mechanisms:

(i) Regional tariff preferences applicable to products originating in member countries, subject to tariffs in force *vis-à-vis* third countries;

(ii) Regional agreements (common to all member countries); and

(iii) Partial agreements with the participation of two or more countries in the area.

Both regional and partial agreements may deal with various issues, such as tariff reductions and trade promotion, economic cooperation, agricultural trade, financial cooperation, tax, customs, health, environmental protection, scientific and technological cooperation, the promotion of tourism, and technical standards.

(6) World Trade Organization

Colombia's agreement with the World Trade Organization (WTO) went into effect on April 30, 1995.[106] As a WTO member, Colombia is entitled to the rights stipulated in the most-favored nation (MFN) clause, i.e., all benefits or trade concessions granted to third countries must be extended to all parties to the agreement. It also must fulfill all commitments corresponding to its full membership in the organization that call for global trade liberalization.

[106] See Colombia Marco Legal 2001-2 (*Coinvertir — Corporacion Invertir en Colombia*).

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(7) Pacific Basin Economic Council

Colombia is a member of the Pacific Basin Economic Council (PBEC). PBEC is a non-governmental association made up of prominent businesspeople from countries in the Pacific Basin. PBEC's purpose is to build mutual understanding and enhance the flow of business and investment, economic cooperation, technology transfers and tourism.[107]

b. Licenses and Quotas

Colombia has the following import regimes:

(i) Free Importation Regime: free importation involves the removal of as many administrative requirements and conditions as possible, to maximize imports of goods listed as necessary for the economic and social development of the country. However, a number of goods identified by the Government as needing specific permits or authorizations require import registration.

(ii) Prior License Regime: according to Decree 925 of 2013, a prior license is required for the following goods: (a) all goods classified under the customs subheading numbers established in Annex I of Decree 925 of 2013; (b) goods that qualify as surplus inventory;[108] (c) goods imported in special market conditions; (d) goods with respect to which an exemption from tariffs is claimed; (e) goods controlled by the National Narcotics Fund (*Fondo Nacional de Estupefacientes*), the National Narcotics Council (*Consejo Nacional de Estupefacientes*) and the Military Industry (*Indumil*); (f) goods earmarked for the Military Forces and the National Police, when the goods imported have national security or national defense purposes, or are military or reserved material; and (g) goods covered by the Annual License System. The prior license for the goods set out above must also comply with any requirements, and permit or authorization obligations established by the competent authority.

(iii) Prohibited Import Regime: as the name implies, certain goods that may endanger the health or safety of persons may not be imported. These include chemical, biological and nuclear weapons, nuclear and toxic waste, and war toys or weapon replicas.

c. Customs Duties and Other Taxes

Along with the other Andean Pact countries, Colombia has adopted (through Decision 571 and Resolution 1684) the General Agreement on Tariffs and Trade (GATT) (now WTO) customs valuation code.[109] Colombia incorporated the GATT code into its own domestic legislation in 1993 through enabling legislation.[110]

Importers of goods with a value of US$5,000 dollars or more must present an additional form, known as the "Andean value declaration," in which the importer must state the real value of the merchandise.[111] This document supports the import declaration and import registration documents.[112] The customs valuation is based on the real transaction value (commercial invoice).[113]

In Colombia, import duties are quoted *ad valorem* on the cost, insurance and freight (CIF) value of goods shipped.[114] All duties (subject to a few exceptions) have been consolidated into four tariff levels, as follows:

(i) 0% and 5%: raw materials, intermediate goods, and capital goods not produced in Colombia;

(ii) 10% and 15%: goods in the categories above in (i), but whose domestic production is registered in Colombia;

(iii) 20%: finished consumer goods; and

(iv) By way of exception to the general rules, 35% and 40%: automobiles and a variable import duty system (price band), textiles and certain agricultural products.

d. Duty Drawback/Deferral Programs

To promote foreign trade operations and investments, the Colombian Customs Regime provides for various mechanisms under which it is possible to develop efficient trade operations (import, export). The most significant mechanisms are described in II.C.1.d.(1) to II.C.1.d.(3), below.

(1) Plan Vallejo or Special Import-Export Regime

The Plan Vallejo or special import-export is a special import-export regime used by companies to import raw materials and some capital goods, with full or partial exemption from customs duties and value-added tax (VAT) (see II.C.1.e., below).[115] Plan Vallejo requires items imported into Colombia under this regime to be utilized exclusively for the production of goods and services that are eventually to be exported.[116] Raw materials that are essential for the production of merchandise that is eventually to be exported may also be imported into Colombia under Plan Vallejo.[117]

(2) Temporary Imports for Export in the Same Condition

The Colombian customs regime allows the temporary import of goods into Colombian territory subject to the condition that the goods will be "re-exported" within a prescribed period of time in an unaltered form, i.e., without the goods being subject to any alteration or modification, except for the normal deterioration/depreciation resulting from normal wear and tear.

[107] See Colombia Marco Legal 2001-2 (*Coinvertir — Corporacion Invertir en Colombia*).

[108] "Surplus inventory" is understood to mean new merchandise that was manufactured two or more years before the filing of the import license. See Decree 925/2013, art. 15.

[109] Andean Community Decision 571 of 2003 and Andean Community Resolution 1684 of 2014.

[110] Decree 2615 issued by the Ministry of the Treasury on Jan. 23, 1993 (now Decree 1165 of 2019).

[111] Decree 1165, issued by the Ministry of the Treasury on July 2, 2019, art. 327.

[112] Decree 1165, 2019, art. 323.

[113] Decree 1165, 2019.

[114] Andean Community Decision 571 of 2003 and Andean Community Resolution 1684 of 2014.

[115] Decree Law 444/1967, art. 172; Decree 631/1985, arts. 14–15 and Decree 285 of 2020.

[116] Decree Law 444/1967, art. 172; Decree 631/1985, art. 6 and Decree 285 of 2020.

[117] Decree 631/1985, art. 6.

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If required, goods that entered Colombia under the temporary regime may be reclassified as ordinary imports.

Colombian law provides for two types of temporary importation: short-term temporary importations or temporary admission; and long-term temporary importations or importations with duties suspended (see II.G., below).[118] Under the short-term temporary importation regime, goods may be imported into Colombia for a specific purpose for a period of time not exceeding six months. The law allows an extension, which must be requested and approval of which must be obtained before the expiration of the initially authorized six-month term. Under the short-term temporary importation regime, goods imported into Colombia are not subject to import duties, but a guarantee equivalent to 100% of the corresponding import duties must be provided to obtain approval to make use of the regime.

Under the long-term temporary importation regime, equipment may be imported into Colombia for a period of up to five years. The long-term temporary importation regime permits the importation of machinery and equipment, as well as related accessories and spare parts,[119] provided such items are included in the same one-time-only shipment. Typically, the temporary long-term importation regime applies to equipment used in public works projects and other activities that are deemed to be important for national economic and social development. Long-term temporary importation is also allowed for machinery and equipment brought into the country under leasing contracts for a period of six months to five years.[120]

(3) International Trading Companies

An International Trading Company (*Sociedad de Comercialización Internacional* or C.I.) is a type of legal entity whose main line of business is the marketing and sale abroad of Colombian products that it acquires on the domestic market or that are manufactured by producers that are shareholders or members of the C.I.

Although C.I.s were created to benefit local exporters, foreign investors may also enjoy the benefits of this type of entity provided they export Colombian products abroad.

To operate as a C.I., it is necessary to create a commercial company or modify an existing company and to request classification as a C.I. by the Ministry of Commerce, Industry and Tourism, which will be granted provided the specific requirements set forth by the law are met.

A C.I. may be organized as any type of commercial company defined in the Code of Commerce, regardless of whether its share capital is domestic or foreign.

Purchases made in Colombia by a company qualifying as a C.I are exempted from VAT, provided the goods are actually exported by the C.I. within six months following the issuance of a supplier certificate.

e. Value-Added Tax

Generally, imports into Colombia are subject to VAT. VAT on imports is typically levied at a rate of 19%, assessed on the CIF value of the shipment plus import duties.[121]

f. Other Special Customs Regimes

(1) Special Customs Zones

Special customs zones offer incentives for new industrial development, trade and tourism in the Caribbean and Pacific coast regions.[122] The intent of the legislation creating these zones is to strengthen local economies and generate employment.

Colombia has a number of special customs zones: Urabá, Tumaco, Guapi, Leticia, San Andre's Island and Providence; additional special customs zones are also found in Maicao, Uribia, and Manaure in the province of Guajira.[123]

These special zones may provide various benefits, including the following:

(i) Imports into these areas are duty free; except into Maicao, Uribia, and Manaure, where duties are 4%;[124]

(ii) VAT is the only levy charged on imports;[125] and

(iii) Goods are allowed to circulate freely within these zones.[126]

(2) Free Trade Zones

Colombian law also contains a free trade zone regime.[127] Free Trade Zones are defined geographical areas within Colombia that offer special tax, customs, and foreign trade incentives with respect to industrial or commercial activities on goods and services carried out in them.

(a) Tax Incentives

The following tax incentives are offered:

(i) Free Trade Zone users are subject to a reduced corporate income tax rate of 20% on sales of goods and services abroad, except for commercial users and users that do not comply with the internationalization plan, which are taxed at the general rate;

(ii) The delivery of goods from abroad into Free Trade Zones is not considered to constitute an import, and is, therefore, exempt from VAT and customs duties, while the goods remain in the Free Trade Zone area. Taxes are triggered when the goods are subsequently introduced into Colombian territory;

(iii) Purchases of raw materials, inputs, and finished goods within the customs territory of Colombia are exempt from

[118] Temporary importation under Colombian law occurs most commonly in the form of international leasing transactions.

[119] As long as they are included in the list of capital goods in Article 233 of Resolution 46 of 2019 and Article 1 of Decree 676 of 2019.

[120] Decree 1165/2019, art. 211.

[121] Col. Tax C., arts. 420, 429, 437, 459, and 468.

[122] Decree 1165/2019.

[123] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[124] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[125] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[126] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[127] Law 1004/2005; Col. Tax C.; Decree 2147/2016; Decree 1165/2019.

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VAT, provided such transactions fall within the purchaser's corporate purpose; and

(iv) Sales to other countries are exempt from VAT as such transactions are considered exports.

(b) Customs Incentives

The following customs incentives are offered:

(i) Exports from Free Trade Zones to foreign countries benefit from international trade agreements signed by Colombia;

(ii) Goods produced, manufactured, transformed, or resulting from any production process developed in a Free Trade Zone are recognized as being "of national origin;"

(iii) Partial processing outside the Free Trade Zone is allowed;

(iv) Goods may remain in the Free Trade Zone indefinitely;

(v) It is possible to sell goods or services produced in the Free Trade Zone within Colombia, subject to the payment of customs tariffs and VAT; and

(vi) Decree 2147 of 2016 allows the incorporation of Offshore Free Trade Zones in Colombia, in order to encourage the development of exploitation and exploration projects in the form of free trade zones, which will increase the competitiveness of the Colombian hydrocarbon sector. To obtain an Offshore Free Trade Zone recognition, an applicant oil company must: have concluded an agreement with the National Agency of Oil and Gas (ANH); have invested a minimum of US$40 million; and commit to the creation of at least 30 new direct jobs with the oil company and its contractors qualified as industrial users within the offshore area.

2. General Regulation of Business

a. Monopolies

Monopolies are regulated in Colombia by means of the National Constitution[128] and Law 155 of 1959. The administrative body vested with the power to police the Colombian economy and to combat any anti-competitive behavior in the marketplace, including the abuse of monopoly power, is the Superintendence of Industry and Commerce.[129]

b. Transfer of a Going Concern

Under Colombian corporate law, the purchase of a business as a going concern is generally deemed to be the purchase of a separate economic unit and is presumed to comprise all assets and liabilities used by the company concerned to carry on its commercial activity. The sale or transfer of a going concern of an entity requires the entity's balance sheet and list of liabilities to be certified by a public accountant.[130] Such transactions also require that the parties involved be jointly and severally liable for all obligations of the commercial activity of the going concern that arose before the transfer and that are registered in the accounting books.[131] Liability of the transferor ends two months after the operation has been registered with the relevant regional Chamber of Commerce of the domicile of the going concern, provided the following conditions are fulfilled:[132]

(i) The transfer was properly announced to the creditors by means of a written notice published in a newspaper with wide circulation both locally and in Bogotá;

(ii) The creditors did not oppose the transaction or the new owner becoming their debtor within two months following registration with the Chamber of Commerce; and

(iii) Creditors opposing the transaction had the right to demand proper guarantees for the payment of debts owed to them (in the event the guarantees are not presented on time, the creditors may also demand payment of future debts owed to them).

The debts or obligations not registered in the entity's accounting books or in the sales instrument will be the transferor's responsibility, unless the buyer did not act in good faith or was negligent, in which case both parties will be jointly and severally liable.[133]

c. Stock Acquisitions

As in most jurisdictions, the acquisition of the shares of a private corporation (a closely held corporation the shares of which are not traded on a public exchange) is conducted in Colombia via negotiations between the shareholder that is offering to sell or dispose of its shares and the potential acquirer.[134] A share transfer can be subject to preemptive rights if such rights are explicitly set forth in the company's by-laws or shareholders' agreements. The transaction and documents evidencing the sale or disposition of shares must be registered in the official company shareholders' register.[135]

d. Mergers

Under Colombian law, a merger occurs when one or more companies dissolve, without liquidating, into another existing company or a newly created company,[136] and, as a result, the surviving company or the newly-formed company acquires all the rights, assets and liabilities of the dissolved company.[137]

Prior to the execution of a merger, the partners or shareholders, as the case may be, are required to meet in general

[128] Col. Const., art. 333, INC. 4.
[129] Decree 2153 of 1992; Law 1340 of 2009; Decree 1074/2015, art. 1.2.1.2.
[130] Col. Com. C., art. 527.
[131] Col. Com. C., art. 528.
[132] Col. Com. C., art. 528.
[133] Col. Com. C., art. 529.
[134] Col. Com. C., art. 403. See Super. Com. Op. Jur. Bul. No. 7/May 1994 ("each share confers upon its owner the right to negotiate freely the transfer or disposition of shares, unless the respective share certificate indicates otherwise"). The disposition of limited liability participation quotas is rather more restricted, as the members of the company must meet formally prior to such a disposition. Further, for such a disposition to occur, the bylaws of the entity (or LLC Agreement) require restatement and amendment. Co. Com. C., arts. 362, 366–67. See Super Com. Of. Op. SL-43965/Dec. 14, 1988 (discussing the difference between the disposition of participation quotas on a transfer (sale) and their disposition by administrative adjudication).
[135] Col. Com. C., art. 406. See Super. Com. Of. Op. 220-1082/Jan. 17, 2001.
[136] Col. Com. C., art. 172.
[137] Col. Com. C., art. 172.

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meeting and, with the required quorum, to vote on the transaction and agree on the merger agreement.[138] In the case of stock corporations, the quorum for adopting decisions is more than 50% of the shares represented by the number (which must be more than one) of shareholders at the corresponding meeting, unless the bylaws call for a greater quorum.[139] In the case of limited liability companies, because a merger implies an amendment of the bylaws, approval must be given by a plurality of partners representing at least 70% of the corporate shares.[140]However, in simplified stock corporations, short-form mergers, which can occur when more than 90% of the shares are owned by a single shareholder and such shareholder plans to absorb said subsidiary, only require the approval of the legal representative or the boards of directors of the constituent companies.

Once this step is complete, the legal representatives of the interested parties are required to make the merger public with a "tombstone" type notice published in a Colombian newspaper with national coverage.[141] Creditors of the merging company must be provided 30 days within which to obtain guarantees for payment of any liabilities owed to them.[142]

Once the decision to execute the merger is adopted, the instrument evidencing the merger must contain the following information:[143]

(i) The reasons for the merger and the conditions for its execution;

(ii) The financial data of the companies involved in the merger, which will be used to determine the conditions of the merger operation;

(iii) The valuation of the assets and liabilities of all the companies that are to participate in the merger operation;

(iv) The valuation methods used, and the procedure for the exchange of quotas or shares; and

(v) Certified copies of the interested parties' financial statements.

On the regulatory side, after completion of the process, a merger must be approved by the Superintendence of Companies,[144] depending (among other factors) on certain income and equity thresholds, if the parties involved are regulated by this governmental agency, (or if the interested parties are supervised by a different entity that does not have power to authorize mergers), which is empowered to supervise most Colombian companies and to enforce most corporate and related legislation promulgated by Colombia's Congress.[145]

Notwithstanding the foregoing, there is a general authorization regime for companies under the supervision of the Superintendence of Companies that are undergoing a merger. Under this general authorization, supervised companies will not be required to submit a request for approval from the Superintendence, provided they meet certain transparency and publicity requirements. These include: being able to provide evidence that the shareholders were properly summoned to the meeting in which the merger agreement was approved; having evidence that the merger agreement or plan of spin-off and the respective supporting documentation (balance sheet, share exchange terms, asset valuations, etc.) were made available to the shareholders at least 5 to 15 business days ahead of the meeting (depending on the corporate form); having publicly notified the creditors and the general public of the transaction through a newspaper with widespread circulation as provided under applicable regulations; and having made available to the creditors a report in connection with the transaction, setting forth its terms, its purpose, the supporting financial statements, the valuation of assets and share exchange procedures, among other items.

The general authorization regime does not apply to transactions where certain conditions are fulfilled, for example: (i) one of the companies involved in the transaction has liabilities that are overdue for more than 90 days that represent 20% or more of external liabilities; (ii) one of the companies involved in the transaction has pension liabilities; or (iii) the combined capital of the merging companies is less than the sum of the capital of the merging and surviving entities, as a result of a reimbursement of contributions.

Companies seeking Superintendence of Companies approval of a merger are required to submit certain information and documentation, including the following:[146]

(i) Complete copies of the relevant corporate or company minutes evidencing the notice of the meeting, the approval of the appraisal of the assets to be received by the absorbing company or the new company, the approval of the proposed merger agreement, and the votes of the partners or shareholders that reject the merger, if applicable;

(ii) An attachment of the minutes containing the merger agreement;

(iii) Legal representative and statutory auditor certification of the company confirming that the merger agreement was available to the partners or shareholders of the companies for at least five to 15 business days ahead of the meeting, depending on the corporate form;

(iv) One copy of the nationwide newspaper in which the merger was announced;

(v) Financial statements forecasting the result of the merger;

(vi) The financial statements, with a date of issuance not more than one month earlier, presented to the other regulatory agencies within the Colombian Government that are responsible for approving the merger; and

(vii) A copy of the valuation studies used to appraise the assets and shares of the constituent companies.

[138] Col. Com. C., art. 173.
[139] Law 222/1995, art. 68.
[140] Col. Com. C., art. 360.
[141] Col. Com. C., art. 174.
[142] Col. Com. C., art. 175.
[143] Col. Com. C., art. 173.
[144] Super. Com. Chapter VI – External Legal Regulatory Letter (*Circular Básica Jurídica*).
[145] Law 222/1995, arts. 82–88.
[146] Super. Com. Chapter VI – External Legal Regulatory Letter (*Circular Básica Jurídica*).

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After the approval, a copy of the public deed or private instrument of merger and its registration with the Chamber of Commerce of the domicile of the absorbing company will need to be filed with the Superintendence of Companies.[147] The document must include the following documents:[148]

- The bylaws of the new company or the amendments to the bylaws of the surviving company;
- Copies of the minutes of the meetings in which the merger was approved by the partners or shareholders; and
- The balance sheets of the merged companies and the consolidated information of the surviving company.

e. Spin-offs and Split-offs

Law 222 of 1995 introduced spin-offs and split-offs into the Commercial Code.

Under a spin-off, the members, partners or shareholders of the splitting company participate in the capital of the beneficiary companies in the same proportion as each held in the capital of the splitting company (pro rata basis). If the splitting company does not distribute its shares or capital on a pro rata basis to its members, partners or shareholders, the transaction will take the form of a split-off.[149]

In general terms, the law provides for the following two types of spin-off or split-offs:

(i) A company dissolves without liquidating and transfers part of its assets to one or more existing companies or to one or more newly incorporated companies;[150] and

(ii) A company dissolves without liquidating and divides its net assets into two or more parts that will be transferred to other existing companies or newly incorporated companies.[151]

The procedures and documentation required to conduct a spin-off or split-off transaction are substantially similar to those discussed in II.C.2.d., above, in relation to mergers.[152]

f. Restrictive Trade Practices

To guarantee the constitutional right to responsible but free competition, the State is required to prevent any person from engaging in anti-competitive behavior in the Colombian marketplace.[153] The Colombian Government supervises and regulates free competition in the market through the Superintendence of Industry and Commerce.[154] This regulatory agency's duties are to ensure free market competition by preventing any restrictive agreement or practice, and to impose sanctions and penalties on persons, including legal entities, that violate the regulations protecting free and fair competition.

g. Unfair Competition

Unfair competition acts and conduct are regulated under Law 256 of 1996. This law establishes a general prohibition against any act or practice carried out in the course of industrial or commercial activities that is inconsistent with the principle of commercial good faith and honest practices in commercial and industrial matters, or when such act or practice affects or is intended to affect the freedom of decision of the buyer or consumer, or the competitive operation of the market.[155] Additionally, Law 256 lists certain explicitly forbidden unfair business practices, including tortious interference, clientele deviation, internal disruption of business activities, and misappropriation of trade secrets.

h. Antitrust Merger Control

Any "economic concentration" that meets certain specific requirements is subject to mandatory antitrust merger control by the competition authority (Superintendence of Industry and Commerce). Under Colombian law, the concept of "economic concentration" covers mergers, acquisitions of control, consolidations or any other type of integration, notwithstanding the form of the projected transaction.[156]

In general terms, the filing thresholds are as follows: (i) the parties to the transaction must be engaged in the same economic activities (horizontal overlap) or be part of the same value chain in a relevant market (vertical relationship); and (ii) the operational revenue or the total assets of the parties to the transaction, jointly or independently, must have exceeded 1,641,044.99 Tax Value Units (approximately US$ 18 million) during the previous fiscal (calendar) year. If the concentration meets the requirements set out above, the applicable merger control procedure and subsequent filing is determined by the combined market shares of the parties in the relevant markets for the transaction. The general rule is that when the combined shares of the parties in at least one of the relevant markets is 20% or more, the transaction is subject to a prior authorization procedure. However, if the parties' combined shares in each of the relevant markets are less than 20%, the transaction is subject to a simple notification procedure.

i. Price Controls

Colombia has price control legislation for specific products in Colombia, such as medicines, regulated by the National Commission for Prices of Medicines and Medical Devices, as well as milk products[157] and agrochemicals, regulated by the Ministry of Agriculture and Rural Development.[158]

j. Securities Regulation

Colombian corporations may issue public shares or debt instruments on Colombia's public stock exchanges with the prior authorization of the Superintendence of Finance. The public stock and debt market is regulated by the Colombian Min-

[147] Col. Com. C., art. 177.
[148] Col. Com. C., art. 177.
[149] Law 222/1995, art. 3.
[150] Law 222/1995, arts. 4–10; Super. Com. Ext. Cir. 7/2001 and 7/2004.
[151] Law 222/1995, art. 3.
[152] Law 222/1995, arts. 4–10; Super. Com. Ext. Cir. 7/2001 and 7/2004.
[153] Col. Const., art. 333; Law 155/1959; Decree 2153/1992; Law 1340/2009; and Decree 1074/2015.
[154] Decree 2153/1992; Law 1340/2009; and Decree 1074/2015.
[155] Law 256/1996, art. 7.
[156] Law 1340/2009; Law 155/1959; Super. Industry & Commerce Ext. Cir. 10/2001; Super. Ind. Resolution 2751/2021; Super. Ind. Resolution 82882/2023.
[157] Resolution 17 of 2012; Resolution 77 of 2015; Resolution 468/2015.
[158] Decree 1988 of 2013.

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istry of Finance and supervised by the Colombian Superintendence of Finance. Noncompliance with the law and regulations regulating the securities market is punishable with civil penalties and sanctions. In addition, the issuance of shares or debt instruments on Colombia's public stock exchanges without the authorization of the Superintendence of Finance may also lead to criminal sanctions. Security issuers in Colombia are subject to Law 964 of 2005 and supervised by the Superintendence of Finance with which financial statements and certain relevant information related mainly to their legal, financial, and operative soundness, must be filed. In addition, mergers, acquisitions, and spin-offs or split-offs conducted by such entities are subject to the prior authorization of the Superintendence of Finance.[159]

k. Privatization Rules

Compliance with Colombian privatization and related law is essential when a privatization or a capitalization transaction is being crafted. Privatization in Colombia is governed by Law 226/1995.[160] The Law provides a procedural map for privatization and capitalization transactions, while setting out to "democratize" the ownership and operation of state-run entities.[161] Law 226 requires that once a public entity's stock ownership is transferred, necessary steps must be taken to guarantee that the service provided is continued throughout the life of the newly privatized or capitalized entity.[162]

Democratization of ownership under Law 226 takes the form of the (initial) offering of public utility shares to the public utility's employees (*El Sector Solidario*).[163] The Colombian Constitutional Court interprets this language to apply to the sale of state-owned assets, as well as to shares of stock.[164] The Court's interpretation is based on article 60 of the Colombian Constitution. Article 60 provides that, if the State sells or transfers its participation in a public entity, it must first (in the spirit of democratic process) offer its stake in the entity in the form of stock to the entity's employees.[165] This position, although highly debatable given the exact language of the law, which talks of state-owned shares of stock, has not been challenged successfully to date[166] because of its constitutional underpinnings.

Democratization under Law 226 is achieved once the labor sector has been offered a chance to participate in the ownership of the state-owned assets.

Comment: Typically, as was the case with the capitalization process carried out at the Bogotá Electric Company in September 1997, labor will be allocated only a 1% or nominal participation in the new entity.[167] Consequently, foreign investors should not be discouraged by the spirit of the law.

In substantive terms, Law 226 covers total and partial sales to individuals of stocks or BOCEAS[168] belonging to the State, and any level of participation in the capital of any State entity.[169] Total or partial sales of State-owned stock or BOCEAS are conducted under the utmost scrutiny, for public policy reasons.[170] This is because such assets are owned with public funds.[171]

In procedural terms, Law 226 transactions are structured in the following manner: first, the national government decrees that it will privatize or capitalize a State-owned asset;[172] second, the appropriate ministries design a program for the privatization or capitalization process, based on technical studies, directed by the Finance Ministry;[173] third, the process is approved by the government and public notice is effected (this notice may be given via "tombstone" advertisements), initially directed toward the labor force;[174] and fourth, steps are taken to guarantee that the process is democratic, by limiting the negotiability of shares by those persons entitled to special conditions under the Law, and imposing correlative sanctions for transactions effected within set time frames.[175]

l. Personal Data Protection

In an era of information and business globalization, personal data is a highly valued asset. Given the importance of personal information and the potential risks to human dignity and to organizations' information systems that may result from misuse, the Constitution of Colombia shelters personal data by promoting respect, liberty, and the supremacy of human dignity as essential principles to be protected in the processing and circulation of personal data.[176]

Data protection regulations in Colombia have established the constitutional right of all individuals to know, update and rectify information gathered about them in databases and files, and govern the collection, storage, use, controller-to-controller and controller-to-processor data transfer, circulation and/or deletion of such information. General provisions on personal

[159] Decree-Law 663 of 1993 - Estatuto Orgánico del Sistema Financiero, arts. 55 to 88, and Decree 2555 of 2010, art. 11.2.1.4.2.

[160] See *Energía*! Poder & Dinero, Oct. 1997, at 220, 225–226.

[161] In some cases, Law 226 takes precedence over other Colombian administrative contract law principles. Law 226, art. 2.

[162] Law 226, art. 5.

[163] Law 226, art. 3.

[164] *In re* Unconstitutionality of Law 226/95, Arts. 15 and 24, Col. Const. Ct., Op. C-343/96 (Aug. 5, 1996); *In re* Unconstitutionality of Law 226/95, Art. 20, Col. Const. Ct., Op. C-392/96 (Aug. 22, 1996).

[165] Col. Const., art. 60.

[166] Under the Colombian legal system, unlike under the U.S. system, a party may bring an action challenging the constitutionality of a portion of a law without a specific case and controversy giving rise to judicial redress or relief. *Thompson v. Zurich Ins. Co.*, 309 F. Supp. 1178, 1181 (D. Minn. 1970). See, generally, Raymond Guillien & Jean Vincent, 239 *Diccionario Jurídico* (1995) (law in a civil jurisdiction is understood to be legislation, related administrative regulations and the constitution). However, in the area of privatization and administrative law, Constitutional Court holdings are binding on agencies and entities managing and organizing privatization projects.

[167] Jonathan Arnold & Stephen Edkins, "Emerging Markets Equity Research: Colombia–Electric Utilities, Colombia Electricity Primer — Get Connected" 24 (Santander Investment Securities Inc. 1997).

[168] Bonds convertible into shares (BOCEAS) are debt/equity instruments that may only be used by a joint stock corporation (*Sociedad Anónima* or *Sociedad en Comandita por Acciones*). The use and issuance of this instrument is regulated by the Superintendence of Securities (the national agency regulating the securities markets) under Superintendence of Securities Res. 400/1995.

[169] Law 226, art. 1.

[170] Transparency issues are a concern, given the unfortunate trend of corruption associated with many governmental processes in Latin America. See John Otis & Jeb Blount, Law & Order, *Latin Trade*, June 1997, at 48–57 (survey of Latin American corruption and governmental efforts to curb it).

[171] Law 226, art. 1.

[172] Law 226, art. 6.

[173] Law 226, art. 7. The technical studies will include a valuation and appraisal of the shares of stock to be transacted (this phase factors in the market value of assets and liabilities, and asset profitability). Law 226, art. 7.

[174] Law 226, arts. 8–9.

[175] Law 226, art. 14.

[176] Col. Const., arts. 15 and 20.

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data protection are contained in Law 1581 of 2012 and Decree 1074 of 2015. The processing of financial, credit, and commercial personal data is governed by Law 1266 of 2008 (the "Habeas Data Law").

Under the provisions of Law 1581, the Habeas Data Law, and Decree 1074, the owner of personal data has the right to know, update, and rectify the data; give and revoke authorization to use the data and to request the deletion of the personal data provided; request proof of the authorization granted; be informed about the uses for which the data will be provided; file complaints with the Superintendence of Industry and Commerce where such rights are infringed; and access free of charge the personal data subject to processing.

The essential principles that guide personal data protection are legality, purpose, freedom, accuracy, transparency, safety, confidentiality, access and restricted circulation.[177] In accordance with these principles and the rights of data subjects, data controllers, and data processors that process personal data are subject to a number of obligations.

Under Colombian privacy laws, any individual or entity that, by itself or in association with others, collects and processes personal data in Colombia for its own purposes is considered to be a data controller and must, therefore, comply with the corresponding obligations and duties. A data processor is any individual or legal entity that, by itself or in association with others, performs the processing of personal data on behalf of a data controller.[178] The main obligations and duties of a data controller are: to request and maintain a copy of the authorization granted by the owner to process its personal data; to inform the owner of the purpose of the data collection and the rights that protect the owner by virtue of the authorization granted; to keep the information securely to prevent its adulteration, loss, consultation or use, or unauthorized or fraudulent access to it; to process queries and claims regarding personal data in accordance with the terms set forth by law; and to adopt an internal manual of policies and procedures to ensure compliance with the provisions of the data protection laws.[179]

Data processing authorizations are not required in the following circumstances:[180]

(i) When the information is requested by a public entity in accordance with its legal functions;

(ii) When the information requested is publicly available data;

(iii) In medical or sanitary emergency situations;

(iv) When the information requested is for historical, statistical or scientific purposes; and

(v) When data is related to individuals´ birth certificates.

Comment: Under Colombian privacy laws, there are two types of international personal data transfers: controller-to-controller and controller-to-processor. Controller-to-controller data transfers involve sending personal data from a data controller located in Colombia to a data controller located in another jurisdiction, who will perform data processing for its own purposes. Controller-to-controller personal data transfers to any country that does not provide adequate levels of data protection is prohibited, with certain exceptions (e.g., prior consent from the data subject, bank transfers, among others.)[181] Under Colombian regulation, a country offers adequate levels of data protection when it complies with the standards set by the Superintendence of Industry and Commerce.[182] Controller-to-processor transfers involve sending personal data from a data controller located in Colombia to a data processor located in another jurisdiction, who will perform data processing on behalf of the controller. Generally, controller-to-processor transfers require prior consent. However, Colombian privacy laws provide that controller-to-processor transfers do not have to be informed or previously consented by individuals if the parties sign a valid controller-to-processor agreement.[183]

Moreover, as of January 2016, data controllers must register their databases with the Superintendence of Industry and Commerce.

Data controllers that are non-public legal entities or nonprofit companies, and that have total assets in Colombia of more than 100,000 UVT (i.e., for 2024, total assets of more than COP 4,706,500,000) are required to register their databases in the National Database Registry (RNBD).

Public legal entities are required to register their databases in the RNBD irrespective of their asset value.

Data controllers that are obliged to register their databases in the RNBD must also update the information registered in the RNBD, as follows:

(i) Within the first 10 business days of each month, when substantial changes[184] are made to the information registered;

(ii) Annually, with respect to information registered between January 2 and March 31 (as of 2024);

(iii) Within the first 15 business days of February and August of each year, with respect to information on claims submitted by Data Subjects; and

(iv) For new databases, within two months from the moment of their creation.

To date, specific instructions for database registration by foreign legal entities have not been issued.

As regards the application of local personal data regulations to foreign entities, in recent decisions, the Colombian data protection authority has taken the view that certain events in internet-based processing may constitute the processing of data within the jurisdiction of Colombia, even if the entity processing the data is not domiciled in Colombia. For instance, when the data controller has the means to collect personal data

[177] Law 1581/2012, art. 4.
[178] Law 1581/2012, art. 3, par. d) and e).
[179] Law 1581/2012, art. 17.
[180] Law 1581/2012, art. 10.

[181] Law 1581/2012, Art. 26.
[182] Such standards can be found in Title V, Chapter 3 of the Circular Letter from the Superintendence of Industry and Commerce (SIC), which compiles all previously issued data protection circular letters issued by the SIC.
[183] Decree 1074/2015, Art. 2.2.2.25.5.1.
[184] Substantial changes are those related to the purpose of the database, the Data Processor, the channels for customer attention, the classification or types of personal data stored in each database, the security measures implemented, the Privacy Policy and the International Data Transfers and Commissioned Processing of Personal Data.

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in Colombia even if the processing is performed abroad or on a global scale (for example, when the data controller has servers, an agency, a representative office or affiliates in Colombia), the Colombian data protection authority has found that there is processing of data in Colombia and, therefore, Colombian data protection regulations may apply. Additionally, the Colombian data protection authority has established that certain foreign entities are subject to Colombian data protection regulations by virtue of processing personal data within the jurisdiction of Colombia through cookies or pixel tags stored on the computer devices of individuals resident in or domiciled in Colombia.

In addition, although the Colombian authorities can only enforce the sanctions they impose within Colombian territory, the legislation allows them to cooperate with other international data protection authorities and agencies to protect Colombian citizens' privacy rights and to make those sanctions effective.

Failure to comply with personal data processing obligations may lead to the imposition of various sanctions by the Superintendence of Industry and Commerce, such as fines of up to 2,000 times the minimum legal monthly wage, and the provisional suspension or temporary closing of operations related to personal data processing.[185]

3. Intellectual Property Rights

Intellectual property (IP) rights in Colombia include:

(i) Industrial property;

(ii) Author rights (copyrights).

Industrial property includes trademarks, commercial names, slogans, patents, industrial designs, and utility models, among other items.

The main regulations on IP rights consist of Andean Community Decision 486 of 2000, Andean Community Decision 351 of 1993, Law 23 of 1982, Law 1648 of 2013, Decree 2264 of 2014, and the Colombian Commercial Code (*Codigo de Comercio*)[186] governing the transfer of technology or licensing of technology in Colombia. The characteristic trait of the regulations is their regional scope within the Andean Community (i.e., Bolivia, Colombia, Ecuador, and Peru).

a. Patents

Under Colombian IP law, a patent protects new inventions from any industry, such as compositions, compounds, substances, devices, machines, mechanisms, tools, procedures, and methods.

To be patentable, an invention must:

(i) Be novel;

(ii) Have an inventive step; and

(iii) Be capable of industrial application.

An invention is considered novel when it has not been disclosed to the public by any means before the application filing date or the priority date, so that the information entailed in the invention is not part of the state of the art. The state of the art comprises all information available to the public regarding an invention, such as articles, videos, products, and procedures. However, for purposes of determining patentability, Colombian law grants a grace period of 12 months within which the disclosure made by the inventor or patent owner prior to the filing date of the application will not bar the invention from being patented.

An invention has an inventive step if, for a person having ordinary skill in the art, the invention could not have been obtained in an evident or an obvious way from the state of the art.

An invention is capable of industrial application if the matter protected can be produced or used in a productive activity.

A patent is enforceable for 20 years as from the filing date of the patent application. A patent grants the owner the right to prevent non-authorized third parties from exploiting the invention and the right to exploit, license, or assign the invention.

Notwithstanding the above, the following are not considered patentable inventions:

(i) Discoveries, scientific theories, and mathematical methods;

(ii) The entirety or part of living beings as they exist in nature, natural biological processes, and biological material existing in nature or that may be isolated, including the genome or germ plasm of any natural living being;

(iii) Literary and artistic works or any other work protected by copyright;

(iv) Plans, rules, and methods for the pursuit of intellectual activities, the playing of games, or the conduct of economic and business activities;

(v) Computer programs or software as such; and

(vi) Methods of presenting information.

Furthermore, the following inventions are not patentable:

(i) The commercial exploitation of an invention that has been prohibited in order to comply with the law, order, or morality;

(ii) The commercial exploitation of an invention that has been prohibited in order to protect human or animal health or life, or to preserve plants and the environment;

(iii) Plants, animals, or biological processes for the production of plants or animals; and

(iv) Therapeutic, surgical, and diagnosis methods for the treatment of humans and animals.

Under Colombian law, protection begins with the filing of the patent application. Immediately after that, the application will be subject to a formal examination to verify that the documents and information required are complete; if they are not, the Patent Office will issue an office action. Once the Patent Office determines that the application meets the formal legal requirements, the patent will be published in the Industrial Property Gazette for third parties to file oppositions. As from the date of publication, the applicant has six months within which to request the patentability examination. During the examination stage, the Patent Office may issue one or more office actions asking the applicant to amend the set of claims or sub-

[185] Law 1581/2012, art. 23.

[186] Col. Com. C., arts. 534–602 (adopting the provisions of Andean Community Decision 486/2000).

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mit technical evidence of the registration of the invention. As a result of the examination, the Patent Office will grant or deny the patent; if the patent is denied, the applicant may file a reconsideration petition before the Patent Office. If the patent is granted, the applicant will have to make annual payments to keep the patent in force.

Additionally, in Colombia, patents can be filed under the Paris Convention for the Protection of Industrial Property or under the Patent Cooperation Treaty (PCT), as described below.

Paris Convention for the Protection of Industrial Property: One of the main benefits of the Paris Convention is the right of priority. This means that on the basis of a first application filed in one of the Contracting States, the applicant is granted a specific term to file new applications for the same patent/utility model/industrial design in other Contracting States. Moreover, any subsequent filings will be deemed filed on the same date as the first application.

The specific term is 12 months for patents and six months for industrial designs, and it is counted as from the date of the first application.

In that sense, the right of priority entails a privilege for the applicant over any other applications filed by third parties within the above-mentioned timeframes in regard to the same patent, industrial design or utility model.

Patent Cooperation Treaty: Under the Patent Cooperation Treaty, the applicant may seek protection for an invention simultaneously in several Contracting States by filing a single international patent application, instead of filing separate national patent applications. However, such international filing must enter a National Phase and the granting of such application remains under the control of the Local Patent Offices.

It is important to bear in mind that the applicant has a limited period of time to file the National Phase of their International PCT Application which, depending on the country, may vary between 30 to 31 months from the original (local) application.

b. Utility Models

Utility models protect any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object, or any part thereof, that improves it or provides a new operation, use or manufacture of the object incorporating it, or endows it with any usefulness, advantage, or technical effect that it did not previously have.

For a utility model to be protected under Colombian law, it must be:

(i) Novel; and

(ii) Capable of industrial application, as explained in II.C.3.a., above.

Additionally, for purposes of determining patentability, disclosures occurring during the year prior to the application filing date will not bar the patentability of the invention.

A utility model is enforceable for 10 years from the application filing date. A utility model grants its owner the right to prevent non-authorized third parties from exploiting the machine or device and the right to exploit, license or assign it.

In addition to the exceptions to, and exclusions from, patentability, a machine or device will not be deemed to be a utility model if it is an architectural work, a plastic artwork or an object that has only aesthetic features.

The protection procedure for a utility model is the same as for a patent. However, the procedural terms are reduced by half.

c. Industrial Designs

Industrial designs protect the external aesthetic features of a product. To obtain such protection, the invention must be novel, as explained in a., above. Industrial designs may be 2D or 3D. Additionally, for purposes of determining patentability, disclosures occurring during the year prior to the filing date of the application do not bar the patentability of the invention.

Under Colombian law, an industrial design is enforceable for 10 years from the application filing date. An industrial design grants the owner the right to prevent non-authorized third parties from exploiting the design and the right to exploit, license or assign the invention.

A design will not be protected:

(i) For moral or public order reasons;

(ii) When its appearance is due to technical functions; and

(iii) When its reproduction is mandatory to allow the product to be compatible with other devices or machines.

Under Colombian law, the protection process starts with the filing of the industrial design application. Immediately after that, the application will be subject to a formal examination to verify that the documents and information required are complete. If they are not, the Patent Office will issue an office action. Once the Patent Office determines that the application meets the formal legal requirements, the industrial design will be published in the Industrial Property Gazette for third parties to file oppositions. If no oppositions are filed, the Patent Office refrains from performing a substantial analysis of the application and grants the industrial design. However, if an opposition is filed, the Patent Office will analyze the novelty of the application and decide whether to grant the industrial design. If the Patent Office denies the registration, the applicant may file a request for reconsideration and a subsidiary appeal.

d. Trade Secrets

A trade secret refers to any information that is not known or easily obtained, has economic value for being secret, and has been subject to reasonable measures to keep it secret. Some reasonable measures could be fragmenting information, installing technological and physical barriers to accessing the information, and keeping an organized register of the information as well as the people who accessed it, among other measures.

A trade secret protects procedures or products that cannot be subject to reverse engineering in any industrial field. A trade secret will remain enforceable as long as the information is kept secret.

e. Trademarks

A trademark is a visible sign used to identify one person's goods and/or services from those manufactured or sold by other persons, and to indicate the source or origin of goods. A trademark can assume any shape, provided it is susceptible of graph-

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ical representation. A trademark may, therefore, consist of words, figures, smells, sounds, letters, numbers, colors, shapes, or any combination of these.

To obtain IP rights over a trademark it is mandatory to register it with the Colombian trademark office (CTO), i.e., the Superintendence of Industry and Commerce. The registration protection process takes approximately six to eight months if no oppositions or objections are made.

Before filing a trademark registration application, it is advisable to perform a trademark availability search with the CTO, to determine the viability and registrability of the expressions of interest. As a result of this search, the applicant is able to select and adjust the specifications of the trademarks that will distinguish its products and/or services in accordance with the current regulations on the matter and the previously registered trademarks.

The trademark registration may be requested claiming specific colors, in which case the trademark will be used only in the specified colors, or without claiming specific colors, in which case the brand is registered in black and white but can be used in any color. Applicants usually choose not to claim trademark colors when they are building up their image or prefer not to limit the trademark to the use of a specific color or set of colors. On the other hand, trademark owners often claim colors when the image has been defined and they wish to position a particular color combination.

The Colombian trademark system is currently governed by the Eleventh Edition of the International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement. Consequently, it is necessary to determine accurately the products and services that will be identified with a trademark, and then classify them according to the above classification.

A trademark application may be mono-class, which means the application pursues coverage for only one International Class, or multi-class in which the applicant seeks to obtain a record with coverage for two or more International Classes. For purposes of mono-class trademark registration, an individual trademark application must therefore be filed for each International Class of interest; for multi-class trademark registrations, only one application is needed for trademark registration in as many classes as the applicant might be interested in.

Registration gives the trademark owner the exclusive right to use the trademark identifying its goods and/or services and the right to exclude third parties from using its sign or any other similar sign that distinguishes competitively linked goods or services. In this way, the Trademark Law aims to avoid consumer confusion in the Colombian market.

A trademark registration is valid for a term of 10 years and can be indefinitely renewed for periods of the same length. The owner of a registered trademark or any party with a legitimate interest may apply for its renewal within six months before the expiration of its registration, or during the six months after the expiration date, within a grace period.

There are other types of trademarks in Colombia, such as collective trademarks and certification trademarks. Collective trademarks are requested by producers, associations, manufacturers, providers of services, organizations, and other legally established groups to distinguish the products or services of their members in the marketplace from those of others that are not part of such associations. Certification trademarks are trademarks used to guarantee the quality or specific characteristics of a product or service.

It should be borne in mind that, in Colombia, trademark rights can only be acquired by obtaining a registration with the Trademark Office. Use alone does not grant any rights over a trademark. However, once registration is obtained, titleholders have the obligation to use their trademark in the Colombian and/or Andean market. In fact, a trademark may be subject to a non-use cancellation action by third parties after three years from the date of its registration.

Additionally, Colombia is a Contracting Country of the Madrid Protocol (Madrid System). By filing applications under the Madrid System, the applicant may file a single international application through its Local Trademark Office, which will certify and forward the application to WIPO (World Intellectual Property Organization). After the formal examination, publication and conferring of the International Registration, WIPO will submit the application to the countries of interest and the Local Trademark Office will issue a decision (granting or denying the application) in accordance with each country's legislation.

The decision issued by each Local Trademark Office is independent from the decision issued by any other Offices.

f. Franchising

A franchise exists when, by means of the licensing of a trademark, technical knowledge is transmitted or technical assistance is provided to allow a person or legal entity to produce or sell quality products or services in a uniform manner.

Franchising agreements, including the licensing of trademarks and trade names, and the supply of technical assistance, know-how and technology contracts as such, must be registered with the CTO.

g. Copyrights and Authors' Rights

Copyrights, in Colombia called "authors' rights," protect creative original works such as music, movies, software, books, drawings, architectural works, photographs, designs and original databases, among other items, fixed in a tangible medium of expression now known or later developed, through which they can be perceived or otherwise communicated.

Copyright protection grants its owner two kinds of rights:

(i) Economic rights to authorize or forbid the reproduction, publication, public performance or display, importation, production of derivative works, or sale of his or her copyrighted works; and

(ii) Moral rights granted to the author, which include the recognition of authorship, and preclude the deformation, mutilation or modification of the work without prior authorization.

Economic rights are protected for the life of the author plus 80 years after his/her death and are transferable and waivable. On the other hand, moral rights are perpetual and non-transferable, and may not be waived.

With regard to author rights for legal entities, with the enactment of Law No. 1915 of 2018, the term of protection was extended from 50 to 70 years. Moreover, legal entities are ac-

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knowledged and recognized as capable of being owners of creative original work (i.e., software, etc.).

The National Copyright Office (DNDA) has indicated that works created using artificial intelligence are not eligible for copyright protection as they do not meet the requirement of being an intellectual creation—i.e., a creation of the human intellect. Under local rules, a work must be original and an intellectual creation to be protected by copyright. The Office has rejected a number of applications to copyright works that were developed using artificial intelligence.[187]

h. Intellectual Property Violations and Infringements

Author's rights and IP violations in Colombia may lead to civil and criminal actions.

In the case of IP, the main civil actions contemplated by Andean Community Decision 486 of 2000 are:

(i) An IP infringement action seeking to defend any protected IP right; and

(ii) A vindicating action for claiming ownership over a mark, a patent or an industrial design registration that has been applied for or obtained by a person that does not have the right to it.

By means of an infringement action the owner of the IP rights that are the subject of violation may bring an action with the competent national authority against any person that infringes its rights or any person that engages in acts that indicate the imminence of an infringement.[188]

Under an IP infringement action, the plaintiff may seek compensation for damages as well as other protective measures, such as the cessation of the acts that constitute the infringement, the withdrawal from commercial channels of the goods resulting from the infringement or the award of ownership of the same, the adoption of the measures necessary to ensure that the infringement does not continue or recur, and the publication of the sentence handed down against the infringer.[189]

Additionally, Decree No. 2264 of 2014 established a regime of pre-defined compensation for damages for trademark infringements alone, which relieves the plaintiff from having to prove the amount of the compensation it seeks.

Along with the institution of the proceedings, immediate precautionary measures may be requested with the aim of preventing the infringement from being committed or avoiding its consequences, securing or preserving evidence, or ensuring the effectiveness of the action or compensation for damages.

Besides being a basis for civil actions, IP violations also constitute a crime under the Colombian Criminal Code, Law 599 of 2000. Usurpation or fraudulent use of a trademark, commercial name, slogan, industrial design or patent is punishable by imprisonment for between four to eight years and fines ranging from 26.6 to 1,500 times the minimum legal monthly wage. Moreover, violations (use, revelation, or disclosure) of information subject to industrial or commercial reserve are punishable by imprisonment for between two to five years and fines ranging from 20 to 2,000 times the minimum legal monthly wage.

Potential violations of author's rights are regulated by 1915 of 2018 on Copyright and under the Colombian Criminal Code, which provides punishment for the infringement of a copyright owner's economic and moral rights. The owner of an infringed copyright may pursue the infringer either in a civil proceeding, based on the conduct set forth in article 51 of Law 44 of 1993, or a criminal proceeding, based on articles 270, 271, and 272 of the Colombian Criminal Code. Author's rights violations are punishable by imprisonment for between two to eight years and fines ranging from 20 to 1,000 times the minimum legal monthly wage.

The Andean Court of Justice issued the prejudicial interpretation n° 391-IP-2022,[190] establishing that, from March 2023, it will no longer be mandatory for judicial courts to request the issuance of prejudicial interpretations before ruling on the merits of a case, provided the relevant intellectual property provisions cited by the plaintiff or the defendant have been previously subject to a prejudicial interpretation that has been published in the official gazette (*Gacetas Oficiales del Acuerdo de Cartagena*).

4. Sanitary Regime

Sanitary provisions aim to protect human health from any activities, conditions, services and products that may pose any kind of risk.

The Colombian sanitary authority in charge of enforcing these provisions is INVIMA.

a. Food and Beverages

Per sanitary regulations, the concept of food refers to any natural or artificial product, processed or not. This definition includes non-alcoholic beverages and spices.

Resolution 719 of 2015 provides that food is classified based on the level of risk—high, medium or low—it poses to public health.

Although each food product might be specifically regulated under technical provisions, the main regulations governing food are:

- Law 9 of 1979;
- Resolution 2674 of 2013;
- Resolution 5109 of 2005;
- Resolution 810 of 2021 (that repealed Resolution 333 of 2011); and
- Resolution 2492 of 2022 that regulates the labeling requirements to be met by packaged foods and raw materials.

b. Alcoholic Beverages

An alcoholic beverage is a product for human consumption that contains a concentration of not less than 2.5 alcoholometric degrees and has no therapeutic indications. All alcoholic

[187] Resolution 137 of May 2, 2023, Resolution 147 of May 18, 2023, and Resolution 185 of June 14, 2023.

[188] Andean Community Decision 486 of 2000, art. 238.

[189] Andean Community Decision 486 of 2000, art. 240.

[190] See:https://www.comunidadandina.org/DocOficialesFiles/Procesos/391_IP_2022.pdf.

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beverages manufactured, processed, hydrated, bottled, stored, distributed, transported, marketed or sold in, exported from, or imported into Colombia must have a sanitary registration. The labels and advertising must carry specific language, the most important examples of which are: "Excess alcohol is harmful to health" and "Selling intoxicating beverages to underage individuals is forbidden."

The main regulations governing alcoholic beverages are the following:

- Law 9 of 1979;
- Law 30 of 1986;
- Law 124 of 1994;
- Decree 1686 of 2012;
- Decree 219 of 2019; and
- Decree 162 of 2021.

c. Dietary Supplements

A dietary supplement is a product that adds other substances with a physiological or nutritional effect to the normal diet. Dietary supplements may contain vitamins, minerals, proteins, amino acids, other nutrients or nutrients derived from plants.

The main regulations governing dietary supplement are Decree 3249 of 2006, Resolution 3096 of 2007 and Decree 335 of 2022.

d. Medicines

Medicines are classified, based on marketing conditions, as free sale medicines, prescribed medicines, specially regulated medicines, and hospital use solely medicines.

Medicines may further be classified into:

(i) Biological: medicines made from living organisms or cells. They can be obtained from sources such as tissues or cells, components of human or animal blood (such as antitoxins and other antibodies, cytokines, hormones, etc), viruses, and microorganisms, among others;

(ii) Homeopathic: pharmaceutical preparations obtained by homeopathic techniques;

(iii) Phytotherapeutics: medicines containing an active substance which comes from medicinal plants or associations of these or extracts, tinctures or oils, presented in a raw state or in pharmaceutical form that is used for therapeutic purposes.

Although a large number of specific technical regulations apply for each product and activity, the generally applicable regulations for medicines are:

- Decree 677 of 1995;
- Decree 2266 of 2004;
- Decree 3554 of 2004;
- Resolution 4320 of 2004; and
- Decree 335 of 2022.

e. Medical Devices

Within this category are all tools, instruments, machines, software, biomedical equipment or other similar or related devices, used for any of the following purposes:

(i) Diagnosis, prevention, supervision, treatment or relief of a disease;

(ii) Diagnosis, prevention, supervision, treatment, relief from injuries or deficiencies;

(iii) Research, substitution, modification or support of anatomical structures or physiological processes;

(iv) Diagnosis of pregnancy; or

(v) Products for disinfection and/or sterilization of medical devices.

The following classification of medical devices is based on potential risks related to use:

- Class I, low risk: subject to general controls, not intended to protect or maintain life, or for any use of special importance in the prevention of deterioration of human health and which do not pose an unreasonable potential risk of illness or injury;
- Class IIA, moderate risk: subject to special controls in the manufacturing phase to demonstrate its safety and effectiveness;
- Class IIB, high risk: subject to special controls in design and manufacture to demonstrate safety and effectiveness; and
- Class III, very high risk: subject to special controls, intended to protect or maintain life or for substantial use in the prevention of deterioration of human health.

The main regulations governing this type of products are: Decree 4725 of 2005 and Resolution 4002 of 2007, Resolution 4816 of 2008 and Decree 322 of 2023.

f. Cosmetics

A cosmetic product is a substance or formulation used in any external surface of the human body such as: epidermis, hairy and capillary system, nails, external lips and genital organs or in teeth and mucous membranes, to clean, perfume, modify its appearance and protect or keep those in good condition and prevent or correct body odors.

The main regulations governing cosmetic products are:

- Decree 219 of 1998;
- Decision 516 of 2002;
- Resolution 1333 of 2012;
- Decision 833 of 2018;
- Decision 857 (amending Decisions 516 and 833);
- Resolution 2108 of 2019;
- Resolution 2214 of 2021; and
- Resolution 2206 of 2021.

Resolutions 2206 of 2021 and 2214 of 2021 set out the good manufacturing practices (*Buenas Practicas de Manufac-*

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tura – BPM) that companies must comply with in order to manufacture or package cosmetic products.

A new development in this area concerns the labeling of cosmetics. The Andean Community of Nations published Resolution No. 2310, through which it approved the Andean Technical Regulation for the Labeling of Cosmetic Products (the ATR). This regulation establishes new labeling requirements that cosmetic products marketed in the territories of the Member Countries (Peru, Ecuador, Colombia, and Bolivia) must comply with, in order to prevent practices that may mislead consumers about the characteristics of these products and to protect human health or safety. This regulation is scheduled to take effect December 17, 2024. In accordance with the provisions, it is now possible to incorporate a supplementary label or sticker on the packaging (a means by which additional information is included on the main label of the product, which must be firmly attached to the label, packaging, or container and must have indelible and legible characters). This supplementary label must comply with the requirements outlined in paragraphs three, four, five, six, seven, and ten of section 5.1 of the same regulation.

g. Hygienics

These are products whose main function is to clean up, disinfect, aromatize the environment and promote care of objects, clothing or areas that will subsequently be in contact with humans.

This category does not include those products whose main purpose is the formulation for cleaning up, disinfecting and promoting the care of industrial and commercial machinery and industrial and public health facilities.

The main regulations governing hygiene products are Decree 1545 of 1998 and Decision 706 of 2008, Decision 908 of 2022 and Decision 784 of 2013 (amend articles from Decision 706).

h. Inspection, Surveillance and Control Visits and Sanitary Measures

INVIMA follows a risk-based sanitary surveillance model, called IVC SOA. Its name results from the assessment prepared over the products falling under its scope, in the following three factors: severity (S), probability of occurrence (O) and affectation (A).

INVIMA conducts surveillance through inspection visits and monitoring of health records, among others. Once INVIMA schedules an inspection, surveillance and control visit to an establishment that performs activities under its competence (without prior notice), it has the power to verify and request the information it deems appropriate to gather. As a result of the visit and if the appointed officer finds any flaw in the fulfilment or compliance with the legal provisions, INVIMA can apply the most appropriate sanitary measure. The purpose of these measures is to prevent, mitigate, control or eliminate any circumstance likely to pose any risk or harm the health of the population.

INVIMA can impose any of the following sanitary measures:

(i) Temporary closure of the establishment;

(ii) Total or partial suspension of services rendering;

(iii) Seizure of objects and products; and

(iv) Destruction of items or products, if applicable.

i. Penalties

The outcome of an administrative sanitary procedure, can lead INVIMA to impose some or all of the following penalties:

(i) Warning notices to the infringer;

(ii) Successive fines up to the amount of 10,000 current legal minimum monthly wages;

(iii) Definitive seizure of products;

(iv) Suspension or cancellation of health registrations; and

(v) Temporary or definitive closure of the respective establishment and/or facility.

j. Advertising and Product Labelling Requirements

In general, to comply with the requirements for advertisements and labeling of products, it is necessary to take into account the particular nature and conditions of a product. However, when designing labels or advertisements for any of the above indicated products, the following criteria must be observed:

(i) Compliance with current sanitary standards;

(ii) Compliance with conditions under which the health registration was granted;

(iii) Ensure that information does not mislead consumers by affirmation or omissions;

(iv) Avoid making medical, preventive, curative, nutritious or special property claims that are not proven and authorized by INVIMA, which may raise false assessments about their true nature, origin, composition or quality; and

(v) Observe free competition.

D. Immigration Regulation

1. In General

The Colombian Government, through the Ministry of Foreign Affairs, has authority over all Colombian immigration policy.[191]

All foreign individuals entering and staying in Colombia are required to file for a temporary visa or permit.

2. Visas Categories

a. In General

Visa applications may be filed with a Colombian Consulate abroad, with the Office of Visas and Immigration Coordination in Bogotá, or via the internet. Foreigners wishing to enter and/or stay in Colombia must have the following:

(i) A valid passport or similar document;[192] and

[191] Decree 1067/2015.
[192] Decree 1067/2015, art. 2.2.1.11.2.1.

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(ii) The corresponding visa, or an entry permit issued by the Colombian Ministry of Foreign Affairs or Immigration Agency (*Migración Colombia*) when a visa is not required.[193]

In Colombia, the following types of visas are available:[194]

• Visitor (Type "V");

• Migrant (Type "M"); and

• Resident (Type "R").

All these visas allow a foreign holder multiple entries, exits or transits. In addition, beneficiary visas may be granted to the family members of the primary visa holder (depending on his or her type of visa) if they are economically dependent.[195]

b. Visitor Visa (Type "V")

The Ministry may grant a Type V visa to foreigners who wish to visit Colombia once or several times or temporarily remain there, without establishing themselves in Colombia, to carry out any of the activities described below.

The Type V visa is residual in nature. In the event a foreigner requests a visa to carry out an activity or exercise an occupation that is not regulated under Resolution 5477 of 2022, the Ministry of Foreign Affairs may grant a Type V visa. The Ministry will then determine the conditions attached to said visa.

The Type V visa provides its holder the possibility of carrying out:

(i) Activities inherent to his/her presence and daily life in Colombia; and

(ii) Business management, market studies, plans or procedures for direct investment and creation of companies.

[193] Decree 1067/2015, art. 2.2.1.11.2.1.
[194] Resolution 5477/2022, art. 22.
[195] Resolution 5477/2022, art 93.

Visitor Visa (Type V)			
Type	**Validity**	**Authorized Stay**	**Permission to Work**
Airport transit	For foreigners of specified nationalities listed in Resolution 5488 of 2022, who are transiting directly through any Colombian airport when traveling to a third country	Up to 24 hours in the relevant Colombian airport.	No.
Tourism	For foreigners of specified nationalities listed in Resolution 5488 of 2022, who are traveling to Colombia for tourism.	Up to 90 days, extendable for another 90 days per calendar year. After 180 days in one calendar year the permission is not extendable.	No.
Business	Carrying out business management, market studies, direct investment plans or procedures, and incorporation of a commercial company, as well as the negotiation and closing of contracts or commercial representation	Up to 180 continuous or discontinuous days in each year that the visa is used. The 180-day period is not extendable.	No.
Student	For foreign students who intend to study in Colombia. Passport holders from visa-exempt countries or territories listed in Resolution 5488 of 2022, will be exempt from processing this type of visa if their stay in Colombia does not exceed 180 calendar days. Leaving the country for more than 90 calendar days will result in the automatic termination of the visa.	Up to two years.	This visa allows university students to work up to 20 hours per week.

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Medical treatment	Undergoing medical treatment in Colombia	Up to one year. The permission is not extendable.	No.
Administrative and/or judicial procedures	Carrying out procedures of an administrative or judicial nature before entities or authorities in Colombia	Up to one year.	No.
Crew member	Entering and working in Colombian jurisdictional waters as a boat crew member or on an offshore platform	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Seasonal agricultural employee	Undertaking seasonal agricultural work under programs established by the Ministry of Agriculture and Rural Development, in consultation with the agricultural sector, the Ministry of Labor and the Ministry of Health and Social Protection	Up to 180 days.	Yes, exclusively for the activity for which the visa was granted.
Special event	Attending conventions, business, cultural or academic activities as a speaker, exhibitor, participant, artist, athlete, jury, contestant, organizer, or as logistics personnel. Passport holders from the visa-exempt countries or territories listed in Resolution 5588 of 2022, will be exempt from processing this type of visa if their stay in Colombia does not exceed 180 calendar days and they do not receive a salary or payment in Colombia.	Up to 180 calendar days, continuous or discontinuous for every 365 calendar days from the issuance of the visa, not extendable.	Yes, exclusively for the activity for which the visa was granted.
Religious	Undertaking religious ministry or working as a missionary for a religious entity duly recognized by the Colombian State.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Students or volunteers of religious entities.	Entering and remaining in the country as a volunteer or student in religious organization or carrying out theological studies in an institute or organization of a religious denomination duly recognized by the Colombian State	Up to one year.	No.

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Volunteer or cooperation	Limited exclusively to activities and organizations authorized by the government. Once the volunteer activity is finished, the foreigner must return to his or her country of origin or residence. A second expedition will only be allowed exceptionally	Up to two years. Leaving the country for more than 90 calendar days will lead to the early termination of the visa.	No.
Cinematographic or audiovisual production	Participating in large-format films or documentary productions	Up to one year.	Yes, exclusively for the activity for which the visa was granted.
Digital nomads	Providing remote work or teleworking services from Colombia, through digital media and the internet, exclusively for foreign companies, as an independent contractor or employee of a foreign entity. It also covers starting a digital content or information technology venture of interest to the country.	Up to two years.	No.
Journalistic coverage	Carrying out short-term journalism assignments in the country.	Up to one year.	Yes, exclusively for the activity for which the visa was granted.
Permanent correspondent	Working in Colombia as a permanent press correspondent for foreign media.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Technical assistance	Providing technical assistance to a legal entity in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Work or vacation	Visiting Colombia under a diplomatic or consular vacation or work agreement.	Up to one year.	Yes, it grants an open work permit.
Promotion of globalization	Undertaking research or innovative activities aimed at adapting technologies, products, or services to innovate in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Annuitant	For foreigners who have a periodic source of income	Up to two years.	No.
Internship	Carrying out an internship.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.

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Service provider or agreements for the duration of projects	Providing temporary services for a natural or legal person in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Entrepreneurs free trade agreements (FTA)	Occupying a position in the Colombian office of a company with presence abroad, by virtue of an internal transfer of personnel, provided the entry or temporary presence of business persons is covered under valid international instruments.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.

Regarding condition 5., above, in accordance with numeral 14 and paragraph 1 of articles 10 and 40 of Resolution 6045 of 2017, an "internal transfer" must meet four conditions:

(i) The foreigner must enter Colombia to occupy a position in the Colombian headquarters of the company abroad;

(ii) The foreign company, the Colombian company, or both, must sponsor the entry of the foreigner into Colombia;

(iii) The sponsor(s) must declare that they will assume economic responsibility for the expenses of the foreigner; and

(iv) Existing international instruments contemplate specific commitments regarding entry or temporary presence of businesspersons.

c. Migrant Visa (Type "M")

A foreigner who wishes to enter or remain in Colombia with the intention of establishing himself or herself there, but who does not meet the conditions to apply for a Resident (Type "R") visa, may apply for a Migrant visa if he or she falls within one of these categories:

Migrant Visa (Type M)			
Visa Type	**Validity**	**Authorized Stay**	**Permission to Work**
Spouse or permanent companion of a Colombian national	Is a spouse or permanent companion of a Colombian national.	Up to three years.	Yes, it grants an open work permit.
Mercosur	Is a national of one of the State parties to the *Agreement on Residence for Nationals of the State Parties of Mercosur* (Argentina, Brazil, Paraguay, and Uruguay)*, Bolivia and Chile*	Up to three years.	Yes.
Employment	Has permanent employment in Colombia or long-term employment, by virtue of an employment relationship or contracting agreement to provide services to a natural or legal person domiciled in Colombia.	Up to three years or less, in accordance with the terms of the contract.	Yes, exclusively for the position, entity or profession for which the visa was granted.
Partner or owner	Has constituted or acquired participation in the share capital of a commercial company of at least 100 minimum monthly salaries (MMS).	Up to three years.	Yes, exclusively in the company that he/she is a partner or shareholder in.
Independent professional	Has the qualifications or expertise to independently practice a profession and has an average income of at least 10 MMS.	Up to three years.	Exclusively for the position, entity or profession for which the visa was granted.

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Parents or children of a Colombian citizen	Parents or children of a Colombian citizen.	Up to two years. Allows applying for a resident visa after two years.	Yes, it grants an open work permit.
Andean migrant	Nationals of one of the State parties to the *Andean Immigration Statute* (Bolivia, Colombia, Ecuador and Peru).	Up to two years. Allows applying for a resident visa after two years.	Yes, it grants an open work permit.
Refugees	For foreigners who have been recognized by the Colombian Government as refugees.	Up to three years. Allows applying for a resident visa after five years.	Yes, it grants an open work permit.
Pensioner	For a foreigner who has a constant monthly income derived from a pension granted by a State or by a private pension fund.	Up to three years. Allows applying for a resident visa after five years.	No.
Promotion of globalization	For research or innovation activities aimed at adapting technologies, products, or services to innovate in Colombia.	Up to three years.	Yes, exclusively for the activity for which the visa was granted.
Investment	Has registered direct foreign investment for real estate in Colombia of at least 350 MMLS.	Up to three years.	No.

d. Resident Visa (Type "R")

A foreigner who wishes to enter and/or remain in Colombia to establish his/her domicile or to permanently settle in Colombia, may request a Resident visa, if he/she meets any of the conditions mentioned below.

Holders of a Type R visa demonstrate their resident status in Colombia by means of an immigration card or a visa, or by means of a visa label stamped on their passport or travel document if under the age of seven.

The validity period of the Type R visa label will be five years. A foreign holder of a Type R visa may request that the visa be renewed for equal periods, through the visa transfer procedure.

Resident Visa (Type R)			
Conditions	**Validity**	**Permission to Work**	**Renewal**
By residence time in Colombia	Uninterrupted residency in Colombia with a type M visa.	Yes, it grants an open work permit.	This visa may be renewed after five years as of the issuance date.
Resignation of Colombian nationality	For Colombian nationals by birth or by adoption, who decided to resign their Colombian nationality.	Yes, it grants an open work permit.	This visa may be renewed after five years as of the issuance date.
Venezuelans under Temporary Protection Statute for Venezuelan Migrants (ETPV)	For Venezuelan citizens sheltered under the ET-PV. When they have been holders of a Special Stay Permit (PEP) for five years.	Yes, it grants an open work permit.	This visa may be renewed when the Special Stay Permit (PEP) expires.
Special Peace Resident	For foreigners who used to be members of FARC-EP, who were part of the peace process.	Yes, it grants an open work permit.	This visa is issued for an indefinite term.[196]

e. Beneficiary Visa

The following family members of the main visa applicant may obtain a beneficiary visa:

(i) Spouse;

(ii) Permanent partner; and

(iii) Children under 25 years of age who are economically dependent on the main visa holder, or who, being older than 25 years, have some type of qualifying disability that prevents them from having economic independence.

[196] Law Decree 831 of 2017, art. 1.

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Only certain type V visas allow family members to apply for beneficiary visas.

A beneficiary visa has the same validity as that of the principal holder's visa. The beneficiary visa does not grant permission to work.

3. Application Requirements

The authority that is responsible for the issuance of visas may request additional documents in addition to those required under Resolution 5477 of 2022. Likewise, the authority may conduct interviews in cases where it deems appropriate.

The approval of the visa will depend on the discretionary decision of the visa authority.

Documents, other than identity documents, passports or travel documents, that are presented as supporting documentation and as requirements for the visa application, must have been issued no more than three months prior to the registration of the application.

Any document created or issued abroad must be apostilled or legalized as appropriate and must be translated into Spanish if it was issued in a foreign language. Bank statements may be presented without apostille or legalization and without translation, provided that their content is clear.

If the visa application is made under the Agreement on Residency for Nationals of the State Parties of Mercosur, Bolivia and Chile, and is presented before a Colombian Consular Office in the applicant's country of origin, the certification will be in accordance with the procedures established in that country.

4. Regulated Professions

Foreigners who will pursue a regulated profession in Colombia (e.g., in the fields of engineering, law, health sciences, or business administration), must apply for a work permit before the corresponding professional council or they must homologate their title before the Ministry of Education, as the case may be, in addition to obtaining a visa.

5. Procedural Aspects

a. Visa Applications

To apply for any type of visa, an application must be filed online. Any inaccuracy in the data provided in the electronic visa application form will be grounds for inadmissibility. A fee must be paid for the review of the visa application within 30 calendar days following the registration of the application. Failure to pay results in the tacit withdrawal of the application.

The visa authority has up to 30 days after payment of the fee to issue a decision on the visa application.

The Ministry of Foreign Affairs may:

(i) Grant the visa;

(ii) Reject the visa application; or

(iii) Deny the visa.

When the visa authority requires additional information from the applicant, the Ministry has the discretionary power to extend the term for issuing a decision.

A request for additional information may be made in relation to:

(i) Incomplete or illegible documents;

(ii) A non-conforming photo;

(iii) Ambiguous information; or

(iv) Request for an interview or additional documents.

There are no appeals on final decisions of the visa authority in visa applications. If the visa application is rejected, the applicant may submit a new application. Nonetheless, if the visa application is denied, the foreigner cannot register a new application for six months following the rejection.

However, the Internal Working Group for Visas and Immigration has discretionary power to receive a new application and issue a visa before the term of denial has expired.

b. Visa Duration

Once the visa is authorized, the holder will have up to 30 calendar days to pay the issuance fee. Failure to pay the fee results in tacit withdrawal of the application.

Once the issuance fee has been paid, the visa authority will issue and send the electronic visa to the applicant's e-mail account within three days. If the visa has typographical errors, the visa holder may request a correction within 30 days following its issuance. Upon expiration of this period, the foreigner must request the reprinting of the visa with the typographical corrections.

Visas granted for a term of less than three months allow the holders to enter, remain and leave Colombia without having to have a label attached to their passport.

6. Obligations of Migrants and Foreigners

Foreigners holding Type V, M and R visas described above, except for visas granted for conducting business, must register their visa in the Foreigner Registration Information System (SIRE) of the Special Administrative Unit of Migration Colombia. Additionally, employers must report and register their foreign employees on the Ministry of Labor's Unique Registration for Foreign Employees (RUTEC).

Foreigners holding a Type R visa and holders of Type V or M visas that are granted an open work permit, must report any change of activity, profession or trade to Migration Colombia, within 15 calendar days following the occurrence of a change event.

7. Identification Card

Foreigners who obtained approval of a visa that is valid for more than three months, must personally appear at the offices of Migration Colombia within 15 calendar days following the issuance of the visa, so that they may: (i) register their visa; and (ii) apply for their foreigner identification card.

Upon carrying out the relevant procedures, Migration Colombia will ask the foreigner for biographical information and will take fingerprints.

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8. Compliance

Non-compliance with the immigration law of Colombia is punishable with pecuniary fines, deportation, expulsion, or imprisonment.[197]

E. Labor Relations

1. Labor Law

a. In General

Colombia's labor law classifies labor relations into two regimes: the labor regime, which governs relations between employers and employees;[198] and the labor union (organized labor) regime, which governs organized labor relations with management.[199]

The rules set forth in the Colombian Labor Law are mandatory.[200] The Labor Law sets forth the minimum rights and guarantees granted to employees in Colombia. Consequently, any agreement between an employer and an employee that affects, constrains, or denies such rights is void.[201]

In addition, an employee cannot waive or assign the rights and guarantees provided under the Law.[202] Consequently, any agreement between an employer and an employee in which the employee waives or relinquishes such rights, is void.

Under the Labor Law, when facts are in conflict with the provisions of an employment contract, the facts prevail over the terms of the contract (see II.E.1.b., below).

b. Employment Agreements

The Labor Law governs any agreement, regardless of the type of contract entered into by the parties, where:

(i) The individual renders a personal service;

(ii) The individual is remunerated; and

(iii) The individual is subordinated to the employer.

"Subordinated" refers to the power of the employer to give orders, directions, and instructions to the employee related to his/her work, where the employee is under an obligation to follow those instructions. The name given to an agreement does not determine the rights and duties under the contract where the facts conflict with the terms of the contract.

c. Employer Obligations

If there is an employment contract, in addition to salary, the employer must make the following payments and/or comply with the following general obligations:

(i) Annual severance payment (*cesantía*). This is a statutory benefit calculated on a yearly basis and is equivalent to a monthly salary per year of services or the corresponding portion for a shorter period. During the term of the agreement, the employer must deposit the corresponding amount in the employee's annual severance payment account before February 15 of the year following the year that gave rise to it. On termination, the employer must pay the employee the accrued amount for the current year. The employee may also access these funds for educational or certain housing purposes;

(ii) Interest on the annual severance payment. This amounts to 12% of the annual severance payment. It must be paid directly to the employee in the month of January following the relevant year;

(iii) Service bonus (*prima de servicios*). This is calculated on a semester basis, from January to June and from July to December every year over the term of the employment. The employer must pay half a monthly salary, or the semester's monthly average if the employee has a variable salary, if the employee rendered his/her services during the entire semester, or the corresponding proportion if he/she worked for a shorter time. The employer must pay the service bonus for the first semester in June and for the second semester during the first 20 days of December;

(iv) Registering the employees with the Social Security System (pensions, health and occupational hazards) and with the family compensation fund (*caja de compensación familiar*);

(v) Pay the monthly contributions to the Social Security System for pension, health, and occupational hazards;

(vi) Payroll fees (*aportes parafiscales*);

(vii) Paid vacation;

(viii) Endowment. Working clothes for employees who earn no more than twice the minimum monthly salary (MMLS), as defined in II.E.1.d., below;

(ix) Transportation allowance for employees who earn no more than twice the MMLS;

(x) Implementing the internal work rules (*reglamento interno de trabajo*);

(xi) Implementing the health and safety system (*sistema de gestión de seguridad y salud en el trabajo*);

(xii) Creating the health and safety committee (*comité de salud y seguridad en el trabajo*) and carrying out timely meetings, at least monthly;

(xiii) Creating the coexistence committee (*comité de convivencia*) and carrying out timely meetings, at least every three months;

(xiv) Granting a family day per semester to all employees,

(xv) Registering job openings with the public employment service;

(xvi) Requesting an apprentice's quota and hiring the apprentices selected;

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[197] Decree 1067/May 2015, arts. 2.2.1.13.1 to 2.2.1.13.2.

[198] Colombia Labor Law (*Código Sustantivo del Trabajo* or C.S.T. — Col. Labor L.), art. 22.

[199] Col. Labor L., arts. 353–467.

[200] A labor reform bill was filed before the Congress on March 16, 2023. The Government expects the reform to be approved during the second legislature half of 2023 for its presidential sanction in the same year. If approved, the reform would change part of the legal framework.

[201] Col. Labor L., art. 13.

[202] Col. Labor L. art. 14.

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(xvii) Conducting an annual self-assessment of health and safety standards and annually registering the assessment with the Ministry of Labor;

(xviii) Implementing the disconnection policy; and

(xix) Comply with prevention obligations regarding labor and sexual harassment in the workplace explained in section No. 7.

For purposes of the discussion that follows, "statutory benefits" refers jointly to the annual severance payment, the interest on the annual severance payment and the services bonus.

d. Salary and Wages

The labor regime in Colombia provides that parties to an employer-employee relationship may freely negotiate employees' remuneration, which may, however, never be lower than the MMLS, as dictated by the national government.[203]

The MMLS in Colombia for the year 2025 is COP 1,423,500 (US$ 343).[204] Also, the Colombian government set the value of the transportation allowance at an amount equivalent to COP $200,000 (US$48), which applies employees who earn up to 2 MMLS.

Salary includes all of an employee's remuneration received as direct compensation for services rendered to an employer. An employee's salary may be paid in cash or in-kind. However, the in-kind component of an employee's salary may not exceed 50% of the employee's total salary, or 30% of the total salary paid when the employee earns the MMLS.

Under articles 127 and 128 of the Labor Law, the general rule is that every payment made by the employer to an employee is included in salary, except when expressly excluded from salary by both the employer and the employee (collectively, "the parties"). Payments that are calculated based exclusively on the employee's performance (i.e., commissions) may not be excluded from salary.

The monthly salary, as well as any surcharges paid by the employer for overtime and work during holidays or nighttime, are taken into account for purposes of calculating statutory benefits, vacations and contributions to the social security system, and the family welfare system.

If the employee's salary is equivalent to 13 MMLS or more, equivalent to COP $18,505,500 (USD 4,453) for 2025, the parties may agree on an integral salary (*salario integral* — or IS), which includes remuneration for overtime, surcharges, bonuses, statutory benefits, etc.,[205] so that an employer does not have to pay statutory benefits, surcharges, etc. to an employee earning an IS. In the case of an IS, contributions to the social security system (pensions, health care, and occupational hazards) are calculated based on 70% of the IS. By contrast, such contributions are calculated based on 100% of ordinary salary. An IS must be agreed in writing.

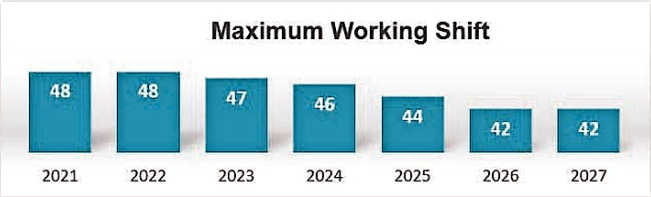
e. Withholding Tax

The employer must deduct from the employee's salary the corresponding withholding tax, according to the employee's monthly salary and the applicable percentage rate. The percentage rate to be withheld varies from 0% to 39%.

f. Working Hours and Surcharges

Under Colombian Labor Law, every month has 30 working days, and each year has 360 working days. In addition, until July 15, 2025, employees can work a maximum of 46 hours per week from Monday to Saturday. However, as of July 16, 2025, employees are allowed to work a maximum of 44 hours per week from Monday to Sunday.

Additionally, based on Law 2101 of 2021, the maximum working schedule will be reduced gradually to 42 hours per week from Monday to Sunday as of July 16, 2026.



Furthermore, an employer may agree with its employees that the current 47 hours per week may be distributed from Monday to Friday by increasing the working schedule by a maximum of two hours per day (to nine hours per day and 42 hours per week, respectively, once the gradual reduction set forth in Law 2101 is completed). Where such an agreement is in place, the employees are entitled to paid rest on Saturday. Also, the parties may agree to a variable working schedule and a mandatory day of rest other than Sunday.

An employer must pay surcharges for overtime, night work, or work during mandatory days of rest (i.e., Sundays, national holidays, and Saturdays if the maximum working schedule is from Monday to Friday). Overtime is limited to two hours per day and 12 hours per week.

In addition to Sundays, there are 18 public holidays that are included in the minimum holiday entitlement. This is in addition to the 15 working days of vacation per year that are granted to all employees.

g. Vacation Leave

Under the Labor Law, employees who have rendered their services for a year have the right to 15 working days of paid rest. Vacation days accrue as of the first day of work. If the employment agreement is terminated before the employee has taken the accrued days, the employer must pay them on termination.[206]

From every vacation period accrued, employees must enjoy at least six continuous business days per year. Employees in an ordinary job position may accumulate up to two periods of vacation and management employees may accumulate up to four periods of vacation.

[203] Col. Labor L, arts. 23, 127, 167.
[204] Calculation was made with the TRM for April 03, 2025.
[205] Col. Labor L., art. 132.
[206] Col. Labor L., art. 186.

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h. Leaves of Absence

(i) Maternity leave: every pregnant or adoptive mother is entitled to 18 weeks of paid maternity leave which may begin two weeks prior to the date of birth. Of the 18 weeks of paid leave, the week prior to the date of birth is mandatory if the circumstances allow it. For multiple pregnancies, the paid leave increases to 20 weeks. Maternity leave is paid by the social security system (EPS), provided the employee is enrolled during the time of the pregnancy;

(ii) Paternity leave: an employee, who is a new father, is entitled to two weeks of paid paternity leave starting from the day of the birth or adoption of the new child, provided the employer contributed to the EPS. Pursuant to applicable law and based on the official unemployment rate issued by the National Government, the paternity leave may increase annually by one week for each percentage point decreased of the unemployment rate with a maximum of five weeks;

(iii) Flexible part-time parental leave: mothers or fathers may exchange a given period of their respective parental leave for a period of part-time work. The part-time leave will be equivalent to twice the time of the leave period that they have chosen. The flexible part-time parental leave must be agreed between the employer and employee in writing;

(iv) Shared parental leave: if agreed between the parents, the last six weeks of maternity leave can be transferred to the father or distributed between the two of them;

(v) Bereavement leave: employees are entitled to five working days of paid bereavement leave due to the death of a spouse, partner, a relative to the second degree of kinship, first degree of affinity or first degree of civil relationship;

(vi) Voting leave: employees who vote in national, congressional, or local elections may, within the following month, request a half day paid leave, upon the agreement between the employee and the employer. In order to request it, the employee must provide the employer with their electoral certificate;

(vii) Voting jurors leave: employees who have been appointed as voting jurors and duly comply with said mandate, will have the right to a paid leave day within the 45 days from the date in which they rendered their services as election jurors, upon agreement between the employee and the employer;

(viii) Domestic calamity leave: employees may be subject to unforeseen events that affect them or their families and require them to be absent. Domestic calamity means "*any family event whose seriousness affects the normal development of the employee's activities, in which eventually fundamental rights of significant importance in the personal or family life of the employee may be threatened, or their emotional stability affected by serious moral pain*", as per Colombian Constitutional Court's Ruling C-390 of 2009;

(ix) Leave to attend the burial of co-employees: in the event of the death of a co-employee, the employer must grant employees leave to attend the burial. This leave shall be granted to up to 10% of the employees and must be notified up to one day in advance; and

(x) Childcare leave: employees who are parents or who hold the custody of a child with a terminal illness or condition, are entitled to 10 working days of paid leave.

i. Foreign Employees

Foreign employees are entitled to the same employment rights as Colombian citizens. However, all foreigners who are to render their services in Colombia on a permanent basis must have a Work Visa or any other visa that allows them to render services in Colombia.

j. Employment Agreements

Employment contracts fall into one of four categories, depending on their duration, as follows:

(i) Indefinite term agreements, i.e., agreements with no expiration or specific termination date;

(ii) Fixed-term agreements, under which the parties agree to a specific term of employment. The term must be agreed to in writing; if there is no such written agreement, the agreement will be deemed to be for an indefinite term. Fixed-term contracts may not exceed three years.

Fixed-term contracts are renewed automatically unless either the employer or the employee informs the other of his/her/its intention not to continue with the contract once the term expires. Notice of such a decision must be given 30 days before the expiration date. The date of the notice letter and the date of termination are not counted as part of the 30-day notice. Employment agreements with a term shorter than one year may be renewed up to three times, for equal or shorter terms; as of the fourth renewal, the term may not be shorter than one year;

(iii) Agreements for the duration of the work or project concerned, i.e., agreements limited to the period required for carrying out particular work or a particular project. The work or project must be specifically defined in the employment contract;

(iv) Occasional, accidental, or transitory work agreements are agreements entered into for purposes of carrying out activities other than an employer's regular activities/outside a company's purpose and have a term shorter than a month.

It should be noted that a written agreement or statement is only required if:

(i) The employment contract is for a definite term;

(ii) The employment contract is subject to a limited trial term and the agreement is for the duration of the work or project concerned;

(iii) The employee will receive an Integral Salary (as explained below);

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(iv) The employee will receive extra-legal benefits excluded from the salary on a regular basis;

(v) The employee will have a specific working schedule;

(vi) The employer will make salary discounts, subject to the specific authorization of the employee;

(vii) The employee will render services by means of telework or under a remote work scheme; or

(viii) The employee's labor conditions will be downgraded.

Employees must grant specific authorization with regard to the treatment of their personal data.

k. Termination

Colombia does not adhere to the at-will work doctrine. Consequently, situations that constitute cause for termination are established by law, as well as the indemnification for unilateral termination of an employment agreement by an employer without cause (severance).

The events that constitute cause for dismissal are related to an employee's performance and behavior in the workplace or with one's boss, subordinates, and co-workers.

An employer that unilaterally terminates an employment agreement must pay severance, which varies depending on the type of contract, as follows:

(i) Indefinite term contract entered into before December 29, 1992: the indemnification will be the equivalent of 45 days' salary for the first year of service, plus 40 additional days' salary for each subsequent year or the corresponding fraction.

(ii) Indefinite term contract entered into on or after December 29, 1992: the indemnification varies according to the employee's salary, as follows:[207]

• If the employee earns from 1 to 10 minimum monthly salaries (MMS): the equivalent of 30 days' salary for the first year of service, plus 20 additional days' salary for each subsequent year or the corresponding fraction; or

• If the employee earns more than 10 MMS: the equivalent of 20 days' salary for the first year of service plus 15 additional days' salary for each subsequent year or the corresponding fraction.

(iii) Fixed-term contract or contract for the duration of the work or project: the equivalent of the salary for the remaining term.

In certain circumstances, an employer may not unilaterally terminate an employment agreement with an employee who is in any of the following situations, as such an employee enjoys special protection under the law:

• Disabled or handicapped employee: an employer who terminates unilaterally and without grounded cause a disabled or handicapped employee (i.e., one whose ability to perform his or her job is substantially limited as a result of a special health condition, including mental health diagnose according to Ruling T — 076 OF 2024) unilaterally without the previous authorization of the Ministry of Labor may be ordered to reinstate the employee in the same or an equivalent position and pay a special compensation equivalent to 180 days' salary.

Although previous rulings of the Supreme Court of Justice establish that it is possible to legally terminate an employment contract by mutual agreement, even if the employee is disabled, recently the Constitutional Court, in Ruling SU-111 of 2025, restricted this possibility in cases involving disabled or handicapped employees.

• Pre-pensioner employee: an employee who is less than three years from retirement may sue for reinstatement if the employer unilaterally and without cause terminates his or her employment agreement. Under the public pension regime (*régimen de prima media con prestación definida*), employees are eligible to retire on: (a) reaching the age of 57 in the case of women and 62 in the case of men; and (b) accumulating at least 1,300 weeks (approximately 25 years) of contributions, which will be gradually reduced to 1,000 weeks for women in 2026 and who may reduce 50 weeks of contributions for each children, up to a maximum of three.

• Pregnant or breastfeeding employee: the employer may only terminate the employment contract unilaterally during an employee's pregnancy or breastfeeding period where there is a cause and previous authorization has been obtained from the Ministry of Labor. Colombian labor law presumes that termination is the result of pregnancy or breastfeeding if it occurs during the term of pregnancy or within 18 weeks after the date of birth. However, Law 2357 of 2024, which ratified ILO Convention 183, establishes that it is the employer's burden to prove that the dismissal was not due to discriminatory reasons. The burden of proof covers the entire period of pregnancy and breastfeeding, which is two years after the date of birth, according to Law 2306 of 2023.

If the employer terminates the employment contract without cause and/or without the prior authorization of the Ministry of Labor during the protection period: (a) the termination will be considered null and void; (b) the employer will be ordered to reinstate the employee; and (c) the employer will be ordered to pay a penalty equivalent to 60 days' salary. This protection also applies to an employee whose partner is pregnant or breastfeeding. For the protection to be available, the employee must have registered his or her partner as a beneficiary with the Social Security System. Additionally, Law 2141 of 2021 extends maternity protection to an employee whose spouse or permanent partner is pregnant or breastfeeding and does not have a formal job.

• Spouse or permanent partner whose partner is pregnant or breastfeeding: Ruling C-517 of 2024: The Con-

[207] Employment contracts may be subject to a trial term. During the trial term, the employer will confirm the qualifications of the employee and the latter will verify whether the employment conditions are acceptable. During this period, the employer may terminate the contract without paying the legal indemnification. For fixed term agreements, the trial term may be a maximum of one-fifth of the term of the employment contract without exceeding two months. For indefinite term contracts, the trial period may be up to two months.

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stitutional Court of Colombia introduced a significant change in the perspective of job protection regarding paternity. Previously, job protection regarding paternity (*fuero de paternidad*) was limited to cases where the pregnant or breastfeeding woman did not have formal employment. The judgment declared these limitations unconstitutional, thereby extending paternity protection to all male employees, regardless of the employment status of their partner.

• Employee who has filed a labor harassment complaint: Law 1010 of 2006 establishes a legal limitation that applies to an employer that terminates an employment contract, unilaterally and for no legally-grounded cause, with an employee who has been the victim of labor harassment for six months after the employee filed the complaint. However, this limitation only applies after the labor harassment has been judicially declared.

• Employee who has filed a sexual harassment complaint: Law 2365 of 2024 defines a legal limitation on unilateral termination of the employment contract of the victim who has filed a complaint or denunciation for sexual harassment. In this sense, any dismissal made within six months following the complaint will have no legal effect, except in cases authorized by the Ministry of Labor or when the disciplinary sanction derives from a process initiated prior to the complaint. On this point, Law 2365 of 2024 materializes the guidelines established in ILO Convention 190, with the objective of adopting measures for prevention, protection, and attention to victims in situations that occur during work, or as a result of work.

• Unionized employee: a union member or officer has special protections under which neither can he or she be dismissed or transferred, nor can his or her working conditions be worsened without cause. If there is cause to dismiss or transfer the employee concerned, or to worsen his or her working conditions, a Labor Court is required to conduct a prior judicial review of that cause under the terms set out below:

(a) Union founder: protection is granted to a founder of a union for two months from the date of the union's creation, and for a maximum of six months from the date on which the union was registered with the Ministry of Labor.

(b) Union member who joins the union between its creation and its registration with the Ministry of Labor: the protection is for the same period as is granted to a founder of a union.

(c) Union officer: protection is granted to five members of a union's board of directors and five alternates, and to one member of the sectional committee and one alternate. The protection is granted for the entire period of appointment and for the six subsequent months.

(d) Employee negotiating a collective agreement: protection is granted from the date on which the employee files a labor grievance (*pliego de peticiones*) with the employer until the collective conflicts described in the grievance are resolved.

(e) Claims' committee member: protection is granted to two members of the claims' committee. Its duration is equivalent to the protection granted to a union officer and the six subsequent months.

In addition, recently the Constitutional Court issued ruling T-073/25, which established a new reinstatement order due to a discriminatory termination, pointing out that employees can object conscientiously in companies if the employer's orders are affecting their religious convictions and conscience. For this reason, reinstatement orders would be extended to these types of cases as well, and not be limited exclusively to the matters listed above.

2. Organized Labor

a. Labor Unions

(1) In General

Colombian law protects an employee's right of association.[208] Workers are afforded the right to associate and organize in defense of their rights, and to form labor unions.[209]

Under Colombian law, a union must have a minimum of 25 members. Its creation process is as follows:

(i) Employee's assembly for the incorporation of the union: the founders must draft the minutes of the employee's assembly, including the names of all the founders, their identification numbers and the profession, craft, or trade that unites them; the name of the union, and the union's purpose.

(ii) Union's by-laws: all unions may freely determine their by-laws.

(iii) Notice of incorporation: the union must give notice of its incorporation in writing to the relevant employer or employers; and the Ministry of Labor (*Ministerio del Trabajo*). This notice must include the names and identification numbers of all the union's founders. The Ministry of Labor will also notify the employer of the union's incorporation.

(iv) Registration with the Ministry of Labor: the union obtains its legal recognition at the incorporation assembly. The by-laws become enforceable against the employer on registration of the union with the Ministry of Labor; no union may exercise its rights unless the union's minutes of incorporation have been registered with the Ministry of Labor.

(v) Publication of the Ministry of Labor's resolution: Ministry's resolution, whereby the union is registered, must be published once in a national newspaper with wide circulation within 10 days of registration.

(vi) Registration of amendments to the by-laws and appointments to the board of directors: all amendments to the union's by-laws and all appointments to the board of di-

[208] Col. Labor L., arts. 353–354.
[209] Col. Labor L., art. 354.

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rectors must be registered with the Ministry of Labor for them to be enforceable.

(2) Types of Labor Unions

Under Colombian employment law, unions are classified as follows:

(i) Company or base union (*Sindicato de Base o de Empresa*): when all members of the union work in the same company, regardless of their profession or trade;

(ii) Industry union (*Sindicato de Industria*): when all members of the union work for different companies in the same industry or economic field, regardless of their profession or trade (for example, the Oil Industry Union);

(iii) Guild union (*Sindicato de Gremio*): when all members of the union have the same profession, craft, trade or specialty; and

(iv) Various trades or crafts union (*Sindicato de Oficios Varios*): when the union's members have different professions or trades and do not work for the same company. This type of union can only be created where the total number of employees is not enough to create a guild union.

(3) Negotiations

To improve their labor conditions, unionized employees may declare the existence of a so-called "collective labor conflict" and commence the remedies prescribed by law to resolve it, by filing a labor grievance before their employer. Such grievances must be approved by the union's general assembly and must be furnished to the employer within two months after their approval.

b. Collective Agreements

There are two types of collective agreements:[210] collective bargaining agreements entered into with unionized employees;[211] and collective agreements with non-unionized employees. Not all employees have to be covered by one or the other type of collective agreement. Affiliation with a union or a collective agreement is strictly voluntary. If an employee is a union member, a collective bargaining agreement negotiated by his/her union automatically applies to him/her. If he/she does not want to be covered by the collective bargaining agreement, he/she must quit the union and waive his/her rights.[212]

c. Measures to Protect the Right to Create a Union

(1) Labor Measures

Any person that undermines the right to unionize may be subject to administrative fines of up to 100 MMLS imposed by the Ministry of Labor.[213]

Under Colombian labor laws the following kinds of conduct are considered to undermine the right to organize:

(i) Impeding or discouraging union membership by making gifts or promises to employees, or conditioning continued employment or the improvement of working conditions on employees not organizing;

(ii) Dismissing or suspending employees, or changing working conditions because of activities related to the creation of a union;

(iii) Refusing to negotiate with unions that have filed labor grievances;

(iv) Dismissing or suspending unionized employees or changing their working conditions for the purpose of impeding the exercise of the right to organize; and

(v) Adopting any repressive measure against employees who have made accusations, made depositions, or otherwise intervened in investigations initiated to prove a violation of the right to organize.

(2) Criminal Measures

Under section 200 of the Colombian Criminal Code:

> Any person who impedes or obstructs a lawful meeting or the exercise of the rights granted under labor laws, or takes reprisals for lawful strikes, meetings or union organization, shall be punished by between one- and two-years' imprisonment and a fine of between 100 and 300 current monthly minimum wages.
>
> Any person who enters into collective agreements in which, in the aggregate, better working conditions are afforded to non-unionized workers than those conditions contemplated in collective agreements with unionized workers of the same company, shall be punished in the same way.
>
> The punishment shall be between three- and five-years' imprisonment and a fine of between 300 and 500 MMLS if the conduct described in the first paragraph is carried out:
>
> (i) Making the employee defenseless in such a way that his or her physical integrity is compromised;
>
> (ii) In connection with a person who is disabled, suffers from a serious illness or in the case of pregnant women;
>
> (iii) Through threats to the worker, his ancestors, descendants, spouse, common law spouse, siblings, adopting parent or adopted child, or next of kin up to the second degree of affinity, to cause death, injury or damage to property; and
>
> (iv) By deceiving workers.

3. Social Security System

Employers must register their employees for purposes of the pension and healthcare systems discussed below and must pay over the relevant monthly contributions. An employer who fails to do so or who fails to comply with the procedures set out below will have to cover all the corresponding costs and services, such as health expenses or the disability pension. In certain cases, the employer will also have to pay interest on the amount of the contributions.

[210] Col. Labor L., arts. 467, 481.
[211] Col. Labor L., art. 467.
[212] Col. Labor L., art. 481.
[213] Col. Labor L., art. 354.

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The Ministry of Labor may also levy a fine on an employer for not complying with the Labor Law and the *Unidad de Gestión Pensional y Parafiscales* (UGPP) may also impose penalties for failing to pay social security contributions in an accurate and timely fashion.

Fringe benefits excluded from salary are not taken into account for the purposes of the contributions, provided they do not exceed 40% of an employee's total remuneration.

a. Pension System

The contribution to the pension system is equivalent to 16% of an employee's' monthly salary. The employer must pay 12% and deduct the remaining 4% from the employee's' salary.

According to Law 2381 of 2024, an employee who earns more than four times the MMLS was required to pay an additional percentage until July 1, 2025, as follows:

Employee Salary	Additional Percentage
From 4 to 16 MMLS	1.0%
From 16 to 17 MMLS	1.2%
From 17 to 18 MMLS	1.4%
From 18 to 19 MMLS	1.6%
From 19 to 20 MMLS	1.8%

After July 1, 2025, the salary brackets and additional percentage to be paid are changed as follows:

Employee Salary	**Additional Percentage**
From 4 to 7 MMLS	1.5%
From 7 to 11 MMLS	1.8%
From 11 to 19 MMLS	2.5%
From 19 to 20 MMLS	2.8%
More than 20 MMLS	3.0%

Foreign employees are not obliged to be enrolled in a pension entity, nor make contributions to this system as long as they are enrolled and contributing abroad.

b. Healthcare System

The contribution to the healthcare system is equivalent to 12.5% of an employee's salary. The employer must pay 8.5% and deduct the remaining 4% from the employee's salary. However, if the employer is subject to income tax, it is relieved from paying the 8.5% in the case of an employee who earns less than 10 times the MMLS.

c. Occupational Hazards

The employer must pay the entire contribution for occupational hazards. The percentage rate ranges from 0.348% to 8.7% of the employee's monthly salary, depending on the type of activity to be performed and the risks inherent in the activity.

Risk Category	Contribution Range
I	0.348% – 0.696%
II	0.435% – 1.653%
III	0.783% – 4.089%
IV	1.740% – 6.690%
V	3.219% – 8.700%

d. Payroll Fees

The employer must pay the entire contribution for payroll fees depending on the employee's salary. For employees who receive 10 MMLS or less, the contribution is 4% of the employee's monthly salary. For employees who receive more than 10 MMLS, the contribution is 9% of the employee's monthly salary.[214]

e. Contributions to the General Pension System

Law 2381 of July 2024 reformed the ways in which contributions to the general pension system are made, essentially creating a new pension system which removes the competition between the public and private systems. Pursuant to Law 2381, all Colombian workers (employees, independent contractors, and the self-employed) whose contribution base was greater than 2.3 MMLS, and who were not part of the transitional regime,[215] had until January 16, 2025 to choose a private pension fund (ACCAI) to manage excess funds above the first 2.3 MMLS, whereas the funds up to this threshold are to be managed by Colpensiones (the public pension system). Since July 1, 2025, employers must pay contributions to Colpensiones and the ACCAI on behalf of employees not part of the transition regime and whose salary is higher than 2.3 MMLS. In other words, all workers who contribute to the pension system are part of the public pension system.

Accordingly, those workers who are part of the transitional regime will be able to continue contributing to the pension system according to previous Law 100 of 1993, since they are not obliged to contribute to both pension systems. In this sense, if a person falls into the transitional regime and is affiliated with a private pension fund, he or she is not obliged to make contributions to the public fund.

The reforms brought by Law 2381 also introduced new obligations for independent contractors who employ workers. First, independent contractors must assume the responsibility of paying social security contributions for their workers under service contracts. Furthermore, independent contractors also must deduct the percentage corresponding to health and mandatory pension contributions from the fees paid to their workers.

Comment: It is important to point out that, due to the procedural errors that took place in Congress to approve the leg-

[214] For employees who earn an integral salary, contributions are calculated over 70% of the employee's salary.

[215] The transitional regime of Law 2381 of 2024 applies to individuals who have accumulated 750 weeks of contributions (women) or 900 weeks (men) as of July 1, 2025. This regime allows them to keep the conditions of Law 100 of 1993.

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islation, several constitutional claims were filed against Law 2381 of 2024. As such, the Constitutional Court has since delayed the implementation of the pension reform. On June 28, 2025, however, the Congress rectified the procedural error and overwhelmingly voted to approve the legislation, but until the matter is officially approved by the Constitutional Court, Law 2381 cannot be enacted the Colombian President. For this reason, it continues to be uncertain whether the effects of this law will apply exactly as described above.

4. Collective Dismissal

According to Colombian Labor Law there is a collective dismissal whenever, within a period of six months, a given percentage of the employees are dismissed without cause. The percentage varies as described in this chart:

Number of Company Employees	**Percent of Terminations Without Cause Considered as Collective Dismissal**
Between 10 and 50	30%
Between 50 and 99	20%
Between 100 and 199	15%
Between 200 and less than 499	9%
Between 500 and less than 999	7%
More than 1,000	5%

In order to undertake a collective dismissal, the employer requires previous authorization from the Ministry of Labor. However, the authorization from the Ministry of Labor does not exempt the employer from paying legal indemnification to the dismissed employees.

5. Remote and Virtual Work

a. Telework

Telework is a remote/virtual scheme through which employees render services outside the employer's premises, but within Colombian territory, for two or more days a week as a result of an agreement between the parties. There are three types of teleworkers:

(i) Autonomous: refers to employees who work from their residence or chosen place, but they may attend the employer's premises sporadically;

(ii) Mobile: refers to employees who do not have an established workplace, and they render their services through technological means; and

(iii) Supplementary: refers to employees who work two or three days per week from their homes, and the rest of the days from the employer's premises.

Under this labor scheme the employer has to comply with certain labor obligations, such as:

(i) Implement a teleworking policy, which must include a minimum content as regulated by the applicable law;

(ii) File a notification to the Occupational Hazards Entity and the Ministry of Labor listing the employees who will work under this modality;

(iii) The employment contract needs to establish a minimum set of rules that should regulate this modality; and

(iv) The employer has to pay a telework allowance to the employees working under this modality.

b. Home Office

Work from home is a labor modality that allows the employee to temporarily provide remote services outside the employer's premises. This scheme is used whenever an occasional, exceptional or special situation occurs that prevents the employee from rendering services at the workplace. Law 2088 of 2020 specifies that this working scheme is only applicable for three months, renewable for an equal term for just a single time. However, if the occasional/exceptional situations persist, work from home may be extended until such conditions disappear.

Under this scheme the employer must:

(i) Notify the employees in writing, indicating the period of time that they will be working under this modality;

(ii) Notify the Occupational Hazards Entity of the information and address of the employees who will be working from home;

(iii) Guarantee the proper use of information and communication technologies through trainings; and

(iv) Pay a digital connectivity allowance to those employees earning up to two MMLS.

c. Remote Work

It is a labor scheme where employees provide 100% of their services remotely by means of information technology and telecommunications. The employer and the employee do not meet in person throughout the contractual relationship, except in the following situations: (a) the verification of their work tools; (b) technological updates to their equipment; and (c) disciplinary proceedings. If the employer eventually requires the remote employee to attend the work premises, it must enable, if applicable, the legal transportation allowance.

Under remote work, the employer must:

(i) Provide the employee with the technological tools, instruments, equipment, connections, programs, energy, internet and/or telephone costs, and further cover transportation ordered by the Company;

(ii) Notify the Occupational Hazards Entity of the activities carried out by the employee, the place and schedule where these will be performed and the risk level of the activities corresponding to the company; and

(iii) The employer and employee must agree in writing a minimum of conditions and set of rules that will apply under this modality.

6. Right to Disconnect

The employment disconnection right is the right to not be contacted by any means, including technological tools for work-related matters, outside regular working hours, during

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rest time, licenses, vacations, holidays and/or leaves of absence. This is in order to grant employees proper space to balance their personal, family and work life, and it includes any information and communication, such as, among others, e-mail, data messages, or phone calls. Therefore, if an employee receives any communication outside of working hours, he/she will not be compelled to respond until the beginning of the next working shift, unless an excepted situation occurs.

Under Law 2191 of 2022, the disconnection right does not apply:

(i) To an employee who must be permanently available because of the nature of his or her duties; or

(ii) In *force majeure* situations or unforeseen circumstances that require an employee's services, for example, to resolve urgent issues arising in the context of a company's operations.

Under ruling C-331 of 2023 issued by the Constitutional Court, employees who hold a position of directorship, trust or management enjoy the disconnection right. However, unlike in the case of ordinary employees, the right in the case of such trust employees is not tied to a working schedule. Employers must guarantee the right of these employees to rest taking into account their duties and responsibilities.

7. Sexual Harassment

According to Article 11 of Law 2365 of 2024, employers are required to prevent, investigate, and sanction acts of sexual harassment in the workplace. These duties consist of the following obligations:

(i) Establish an internal prevention policy that is reflected in the internal labor regulations, labor contracts, protocols, and care paths against sexual harassment in the workplace, which should be widely disseminated;

(ii) Guarantee the rights of victims and establish mechanisms to address, prevent and provide guarantees of non-repetition of sexual harassment within its scope of competence;

(iii) Implement immediate protection guarantees to avoid irreparable harm within its scope of competence;

(iv) Inform the victim of his/her faculty to resort to the Attorney General's Office (*Fiscalía General de la Nación*);

(v) Immediately transmit the complaint to the competent authority, at the request of the victim, respecting his or her right to privacy;

(vi) Refrain from conducting acts of censorship that disregard the victims' guarantee of not being revictimized;

(vii) Publish every six months the number of complaints processed and sanctions imposed on the available physical and/or electronic channels.

Compliance with these obligations should be aligned with the Transversal Plan that should be issued by the National Government before June 2025. However, the absence of such a plan does not exempt employers from complying with these obligations. In case of non-compliance, the Ministry of Labor may subject employers to general fines ranging from COP $1,423,500 to COP $7,117,500,000.

F. Financing the Business

The method most commonly used by foreign investors to inject capital into Colombia is direct foreign investment. This method of injecting capital is subject to Colombian foreign exchange and investment controls, consisting of informing the Colombian Central Bank via registration requirements as to when an investment is effected, modified, or repatriated. An investor that does not comply with Central Bank registration requirements will not be permitted to bring in capital or remit it abroad when desired. See discussion at II.A., above.

Under Colombian law, direct foreign investment is understood to encompass the importation of capital assets into Colombia, the transfer into Colombia of foreign exchange that is freely convertible into Colombian pesos, the making of in-kind contributions in the form of technology or other intangibles, the provision of resources in Colombian pesos, the reinvestment of earnings and the transfer into Colombia of foreign currency destined for the purchase of real property assets.

Another acceptable method of introducing capital into Colombia is through the use of debt. Injecting finance into an infrastructure project via debt vehicles is sometimes preferred. Financing may be affected by means of back-to-back loans, foreign collateral for local loans, and direct loans via syndication structures, sole lenders or multilateral organizations, or a combination of all these vehicles.

Foreign indebtedness operations are subject to Central Bank registration requirements similar to those required for direct foreign investment. Debt operations in Colombia are effectively registered with the Central Bank by way of a deposit (currently 0%) that must be placed with the Central Bank. Should the deposit requirement be raised above the current 0% rate, the deposit will have to be made on the initial loan drawdown and placed by the borrower for a fixed term to be defined by the Central Bank. The deposit is interest-free. The deposit may be returned to the borrower on petition to the Central Bank before the end of the deposit period, subject to a penalty charge. The penalty charge varies depending on the number of months remaining in that period.

Upstream intercompany charges are another effective method of introducing capital into a newly privatized entity. Under this method, the Colombian entity charges an offshore affiliate for services rendered on the latter's behalf. To compensate for the transactions, the Colombian entity invoices the offshore affiliate. However, such transactions have a negative aspect in that upstream intercompany charges may result in the Colombian entity having to assume VAT liability (unless the services can qualify as exported services for VAT purposes). Additionally, payments made to the Colombian entity will constitute taxable income for Colombian tax purposes.

Since 2013, Colombia has had a thin capitalization regime (see V.B.6.j., below). Under the regime, for income tax purposes, a taxpayer can only deduct interest payments corresponding to debts the average of which for the taxable year concerned does not exceed in total the result of multiplying by two the net worth of the taxpayer on the last day of the previous fiscal year (i.e., 2:1 ratio, reduced from a 3:1 ratio applicable prior to Janu-

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ary 1, 2019). Interest attributable to debt that exceeds that limit is not deductible.[216]

It should be noted that, as from 2019, the thin capitalization rules apply only when debt involves an economic (national or foreign) related party in the following cases:[217]

(i) To entities subject to the inspection and supervision of the Superintendence of Finance, which are not subject to the thin capitalization rules;

(ii) With respect to project finance utility infrastructure made through special purpose vehicles, which are also not subject to the restrictions; and

(iii) In the case of special purpose vehicles for the construction of public housing, which are subject to a limit of four times the net worth of the debtor;

(iv) Taxpayers liable to income tax that are under the supervision of the Superintendence of Finance;

(v) Taxpayers liable to income tax that carry out factoring activities, as provided under Decree 2669 of 2012, provided that the activities of the factoring company are not more than 50% lent to economically related companies;[218] and

(vi) Taxpayers in an unproductive period.

G. Leasing Operations

1. In General

International leasing operations are an attractive mechanism in privatization and project finance operations. They are effective methods of importing vital equipment into target countries, such as Colombia, and serve as a means of profit repatriation. Under Colombian tax law, financial leasing operations fall into two categories: (i) pure finance leases; and (ii) finance operating leases. Each category is subject to specific tax law rules. An analysis of the two forms of Colombian finance leases follows in 2. to 3., below.

2. Pure Finance Leases

For accounting and tax purposes, a finance lease agreement or a lease agreement with an option to purchase entered into after January 1, 2017, must meet with the following requirements once the contract is established:[219]

(i) At the beginning of the contract, the lessee must register an asset and a liability reflecting the present value of the lease payments, the value of the purchase option, and the residual value of the guarantee, if applicable, calculated as of the date of the contract start date and at the agreed interest rate. The amount registered by the lessee as a liability must coincide with the amount registered by the lessor as an asset.

(ii) The value registered as an asset by the lessee, except for the amount corresponding to VAT that will be creditable or deductible, could be depreciable or amortizable, as the case may be. If the leased asset is not depreciable or amortizable, the lessee will not be allowed to depreciate it or amortize it.[220]

Under article 134 of the Tax Code, depreciation may be taken applying the methods accepted by the accounting rules,[221] however, article 137 of the Tax Code establishes certain maximum rates of depreciation for tax purposes, according to the type of asset.

Under article 140 of the Tax Code, it is possible to increase the rates of depreciation on assets depreciated using the straight-line method that are used for at least 16 hours, and proportionally for higher fractions, as long as that situation can be proven. In such circumstances, the taxpayer may accelerate depreciation by 25%.

Minimum useful asset lives are as follows: real property, 20 years; machinery and equipment, 10 years; and vehicles and computers, five years.[222]

(iii) Lease payments made by the lessee must be split into a capital advance portion and a portion comprising interest or financing costs.[223] The part corresponding to a capital advance will be charged directly against, and reduce the value of, the liability registered by the lessee.[224] The portion of the lease payments corresponding to interest or financial costs is a deductible expense for the lessee.[225] The VAT will be creditable or deductible, depending on the type of asset under the agreement, under rules set forth in the Tax Code.[226]

(iv) When the purchase option is exercised, the amount agreed will be charged against the liability of the lessee, so as to reduce the account balance to zero. Any difference will be treated as income or expenses, as the case may be.[227] A lessee that does not exercise its option to purchase the asset will have to adjust its assets and liabilities for tax purposes. Any difference will not have income tax effects, if such difference has not generated a deductible cost or expense. In such case, it will be treated as a deduction recapture, taxed under the income tax at the general rate.[228]

3. Operating Leases

According to the Tax Code, an operating lease is any lease that is not a pure finance leasing (as discussed under II.G.2., above).

The lessor of the asset must treat the operating lease according to the nature of the asset and must recognize as income the lease payments. On the other hand, the lessee will recognize as a deductible expense the lease fees paid, without having to recognize as an asset or liability any amount linked to the asset under the agreement.

[216] Col. Tax C., art. 118-1.
[217] Col. Tax C., art. 118-1.
[218] Decree 2669 of 2012 regulates factoring activities.
[219] Col. Tax C., art. 127-1.
[220] Decree 1625/2016, art. 1.2.1.18.4.
[221] Col. Tax C., art. 134.
[222] Col. Tax C., art. 140. Decree 1625/2016, art. 1.2.1.18.4.
[223] Col. Tax C., art. 127-1(2)(b)(v).
[224] Col. Tax C., art. 127-1(2)(b)(v).
[225] Col. Tax C., art. 127-1(2)(b)(v).
[226] Col. Tax C., art. 127-1(2)(b)(iii).
[227] Col. Tax C., art. 127-1(2)(b)(vi).
[228] Col. Tax C., art. 127-1(2)(b)(vii).

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Leasing agreements (including pure finance and operating leases) executed before January 1, 2017, remain subject to the tax treatment in force at the time of their execution. Those executed as from January 1, 2017, are subject to the tax treatment established by article 127-1 of the Tax Code,[229] discussed above.

[229] Law 223/95. Art. 89. Leasing agreements with a duration of 12 or more years intended to facilitate the development of infrastructure projects in the transportation, energy, telecommunications, drinking water, or basic sanitation sectors qualify for operating lease treatment.

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III. Forms of Doing Business in Colombia

A. Principal Business Entities

Colombia offers domestic and foreign investors a number of structuring options that provide the security and the flexibility needed to achieve business and planning objectives. Options available to foreign investors range from the typical branch of a foreign company to various Colombian legal entities and various forms of joint venture agreements. Careful consideration needs to be given to finding the optimal structure.

The principal legal entities available to foreign investors in Colombia are the following:

(i) A joint stock capital corporation (for example, a *Sociedad Anónima*, a *Sociedad por Acciones Simplificada*, and a *Sociedad en Comandita por Acciones*);[230]

(ii) A limited liability company (*Sociedad de Responsabilidad Limitada*);[231]

(iii) A partnership with mixed liabilities (*Sociedad en Comandita*);[232]

(iv) A partnership (*Sociedad Colectiva*);[233]

(v) A branch of a foreign corporation;[234] and

(vi) A sole proprietorship (*Empresa Unipersonal*).[235]

The formation and governance of these entities is codified under the Colombian Commercial Code (*Código de Comercio*), as amended by Law 222 of 1995, Law 1258 of 2008, Law 1429 of 2010, Decree 1074 of 2015 and Law 2069 of 2020.

Additional forms (although they do not imply the formation of a separate legal entity) are available, such as:

(i) A *Contrato de Cuentas en Participación*;[236]

(ii) A consortium and temporary union;[237] and

(iii) A trust agreement (*Fideicomiso*).[238]

All of these forms are available to Colombian, as well as foreign, investors.

Under Colombian regulation, foreign investors have no restrictions regarding the economic sector in which they can invest in Colombia with the exception of the defense sector and national security and hazardous waste which is not produced in the country.[239]

Also, all foreign investment in Colombia, including any investment in any Colombian corporate vehicle, must be reported to the Colombian Central Bank and must be brought into the country in compliance with Colombian foreign investment and foreign exchange law (see II., above).[240]

[230] Col. Com. C., arts. 323 – 336, 343 – 352, 373 – 460; Law 1258/2008.
[231] Col. Com. C., arts. 353–372.
[232] Col. Com. C., arts. 323–414.
[233] Col. Com. C., arts. 294–322.
[234] Col. Com. C., arts. 469–497.
[235] Law 222, 1995, arts. 71-81.
[236] Col. Com. C., arts. 507 – 514.
[237] Law 80, 1993, art. 7.6, 7.7.
[238] Col. Com. C., arts. 1226–1244.
[239] Decree 1068, 2015, art. 2.17.2.2.2.1.
[240] Cen. Bank. Ext. Res. No. 8/2000.

B. Joint Stock Corporation (Sociedad Anónima)

1. Formation

The *Sociedad Anónima* (SA) was the leading form for conducting business in Colombia before the introduction of the SAS in 2008 (see III.E.2., below, for further details).

An SA is created as the result of the pooling of funds and interests provided by shareholders that come together to organize a for-profit legal entity.[241] The pooling of economic interests is documented in what is generically termed in Spanish *contrato de sociedad*,[242] in English "entity contract." This document, in the legal context of an SA, is akin to a document combining a corporation's articles of incorporation and its by-laws. A public deed must be drafted to incorporate an SA. The deed must subsequently be registered, with registration serving to publicize the existence of the SA to third parties.

The SA generally protects investors given that liability does not extend to partners, beneficial owners or ultimate parent companies.

An SA is required to have at least 5 shareholders,[243] each of which will be generally liable for the debts of the corporation up to the amount of their contributions to the entity, as evidenced by their shareholdings.[244] No single shareholder may own more than 95% of the total number of shares.[245]

At the time of incorporation, at least 50% of the authorized capital stock must be subscribed for, and at least 33% of the subscribed capital stock must be paid-up.[246] The remaining capital must be paid-up within a year following incorporation.[247] Corporations may be financed through the issue and sale of common stock, nonvoting preferential stock, or ordinary bonds, compulsory convertible bonds or voluntarily convertible bonds. There is no minimum legal capital requirement for incorporating an SA, although an SA (like all Colombian corporate types generally) is subject to thin capitalization rules.

a. Corporate Purpose Clause

The statement of an SA's corporate purpose (*objeto social*) in the incorporation documents should include mention of the activities to be engaged in by the company.[248] Within the scope of activities to be engaged by the company, it is also understood that any activities directly related to the SA's corporate purpose and those necessary for the SA to comply with its obligations or exercise its rights are also included.

[241] Col. Com. C., arts. 100, 373. For comparison purposes, a *Sociedad Anónima* (SA) is similar to a U.S. corporation under most state corporate laws and a C corporation from a federal perspective.
[242] Col. Com. C., art. 98.
[243] Col. Com. C. art. 374. Shareholders of a business entity must be of legal age and sound judgment, and capable of entering freely into the entity contract (*contrato social*). Col. Com. art. 101. It should be noted that family-run entities are permitted under the law. Col. Com. art. 102; Super. Com. Of. Op. 0A/05802, May 2/72.
[244] Col. Com. C., art. 102.
[245] Col. Com. C., art. 457.
[246] Col. Com. C., art. 376.
[247] Col. Com. C., art. 387; Super. Com. Of. Op. AN-11158/June 7, 1989.
[248] Col. Com. C., art. 99 and 110.

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b. Corporate Name

A company's name does not have to describe its activities.[249] An SA's corporate name must be followed by the words "*sociedad anónima*" or the letters "SA."[250] If a company is incorporated as an SA, but does not register its name with the designation "SA" or announces itself to the public without such designation, the management of the company will be held personally liable for its actions and activities.[251]

c. Incorporation

An SA may be incorporated by a unanimous act of its potential shareholders that have joined to create the venture or by a subsequent subscription of shares of stock evidenced in a stock subscription contract.[252]

The formation of a company through a subsequent subscription requires the assistance of corporate promoters (which may also be shareholders). The promoters' functions are to prepare and effect an incorporation plan together with a detailed stock offering report. The plan of incorporation is to be subscribed to by all the promoters involved, as is the stock offering report. Both documents are then registered with the Chamber of Commerce of the place where the company will have its principal domicile.[253]

The incorporation plan should contain the following information:[254]

(i) The name and nationality of the company and the names and domiciles of the promoters;

(ii) The proposed company's by-laws;

(iii) The number, kind, and face value of the proposed company's shares of stock;

(iv) The company's minimum subscribed capital amount and the name of the financial institution with which the capital will be deposited;

(v) The minimum amount of, and the conditions for acquiring, shares of stock;

(vi) If in-kind capital contributions are to be made, a detailed listing of the types of in-kind contributions that will be accepted;

(vii) Information as to how general shareholders' meetings will be convened and the rules of procedure that will be followed at such meetings;

(viii) The promoters' participation in the company's capital; and

(ix) How interest revenue and expenses are to be managed during the incorporation process.

The stock subscription plan to be registered with the Chamber of Commerce should contain, as a minimum, the following information:[255]

(i) The names, nationalities, identification, and domiciles of the subscribers;

(ii) The name and domicile of the future company;

(iii) The number, kind, and face value of the shares of stock to be subscribed for;

(iv) If shares are to be paid with in-kind contributions to capital, details as to the types of in-kind contributions that will be accepted;

(v) An express statement of acceptance by the subscribers to the shares, in which they accept and concur with the program of incorporation; and

(vi) The date of the subscription and the signatures of the subscribers.

The subscribers of the shares must then deposit with the entity designated in the incorporation plan and subscription agreement the amounts of capital agreed to and corresponding to their capital contributions. If payment is to be made in installments, up to a third of the paid-up capital must be duly paid or contributed at the time of subscription.[256]

The time limit for shareholders to pay in their agreed capital contributions is one year from the date of the subscription of the company's shares.[257] If potential shareholders breach their agreement to contribute capital, they may not exercise any rights granted to them as a shareholder. The promoters or the company may seek judicial relief to enforce the payment of the requisite capital or to modify the number of shares to be subscribed and may deduct 20% of the payment as compensation.[258] If the incorporation plan is not flexible and the amount of paid-up capital and subsequent subscription of shares cannot be modified, the total paid-up capital to date, and any interest income attributable to such capital, is to be returned within 10 days to those persons that have complied with their obligations.[259] At this point, it is deemed that the SA will not be incorporated.[260] If there is to be no incorporation, all potential shareholders must be notified within five days of the decision not to go forward with the company's incorporation.[261]

Paid-up capital may not be utilized to cover any costs of the company, except those relating to incorporation, until such time as the articles of incorporation and by-laws are approved by the shareholders' general meeting and the documents registered with the Chamber of Commerce and a Notary Public.[262] At this point, the company is formally incorporated and a public deed for the company is deemed to exist under operation of law.

Once the subscription of the shares is completed, a general shareholders' meeting must be convened within 15 days, as envisaged in the incorporation plan. If there is no quorum at the meeting, a new meeting must be convened at least 10 days, but not more than 30 days, after the date of the initial meet-

[249] Super. Com. Of. Op. 02454/Feb. 27, 1978.
[250] Col. Com. C, art. 373.
[251] Col. Com. C., art. 373.
[252] Law 222/1995, art. 49.
[253] Law 222/1995, art. 50.
[254] Law 222/1995, art. 51.
[255] Law 222/1995, art. 52.
[256] Law 222/1995, art. 53.
[257] Law 222/1995, art. 53.
[258] Law 222/1995, art. 54; Col. Com. C., art 397.
[259] Law 222/1995, art. 54.
[260] Law 222/1995, art. 54.
[261] Law 222/1995, art. 54.
[262] Law 222/1995, art. 55.

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ing. If there is no quorum at the second meeting, the incorporation plan will be deemed to be terminated and the subscription process will be deemed to have failed.[263]

The purpose of the general shareholders' meeting is to vote on and approve the actions of the promoters, review and approve the articles of incorporation and by-laws of the new company, examine and approve the valuation of all in-kind contributions, and appoint a legal representative, board of directors and statutory auditor. Shareholders that were promoters of the company are not permitted to vote on and approve at this meeting any of the actions taken as promoters.[264]

All decisions of the general assembly must be made by majority vote. The number of votes per shareholder depends on the number of the shareholder's subscribed shares in the company.[265]

Once the general shareholders' meeting has met and approved the company's articles of incorporation and by-laws and other matters, as discussed above, the company and its promoters must request that the company's articles of incorporation and by-laws, together with all supporting documentation, be reviewed and registered by a Notary Public and the Chamber of Commerce. This step must be taken within 6 months after the general shareholders' meeting; otherwise, the shareholders may demand that the promoters and the company return their capital contributions, plus interest earned thereon. Should incorporation fail at this point, the promoters of the SA may be held liable for any activities conducted by the SA during the pre-operational period.[266]

An SA is deemed to be incorporated on completion of the above steps and, on final registration with the Notary Public and the Chamber of Commerce, the company will assume responsibility for any contracts entered into on its behalf by the promoters and for all preoperational costs, provided the general shareholders' meeting approved such costs. In a similar fashion, the SA will assume any obligations undertaken on its behalf by its legal representative. At no time are the shareholders liable for any actions or potential obligations undertaken by the SA.[267]

d. Articles of Incorporation

The entity contract (*Escritura Pública* or *Contrato Social*) of an SA, i.e., a document that contains the by-laws, must provide the following information:[268]

(i) The names and domiciles of the persons that are acting on the SA's behalf to incorporate it; in the case of a closely held entity, the shareholders that have joined to create it. Should the shareholders be individuals, the document must state their full names, nationalities, and passport or national identification card numbers. If the shareholders are companies, they must be identified by their country of residence and domicile, with reference being made to the laws that govern them and to the articles of incorporation that initially created them.

(ii) The type of entity to be created and the corporate name.

(iii) The domicile and residence of the company to be created, as well as that of any subsidiary that may belong to the company.

(iv) The company's corporate purpose, as well as the main activities that the company will engage in to fulfill its corporate purpose.

(v) The amount or value of the company's initial subscribed capital, the amount to be initially paid in, the term for fully paying in capital (which may not exceed one year), and the value and types of shares of stock to be subscribed. The terms under which shares may be cancelled and redeemed should also be stated.

(vi) The manner in which the company is to be managed, the duties of the various company executives who are essential to the company's operations, i.e., essential management, the rights and responsibilities of the board of directors and details as to who will be part of the board, how often it will be chosen/elected, and under what circumstances it may be terminated. Procedures for convening and conducting the general shareholders' meeting should also be stipulated. Details as to what each decision-making body is entitled to express an opinion on and what procedures each is to follow in issuing resolutions also need to be indicated.

(vii) Procedures for convening extraordinary board of directors' and shareholders' meetings, as well as details as to what each decision-making body is entitled to express an opinion on and what procedures each is to follow in issuing resolutions.

(viii) The dates on which financial statements are to be issued to the shareholders and the procedures for making dividend distributions. Procedures and information as to the funding of additional legal and other reserves must be addressed in detail.

(ix) The duration of the company. A company may not exist in perpetuity and a set time for its eventual winding up is required.

(x) The company's procedures for liquidation and the winding up of operations, including details as to in-kind capital asset contributions and procedures for the selling off the company's assets on an eventual liquidation.

(xi) Procedures as to how shareholder and board of director differences will be resolved, i.e., mediation or arbitration procedures.

(xii) The names and, domiciles, of the individuals chosen as the company's legal representatives (there should be a main representative and an alternate), specifying their powers and duties.

(xiii) The duties and responsibilities of the statutory auditor.

(xiv) The circumstances in which additional or new shares may be issued, the procedures for accepting new shareholders in the case of a closely held company, and any oth-

[263] Law 222/1995, art. 56.
[264] Law 222/1995, art. 58.
[265] Law 222/1995, art. 57.
[266] Law 222/1995, art. 59.
[267] Law 222/1995, art. 60.
[268] Col. Com. C., art. 110.

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er issues of corporate governance required to carry on the business of the SA within the provisions of the articles of incorporation and by-laws and to amend the articles themselves.

e. Capital Stock

The capital of an SA is required to be divided into freely negotiable shares of stock of equal value.[269] Shares can be classified for corporate purposes as ordinary shares,[270] industrial shares,[271] preference shares,[272] or shares without voting rights.[273]

A capital surplus, i.e., the surplus value paid by the shareholders of a company on the acquisition of shares with respect to their face value, is considered to be, and treated as, a capital contribution. Any surplus paid will form part of the acquisition value for the shareholders for tax purposes.[274]

The rules on surplus capital apply with respect to all types of corporations.

(1) Ordinary Shares

Ordinary shares give their holders political and economic rights.[275] Such shares must be registered in the company's shareholders' ledger.[276] The rights attaching to such shares may be summarized as follows:[277]

(i) The right to participate and vote in the shareholders' meeting;

(ii) The right to receive dividends and other economic benefits as determined by the shareholders;

(iii) The right to negotiate the shares freely, except where existing shareholders or the company have a preferential right of subscription;

(iv) The right to inspect the papers and books of the company,[278] subject to certain limitations concerning trade secrets and intellectual property;[279] and

(v) The right to receive a portion of the company's assets in the event of its liquidation.

(2) Industrial Shares

The purpose of industrial shares is to compensate for contributions made by individuals in terms of services, work, technological knowledge, trade or commercial secrets or technical assistance. They afford the owner the right to participate in:[280]

(i) The shareholders' meeting, but without voting rights;

(ii) Dividends declared; and

(iii) Accumulated earnings, if the company is liquidated.

(3) Preference Shares

Preference shares grant the owners of said shares the same rights as ordinary shares, as discussed in (1), above, and may also grant the owners the following additional rights:[281]

(i) The right to receive a portion of the assets in preference to common shareholders;

(ii) The right to receive earnings in preference to common shareholders; and

(iii) Other economic rights that do not imply a change in voting rights.

(4) Shares Without Voting Rights (Preferred Non-voting Shares)

Colombian corporate legislation also permits the issuance of shares without voting rights in the form of preferred shares.[282] Preferred non-voting shares may not exceed 50% of the company's capital.[283] As a general rule, this kind of capital stock gives its owner the right to receive a minimum dividend amount that is paid to the shareholder in preference to ordinary shareholders.[284] However, Colombian law grants the owners of these types of shares special voting rights whenever the shareholders' general assembly intends to:

(i) Adopt a decision that will affect the existing rights granted by said shares;

(ii) Convert said shares to ordinary shares; and

(iii) In the specific events stated in the company's regulation for the issuing of shares.[285]

f. Cost of Incorporation

The costs of incorporating an entity in Colombia are as follows:

(i) Notary Public fees ranging from 0.27% to 0.30% of the entity's capital (*Capital Social*) as stated in its articles of incorporation; in the case of an SA, the fees are calculated based on the entity's authorized capital;

(ii) Value added tax (VAT) levied at the rate of 19% on the Notary Public fees; and

(iii) Registration tax payable to the Chamber of Commerce at a rate of 0.7% of the entity's capital, as stated in its articles of incorporation. If the capitalization includes a premium on capital, this will also be part of the basis for the registration tax of 0.3% of the capital.[286] The rate to be applied will depend on the decision of the Departmental Assembly (State Legislature) with jurisdiction over the place at which the event will be recorded, as well as whether the event involved paid-in shares (in which case the rate will

[269] Col. Com. C., art. 375.
[270] Col. Com. C., art. 379 and 381.
[271] Col. Com. C., art. 380.
[272] Col. Com. C., arts. 381–382.
[273] Law 222/1995, art. 63.
[274] Law 1607 of 2012, art. 91.
[275] Col. Com. C., art. 379.
[276] Col. Com. C., art. 379.
[277] Col. Com. C., art. 379.
[278] Col. Com. C., arts. 379.4, 446 and 447; Superintendence of Companies, Ext. Circ. 100-000008 of 2022, §3.9.
[279] Superintendence of Companies, Ext. Circ. 100-000008 of 2022, §3.8.
[280] Col. Com. C., art. 380.
[281] Col. Com. C., art. 381; Super. Com. Of. Op. 220-21177/Oct. 1, 1993.
[282] Col. Com. C., art. 381; Super. Com. Of. Op. 220-21177/Oct. 1, 1993.
[283] Law 222/1995, art. 61.
[284] Law 222/1995, art. 63.
[285] Law 222/1995, art. 63.
[286] Law 223/1995, art. 229, as amended by Law 1607/2012.

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range from 0.1% to 0.3%) or not (in which case the rate will range from 0.3% and 0.7%).[287]

2. Operation

a. License

No special license is required to start operations as an SA, unless the SA will be subject to surveillance and inspection by the Financial Superintendency (*Superintendencia Financiera de Colombia*), as in the case, for example, of a banking establishment.[288] In such circumstances, a submission must be made to the Financial Superintendency to obtain both an incorporation license and an operating license.

b. Amendments to Articles of Incorporation

Amendments to an SA's articles of incorporation must be registered with the Notary Public and the Chamber of Commerce.[289] In the absence of such registration, amendments to the articles of incorporation are not considered to have any legal effects towards third parties.[290] Companies under the control of or, in certain cases, the supervision of, the Superintendence of Companies, must obtain authorization from the Superintendence of Companies' before registering such amendments with the Chamber of Commerce.[291]

Amendments to the articles of incorporation of an SA require the approval of a majority vote of the shareholders, unless the bylaws of the company provide otherwise. One-half plus one of the owners of capital must be present to vote.[292]

Amendments to the articles of incorporation are required when, among others, any of the following events occurs:

(i) Dissolution;[293]

(ii) Liquidation;[294]

(iii) Merger;[295]

(iv) Spin-off/split-off;[296]

(v) A change in the company's domicile;[297] or

(vi) A change in the authorized capital of the company.[298]

An amendment to the articles of incorporation is not required to change the legal representative or statutory auditor of a company or persons involved in the company's management. These changes may simply be evidenced in the corporate minutes of the corresponding board of directors' meeting or general shareholders' meeting in which the decisions were adopted, depending on the powers granted by the by-laws of the SA to each corporate body.[299]

c. Alterations of Share Capital

(1) Increases in Capital

Commercial rules provide that an SA is to have three types of capital, i.e., authorized capital, subscribed capital and paid in capital. The authorized capital indicates the maximum value of capital that a company may have. Subscribed capital is the amount of capital that the company shareholders have agreed to pay. Paid capital is the amount of subscribed capital that the shareholders have paid.

Increases in an SA's capital are permitted under Colombian law and are commonplace.[300] As a procedural matter, when the increase concerns the authorized capital, the increase must be documented and evidenced via an amendment to the company's articles of incorporation.[301] The amendment to the articles is then filed with the Notary Public and the Chamber of Commerce.[302]

The process for modifying the subscribed and paid in capital involves a subscription of shares, which requires the shareholders' general assembly to approve the issuance of shares. Once this approval is obtained, the board of directors draws up rules for the placement of the shares, unless the company's bylaws stipulate that this is to be done by the general assembly. The rules must specify: (i) the number of shares to be offered; (ii) the terms under which shares can be subscribed; (iii) the timeframe for the acceptance of the offer, which shall not be less than 15 days nor exceed three months; and (iv) the share price and payment deadline.[303] An offer to acquire shares is then made, which must be accepted by the interested parties.[304]

A certificate issued by the statutory auditor indicating the value of the increase in subscribed capital and the new value of the subscribed and/or paid in capital must be filed with the Chamber of Commerce at the company's place of domicile. An increase in the subscribed capital is subject to registration tax (a tax levied on instruments filed with notaries and Chambers of Commerce that have the effect of public documents) at a rate ranging from 0.1% to 0.7% of the amount of the increase and other administrative notary and legal costs related to the preparation of the amendment to the articles. In addition, increases in capital are subject to a premium on capital which includes a 0.3% registration tax.

(2) Decreases in Capital

Capital reductions are permitted under Colombian law, subject to the limitations described below. The Superintendence of Companies[305] must approve a capital reduction if the decrease is not covered under the general authorization regime of the entity and entails the reimbursement of contributions to shareholders. Approval is granted if the company requesting the reduction has no liabilities or if the reduction will not result

[287] Law 223/1995, art. 230, as amended by Law 1607/2012.
[288] Decree 663/1993, art. 326.
[289] Col. Com. C., art. 158.
[290] Col. Com. C., art. 158.
[291] Col. Com. C., art. 159.
[292] Law 222/1995, art. 68.
[293] Col. Com. C., art. 162.
[294] Col. Com. C., art. 162.
[295] Col. Com. C., art. 162.
[296] Law 222 of 1995, arts. 8 and 11.
[297] Col. Com. C., art. 165.
[298] Col. Com. C., art. 158.
[299] Col. Com. C., art. 163.
[300] Col. Com. C., art. 158.
[301] Col. Com. C., art. 158.
[302] Col. Com. C., art. 158.
[303] Col. Com. C., art. 386.
[304] Col. Com. C., art. 384.
[305] Col. Com. C., art. 145. The Superintendent of Companies is a regulatory agency in charge of regulating and supervising the activities of most business association forms allowed in Colombia.

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in its assets being reduced to less than twice its external liabilities, or if all creditors expressly agree to the decrease in capital.[306] Additionally, if the company's external liabilities include outstanding Social Protection obligations, the Labor Ministry must approve the capital reduction.[307]

Comment: The required government approvals may be costly from a time-efficiency perspective. Informally, the Superintendence of Companies has indicated that if the basic criteria for a capital reduction are met, it will grant the request in about three to six months. Labor Ministry approval is also required under a two-month general term.

d. Stock Buybacks

An SA may redeem its own shares of stock. However, for an SA to acquire or redeem its own stock, the operation must be approved by the general shareholders' meeting. A decision of the general shareholders' meeting for an SA to acquire back its own shares requires a simple majority of the shareholders present at the meeting in which the redemption decision is made.[308] Furthermore, the company must have registered profits in its financial statements to acquire back its own shares.[309]

Once the decision to acquire back an SA's shares of stock is adopted, the acquisition must be funded with net earnings and profits. Once acquired back, the shares of stock are placed in special receivership during which time the rights attached to them are suspended.[310]

e. Corporate Officers

Traditionally, an SA's corporate officers consist of the individuals comprising the company's board of directors.[311] The board of directors must consist of no less than three executives, each of whom must have an alternate.[312] The officers of the board of directors of an SA are its members, although for the purpose of the board meetings, the board members choose a president and a secretary.[313]

Additionally, an SA is required to appoint a legal representative and an alternate legal representative. The legal representatives are named by the SA's board of directors. These individuals must be registered with the Chamber of Commerce.[314]

f. Shareholders' Meetings

General shareholders' meetings may be ordinary or extraordinary.[315]

Unless the law provides for a higher quorum, shareholders representing at least one-half plus one of the capital stock must be present at the first call for ordinary and/or extraordinary meetings.[316] At second call, there will be a quorum if at least two shareholders are present.[317] All resolutions of extraordinary meetings require the approval of shareholders representing at least a simple majority of the capital stock present at the shareholders meeting.[318] This applies when the meeting is held by the shareholders in their own right or as a result of a subsequent call.[319] A higher quorum is required to adopt decisions to:[320]

(i) Distribute dividends in an amount less than that authorized by law: the approval of 78% of the capital stock represented at the meeting is required;

(ii) Issue shares without preferential rights: the approval of 70% of the capital stock represented at the meeting is required;

(iii) Pay dividends with shares: the approval of 80% of the capital stock represented at the meeting is required;

(iv) Split the company if, as a result of the split, the split company's shareholders are shareholders of the beneficiary companies, but hold a different stake in the new companies: the approval of 100% of the company's shareholders is required;[321] or

(v) Convert the company from an SA to an SAS: the approval of 100% of the company's shareholders is required.[322]

An ordinary meeting must be held at least once a year, on the dates specified in the bylaws, or in their absence; within three months of the closing of the fiscal year.

Ordinary shareholders' meetings are held to discuss and resolve the following issues:[323]

(i) The balance sheet and the profit and loss (P&L) statements;

(ii) The election, when in order, of directors, and statutory auditors;

(iii) Earnings and profit distributions in the form of dividends;

(iv) The creation of reserves for future investments;

(v) Company forecasts and current company performance; and

(vi) Reports of the legal representative and the statutory auditor.

An extraordinary shareholders' meeting may be convened by the board of directors, the legal representative or the statutory auditor to discuss and resolve any urgent matters.[324] A plurality of shareholders that represents at least 10% of the subscribed capital may request the convening of such a meeting.[325] The Superintendence of Companies may order an extraordinary shareholders' meeting if the ordinary shareholders' meeting does not take place, the administration encounters an irreg-

[306] Col. Com. C., art. 145.
[307] Col. Com. C., art. 145.
[308] Col. Com. C., art. 396.
[309] Col. Com. C., art. 396.
[310] Col. Com. C., art. 396.
[311] Col. Com. C., art. 434.
[312] Col. Com. C., art. 434.
[313] Col. Com. C., art. 441.
[314] Col. Com. C., art. 441.
[315] Col. Com. C., arts. 422–423.
[316] Col. Com. C., art. 425; Law 222/1995, art. 68.
[317] Col. Com. C., art. 429.
[318] Col. Com. C., art. 429.
[319] Col. Com. C., art. 429.
[320] Law 222/1995, art. 68; Super. Com. Of. Op. 220-00456/Jan. 9, 2001; Super. Com. Of. Op. 220-42826/Aug. 8, 1997; Super. Com. Of. Op. 220-60732/Dec. 27, 1996; Super. Com. Of. Op. AN-0850/Jan. 29, 1988.
[321] Law 222/1995, art. 3.
[322] Law 1258/2008, art. 31.
[323] Col. Com. C., art. 420.
[324] Col. Com. C., art. 423.
[325] Decree 2069/2020, art. 6.

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ular situation that has to be corrected by the shareholders or the administration is asked do so by at least two shareholders representing at least 20% of the subscribed capital.[326] Additionally, the shareholders assembly may meet in its own right on the first working day of April if the shareholders were not summoned to a meeting before that day. [327]

Shareholders' meetings can be held in person or by non-face-to-face means (for example, virtually). Before March 13, 2020, in order for a shareholders' meeting to take place by non-face-to-face means, all shareholders of the company had to be present and able to deliberate. With the issuance of Decree 398 of 2020, non-face-to-face meetings may take place if the majority required for the company to hold a meeting is present. The majority required to hold such meetings was reduced, requiring fewer shareholders to have a quorum.[328]

g. Directors' Meetings

An SA is required to have a board of directors.[329] The board of directors must have at least three members who are elected by the shareholders.[330] The members of the board of directors are elected by electoral quotient.[331] The board of directors may hold meetings as frequently as is necessary to supervise the company's activities properly.[332] There are no legal requirements as to the frequency of board meetings.[333]

h. Books and Records

An SA is required to keep the following books, each of which must be page-numbered and registered with the Chamber of Commerce:

(i) A book of General and Extraordinary Shareholder Assembly Minutes and Resolutions;[334]

(ii) A shareholders registration book; and

(iii) A general Accounting Ledger/Statement of Accounts.[335]

i. Financial Statements

Colombia completed the process of changing its accounting standards to an International Financial Reporting Standards (IFRS)-based system. The IFRS-based system is applicable to all companies in Colombia, except companies that are in the process of liquidation. The following is a summary of the current accounting standards in place at the time of writing.

An SA must keep accounting records in Colombian pesos and in the Spanish language, in compliance with the IFRS-based system. The normal accounting method is the accrual method (*causación*).

According to NIC 1 (*Normas Internacionales de Contabilidad*), the basic financial information consists of a statement of financial situation, a P&L statement, a statement of change in net equity, a cash flow statement, and related notes. This information requires review by, and the approval of, the statutory auditor.

An SA is required to close its financial statements (balance sheet and P&L statement) and accounting ledgers at least once a year. Annual financial statements and accounting ledgers must be made up to December 31. Financial statements must conform to the IFRS-based system.

j. Dividends and Other Distributions

An SA with earnings and profits (evidenced and supported in the company's final financial statements)[336] at the close of an accounting period may make a distribution payment, in the form of a dividend, to its shareholders, provided the shareholders declare a dividend at the general shareholders' meeting.[337] The declaration of a dividend requires a vote of a general shareholders' meeting at which a majority of the shareholders (comprising at least two shareholders) is present.[338] A special majority vote of 78% of the shares present at the general shareholders meeting is required, unless the bylaws establish a higher special majority.[339] However, if this requirement is not met, at least 50% of the dividends must be distributed unless there are losses from previous exercises that have to be absorbed.[340] A dividend distribution is only permitted after all legal, statutory and occasional reserves have been funded.[341]

Dividend payments are to be made in cash at the time decreed by the general shareholders' meeting.[342] However, an SA may also make dividend payments in the form of additional shares of stock, if it is so decided at the shareholders' meeting, with a special majority of 80% of those present.[343]

If the legal, statutory, and occasional reserves of an SA are funded to the extent that they exceed 100% of the company's subscribed capital, the SA is required to distribute or pay out a dividend consisting of at least 70% of its net earnings and profits.[344]

Operating losses may be offset with earnings and profits used to fund reserves set up to compensate such losses.[345]

k. Reserves

An SA is required to fund a legal reserve.[346] The purpose of this legal reserve is to cover any losses that the company may have in the future.[347] The legal reserve must amount to at least 50% of the company's subscribed capital.[348] The legal reserve must be funded in quotas of at least 10% of each year's

[326] Col. Com. C., art. 423.
[327] Col. Com. C., art. 422.
[328] Decree 398 of 2020, art. 1.
[329] Col. Com. C., art. 434; Super. Com. Of. Op. No. J-3491/March 9, 1972.
[330] Col. Com. C., art. 434.
[331] Col. Com. C., art. 436.
[332] Col. Com. C., arts. 437–438; Super. Com. Of. Op. 220-23264/March 28, 2000.
[333] Col. Com. C., arts. 437–438.
[334] Col. Com. C., art. 431.
[335] Decree 2649/1993.
[336] Col. Com. C., art. 451.
[337] Col. Com. C., art. 155.
[338] Col. Com. C., art. 155.
[339] Col. Com. C., art. 155.
[340] Col. Com. C., art. 155.
[341] Col. Com. C., arts. 451, 455.
[342] Col. Com. C., art. 455.
[343] Col. Com. C., art. 455.
[344] Col. Com. C., art. 454.
[345] Col. Com. C., art. 456.
[346] Col. Com. C., art. 452.
[347] Col. Com. C., art. 456.
[348] Col. Com. C., art. 452.

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profits.[349] Once the legal reserve reaches the required level, the company stops contributing to it, unless the reserve is reduced below the required level at any point.[350] If no income is realized, the legal reserve cannot be funded.[351]

An SA may also fund statutory or occasional reserves, as provided for in its by-laws or as decided by an ordinary or extraordinary shareholders' meeting.[352]

3. Statutory Mergers

See II.C.2.d. and e., above.

4. Dissolutions

An SA may be dissolved on the occurrence of any of the following events:[353]

(i) The expiration of the term of the SA;

(ii) When it becomes impossible for the SA to perform its corporate purpose or on the destruction of the assets needed to pursue the corporate purpose;

(iii) The number of shareholders is reduced to fewer than five;

(iv) For reasons specified in the company's articles of incorporation and by-laws;

(v) On the adoption of a decision to dissolve the SA;

(vi) On a decision imposed by a government authority, for example, in the case of bankruptcy; or

(vii) When the SA does not satisfy the ongoing business hypothesis criteria (*hipótesis de negocio en marcha*);[354] or

(viii) When one shareholder possesses or acquires more than 95% of the SA's subscribed capital.

In the case of causes (ii) – (vi) and cause (viii), the 18-month term begins when the cause occurs, which is verified on a case-by-case basis.

On the other hand, in the event of cause (vii), above, the SA must be liquidated and wound up. However, during the dissolution process, the SA may be reactivated by a decision of the General Shareholders' Assembly, provided that the company's external liabilities do not exceed 70% of its social assets and the distribution of the remaining assets to the shareholders has not commenced.[355] For this reactivation, the provisions established in Article 29 of Law 1429 of 2010 must be followed.

5. Private Liquidations

Once the dissolution of a company occurs, the next step is liquidation or winding up. This occurs with the liquidation of the company assets, the payment of the company's liabilities and the distribution of the remaining balance among the shareholders.[356]

In general, the following procedures must be complied with on the commencement of liquidation:[357]

(i) A liquidation plan must be drawn up and followed in accordance with the credit ranking established in the Colombian Civil Code;[358]

(ii) All of the company's operations and activities must be concluded, and any subsequent activities must be connected with the liquidation of assets and payment of liabilities;

(iii) A final liquidation balance providing an inventory of the remaining assets after the payment of external liabilities must be prepared to be submitted for the approval of the shareholders; and

(iv) On completion of the liquidation, the final decision approved by the shareholders must be registered with the Chamber of Commerce.

6. Transformations

A company established under Colombian corporate law may be converted from one form of legally recognized entity into another form by means of an amendment to the company's by-laws.[359] For such a conversion to occur, there must be a statutory reform of the company bylaws. The decision must be evidenced by a shareholders' resolution or decree issued at a general or extraordinary shareholders' meeting, accompanied by the corresponding minutes of the meeting and the amendment to the SA's by-laws.[360] On the adoption of the decision to transform the legal entity into a different corporate or business entity form, the shareholders must approve the prior entity's closing financial statements and must verify that the entity meets the formation requirements for the new form that the entity is to take.[361] Whenever the transformation entails the shareholders experiencing a deterioration of their equity rights, or could increase their liability, any absent or dissident shareholders may execute their right of retirement.

C. Partnerships

1. General Partnership (Sociedad Colectiva)

A general partnership requires at least two partners. There is no limit to the maximum number of partners permitted by law.[362]

The partners have joint and unlimited responsibility for the debts of a partnership[363] and joint and unlimited liability for the partnership's taxes, in proportion to their contribution to the partnership.[364] This joint liability does not extend to penalties, interest, or inflation adjustments.[365]

[349] Col. Com. C., art. 452; Super. Com. Cir. D-001/Jan. 2, 1980.
[350] Col. Com. C., art. 452.
[351] Col. Com. C., art. 452.
[352] Col. Com. C., art. 453.
[353] Col. Com. C., arts. 218 and 457.
[354] Law 2069/2020, art. 4.
[355] Law 1429/2010, art. 29; Super. Com. Of. Op. 220-023821/February 3, 2022.
[356] Col. Com. C., arts. 220–246.
[357] Col. Com. C., arts. 225, 231 and 246.
[358] Col. Civil Code, arts. 2488-2511.
[359] Col. Com. C., art. 167.
[360] Col. Com. C., arts. 167–171.
[361] Col. Com. C., arts. 167–171.
[362] Col. Com. C., arts. 294–295.
[363] Col. Com. C., arts. 294–295.
[364] Col. Com. C., arts. 294–297.
[365] Col. Com. C., arts. 294–297.

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2. Partnership with Mixed Liabilities (Sociedad en Comandita Simple)

A simple limited partnership may have no more than 25 limited partners. In the case of a partnership with mixed liabilities, there is no maximum limit on the number of partners (*socios gestores*).[366]

A partnership with mixed liabilities must have at least 1 managing partner and 1 limited partner. The managing partner has joint and unlimited liability for the debts of the partnership, while the limited partners are liable up to the amount of their contributions.[367]

While a managing partner is subject to the rules for general partners, a limited partner is subject to the SRL regime (see III.E.3., below).

D. Branch of a Foreign Corporation

1. In General

For corporate liability purposes, Colombian law deems a Colombian branch of a foreign company to be an extension of the offshore home office company and treats both as "ongoing concerns."[368] (See also II., above, and V. and VII., below.) Liability of the branch, therefore, extends to the home office.[369]

The major characteristics of a branch under Colombian law are as follows:

(i) A branch has flexibility with respect to reducing its supplemental capital without requesting authorization.[370] The law permits a branch's capital to fluctuate freely through its supplemental capital account (an account available only to branches).[371]

(ii) A branch must have a statutory auditor.[372]

(iii) A branch, like an SA and SRL, is required to fund a legal reserve. The legal reserve of a branch should be funded to the extent of up to 50% of the assigned capital. The reserve is funded by allocating to it 10% of the net revenues of each accounting period. If no income is realized, the legal reserve cannot be funded.[373]

(iv) It is not permitted to convert a branch into a resident business with a separate legal existence, such as an SRL or SA. This is because, from a corporate law perspective, such a transformation requires a complete liquidation of the investment in Colombia and a subsequent reinvestment of funds in the country, as well as entirely new incorporation documents.[374] However, the funds resulting from the liquidation may be contributed to an existing company's capital.

2. Incorporation Procedure

To incorporate a branch office of a foreign corporation in Colombia, the following documentation must be gathered and submitted:

(i) Copies of the parent company's/shareholder's by-laws;

(ii) Copies of the parent company's board minutes resolving to establish the branch in Colombia;

(iii) Copies of the parent company's/shareholder's certificate of existence in its home jurisdiction; and

(iv) Copies of the certificate or document identifying the legal representative of the foreign entity.

To have legal effect in Colombia, the documentation listed above must be authenticated and duly legalized (or apostilled),[375] and must be filed with a notary public in the city in which the entity is domiciled. All documents that are not in Spanish must be translated by an official translator to be accepted by the Chamber of Commerce and the notary public.

Once the creation of a formal entity in Colombia has been decided on and the documentation listed above is ready for filing, the minutes or act adopting the decision must be drawn up. The minutes must contain the following information:[376]

(i) The type of business activity that the entity will undertake in Colombia under Colombian law and the entity's corporate purpose;

(ii) The amount and source of the capital assigned to the entity;

(iii) The entity's domicile;

(iv) The time frame within which the entity will conduct business activities and the date on which the entity will wind up its operations in Colombia;

(v) The designation and identity of the entity's representative, and one or more substitutes representing the entity with respect to its Colombian business activities (the representative must be competent to represent the entity in all the activities within the scope of the entity's corporate purpose, for all legal effects); and

(vi) The designation and identity of the statutory auditor, who must be an individual with permanent residence in Colombia.

This documentation must be filed with the Notary Public and the Chamber of Commerce, together with the Colombian entity's articles of incorporation and by-laws referring to the minutes/act referred to above, in order to fulfill the mercantile registration requirements.[377]

[366] Col. Com. C., art. 323; Super. Com. Of. Op. SL-MD-1034/Jan.22, 1991.
[367] Col. Com. C., arts. 326–328, 335–336.
[368] Col. Com. C., arts. 469, 485.
[369] Col. Com. C., art. 485.
[370] Col. Com. C., art. 487.
[371] Col. Com. C., art. 487; Cen. Bank Ext. Res. No. 8/2000.
[372] Col. Com. C., art. 203.
[373] Col. Com. C., arts. 452 and 476.
[374] Col. Com. C., arts. 479, 484–486, 495.

[375] All documentation prepared outside Colombia must be legalized before the appropriate Consular personnel in the city and country where the documentation was prepared (Com. C., art. 480). This principle applies with regards to all the documentation prepared abroad that will have some legal effect in Colombia or that evidences some formal transaction. This rule applies to both branch and subsidiary incorporation procedures. See compulsory consular documentation process, Counsel of State, 4th Section, Op. 3541, May 17/93 (P.M. Delio Gómez Leyva).
[376] Col. Com. C., arts. 471–472.
[377] Col. Com. C., arts. 475, 476, 479, 484–486, 495.

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3. Organizational Costs

The costs of establishing a branch in Colombia are as follows:

(i) Notary Public fees ranging from 0.27% to 0.30% of the branch's assigned capital, as stated in the resolution or act establishing the branch;

(ii) VAT levied at the rate of 19% on the Notary Public fees; and

(iii) Registration tax payable to the Chamber of Commerce at a rate of 0.7% of the branch's assigned capital as stated in the resolution or act establishing the branch.

E. Other Types of Business Entities

1. Partnership Limited by Shares (Sociedad en Comandita por) Acciones

The basic elements of a *Sociedad en Comandita por Acciones* (SCA) mirror those of a joint stock corporation (SA).[378] However, one difference between an SA and SCA is that the latter has at least one shareholder that is subject to unlimited liability with respect to the SCA's business activities.[379] This shareholder is known as the *socio gestor.*

To spread the risk of exposure effectively across a number of levels, Colombian law allows a business entity to act as an SCA's unlimited liability shareholder.[380] In this regard, counsel may recommend the use of another SCA, one or more of the shareholders of which are SAs or other types of Colombian business association.

Despite the SCA unlimited liability shareholder requirement, a U.S. investor may choose to use an SCA given that, for U.S. tax purposes, U.S. tax law will treat the SCA as if it were a U.S. partnership or limited liability company (LLC) or a pass-through entity, provided the taxpayer elects to be treated as such.[381]

2. Simplified Stock Corporation (Sociedad por Acciones Simplificada)

The basic characteristics of the joint stock corporation also apply to a *Sociedad por Acciones Simplificada* (SAS). However, an SAS is a much more flexible corporate vehicle. An SAS's liability does not extend to the ultimate parent company, except in cases involving piercing of the corporate veil. An SAS may be incorporated with a broad corporate purpose, in such a way that its legal capacity extends to any type of business not prohibited by law. This type of corporation may be incorporated through a private document, unless the shareholders at the time of incorporation contribute real property. In a similar fashion, all by-law amendments may be performed through a private document filed for registration with the Chamber of Commerce where the SAS is domiciled.

An SAS may be incorporated with only one shareholder. The law does not set a maximum number of shareholders, nor a maximum participation percentage for any one shareholder if there are several shareholders. The law offers a two-year limit from the date of incorporation for all authorized capital to be paid in. Shareholders are liable up to the amount of their participation in the capital of the company in the same manner as in the case of an SA.

The main corporate body of an SAS is the general shareholders' meeting, but an SAS may also have a board of directors, if so provided in the by-laws. An SAS will only require a fiscal auditor if the amount of its assets or earnings exceeds certain thresholds.[382]

Although, as a rule, SAS shares do not qualify to participate in the stock market, Law 2294 of 2023 authorized the registration of SAS debt securities in the National Registry of Securities and Issuers.

3. Limited Liability Company (Sociedad de Responsabilidad Limitada)

An SRL must be incorporated and operate with at least two individual or corporate members (referred to as "partners"), but it may not have more than 25 members.[383] The partners are liable for the debts of the company, with the exception of tax, labor, foreign exchange, and customs liabilities, up to the amount of their contributions.[384] An SRL's liability does not extend to the ultimate parent company. Instead, it is generally limited to the capital contribution of the partners and does not extend extra-territorially.[385] An SRL's company name must include the words *Sociedad de Responsabilidad Limitada, Limitada* or *Ltda.*[386]

Although an SRL's liability does not extend to the ultimate parent company, there are exceptions concerning tax, labor, foreign exchange, and customs responsibilities. The Colombian Supreme Court has stated that the shareholders' liability is not limited regarding any labor contracts that the company has with its employees and, therefore, the shareholders may be held liable. Also, tax law may hold a company's shareholders liable for the company's tax obligations.[387]

SRLs are directed and managed by boards of partners, with each partner having as many votes as he, she, or it has quotas in the company. Each quota represents one vote. Decisions require the approval of an absolute majority. The board of partners may appoint a legal representative to run the company.[388]

The company's capital must be paid in full when the company is incorporated and must be divided into quotas of equal value.[389]

[378] Col. Com. C., arts. 343–352. See *In re* SCA Shareholder Requirements, Col. Sup. Ct., Civil Op. 20/97 (P.M. Rafael Romero Sierra) (holding that a *Sociedad en Commandita por Acciones* (SCA) must comply with the five-or-more-shareholder rule).

[379] Col. Com. C., art. 323. The scope of this unlimited responsibility for SCA business activities is akin to that of a general partner's liability under U.S. partnership law. Uniform Partnership Act, §15.

[380] Superintendence of Companies. Op. SL-MD-1034/Jan.22, 1991.

[381] U.S. Reg. §301.7701-1–§301.7701-3.

[382] Decree 2020 of 2009, art. 1; Law 43 of 1990, art. 13.

[383] Law 2294 of 2023, art. 261.

[384] Col. Com. C., art. 353.

[385] Col. Com. C., art. 353.

[386] Col. Com. C., art. 794-1.

[387] Col. Com. C., art. 357.

[388] Col. Com. C., art. 358.

[389] Col. Com. C., art. 354.

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SRL formation and operation procedures mirror those of an SA, by express authority under the Commercial Code,[390] except where otherwise indicated. For the most part, however, an SRL is very similar to an SA and is often chosen for closely held businesses and when U.S. persons are involved, because an SRL may be characterized as a partnership-type entity for U.S. federal income tax purposes.[391]

Other important characteristics of an SRL include the following:

(i) An SRL is required to have a statutory auditor only if it has total assets exceeding 5,000 times the minimum salary or total gross revenues exceeding 3,000 times the minimum salary.[392]

(ii) An SRL's subscribed capital must be totally paid-in at the time of the SRL's incorporation.[393]

(iii) Increases in an SRL's capital are permitted under Colombian law and are commonplace. Procedurally, such increases must be documented and evidenced via an amendment to the company's articles of incorporation.[394] The amendment to the articles is then filed with the Notary Public and the Chamber of Commerce.[395] This process may be subject to registration tax (a tax levied on instruments filed with notaries and Chambers of Commerce that have the effect of public documents) at a rate of 0.7% and to other administrative, notarial, and legal costs related to the preparation of the amendment to the articles.[396] If the capitalization includes a premium on capital, this will also be part of the basis for the transfer tax registration.[397] The rate to be applied will depend on the decision of the Departmental Assembly with jurisdiction over the place where the event will be recorded, and also on whether the event involved paid-in shares (in which case the rate will range from 0.1% to 0.3%) or not (in which case the rate will be 0.7%).[398] Any sale of the company's quotas requires a statutory amendment of the company bylaws and is subject to a registration tax (at the rate of 0.7%).[399]

(iv) Colombian entities, including SRLs, are required to fund a legal reserve. The legal reserve of an entity must be funded by allocating at least 10% of the net revenues of each accounting period until the amount of the reserve reaches at least 50% of the subscribed capital. However, if no income is realized the legal reserve cannot be funded.[400]

4. Joint Venture (Contrato de Cuentas en Participación)

A *Contrato de Cuentas en Participación* is a contractual relationship under which two or more parties form an association to carry out a specific venture, for profit, outside the parameters of a duly organized form of business association, i.e., without creating a separate legal entity.[401]

Under the *Contrato de Cuentas en Participación*, the parties are free to agree on their contributions to their common venture. One of the parties to the arrangement (the *partícipe gestor*) is required to be the legal representative of the association *vis-à-vis* the public at large.[402] The *partícipe gestor* is liable for the actions of the venture up to its total net worth, while the other members (the *partícipes ocultos*) are responsible for the venture's actions to the extent of their contributions, unless they disclose or authorize the disclosure of their participation in the venture, in which case they will be jointly liable with the manager.

5. Consortia and Temporary Union

The procurement laws of Colombia, as enacted in 1993, allow individuals and legal entities to enter into ventures to subscribe to and execute contracts with the Government at any level. The law provides for two types of joint ventures:[403]

(i) A consortium, in which two or more entities present a proposal for the adjudication, acceptance and execution of a contract. The entities are jointly liable for all obligations resulting from the execution of the contract, including penalties in the case of a breach.[404]

(ii) A temporary union, in which two or more entities present a proposal for the adjudication, acceptance and execution of a contract and each party is jointly liable for each other party's obligations resulting from the contract, except penalties. Under a temporary union, penalties are imposed on the party that fails to perform its duties under the contract.[405]

Consortia and temporary unions in Colombia are associative figures without legal personality that may only execute government contracts. In terms of commercial regulation, however, the companies that make up a consortium or temporary union are separately liable.

6. Trusts

A trust (*fiducia*) is defined for Colombian purposes as a contract under which a trustee receives funds or property from a grantor to be used for a special purpose.[406]

The property or corpus placed into trust on settlement of the trust is then deemed to constitute, under Colombian Civil law, the patrimony of the trust and is designated thereafter as an "autonomous patrimony" (*patrimonio autónomo*).

The grantor and the beneficiary may be the same person, or the grantor may designate a third party as the beneficiary of the trust.[407] Only special financial service entities, called Trust Companies, authorized by and under the surveillance of the Superintendence of Finance may act as trustees.[408]

[390] Col. Com. C., art. 371.
[391] See U.S. Treas. Regs. §301.7701-1–§301.7701-3.
[392] Law 43/1990, art. 13.
[393] Col. Com. C., art. 354.
[394] Col. Com. C., art. 360.
[395] Col. Com. C., art. 360.
[396] Col. Com. C., art. 361.
[397] Law 223/1995, art. 229, as amended by Law 1607/2012.
[398] Law 223/1995, art. 230, as amended by Law 1607/2012.
[399] Col. Com. C., art. 462.
[400] Col. Com. C., art. 452.
[401] Col. Com. C., arts. 507 and 509.
[402] Col. Com. C., art. 510.
[403] Law 80/1993.
[404] Law 80/1993, art 7.6.
[405] Law 80/1993, art 7.7.
[406] Col. Com. C., art. 1226.
[407] Col. Com. C., arts. 1226–1228, 1235–1236.
[408] Col. Com. C., art. 1226.

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Trusts are commonly used in Colombia, especially to develop construction infrastructure projects. The main characteristic of a Colombian trust is that the grantor has the power to adopt decisions regarding the sale or transfer of property, notwithstanding the fact that the trustee has the legal title to the property, although it is held as an asset separate from its own equity.[409]

7. Sole Proprietorships

Law 1258 of 2008 made sole proprietorship entities obsolete because investors prefer to use a new type of entity, the SAS, which is described in III.E.2., above. Although sole proprietorships may still be used, the SAS is more flexible and allows investors to be more creative when designing the structure that they want to implement. This flexibility has made the SAS the most common corporate vehicle used by investors in Colombia.

Some of the benefits of the SAS over the sole proprietorship are as follows:

- Unlike sole proprietorships which can only have one shareholder, the SAS may have one or more shareholders without limitation.[410]
- Sole proprietorships require that the capital established in the company bylaws be contributed at the moment of incorporation.[411] The SAS on the other hand, allows its shareholders two years to contribute the capital stated in the company bylaws.[412]
- The owner of a sole proprietorship, whether as an individual or by means of other sole proprietorships that he owns, is barred from executing contracts with the sole proprietorship.[413] This limitation on the owner's actions do not apply in the context of an SAS.

8. Business Collaboration Agreements

Although this is not specifically set forth in law, Colombian entities are authorized to enter into contracts for business collaboration (for example, *Contrato de Cuentas en Participación* or joint ventures or partnership contracts for oil exploration), which do not give rise to a new legal person. The absence of rules on the subject gives the parties greater freedom to determine their internal relations, as well as the distribution of income and expenses resulting from their joint activity. The tax effects of these operations will fall directly on each of the parties in proportion to their participation.

[409] Col. Com. C., arts. 1233–1236.
[410] Law 1258/2008, art. 1.
[411] Col. Com. C., art. 353.
[412] Law 1258/2008, art. 9.
[413] Law 222, 1995, art. 75.

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IV. Principal Taxes

A. Sources of Authority in Tax

1. Organization of Tax Law

The provisions governing the Colombian tax system are primarily contained in the Constitution of 1991, which sets forth the general rules and principles and is the base for the Colombian Tax Code (*Estatuto Tributario Nacional* — Col. Tax C. or Tax Code), codified in Decree 624 of 1989.[414]

The Tax Code governs the principal taxes at a national level and represents the compilation of a series of laws and decrees, including the most recent tax reform, Law 2277 of 2022. At the local level, municipal authorities have restricted autonomy to regulate certain taxes, within their respective territories and limited only to such territories.

The Constitutional Court and the Council of State, two of the highest courts in the country, have the capacity to render decisions related to the interpretation of the tax system. Likewise, the Colombian Tax Authority (DIAN) issues official opinions regarding the tax regime (only binding for the DIAN and not for taxpayers), which are considered fundamental to interpreting tax collection requirements in Colombia.

2. Advance Tax Rulings

The DIAN does not issue private rulings to taxpayers, but individuals may request general opinions from the tax administration, which are made public. While taxpayers may choose to disregard the opinion of the DIAN, if they believe the interpretation is incorrect, opinions are not binding on them, but it is binding on the officials of the tax administration.

B. Income Tax

Income tax is a national tax levied on ordinary income and extraordinary income received during a tax year that produces a net increase in a person's (individual or legal entity) net wealth and is not otherwise exempted by law, minus costs, deductions and other items specifically allowed by law.[415]

The calculation of a person's income tax starts with the determination of ordinary and extraordinary gross receipts, excluding those receipts expressly established as not constituting income or capital gains, such as those referred to in articles 36 and 57-2 of the Tax Code. Refunds, rebates and discounts are then subtracted from gross receipts to obtain the person's net receipts. Net receipts are then reduced by subtracting the costs incurred in obtaining such receipts, if any, to arrive at gross income. Net income is obtained by subtracting from gross income the deductible expenses related to the production of that income. The result constitutes the base for income tax purposes (except when the law provides otherwise).

Far-reaching reforms pertaining to Colombian income tax were implemented under Law 2010 of 2019, enacted on December 27, 2019, which are effective from January 1, 2020, and, afterwards, modified by Law 2155 of 2021. Colombian income tax consists of two main components:

(i) Basic income tax: the basic income tax rate for national and foreign corporations and similar entities and foreign corporations that derive income through permanent establishments (PEs) located in Colombia is 35% for fiscal year 2022 onwards.[416]

The income tax surcharge for financial entities that was introduced by Law 2010 of 2019, was modified and extended until 2027 at a tax rate of 5% by Law 2277 of 2022. It is applicable to certain taxpayers in the financial industry sector (e.g., financial, insurance and reinsurance entities, stockbrokers, agricultural brokers, among others) that have a taxable income equal to or higher than 120,000 UVT. This surcharge should be paid in advance and is calculated based on the income tax base of the preceding taxable year.[417]

Additionally, Law 2277 of 2022 introduced a new surcharge for Colombian companies, PEs, and foreign companies that develop one or more of the following economic activities:[418]

a) Hard coal and lignite coal mining: at a rate of 0%, 5% or 10%, depending on the average price over the last 120 months, without including the months that have passed in the year of the tax return, in accordance with Art. 240 of Col.Tax.C., provided the taxpayer has a taxable income equal to or higher than 50,000 UVT;

b) Crude oil extraction: at a rate of 0%, 5%, 10% or 15%, depending on the average price over the last 120 months, without including the months that have passed in the year of the tax return, in accordance with Art. 240 of Col.Tax.C., provided the taxpayer has a taxable income equal to or higher than 50,000 UVT; and

c) Hydroelectric power generation: at a rate of 3% for fiscal years 2023, 2024, 2025 and 2026, provided the taxpayer has a taxable income equal to or higher than 30,000 UVT. This threshold shall be calculated on an aggregate basis for the activities carried out by related parties determined by Art.260-1 of Col.Tax.C.

(ii) Capital gains tax: this complementary income tax is levied on income such as that arising from the sale of fixed assets held for at least two years, donations, legacies and bequests. The capital gains tax rate is generally 15%, regardless of whether the taxpayer is a legal or natural person, and whether they are resident or nonresident.[419] For capital gains derived from lotteries, raffles, betting and the like, the rate is 20%.[420] Gains arising from the sale of fixed assets held for less than two years are subject to the general income tax rate. Net capital gains are calculated by subtracting capital gains that are expressly exempt and

[414] Available at http://www.secretariasenado.gov.co/senado/basedoc/estatuto_tributario.html.

[415] Col. Tax C., art. 26.

[416] Col. Tax C., art. 240. The definition of a permanent establishment (PE) for tax purposes can be found in Col. Tax C., art. 20-1.

[417] Col. Tax C., art. 240. Par.2.

[418] Col. Tax C., art. 240. Par.3.

[419] Col. Tax C., arts. 313, 314, 316.

[420] Col. Tax C., art. 317.

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occasional losses, as set forth by law, from gross capital gains.[421]

For the purposes of the basic income tax, the tax base for corporations and individuals could not be lower than the applicable presumptive income, which for fiscal years up to and including 2020 is set at 0.5% of net wealth on the last day of the previous taxable year.[422] The applicable rate has been reduced to 0% as from January 1, 2021.[423]

In addition to the foregoing, with regard to the calculation of the income tax, the law allows offsets (e.g., (i) the carry forward of losses within the next 12 fiscal years[424] and (ii) the excess of presumptive income over the income determined according to the ordinary system may be offset against the ordinary income within the following five years);[425] discounts (e.g., the discount of 100% of the VAT paid for the acquisition, construction or import of productive fixed assets);[426] and deductions (e.g., the deduction of 100% of all paid taxes, rates and contributions when they have been effectively paid, excluding income tax, wealth tax and tax paid under voluntary disclosure introduced by Law 2010 of 2019 and by Law 2155 of 2021),[427] which result in a reduction of the tax due. It is important to note that 50% of the financial transaction tax may be deducted from the income tax.

Deductions reduce the gross income while credits reduce the income tax to be paid by the taxpayer.

Law 1943 of 2018 and Law 2010 of 2019 introduced the *Régimen de Tributación Simple* ("simple tax regime"). The purpose of the simplified regime is to reduce the formal and substantive obligations of taxpayers in order to simplify compliance. The regime is optional and requires the filing of an annual tax return and payment of bi-monthly advances. Under article 907 of the Tax Code, the tax to be paid under this alternate regime integrates the Income Tax, the Consumption Tax, and the Industry and Commerce Tax (Turnover Tax).[428]

Individuals and entities that meet the following conditions may opt for the simple tax regime:

(i) Individuals developing an enterprise or companies of individuals that have Colombian tax residents as shareholders;

(ii) Individuals or legal entities with gross income (including both ordinary and extraordinary income) of less than 100,000 UVT in the prior tax year. For new entities, this requirement will be determined according to the gross income of the current fiscal year;

(iii) Individuals that render professional consulting and scientific services in which the intellectual factor predominates over the material factor, including liberal professions, may only be subject to the simplified tax regime if they have obtained for these concepts a gross income (including both ordinary and extraordinary income) of less than 12,000 UVT in the previous year;

(iv) If a shareholder has one or more enterprises or companies registered as taxpayers under the simplified regime, the gross income ceiling must be determined based on the consolidated gross income of all the enterprises or companies in proportion to their participation;

(v) If shareholders that are individuals own more than 10% in one or more companies that are not registered as taxpayers under the simplified regime, the gross income ceiling will be based on a consolidated basis in proportion to the participation;

(vi) If a shareholder is a manager in other companies, the gross income ceiling will be determined on a consolidated basis with the other companies that the shareholder manages.

The following taxpayers are not eligible for the simple tax regime:

(i) Foreign legal entities or their Colombian permanent establishments;

(ii) Individuals who are non-residents in Colombia or their permanent establishments.

(iii) Individuals residing in Colombia with an active employment contract;

(iv) Entities that are affiliates, subsidiaries, agencies or branches of foreign and domestic legal entities, or of non-resident individuals;

(v) Companies that are shareholders, subscribers, participants, settlors or beneficiaries of other Colombian companies or their entities abroad;

(vi) Financial entities; and

(vii) Individuals or legal entities engaged in any of the following activities: micro-credit activities; asset management, intermediation in the sale or leasing of assets, and/or activities generating passive income equal to or greater than 20% of their total gross income; factoring; financial advisory and/or credit structuring services; generation, transmission, distribution or commercialization of electric energy; vehicle manufacturing, importing or commercialization activity; fuel import activities; production or commercialization of firearms, ammunition and gunpowder, explosives and detonators; the companies that are the result of a spin-off, which has occurred in the five years prior to the time of the application for registration to the regime, and individuals or legal entities engaged in waste collection, processing, and commercialization activities, obtaining net profits exceeding three percent of their gross income.

Furthermore, individuals and legal entities opting for the simplified tax regime must be registered as payers of the single tax in the National Tax Registry (RUT) until January 31 of the taxable year in which they wish to apply this regime.[429] Foreign companies that have their effective management headquarters

[421] Col. Tax C., art. 311.
[422] Col. Tax C., art. 188.
[423] Col. Tax C., art. 188.
[424] Col. Tax C., art. 147.
[425] Col. Tax C., art. 189.
[426] Col. Tax C., art. 258-1.
[427] Col. Tax C., art. 115.
[428] Col. Tax C., arts. 905, 907.
[429] Col. Tax C., arts. 904 and 909.

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in Colombia may opt to be taxed under the simple taxation regime, provided they meet the requirements set out above. When a foreign company ceases to have its effective management headquarters in Colombia, it will cease to be a Colombian tax resident and, to that extent, it will not be able to benefit from the simplified tax regime.[430] The amount to be paid depends on the business activity and its gross ordinary and extraordinary income accrued during the taxable period, ranging between 1.2% and 8.3%:[431]

[430] Col. Tax and Customs Admin. Ruling 673/2023.

[431] Col. Tax C., arts. 908 nums. 1 through 54, covering small shops, minimarkets, micro markets, and hairdressers (Activity 1); wholesale and retail business activities, technical and mechanical services, among others (Activity 2); food and beverage dispensing activities and transportation (Activity 3); professional, consulting, and scientific services where intellectual expertise takes precedence over material factors, including services rendered by liberal professions (Activity 4).

Gross Annual Income		Consolidated Rate Under Simple Tax Regime				
Equal to or over (UVT)	Less than (UVT)	Activity 1	Activity 2	Activity 3	Activity 4	Activity 5
0	6,000	1.2%	1.6%	3.1%	5.9%	7.3%
6,000	15,000	2.8%	2.0%	3.4%	7.3%	8.3%
15,000	30,000	4.4%	3.5%	4.0%	12%	N/A
30,000	100,000	5.6%	4.5%	4.5%	14.5%	N/A

Additionally, taxpayers under the simple tax regime are also responsible for VAT or the Consumption Tax.[432] If taxpayers under the simplified regime are responsible for VAT on services provided under Activity 1,[433] they are not allowed to credit VAT paid against VAT collected on the services rendered.

If taxpayers under the simple tax regime provide services consisting in the sale of food and beverages, the consolidated rate under the simplified regime is increased by 8% corresponding to the Consumption Tax.

As a result of the declaration of unconstitutionality, taxpayers engaged in professional, consulting, and scientific services in which the intellectual factor predominates over the material component — including services rendered under liberal professions — and who are subject to the simple tax regime, must apply the tax rates previously established in numeral 3 of Article 42 of Law 2155 of 2021, as reflected in the table above.[434]

Taxpayers under the simplified regime are not subject to income tax withholding or self-withholding, and may not act as withholding agents, except in connection with salary payments.[435]

Taxpayers who fulfilled the requirements under Law 1943 of 2018 to be part of the simple tax regime, do not have to go through the procedure again for 2020.

C. Estate and Gift Tax

Colombia has no special estate or gift tax. However, inheritances, legacies and donations, along with other special cases, are taxed as capital gains and, therefore, are subject to a 15% tax rate rather than the basic income tax rates.[436] Lotteries, raffles, bets and the like are subject to a capital gain tax of 20%.[437]

[432] Col. Tax C., art. 915.
[433] Col. Tax C., art. 908, num 1.
[434] Tax Ruling 24 of 2024.
[435] Col. Tax C., art. 911.
[436] Col. Tax C., arts. 302, 313, 314.
[437] Col. Tax C., art. 317.

D. Value Added Tax

Value added tax (VAT) is levied on:[438]

(i) The sale of tangible movable assets (located in Colombia at the time of disposal) and immovable assets, except for those that are expressly excluded;

(ii) The sale or assignment of rights with respect to intangible goods associated with industrial property;

(iii) The rendering of services within Colombia or from abroad, except for services that are expressly excluded;

(iv) The importation of tangible goods, except for goods that are expressly excluded;

(v) The circulation, sale or operation of games of chance that are not operated online; and

(vi) In compliance with Law-Decree 175 of 2025, VAT also applies to games of chance that are operated exclusively online, whether conducted within the national territory or from abroad. These measures will remain in effect until December 31, 2025, after which online games of chance will no longer be subject to VAT.[439]

In general terms, VAT is not imposed on the sale of fixed assets, except in certain cases (such as the first sale of real property for residential purposes, motor vehicles and other fixed assets that are usually sold in the name of or on behalf of third parties, and aircraft).[440]

The following rules apply with regard to the rendering of services:

(i) Services connected with immovable property will be understood as rendered where the property is located;

(ii) Cargo loading, unloading, transfer and storage services, as well as services having a cultural and artistic

[438] Col. Tax C., art. 420.
[439] Col. Tax C., art. 420 and Law Decree 175 of 2025.
[440] Col. Tax C., arts. 420, 420-1.

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character, are taxed at the place where they are physically carried out; and

(iii) Services performed from abroad for a domestic entity or a resident individual are deemed to be performed in Colombia.

(iv) Intangibles acquired or licensed from abroad will be understood as acquired or licensed in Colombia.[441]

In general, merchants and importers are responsible for the collection of the VAT generated by transactions undertaken by them,[442] excluding artisans (retailers), small farmers and cattle ranchers as well as service providers, as long as they meet the following conditions:

(i) Their gross receipts, arising from the activity taxed with VAT in the previous or the current fiscal year, are of less than 3,500 UVT;[443]

(ii) They do not have more than one going concern;

(iii) The going concern, office, headquarters or business does not carry out activities under franchise, concession, royalty, authorization or any other system that implies the exploitation of intangibles;

(iv) They are not customs users (i.e., exporters or importers);

(v) They have not entered into contracts for the sale of goods and/or rendering services for an individual taxable value, equal to or greater than 3,500 UVT in the immediately preceding year or in the current year;[444] and

(vi) The amount of their bank deposits, deposits or financial investments during the previous year or during the current year corresponding to the activities taxed with VAT, does not exceed the amount of 3,500 UVT.[445]

Taxpayers under the simplified tax regime are not VAT responsible, if they only develop one or more activities established under num 1. Art. 908[446] of the Tax Code.[447]

Individual taxpayers under the simplified tax regime are not VAT responsible if their gross income is less than 3,500 UVT.[448]

The basis for calculating VAT is the total value of the relevant transaction, whether financed or not, including the expenses of financing, accessories, transportation and installation, insurance, warranties and commissions.[449] VAT imposed on the importation of goods is calculated based on the customs value under the applicable regulations, plus the corresponding customs duties.[450]

Unless a transaction is otherwise exempted, VAT is imposed at each stage of production based.[451] Generally, VAT paid on purchases and imports is creditable against the tax collected on sales, provided the purchases and imports may be treated as costs or expenses for income tax purposes.[452] VAT paid on the acquisition, importation, construction or production of fixed assets is creditable against income tax (see V.B.7.b., below).[453] In this case, the VAT is not creditable for VAT purposes.

VAT is levied at a general rate of 19% on both goods and services.[454] Special rates of 0% and 5% apply in certain cases, such as those listed in articles 468-1 (goods subject to the 5% rate) and 468-3 (services subject to the 5% rate) of the Tax Code.

The Colombian VAT system distinguishes between taxable, excluded (i.e., not subject to tax) and exempt or zero-rated transactions.[455] Only persons that engage in taxable or exempt transactions are entitled to credit the VAT paid on their inputs for VAT purposes.[456] In addition, persons that carry out exempt transactions (i.e., exporters) are entitled to claim a refund of credit balances resulting from VAT returns, a possibility that is generally not afforded to persons carrying out taxable transactions.[457]

For further research on Colombia's VAT system, see the VAT Navigator.

E. Capital Investment Tax

Colombia has no capital investment tax.

F. Payroll Tax

See II.E.3., above.

G. Trade Tax

Colombia has no trade tax.

H. Wealth Tax

During the fiscal years 2007–11, income taxpayers who had a net worth exceeding COL 3 billion were subject to a net worth tax. Only certain items specifically designated by law, such as shares in Colombian companies, were excluded from the tax base. The applicable rate was 1.2% for each of the years 2007 to 2010 and of 2.4% or 4.8%, depending on the net worth of the taxpayer, for the year 2011 (the tax for 2011 being payable in eight installments, between 2011 and 2014).[458] It should be noted that, for 2011, net worth for purposes of the tax was measured as of January 1 of that year (even though the deadline for payment was extended until 2014) and, therefore, it does not take into account later changes in the net worth of the taxpayer nor does it affect entities created after that date.[459]

[441] Col. Tax C., art. 420, para. 3.
[442] Col. Tax C., art. 437.
[443] Col. Tax C., art. 437, para. 5. This limit shall be of 4,000 UVT for those individuals who generate their income from contracts with the Government.
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[446] Col. Tax C., art. 908, num. 1. Covering small shops, minimarkets, micro markets, and hairdressers (Activity 1).
[447] Col. Tax C., art. 437, para. 4.
[448] Col. Tax C., art. 437, para. 4.
[449] Col. Tax C., art. 447.
[450] Col. Tax C., art. 459.
[451] One exception to this rule concern some petroleum derivatives with respect to which VAT is due only in the case of operations entered into by the producer or importer (or their related parties). Col. Tax C., art. 444.
[452] Col. Tax C., art. 488.
[453] Col. Tax C., art. 258-1.
[454] Col. Tax C., art. 468.
[455] Col. Tax C., arts. 424, 477, 481.
[456] Col. Tax C., arts. 485, 489, 490.
[457] Col. Tax C., art. 850.
[458] Law 1111/2006, art. 29
[459] Col. Tax C. art. 294-1.

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Law 1739 of 2014 introduced a net worth tax called the wealth tax for fiscal years 2015 to 2017 (and 2018 for individuals). Then, Law 1943 of 2018, once again introduced a net worth tax for fiscal years 2019, 2020 and 2021. Although Law 1943 was declared unconstitutional, it was effective for fiscal year 2019. This tax was then re-introduced by Law 2010 of 2019 for fiscal years 2020 and 2021.

Law 2155 of 2021 neither extended the duration of the net worth tax introduced by Law 2010 of 2020, nor did it create a new one. However, Law 2277 of 2022 permanently reintroduced a net worth tax for the following individuals or entities who — from January 1 of each year — hold net equity (gross assets minus debts) that is equal to or higher than 72,000 UVT,[460] based on the value of their assets, unless otherwise provided under international treaties or domestic law:

(i) Individuals and unliquidated successions that are income taxpayers in Colombia, on their worldwide wealth;

(ii) Foreign or Colombian individuals that are non-tax residents, with respect to their wealth held in Colombia (directly or indirectly through a PE situated in Colombia), according to the equity attributable to the PE in accordance with article 20-2 of the Col.Tax.C.;

(iii) Unliquidated successions of individuals who were non-tax residents in Colombia at the time of their death, with respect to their wealth held in Colombia; and

(iv) Foreign entities that are not income taxpayers in Colombia, with respect to their wealth held directly in Colombia (e.g., real property, yachts, artwork, among others), excluding shares, accounts receivable and portfolio investments (that comply with the foreign exchange regime) in accordance with article 2.17.2.2.1.2 of Decree 1068 of 2015 and article 18-1 of the Tax Code.[461][462]

Individual taxpayers are entitled to deduct the first 12,000 UVT of their residential property from their taxable base.[463]

The following rules show how to determine the taxable base:[464]

(i) The value of the shares of national entities that are not listed on the Colombian stock exchange or on any other known international stock exchange (according to the Colombian Tax Authority) is the fiscal cost updated annually based on Art.73 of the Col.Tax.C. from the date of its acquisition. Shares or quotas that were acquired prior to 2006, shall be deemed to have been acquired after 2006. If the intrinsic value of the shares is lower than the fiscal cost accrued, the intrinsic value will be used as part of the tax base instead of the fiscal cost;

(ii) The value of the shares of national entities that are listed on the Colombian stock exchange or on any other known international stock exchange (according to the Colombian Tax Authority) is the average stock market price for the year or fraction of year of the immediate prior year; and

(iii) Participation in private interest foundations, trusts, cash value life insurance, investment funds or any other fiduciary business abroad based on articles 271-1 and 288 of the Col.Tax.C., will be assimilated to fiduciary rights.

The wealth tax's rate is progressive and should be determined as follows:[465]

UVT		Rate
From	To	
>0	72.000	0%
>72.000	122.000	0.5%
>122.000	239.000	1%
>239.000		1.5% This tax rate will only be applicable until 2026. From 2027 the tax rate will be increased by 1% according to the rules and thresholds mentioned before.

The net worth tax is neither deductible nor creditable against the income tax.[466] Taxpayers not liable for the net worth tax may file the return and pay it voluntarily.

I. Consumption Tax

Colombia levies a national consumption tax on the following:[467]

(i) Mobile communication, internet and data services are taxable at a rate of 4% of the price charged to the consumer, not including sales tax. The taxable base for this service will be the amount exceeding 1.5 UVT.

(ii) Motor vehicles, ships, aircraft, and other vehicles referred to in articles 512-3 and 512-4 of the Tax Code are taxable at a rate of 8% or 16% (depending on certain characteristics) of the total value paid by the acquirer, excluding sales tax. Article 512-5 of the Tax Code, in turn, excludes some vehicles (for example, cars, taxis and other public service vehicles classifiable under tariff heading 87.02, 87.03, and 87.04) from the imposition of this tax. Thus, sales of motor vehicles, ships, aircraft and other vehicles referred to in articles 512-3 and 512-4 are not subject to this tax if they are considered fixed assets of

[460] Col. Tax C., art. 294-3.

[461] Decree 1068/2015, art. 2.17.2.2.1.2.

[462] Col. Tax and Customs Admin. Ruling 10028192-619/2023 confirms that the taxable base of this tax for foreign companies that are not income tax payers in Colombia corresponds to the company's gross equity as at January 1 of each year in Colombia, minus any debts owed by the company as at January 1 of each year, excluding the value of shares, accounts receivable, and/or portfolio investments owned in Colombia.

[463] Col. Tax C., art. 295-3.

[464] Col. Tax C., art. 295-3.

[465] Col. Tax C., art 296-3.

[466] Col. Tax C., art. 298-6.

[467] Col. Tax C., art. 512-1.

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the seller. This excludes vehicles, the sale of goods in the name and on behalf of third parties, and aircraft.

(iii) Food and beverage services rendered in restaurants, cafeterias, self-service shops, ice cream shops, fruit shops, and bakeries, for table service, take out or deliveries, as well as catering and food and alcoholic beverage services in bars, taverns and discos, are taxable at a rate of 8%.[468] The consumption tax does not apply when the sale of food and beverages is carried out through franchising activities (VAT will apply instead).

The sale of goods and services carried out in the Amazonas and San Andres, Providencia and Santa Catalina departments are excluded from this tax with the exception of the sale of yachts, ships and boats under tariff heading 89.03, when the free-on-board (FOB) value exceeds 30,000 UVT and helicopter and airplanes for private use, under tariff heading 88.02.[469]

Individuals rendering services in bars and restaurants with a gross income below 3,500 UVT and with no more than one ongoing concern, are not taxpayers for purposes of the consumption tax.[470]

For fiscal year 2022, taxpayers under the simple taxation system, will not be liable for the national consumption tax of restaurants and bars, provided they only sell food and beverage as referred to in numeral 4, Art.908 of the Tax Code.

1. Medical Cannabis

The national consumption tax on medical cannabis is levied on the sale of products processed from psychoactive or non-psychoactive cannabis,[471] on the date on which the invoice or equivalent document is issued, or at the time of delivery, depending on the taxable event.[472]

The person liable for the consumption tax on medical cannabis is the processor, meaning the purchaser or producer of cannabis, regardless of whether the cannabis is psychoactive or non-psychoactive. The taxable base is the total value of the final product of the processor or the person responsible for the tax, not including the sales tax.[473] The tax is levied at a general rate of 16% of the total value of the final product in any of its incarnations.[474] The tax is a deductible cost for income tax purposes.

The consumption tax on medical cannabis may not be set off against the sales tax (VAT).[475]

2. Plastic Bags

As a national consumption tax on plastic bags is levied on the delivery of any plastic bag whose purpose is to carry products sold by an ongoing concern.[476] In all cases, the invoice or equivalent document must expressly state the number of bags and the amount of tax levied.

The tax rate is COP$70.

This rate will be updated annually by a percentage equivalent to the variation in the consumer price index certified by the Administrative Department for Statistics (DANE), as of November 30 of each year, rounded to the nearest peso. The DIAN will certify and publish the updated rates before January 1 of each taxable year.

Taxpayers for the purposes of this tax are individuals and legal persons that are subject to the common VAT system.

The consumption tax on plastic bags cannot be treated as a deductible cost or tax.

The rate for plastic bags that carry some environmental benefit is 0%, 25%, 50%, or 75% of the total value of the tariff, according to their level (from 1 to 4) of impact on the environment and public health, as defined by the Ministry of Environment and Sustainable Development.

Under the new law, the Ministry of Environment is required to carry out a study of industry standards on the level of degradability of plastic materials in landfills, as well as studies on the characterization of plastics as waste and feasible environmental solutions for them.

The following plastic bags are not subject to this tax:[477]

(i) Bags whose purpose is not to load or carry products purchased from an on-going concern;

(ii) Bags that are used as packaging material for pre-packaged products;

(iii) Biodegradable bags certified by the Ministry of Environment and Sustainable Development; and

(iv) Reusable bags that, according to the regulations, possess technical and mechanical characteristics that allow them to be used a number of times without requiring any transformation process.

J. Fuel Tax

The national tax on gasoline and diesel fuel is levied on the sale, withdrawal of inventory, importation for own consumption or importation for sale of gasoline and diesel fuel, and is only triggered once, depending on which taxable event occurs first.[478] The tax is levied on a sale made by a producer, on the date on which the relevant invoice is issued; on a withdrawal of inventory, on the date of the withdrawal; and on import, on the date on which the gasoline or the diesel fuel is imported.

The amount of the tax is COP 663.16 per gallon of regular and COP 1,258.66 per gallon of premium gasoline, and COP 634.74 per gallon of diesel fuel, as adjusted on February 1 of each year, based on the inflation rate for the previous year.[479]

The sale of marine diesel and fuel used to refuel ships in international traffic is considered an export and, therefore, such refueling is not subject to tax.

The Ministry of Mines and Energy is responsible for distributing fuel in provinces or *departamentos* located in border

[468] Col. Tax C., arts. 512-8 to 512-13.
[469] Col. Tax C., art. 512-7.
[470] Col. Tax C., art. 512-13.
[471] Col. Tax C., art. 512-17.
[472] Col. Tax C., art. 512-21.
[473] Col. Tax C., art. 512-19.
[474] Col. Tax C., art. 512-20.
[475] Col. Tax C., art. 512-21.
[476] Col. Tax C., art. 512-15.
[477] Col. Tax C., art. 512-16.
[478] Law 1607/2012, art. 167.
[479] Law 1607/2012, art. 168. Updated rates according to Ruling 08/2025 issued by Colombian National Tax Authority (DIAN), effective from February 1, 2025.

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zones. Such distribution is exempt from sales tax, customs duties and the tax on gasoline and diesel fuel.[480]

K. Carbon Tax

The national tax on carbon is levied on the sale, withdrawal of inventory, importation for own consumption or importation for sale of fossil fuels, including all oil products and all types of gas used for energy purposes, provided such fuels are used for combustion processes, and is only triggered once, depending on which taxable event occurs first.[481]

The sale of marine diesel and fuel used to refuel ships in international traffic is considered an export. Consequently, refueling is not subject to tax.

The amount of the tax is COP 27,399.14 per ton of CO2 and the amount per unit is as follows, depending on the product:[482]

Fossil Fuel [483]	**Unit**	**Amount**
Natural gas	Cubic meter	COP 42.16
Liquefied petroleum gas	Gallon	COP 179.10
Gasoline	Gallon	COP 197.93
Kerosene	Gallon	COP 263.30
Jet fuel	Gallon	COP 269.98
Diesel fuel	Gallon	COP 223.69
Fuel oil	Gallon	COP 318.10
Carbon	Tons	COP 69,787.61

The above rates are adjusted on February 1 of each year, based on the inflation rate for the previous year, plus one point, until it is equivalent to one UVT per ton of CO2. Consequently, the values per unit of fuel will grow at the same rate.

The tax on carbon is deductible for income tax purposes at an adjusted value, in accordance with article 115 of the Col. Tax C. and article 222 of Law 1819 of 2016 (paragraph 2) modified by article 48 of Law 2277 of 2022, and should be determined as follows:[484]

Year	**Rate**
2023 and 2024	0%
2025	25% of the fixed rate
2026	50% of the fixed rate
2027	75% of the fixed rate
2028 onwards	100% of the fixed rate

Law Decree 175 of 2025 established a temporary tax on the sales of fossil fuels and coal extracted from Colombian national territory. This tax applies, at present, on the first sale or export and specifically covers the exploitation of coal, briquettes, ovoids, and other similar solid fuels containing carbon, as well as crude oils derived from petroleum or bituminous minerals. The tax rate is set at 1% of the sales value for transactions within the national territory and 1% of the Free on Board (FOB) value for exports. The provisions of this decree remain in effect until December 31, 2025.

L. Local Taxes

1. Industry and Commerce Tax

Industry and commerce tax (ICA) is a turnover tax levied by the municipalities on all commercial, industrial and services activities performed within their jurisdiction, whether directly or indirectly, by individuals, corporations and other legal entities.

The taxable base for ICA purposes comprises all ordinary and extraordinary income less: (i) income attributable to exempt or excluded or activities that are not subject to tax; (ii) refunds, rebates and discounts; (iii) the value of exported goods or services; and (iv) the amount of fixed assets sold in the corresponding taxable period.[485] Each municipality is free to fix an applicable tax rate within the following ranges, established by law: (i) 0.2% to 0.7% for industrial activities; and (ii) 0.2% to 1% for commercial activities and the rendering of services. In the case of Bogota, rates can theoretically range from 0.2% to 3%, but the enacted rates range between 0.414% and 1.104%. The relevant municipal authorities establish the special requirements and filing dates that must be met by taxpayers (in practice, this has been bi-monthly for Bogota and annual for most other municipalities).

Liability for ICA is mainly determined by the jurisdiction in which the relevant industrial or commercial activity is performed, or in which the relevant service is rendered. However, other rules may be applicable, as follows:[486]

(i) In the case of industrial activities, income is subject to tax in the jurisdiction in which a factory is located, the tax liability in that jurisdiction being determined based on the gross income derived from the commercialization of the goods that have been produced in that factory.

(ii) In the case of commercial activities:

- Income from activities carried on through an ongoing concern is subject to tax in the jurisdiction in which the ongoing concern is located;
- Income from activities carried on not through an ongoing concern is subject to tax in the jurisdiction in which the relevant sale is concluded;

[480] Law 1607/2012, art. 173.

[481] Law 1819/2016, art. 222.

[482] Law 1819/2016, art. 222. Updated rates according to Ruling 08/2025 issued by the Colombian National Tax Authority (DIAN), effective from February 1, 2025.

[483] Carbon Tax for Gasoline Jet Fuel and Diesel Fuel will be of 0% in the Amazonas, Caquetá, Guainía, Vichada, Guaviare, Putumayo, Vaupes and the municipalities of Sipí, Riosucio, Alto Baudó, Bajo Baudó, Acandí, Unguía, Litoral de San Juan, Bojayá, Medio Atrato, Bahía Solano, Juradó and Carmen del Darién in Choco, provided those municipalities and departments neither carry out exploitation activities nor refining of fuels.

[484] Law 1819/2016, art. 222, par 6.

[485] Decree 1333/1986 art. 196.

[486] Law 1819/2016, art. 343.

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• Income from direct sales to consumers via mail, catalogs, online purchases, telemarketing and electronic sales is subject to tax in the jurisdiction in which the goods or merchandise are shipped; and

• Income from investment activities is subject to tax in the jurisdiction in which the headquarters of the investing company are located.

(iii) In the case of the rendering of services, income is subject to tax in the jurisdiction in which the relevant service is rendered, subject to the following exceptions:

• Income from transportation services is subject to tax in the jurisdiction from which the goods are shipped or from which passengers take off;

• Income from subscription television and internet services and fixed telephony is subject to tax in the jurisdiction in which the subscriber to the relevant service is located; and

• Income from mobile telephone, mobile navigation and data services is subject to tax in the user's domicile as registered at the time the original contract for the relevant service is signed or in a document updating that contract.

2. Municipal Real Estate Tax

Owners and tenants (among other kinds of taxpayers) of real property must make annual payments of municipal real estate tax. Every municipality (or district in some cases) can establish an applicable rate within a range of 0.1% to 3.3% of the real property appraisal.[487]

Rates for most types of real property range from 0.1% to 1.6%, while rates of between 1.6% and 3.3% are normally reserved for undeveloped urban land. The appraisal to be used for computing the tax cannot be lower than the administrative appraisal (known as the "*avalúo catastral*") which, in principle, should not be lower than 60% of the market value of the property.[488]

M. Registration Tax

For a discussion of the registration tax, see V.C.1., below.

N. Plastics Tax

Article 51of Law 2277 of 2022 introduced a new tax in Colombia on single-use plastic products used for wrapping or packaging goods. The tax applies to sales by producers, withdrawals for own consumption, and imports of single-use plastic products used to wrap, pack, or package goods (except those used to wrap, pack or package medicines and hazardous waste). It does not apply to sales of goods already wrapped, packed, or packaged in single-use plastic products.

The tax is calculated based on the weight of the plastic in grams at the rate of 0.00005 UVT per gram.[489]The taxpayer is the relevant producer or importer who is responsible for the collection and payment of the tax to the Colombian Tax Authority.

Certain plastic products, such as items listed in Paragraph 5 of Law 2232 of 2022, are exempt from single-use plastic products tax.

The tax is not deductible or creditable against income tax. Penalty for the failure to declare the tax is equivalent to 20% of the value of the tax that should have been paid.[490]

O. Junk Food Tax

1. Sugary Beverages

An excise tax on ultra-processed sugary beverages is levied on their production, sale, withdrawal for inventory or any other act that involves an ownership transfer (free or for a consideration) and its import (including power blends).[491]It is imposed upon issuance of an invoice or equivalent document or, in the absence thereof, at the time of delivery or withdrawal or on the date of nationalization of imported beverages. [492]

Producers or importers of such products are responsible for collecting and paying the Ultra-processed Sugar Sweetened Beverages Tax to the Colombian Tax Authority.[493] However, producers and importers with gross taxable income below 10,000 UVT in the previous or current year are not subject to this tax.[494]

The taxable base is the sugar content in grams per 100 milliliters of the beverage. The tax rates vary depending on the year in question and the sugar content of the beverage:[495]

Content in 100 ml	Tax Rate: 2023	Tax Rate: 2024
Less than 6 grams of added sugar	$0	$0
Equal or more than 6 grams and less than 10 grams of added sugar	$18	$28
Equal or more than 10 grams of added sugar	$35	$55

Content in 100 ml	Tax Rate: 2025
Less than 5 grams of added sugar	$0
Equal or more than 6 grams and less than 10 grams of added sugar	$38
Equal or more than 10 grams of added sugar	$65

From 2026 onwards, the tax rate will be adjusted annually on January 1 by the same percentage as the increase in the UVT.[496]

[487] Law 1450/2011, art. 23.
[488] Law 1450/2011, art. 24.
[489] Law 2277/2022, art. 51
[490] Col. Tax C., art. 643(11).
[491] Col. Tax C., art 513-1.
[492] Col. Tax C., art 513-5.
[493] Col. Tax C., art 513-2.
[494] Col. Tax C., art 513-2.
[495] Col. Tax C., art 513-3.
[496] Col. Tax C., art 513-4.

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The tax does not apply to exported products or donations to non-profit food banks qualifying for the special tax regime or products recognized by the Ministry of the Interior. Other exempted items include baby formulas, medicines with added sugar, liquid or powder products for nutritional therapy and electrolyte solutions for oral consumption to prevent dehydration.[497]

The tax on ultra-processed sugar sweetened beverages is a deductible cost, for income tax purposes, for buyers under Article 115 of the Tax Code. It is not creditable for VAT purposes. The invoice must explicitly specify the amount of tax levied, independently of VAT.

This tax is not levied on the export of the relevant products and the donation by the producer or importer to food banks that are considered as non-profit entities under the special tax regime or food banks of the churches recognized by the Ministry of the Interior.

This tax is deductible for income tax purposes for the buyers (as per Article 115 of the Tax Code) and not deductible for VAT purposes.

2. Ultra-processed Food

This tax is levied on the production, sale, inventory withdrawals, any transfer of ownership and importation of ultra processed food products that contain added sugars, sodium, and saturated fats exceeding accepted nutrient thresholds. For these purposes, ultra-processed products are defined as industrially manufactured formulations made from substances derived from food or synthesized from other organic substances. The main ingredients in ultra-processed products are typically additives such as emulsifiers, stabilizers, flavorings, and preservatives.

The tax on industrially ultra-processed edible products and/or with a high content of added sugars, sodium or saturated fats applies to products with nutritional values exceeding the following thresholds for sodium, sugar and saturated fats:[498]

Nutrient	Per 100 g
Sodium	Equal or more than 1mg/kcal and/or equal or more than 300 mg/100 g
Sugar	Equal or more than 10% of the total energy from free sugars
Saturated fats	Equal or more than 10% of the total energy from saturated fats

The producers and importers are responsible for the collection and payment of the tax.[499] However, producers and importers with gross taxable income below 10,000 UVT in the preceding or current year are not subject to this tax. They may, however, make tax-exempt donations to food banks operating under non-profit status or those affiliated to churches recognized by the Ministry of Interior.

The tax rates are progressive: 10% for the fiscal year 2023, 15% for 2024, and 20% from 2025 onwards. The tax is calculated based on the sale price of the relevant domestically produced goods, commercial price for inventory withdrawals, and the assessed value for customs duties in the case of imports. This tax does not apply to exported products.

Certain food items, such as sausage, mortadella, butifarra, corn, flour, groats, semolina, bread, wafers and vegetables preserved in vinegar or acetic acid, are also exempt.

This tax is deductible for income tax purposes for buyers (as per Article 115 of the Tax Code). It is not creditable for VAT purposes. Invoices must explicitly specify the amount of tax levied, independently of VAT.

The tax on ultra-processed edible products and/or with a high content of added sugars, sodium or saturated fats is designed to discourage the consumption of unhealthy food and generate additional public resources that contribute to the financing of the national health system.

P. National Stamp Tax

The National Stamp Tax was first introduced by Law 43 of 1986 and subsequently modified by Law 1111 of 2006. This tax was levied at a rate of 1% until 2008, 0.5% until 2009 and at a rate of 0% from 2010 until 2022.

Following changes introduced by Law 2277 of 2022, transfers of real estate property are subject to stamp tax as well as registration tax, except in the case of transfers of real estate with a value below 20,000 UVT. The stamp tax also applies to mortgage constitution or cancellation, including open mortgages.[500]

As from 2023, the rate of tax levied on public deeds concerning the sale of any real estate property with a value equal to or exceeding 20,000 UVT, will be determined according to the following table:[501]

UVT Range	Marginal Rate	Tax Rate
0	20,000	0%
>20,000	50,000	1,5%
>50,000	>50,000	3%

In 2025, Decree Law 175 introduced a temporary change to paragraph 2 of Article 519 of the Colombian Tax Code, increasing the stamp tax rate from 0% to 1%, effective from February 22, 2025, until December 31, 2025.

However, these changes do not apply to real estate transactions. The stamp tax on real estate, specifically governing the transfer of real property, continues to be regulated by Law 2277 of 2022 and is subject to the provisions of paragraph 3 of Article 519.

The stamp tax applies to public instruments and private documents, including securities, when their value exceeds 6,000 UVT. The tax is triggered when these documents formalize the creation, existence, modification, extinction, extension, or assignment of obligations, and when they are granted or accepted within Colombia or generate obligations within the national territory. Additionally, the stamp tax applies when a public entity, a legal entity, or a natural person with merchant

[497] Col. Tax C., art 513-5.
[498] Col. Tax C., art. 513-6.
[499] Col. Tax C., art. 513-7.
[500] Col. Tax C., art 519.
[501] Col. Tax C., art 519. Para 3.

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status (whose gross income or assets exceed 30,000 UVT in the preceding year) is involved as a grantor, acceptor, or subscriber.

The law also establishes a list of 52 exceptions to the stamp tax, including the importation of goods and services, as well as commercial offers accepted through purchase orders. Other exemptions include documents formalizing the creation or modification of obligations related to external credit, and transactions involving shares, bonds, and their assignment or endorsement.

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V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

For tax purposes, domestic corporations are entities:[502]

(i) That, over the course of the relevant tax year, have their effective management headquarters (defined as the place at which material business and management decisions are made) in Colombia;[503]

(ii) Whose principal place of domicile is in Colombia; or

(iii) That are constituted in Colombia, in accordance with Colombian law.

As discussed in VI. and VII., below, branches of foreign companies and permanent establishments (PEs) are treated for taxation purposes as Colombian entities and are taxed on their worldwide source income and assets attributable to the branch or PE in Colombia.[504]

B. Corporate Income Tax

1. In General

Under Colombian tax law, there are two types of taxable entities of which foreign investors should be aware: resident entities and branches of foreign companies registered to conduct business in Colombia. The taxation of these entities is different in that the former are taxed on a worldwide basis[505] and the latter are only taxed on their Colombian-source income and their foreign-source income that is attributable to the operation of the branch.[506] The income tax rates for legal entities are as follows:

(i) The basic income tax rate is 35% for fiscal year 2023 onwards.[507]However, Law 2277 of 2022 introduced a new 15% minimum tax for all legal entities that are income taxpayers and for entities that operate in free trade zones. The tax rate is calculated by dividing the adjusted income tax by the adjusted profit.[508]

This minimum tax rate is not applicable to:

- Foreign entities;
- Entities incorporated as special economic and social development zones ("ZESE")[509]; and
- Companies that operate in areas of armed conflict (ZOMAC).

(ii) Capital gains (including profits from the sale of assets held for more than two years) are taxed at a rate of 15%.[510]

Most legal entities — including a *Sociedad Anónima* (SA), a *Sociedad de Responsabilidad Limitada* (SRL) and a branch — are taxed at the entity level.[511] Colombia has no pass-through entity concept, such as applies to partnerships under Subchapter K of the I.R.C. of the United States. However, pass-through treatment for income taxation purposes is available with respect to temporary union, consortium and joint venture-type arrangements, as they have no legal personality and are not designated as taxpayers for purposes of income tax (although they are considered taxpayers for purposes of industry and commerce tax (ICA), valued added tax (VAT) and withholding taxes). The above rules apply provided that the contracting parties did not intend to associate themselves by creating a new (separate) entity under these arrangements. If the parties did so intend, the arrangement would give rise to a *sociedad de facto* or irregular entity that would be liable to the various Colombian taxes discussed in this Portfolio.[512]

Colombia imposes corporate-level income taxation not only on private for-profit entities, such as typical SAs and SRLs,[513] but also on some state-owned entities, which include mixed-economy entities (companies consisting of government and private shareholder interests), public funds, and the National Telecommunications Company (known as "Telecom").[514] Nonprofit organizations are subject to a special tax regime.[515] However, the Colombian Government and its agencies, districts, municipalities, government regulatory agencies and indigenous people associations, among other state organizations, are not considered taxpayers and, as such, are not subject to corporate income tax.[516] Additionally, under Colombian tax law, the following institutions are not considered income tax payers:

(i) Legally organized labor unions;

(ii) Universities organized as nonprofit organizations;

(iii) Political parties;

(iv) Religious congregations organized as nonprofit organizations;

(v) Alumni associations; and

(vi) Hospitals organized as nonprofit organizations.[517]

Nonprofit organizations may be exempt if their operating profits are earmarked to cover health, formal education, cultural, scientific research, ecology or social development programs.

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[502] Col. Tax C., art. 12-1.

[503] According to the reforms introduced by Law 2277 of 2022, the "effective headquarters" of a company is the place where the business and management decisions necessary to carry out the company's activities on a *day-to-day* basis are materially made. Col. Tax C., art 12-1.

[504] Col. Tax C., arts. 12, 20, 20-2 and Law 1943/2018, art. 58.

[505] Col. Tax C., art. 12.

[506] Col. Tax C., arts. 12, 20, 20-2 and Law 2010/2019, art. 66.

[507] Col. Tax. C., art. 240.

[508] Col. Tax. C., art. 240, par 6.

[509] The Special Economic and Social Zones (ZESE as per its acronym in Spanish) are designated areas aimed at fostering economic and social development by attracting national and foreign investment. Established by Law 1955 of 2019, the ZESE seek to improve living conditions and create employment in regions with high unemployment rates. This special regime is implemented in the departments of La Guajira, Norte de Santander, and Arauca, as well as in the capital cities of Armenia and Quibdó.

[510] Col. Tax C., arts. 313, 314.

[511] Col. Tax C., arts. 13, 14.

[512] Col. Tax C., arts. 18, 368, 437.

[513] Col. Tax C., art. 16.

[514] Col. Tax C., art. 17.

[515] Col. Tax C., arts. 19, 22, 23.

[516] Col. Tax C., art. 22.

[517] Col. Tax C., arts. 23-1, 23-2; Decree 1625/2016, art. 1.2.1.4.1.

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2. Foreign Corporations

See VI. and VII., below.

3. Basis of Taxation

As indicated in V.B.1., above, Colombia uses a worldwide basis of taxation (i.e., resident entities are subject to tax on their worldwide income and PEs are subject to tax on their Colombian-source income and their foreign-source income that is attributable to the operation of the PE). Foreign companies (not including PEs) are subject to tax on their Colombian-source income.[518] For a description of what is considered Colombian-source income, see V.B.5.c., below.

4. Tax Accounting

a. In General

Colombia does not have a specific "tax accounting" system. Thus, taxpayers are required to keep their books in accordance with the financial accounting rules that apply to them, making specific adjustments to reflect the difference between the accounting and tax treatment of a particular economic event (for example, the use of different depreciation methods for accounting and tax purposes). In any case, it is not necessary to include tax options in the financial statements following the 'independence and autonomy' of financial accounting from tax rules established in Law 1314 of 2009, which adopted IFRS (for a more complete description of description of financial accounting, see V.D.1., below). The computation of taxable income is based on the accounting results and complemented by numerous special tax rules or adjustments pursuant to more than 916 articles of the Tax Code. Therefore, taxpayers are obliged to maintain a system of tax reconciliation of the differences that arise between the application of the accounting rules and the provisions of the Tax Code.[519]

Some of the most relevant tax deviations are:

(i) Article 21-1 invalidates fair value for tax purposes and restricts valuation to historical cost or face value to minimize accounting options;

(ii) In general, provisions are not allowed as deductions. Pursuant to Article 145 of the Tax Code only amounts corresponding to doubtful debts are deductible upon compliance with certain requirements;

(iii) Accounting methods are accepted for depreciation purposes, subject to maximum annual rates ranging between 2.22% and 33% as determined by the government through a regulatory decree;

(iv) Expenses related to tax-exempt income are non-deductible;

(v) Payments made to residents in non-cooperative jurisdictions or low or zero-tax jurisdictions (as identified in a list provided by the government) are non-deductible; and

(vi) Capital loses derived from the selling of assets between related parties or partnerships and their partners are also non-deductible.

With the enactment of Law 1314 of 2009, Colombia initiated the process of moving from Colombian generally accepted accounting principles (COLGAAP) to International Financial Reporting Standards (IFRS). For purposes of the transition to the new reporting standards, Colombian companies were classified into the following three groups:

(i) Companies whose securities are publicly traded and are legally defined as public interest entities under the law; large companies whose parent or subsidiary reports under IFRS; and companies that derived 50% or more of their revenue from exports or imports: adoption of full IFRS by 2015 (transition during 2014);

(ii) Large and medium-sized companies other than those included in group (i), above: adoption of IFRS for SMEs in 2016; and

(iii) Microenterprises: adoption in 2015 of a new standard developed by the Technical Council for Public Accounting. Microenterprises may also choose the IFRS for SMEs.

An IFRS-based system was introduced under Law 1819 of 2016 also for tax purposes as of 2017. Financial accounting rules are decisive for purposes of the computation of the taxable base, as explicitly provided in Article 21-1 of the Tax Code.[520] However, as previously mentioned, it is not necessary to include tax options in the financial statements following the independence of financial accounting from tax rules.[521]

b. Tax Accounting Periods

The tax or fiscal year is the calendar year.[522] Resident entities that commence business operations after January 1 of a particular year are deemed to have a short initial tax year, which begins on the date on which operations commence.[523] Short tax years may also arise where a legal entity undergoes a liquidation.[524] Likewise, when a foreign investment in Colombia is liquidated, a special purpose income tax return must be filed, even when the liquidation does not generate a tax liability.[525]

c. Tax Accounting Methods

In general, entities required to maintain accounting records must do so using the accrual method, which is also valid for tax purposes.[526] Generally, the cash method of accounting is permit-

[518] Col. Tax C., arts. 12, 20, 20-2.
[519] Col. Tax C., art. 772-1.
[520] Article 21-1 provides as follows: "To determine the income tax, the value of assets, liabilities, equity, income, costs and expenses, taxable persons required to keep accounting shall apply the recognition and measurement systems, in accordance with technical regulatory frameworks in force in Colombia, when the tax law expressly refers to them and in cases in which it does not regulate the matter. In any case, the tax law may expressly provide for a different treatment, in accordance with Article 4 of Law 1314 of 2009." (unofficial translation).
[521] Law 1314 of 2009, art. 4.
[522] Decree 1625/2016, art. 1.6.1.5.7.
[523] Decree 2588/1999.
[524] Col. Tax C., art. 595; Decree 2588/1999.
[525] Col. Tax. C., art. 326.
[526] Col. Tax C., art. 27.

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ted only for individuals who do not carry on business activities.[527]

d. Inflationary Adjustments

See V.D.3.e., below.

e. Consolidated Returns

Colombia currently does not permit controlled groups to file consolidated income tax returns. However, economic and business groups are required to submit certain information electronically to the Tax Administration (DIAN).[528]

f. Payment of Income Tax in Connection with Economic and Social Development Projects

Law 1819 of 2016, as amended by Law 2010 of 2019 and Law 2155 of 2021, established the possibility for entities (and individuals) that are:

(i) Required to keep accounts;

(ii) Considered as taxpayers for income tax purposes; and

(iii) That in the prior fiscal year obtained a gross income equal to or greater than 33,610 UVT, to enter into agreements with national public entities to receive Titles for the Renewal of the Territory (TRT) used to pay their corporate income tax, as consideration for the development and execution of economic and social projects in the Colombian municipalities considered as the "most affected zones by the armed conflict" ("ZOMAC") and the municipalities with development programs with territorial economic impact ("PDET").[529] Through this agreement, the taxpayer commits to develop the project in exchange for consideration that will be paid by means of TRT, once the project is executed and delivered with the approval of the competent entity.

5. Taxable Income

a. Gross Income

Colombia's concept of gross income is very broad and includes all events that increase the net worth of the entity, whether by way of an increase in assets or decrease in liabilities.[530] A resident entity's taxable income comprises all revenue, including income in kind, apart from some specifically excepted items.[531] The Tax Code expressly excludes certain income from the scope of income tax, for example:

(i) Profits derived from the sale of shares listed on the Colombian stock market, if the relevant transaction does not involve more than 3% of the total shares of the company concerned;[532]

(ii) Distributions of dividends to shareholders that are out of profits that have already been subject to corporate income tax. However, these dividends will be subject to a dividend tax;[533]

(iii) Indemnification for losses paid by insurance companies, provided such indemnification is intended to compensate for actual damages (or the establishment of a fund for this purpose);[534]

(iv) Increases in the capital of a company;[535]

(v) Certain contributions to pension funds and savings accounts, made in favor of individuals;[536]

(vi) Certain payments under employment contracts;[537] and

(vii) Profits derived from international aviation and maritime transportation attributable to a Colombian entity.[538]

b. Capital Gains

One of the components of income taxation in Colombia is the *impuesto de ganancias ocasionales* (capital gains tax), which is levied on, among other items, profits from the sale of fixed assets owned for more than two years;[539] inheritances, legacies, and donations;[540] gains arising as a result of the liquidation of a legal entity in excess of the invested capital; and winnings from lotteries, raffles, and gambling.[541] The tax is imposed at a 15% rate, except in the case of income earned from lotteries, raffles and gambling, which are taxed at a rate of 20%.[542]

c. Colombian-Source Income

Colombian-source income is income derived from the exploitation of tangible or intangible goods or services rendered on a continuous or occasional basis within Colombia.[543] Colombian-source income also includes gains from the disposition of any tangible or intangible item (for example, stock), provided the item was located in Colombia at the time of the relevant transaction. Specifically included in Colombian-source income are the following items:

(i) Earnings and profits derived from immovable goods located in Colombia;

(ii) Earnings and profits derived from the disposal of immovable goods located in Colombia;

(iii) Earnings and profits derived from the exploitation of movable goods in Colombia;

(iv) Interest income derived from debt instruments held in Colombia or economically attributable to Colombia (inter-

[527] Col. Tax C., art. 27.
[528] Col. Tax. C., art. 631-1.
[529] Col. Tax C., art. 800-1. Targeted projects include those related to drinking water, basic sanitation, energy, public health, public education, rural public goods, climate change adaptation and risk management, payments for environmental services, information and communication technologies, transportation infrastructure, cultural infrastructure, and sports infrastructure, among others.
[530] Col. Tax C., art. 26.
[531] Col. Tax C., arts. 24, 26–27.
[532] Col. Tax C., art. 36-1.
[533] Col. Tax C., arts. 48–49.
[534] Col. Tax C., art. 45 and Decree 1625/2016, arts. 1.2.1.12.2, 1.2.1.12.3, 1.2.1.12.4.
[535] Col. Tax C., art.319. Decree 1625/2016., art. 1.2.1.12.1.
[536] Col. Tax C., arts. 126-1, 126-4.
[537] Col. Tax C., art. 206.
[538] Col. Tax C., art. 25(d).
[539] Col. Tax C., art. 300.
[540] Col. Tax C., art. 302.
[541] Col. Tax C., art. 301.
[542] Col. Tax C., art. 317.
[543] Col. Tax C., art. 24.

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est income derived from debt instruments pertaining to the importation of goods and bank overdrafts is exempt);

(v) Compensation income, such as salary, commissions, and fees for professional services, artistic and athletic performances, and other activities, including services rendered by a legal entity, provided the services are performed in Colombia;

(vi) Compensation income for personal services paid by the Colombian Government, irrespective of where the services are rendered;

(vii) Benefits or royalties derived from the exploitation of intellectual property (IP) rights or know-how related to IP or literary, artistic or scientific property, or the provision of assistance services within Colombia, or from abroad to a Colombian beneficiary;

(viii) Income from rendering technical services that are performed in Colombia or from abroad for a Colombian beneficiary;

(ix) Dividend or profit distribution income derived from a Colombian resident entity;

(x) Dividend or profit distribution income paid to Colombian residents that is derived from a foreign (offshore) entity that is directly or indirectly engaged in business activities or investment in Colombia;

(xi) Income derived from lifelong support and maintenance contracts, if the recipient of the income is a resident of Colombia or the income is economically attributable to Colombia;

(xii) Earnings and profits derived from the exploitation of farms, mines, natural resource deposits and forestry, and other natural resources located in Colombia;

(xiii) Earnings and profits derived from the manufacturing and transformation of industrial goods or raw materials in Colombia, irrespective of the place of sale or disposition of the product in question;

(xiv) Earnings and profits effectively connected with a Colombian trade or business;

(xv) In the case of a turn-key contract effected in Colombia, the contractor's total contract price or value and other contract values pertaining to the manufacturing of materials or products in Colombia;

(xvi) Reinsurance premiums yielded by Colombian insurance companies to foreign companies; and

(xvii) Income obtained from the sale of goods and services by nonresidents or foreign entities with significant economic presence, on behalf of customers located within the national territory in accordance with the provisions of article 20-3 of the Tax Code.

d. Foreign Source Income

The following items of income are expressly considered to be derived from non-Colombian sources for purposes of calculating taxable income in Colombia[544] (this has consequences mainly for foreign entities, as well as nonresident individuals, which are only taxed on their Colombian-source income):[545]

(i) Income from loan instruments acquired abroad corresponding to one of the following categories: short-term debt instruments obtained for the importation of goods and bank overdrafts; loans obtained to finance or pre-finance exports; loans obtained abroad by financial institutions and banks incorporated under the laws of Colombia; and loans to finance foreign trade obtained through financial institutions and banks incorporated under the laws of Colombia;

(ii) Earnings and profits derived from repair and equipment maintenance technical services rendered abroad (as opposed to "from abroad");

(iii) Revenue from staff training services provided abroad to public sector entities;[546]

(iv) Income arising from the sale of foreign goods deposited in "International logistic distribution centers" located in maritime ports authorized by the DIAN. It should be noted that, as of the time of writing, the Colombian Government had not yet issued regulations on this matter; and

(v) Earnings and profits from international aviation and maritime transportation attributable to a Colombian resident entity.

e. Calculation of Taxable Income

Taxable income is determined as follows:

(i) Ordinary and extraordinary receipts that result in an increase of the net worth of the taxpayer and are not expressly excluded = gross revenues;

(ii) Gross revenues minus returns, discounts and rebates = net revenues;

(iii) Net revenues minus costs attributable to such revenues = gross income; and

(iv) Gross income minus deductible expenses = net or taxable income.[547]

In principle, the tax base for the basic income tax is net income, as calculated above. However, the law allows for the set off, against net income, of tax loss carryforwards[548] and accumulated excess presumptive income over actual income (as discussed below),[549] which decrease the tax base. That said, the tax base may not be smaller than the tax base determined under the presumptive income system.

For fiscal years before 2021, the taxable income of a legal entity (or an individual not qualifying as an employee), may not be less than an amount of presumed taxable income based on the taxpayer's net worth (presumptive income). For presumptive income purposes, a taxpayer's net income may not be less than 0.5% of the taxpayer's net equity as of December 31 of the

[544] Col. Tax C., art. 25. This is akin to the general U.S.-source rules under I.R.C. §862(a), which define non-U.S.-source income.
[545] Col. Tax C., arts. 9, 12, 20, 20-2.
[546] Col. Tax C., art. 25(b).
[547] Col. Tax C., art. 26.
[548] Col. Tax C., art. 147.
[549] Col. Tax C., art. 189.

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previous tax year.[550] However, Law 2010 of 2019, reduced the presumptive income rate to 0% for fiscal year 2021 onwards.[551]

Thus, for taxable year 2020, if a taxpayer has losses or has taxable income amounting to less than its presumptive income, the corporate income tax must be calculated based on the presumptive income. The presumptive income regime is not applicable to:

(i) New companies during the fiscal year of incorporation;

(ii) Individuals and entities under the simple tax regime (*Régimen de Tributación Simple*);[552]

(iii) Companies under liquidation (but only during the first three fiscal years), among others.[553]

The taxable base for purposes of computing the tax based on presumptive income may only be reduced by the value of the following assets:[554]

(i) The net value of shares and stock in Colombian companies;

(ii) Assets affected by acts of God, if evidence is provided as to the existence of such acts and the degree to which such acts resulted in lower net income;

(iii) The net value of the assets associated with companies during an unproductive period;

(iv) The net value of assets used in the mining industry, other than the exploitation of oil and gas;

(v) The value of the assets earmarked for agricultural activities, up to 19,000 UVT; and

(vi) The net value of assets associated with sporting activities carried on in clubs.

Although the value of the above assets is excluded, the taxable income attributable to the excluded assets must be added to the amount of presumptive income for purposes of calculating the corporate income tax liability.[555]

Among others, the following taxpayers were not required to calculate presumptive income tax when assessing their tax liability:[556]

(i) Non-profit organizations subject to the special regime outlined in article 19 of the Tax Code;

(ii) Public utility companies;

(iii) Securities, pension, investment and other types of funds covered by articles 23-1 and 23-2 of the Tax Code;

(iv) Companies involved in the operation of mass transit and public transport systems;

(v) Companies in bankruptcy;

(vi) Companies in liquidation during the first three years of the liquidation process; and

(vii) Financial institutions taken over by the Superintendence of Finance.

Example: The following illustrates how for FY2020 the presumptive income regime operates in the case of a taxpayer required to calculate its income tax liability under the presumptive income regime because of its financial situation.

Detail	Presumptive Regime (COP)	Ordinary Regime (COP)
Revenue		100,000
Cost and Expense		(80,000)
Taxable Income		20,000
Tax Due		6,400
Net Worth of Prior Year	15,000,000	
Minimum Profitably (2020): (0.5% × Prior Year's Net Worth)	75,000	
Taxable Income	75,000	
Tax Due (2020: 32%)	24,000	

In the above Example, the company must calculate income tax based on 75,000. Moreover, the taxpayer will have excess presumptive net income of 55,000, which is likely to be offset against the taxable income under the ordinary system determined in the next five years.[557]

Colombian tax law provides that certain Colombian-source income is excluded in calculating taxable income.[558]

6. Deductions

a. In General

Resident entities are allowed to deduct ordinary and necessary business expenses from their gross tax base to arrive at a net tax base amount.[559] Under Colombian law,[560] business expenses are deductible for income tax purposes, provided they meet the following requirements:

(i) The expenses must be necessary for carrying on the business activity.

(ii) The amount of the expenses must be proportionate to each activity.

(iii) The expenses must have a causal relationship to the income generated.

(iv) Only expenses incurred and accrued during the current year are tax deductible, which means that expenses incurred in prior years are not tax deductible.

[550] Col. Tax C., art. 188.
[551] Col. Tax C., art. 188.
[552] Col. Tax C., art. 188.
[553] Col. Tax C., art. 191.
[554] Col. Tax C., art. 189.
[555] Col. Tax C., art. 189.
[556] Col. Tax C., art. 191.
[557] Col. Tax. C., art. 189.
[558] Col. Tax. C., art. 207-2.
[559] Col. Tax C., arts. 26, 104, 105, 107.
[560] Col. Tax C., arts. 104, 105, 107, 771-2, 87-1, 108, 121-122.

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(v) The expenses must be supported by invoices or equivalent documents that comply with legal requirements. In general, these requirements state that the invoice must contain: the name and tax identification number of both the acquirer and the supplier of the goods or services; a number that corresponds to a consecutive invoice numbering system; and the date of issuance and the number of items sold and their value, or a description and the value of the services rendered, among others.[561]

(vi) Only expenses linked to taxable revenue are tax deductible. No deductions are allowed for expenses not effectively connected with taxable revenue.

It should be noted that Colombia is trying to ensure that all invoices issued by taxpayers are issued electronically.[562] The electronic invoicing system is applicable to the sale of goods and services as well as to other operations, such as payroll payments, exports, imports, and payments made to non-VAT responsible persons.

In addition to the general requirements set out above, the law establishes specific conditions for the admissibility of certain types of deductions. For example, labor compensation may only be taken as a cost or expense if the respective withholding taxes were properly deducted, and the employer met its social security obligations.[563]

Costs and expenses incurred outside Colombia for purposes of deriving Colombian-source income may also be deducted from the net income of the taxpayer. Deductions of costs and expenses abroad may not exceed 15% of the taxpayer's net income, before such costs and deductions. The following costs are deductible without the mentioned limitation:[564]

(i) Costs with respect to which a mandatory withholding tax in Colombia applies to the corresponding payments;

(ii) Costs that correspond to payments specifically designated in article 25 of the Tax Code as not constituting domestic-sourced income;

(iii) Payments for the acquisition of tangible assets of any type;

(iv) Expenses incurred under legal requirements, such as the cost of customs certification services;

(v) Costs incurred for the provision of telecommunications services;[565] and

(vi) Interest on loans granted by a multilateral credit institution to a Colombian tax resident, if the institution qualifies as an institution that is exempt from income tax.

Additionally, the DIAN has accepted the full deductibility of expenses incurred in countries with which Colombia has signed tax treaties, under the non-discrimination clause contained in such treaties.[566]

Furthermore, in some cases, the possibility of deducting foreign expenses is conditioned on compliance with the provisions set forth in the Tax Code (which, in the case of technology, brand or patent import contract, includes an obligation to register the agreement with the DIAN),[567] as well as payment of the withholding taxes related to foreign expense payments, if applicable.[568]

Colombian entities are also allowed to deduct the amounts paid to their parent companies or offices abroad, with regard to administration or management and the purchase cost of any kind of intangible good, as long as the payments were duly subjected to income tax withholding[569] Payments to head offices abroad for other purposes are subject to the restrictions (15% ceiling) discussed above.

In addition, Colombian taxpayers may deduct 100% of all paid taxes, rates and contributions if they have been effectively paid, excluding income tax, wealth tax and tax paid under the voluntary disclosure regime introduced by Law 2010 of 2019.

It is important to note that 50% of the financial transaction tax may be deducted from the income tax and that the taxpayer may take as a discount.

Law 2277 of 2022 provides that royalties paid by taxpayers for the exploitation of non-renewable natural resources are non-deductible for income tax purposes and, therefore, cannot be treated as an expense.[570]

Law 1257 of 2008 created an incentive for employers to hire women who are victims of gender-based violence in the form of a 200% deduction for the relevant wages and social benefits paid during the taxable year, for a period of three years.

An employer seeking to obtain the deduction introduced by Article 23 of Law 1257 of 2008 must:

(i) Have a valid employment contract with one or more women who are victims of verified violence, as defined in Decree 2733 of 2012. The existence of the employment relationship must be proven within the taxable period for which the deduction is requested.

(ii) Provide a copy of the certificate verifying the relevant violence, as defined in section b) of Article 3 of Decree 2733 of 2012.

(iii) File evidence of payments of salary and social benefits to female workers who are victims of verified violence during the taxable period for which the deduction is sought.

(iv) Obtain certification from the information operator of the Integrated Contribution Settlement Form (*Planilla Integrada de Liquidación de Aportes*, PILA) detailing contributions and bases relating to female workers referred to in Decree 2733 of 2012.

(v) Submit a copy of the PILA or equivalent document related to payments made under the employment relationship that qualifies for the benefit during the respective tax-

[561] Col. Tax C., art. 617.

[562] Electronic invoices must be issued in accordance with the requirements set forth in Col. Tax C., art. 616-1 and regulations to be issued by the Colombian Government (including Decree 358 of 2020, Decree 1625 of 2016, Resolution 42 of 2020 and Resolution 165 of 2023).

[563] Col. Tax C., arts. 87-1, 108.

[564] Col. Tax C., arts. 121–122.

[565] Decree 1625/2016, art. 1.2.1.17.4.

[566] Col. Tax and Customs Admin. Op. 77842/2011.

[567] Col. Tax C., art. 123. Col. Tax and Customs Admin. Op. 085072/2008.

[568] Col. Tax C., art. 123.

[569] Col. Tax C., art. 124.

[570] Col. Tax C., art. 115. Par 1.

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able year. This document must prove that periodic payments of salary and contributions qualifying for the deduction were made in the corresponding taxable period.

(vi) Demonstrate compliance with Article 108 of the Tax Code and meet other requirements for eligibility for the deductions.[571]

b. Organizational Costs

Certain expenses may not be deducted in full during the period in which they are incurred, but rather must be amortized over later fiscal years. These expenses include:

(i) The cost of intangible assets that fulfill the conditions set out in article 74 of the Tax Code.[572]

(ii) Costs associated with mining acquisitions and exploration, or the development of oil and gas and other nonrenewable natural resources, if they fulfill the conditions laid down in article 143-1 of the Tax Code.

The amortization base is the cost of the intangible, which must be determined as provided under article 74 of the Tax Code.

The method of amortization is determined in accordance with accounting principles and the maximum rate of amortization per fiscal year is 20% of the asset's cost for tax purposes.

An intangible asset acquired under a contract must be amortized on a straight-line basis, in equal installments, over the period stated in the contract. In any case, the annual rate may not exceed 20% of the asset's cost for tax purposes. Expenses that exceed the 20% limitation will be deductible in the following fiscal periods, based on the useful life of the intangible asset concerned. In any case, the corresponding deductible amortization expenses in any year may not exceed 20% of the asset's cost for tax purposes.

Intangible assets acquired separately or as a part of a business are amortizable if they meet the following requirements:

(i) The assets have an established useful life;

(ii) The assets can be reliably identified and measured in accordance with accounting techniques; and

(iii) Their acquisition generated taxable income at market value, or the transfer was made with an independent third party from abroad.

It should be noted that intangible assets acquired separately or as part of a business between related parties within Colombia's national customs territory and free trade zones, or transactions subject to the transfer pricing rules under articles 260-1 and 260-2 of the Tax Code, may not be amortized.

c. Cost of Goods and Services

(1) In General

As is the case with the deduction of other deductible expenses, the deduction of the cost of goods and services for income tax purposes is allowed only as provided by law for that purpose, i.e.:

(i) If the taxpayer is not required to keep accounts, such costs may be deducted in the year in which they were actually paid; or

(ii) If the taxpayer is required to maintain an accounting system, such costs may be deducted in the year in which they accrued.[573]

Costs incurred abroad are subject to the restrictions discussed in a., above.[574]

The Colombian Tax Code includes a provision dealing with the determination of the cost of services. For taxpayers that are required to maintain an accounting system, the cost of services will be the cost accrued in accordance with the relevant accounting method during the year in which they were rendered. For taxpayers that are not subject to such a requirement, the cost of services will be the amount paid for the services during the year.[575]

Expenditures incurred for the rendering of services are deductible under the general rules.[576]

(2) System for Establishing the Cost of Inventories

For taxpayers who are required to keep an accounting system, the cost of inventories must be established using the permanent inventory, the temporary inventory (*juego de inventarios*) or the retail method.[577]

The permanent inventory method requires the maintenance of special records that are part of the accounting system and must contain at least the following information: the type of item; the transaction date; the identification number of the document in which the purchase is recorded; the number of units purchased, sold, consumed or assigned; the number of items remaining; the cost of units purchased, sold, consumed or assigned; and the cost of the items remaining in inventory.[578] The retail method requires the maintenance of records of purchases at both cost and selling price based on which a ratio of cost to retail is calculated and applied to the ending inventory at retail to calculate the approximate cost. The temporary inventory method is the result of taking the total cost of goods or services, plus opening inventory, minus closing inventory. Provisions for estimated inventory depreciation or price fluctuations are not allowable.

To change the inventory valuation method used, the taxpayer must obtain the approval of the DIAN.[579]

(3) Cost of Acquisition of Goods

The cost of acquisition of goods for taxpayers that are required to keep an accounting system is based on the acquisition and processing costs, and, in general, the total cost incurred to put the goods into a usable or sellable condition, according to the relevant accounting method.[580]

[571] Decree 2733 of 2012.
[572] Col. Tax C., arts 143 and 143-1. Decree 2649/1993, art. 67.
[573] Col. Tax. C., arts. 58, 59.
[574] Col. Tax. C., arts. 121, 122.
[575] Col. Tax. C., art. 66.
[576] Col. Tax C., art. 107.
[577] Col Tax. C., art. 62. Decree 1625/2016, art. 1.2.1.17.15.
[578] Decree 1625/2016, art. 1.2.1.17.11.
[579] Decree 1625/2016, art. 1.2.1.17.14.
[580] Col. Tax C., art. 66. num 1.

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The costs so determined will be adjusted pursuant to article 59, article 93, no. 3, and any differences arising from depreciation and amortization not accepted for tax purposes, in accordance with the provisions of the Colombian Tax Code.

On the other hand, the cost of acquisition of goods for taxpayers that are not obliged to keep an accounting system is the cost of acquisition and the total cost and expenses incurred to put the goods into a sellable condition.[581]

The following expenses must be considered in determining the cost of acquisition of movable goods:[582]

(i) The cost of acquisition, taking into account the exchange rate at the time of acquisition in the case of importation;[583]

(ii) Transportation costs necessary to put the good into a sellable or usable condition; and

(iii) Other direct or indirect costs and expenses incurred in acquiring, extracting or manufacturing the goods.

(4) Reduction in Inventory Costs

In the case of goods that can be easily destroyed or lost, the closing units of inventory can be reduced by up to 3% of the sum of the opening inventory plus purchases.[584] If a *force majeure* event is demonstrated to have taken place, larger decreases may be accepted. The value of obsolete inventory is deductible for income tax purposes at its acquisition cost, plus directly attributable expenses and costs of transformation, provided the obsolete inventory is destroyed, recycled or converted into scrap metal.

For the reduction in inventory costs to be allowed, the following information must be supplied by the taxpayer:

(i) Quantity;

(ii) Product description;

(iii) Tax cost per unit;

(iv) Total cost;

(v) Justification of obsolescence or destruction; and

(vi) Any other relevant evidence.

If the inventory in question is insured, the tax loss subject to deduction will be the amount not covered by the insurance. The courts have accepted the inclusion of costs associated with destructible inventory on terms different from those set out in article 64 of the Tax Code, specifically in the case of merchandise such as expired medicine that must be destroyed for sanitary purposes, in accordance with public health and customary business practices.[585]

(5) Fixed Asset Costs

With effect from December 31, 2016, the cost of fixed assets is based on their purchase price, plus any costs incurred to put the assets into a saleable condition.[586] Additionally, the cost of the assets may be adjusted[587] each year in accordance with article 868 of the Tax Code.[588]

Specifically, for taxpayers that are required to maintain an accounting system, the acquisition costs with respect to property, equipment and investment property are the purchase price plus the costs incurred to put the assets into a useable condition (not including the initial estimate for dismantling and removal costs of the item, as well as the rehabilitation of the site on which it is situated, if applicable). Additionally, expenses on improvements, major repairs and inspections are added to the cost of such assets. For taxpayers that are not required to maintain an accounting system, the acquisition costs are the purchase price, or the cost declared in the previous year, plus the following expenses:[589]

(i) In the case of movable assets, expenses of additions and improvements;[590] and

(ii) In the case of real property, expenses of construction and improvements, and other related expenses.[591]

In the case of real property that constitutes a fixed asset, the cost can be established: (i) in accordance with the above or, (ii) at the taxpayer's option, the tax base for purposes of the real estate tax paid in the preceding year.[592]

For tax purposes, taxpayers that are required to maintain an accounting system may depreciate the above-mentioned assets in accordance with article 128 of the Tax Code.

(6) Fiscal Cost of Intangible Assets

Cost of intangible assets acquired separately:[593] When a taxpayer buys an intangible, the cost will correspond to the acquisition price plus any cost that is directly attributable to the preparation or start-up of the asset for its intended use. When this kind of asset is sold, the cost will be the one determined according to the rule mentioned above minus amortization if deducted for tax purposes.

Cost of intangible assets acquired as a part of a business combination:[594] Intangible assets acquired as part of a transaction or any other event in which the acquirer obtains control of one or more businesses, which involve an integrated set of activities, assets and liabilities obtained with the purpose of obtaining a profit, are subject to the following rules:

(i) The purchase of shares, quotas or parts of social interest does not give rise to an intangible asset. Consequently, the acquisition value corresponds to its fiscal cost;

(ii) Mergers and spin-offs subject to income tax, give rise to goodwill corresponding to the difference between the sale price and the net asset value of the identified assets sold. In this case, goodwill is not amortizable. However,

[581] Col. Tax C., art. 66, no. 2

[582] Decree 1625/2016, art. 1.2.1.17.2.

[583] Col. Tax C., arts. 288 and 291.

[584] Col. Tax C., art. 64.

[585] See, for example, Case 19006, issued by the Fourth Section of the State Council on May 10, 2012.

[586] Col. Tax C., art. 61.

[587] Each year the National Government is responsible for updating the adjustment of the tax cost of fixed assets. Decree 1625 of 2016., art. 1.2.1.17.20 and 1.2.1.17.21, modified by Decree 128 of 2024.

[588] Col. Tax C., arts. 70, 280.

[589] Col. Tax C., art. 69

[590] Col. Tax C., art. 66.

[591] Col. Tax C., art. 67.

[592] Col. Tax C., art. 72.

[593] Col. Tax C., art. 74, num 1.

[594] Col. Tax C., art. 74, num 2.

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other kinds of intangible assets, identified and identifiable, may be amortized according to the rule mentioned under (i), above. Other kinds of assets are subject to the general rules;

(iii) Goodwill resulting from the acquisition of a going concern corresponds to the difference between the sale price and the net asset value of the identifiable assets of the concern. In this case, goodwill is not amortizable. However, other kinds of intangible assets, identified and identifiable, may be amortized according to the rule mentioned in (i), above. Other kinds of assets are subject to the general rules; and

(iv) If among the identified/identifiable assets are intangible assets formed by the transferor, in cases under (ii) and (iii), above, the fiscal cost for the acquirer will be the value attributable to such intangibles in the framework of the contract or agreement, based on technical studies.

When intangible assets acquired as part of a business combination are sold, individually or as part of a new business combination, their cost will be determined as mentioned under (iv), above, minus, when applicable, amortization that has been deducted for tax purposes. In any case, goodwill may not be sold individually or separately or amortized.

Intangible assets arising from government grants:[595] These are intangible assets originated by the State's authorization to use any property owned by the State free of charge or at a price lower than the commercial value. The cost of these assets, unless subject to special treatment in accordance with the Tax Code, is the value paid for such assets plus the costs directly attributable to the preparation of the asset for its intended use. When these assets are sold, the cost determined in accordance with the preceding paragraph, is reduced, when applicable, by the amount of amortization that has been deducted for tax purposes.

Intangible assets originated in the improvement of assets under operating lease agreements:[596] The fiscal cost of such intangible assets corresponds to the costs accrued in the taxable period, provided they are not subject to compensation by the lessor.

Cost of self-created intangibles:[597] Self-created intangibles are intangible assets created internally that do not meet any of the definitions mentioned above or those provided by article 74-1 of the Tax Code (investments), associated to industrial, literary, artistic and scientific property, such as trademarks, goodwill, copyrights and invention patents. The cost of a self-created intangible for individuals who must keep accounting and for legal entities is zero. However, the cost of a self-created intangible for individuals who are not obliged to keep accounting is deemed to be 30% of its sale price.[598]

Regarding crypto (or virtual) currencies, Colombia does not have a special tax regime. However, the Colombian tax authority has issued interpretations regarding this asset class.[599] Although the tax authority has used the terms "crypto assets" (genre) and "cryptocurrencies" (specie) interchangeably, the general conclusions arising from various declarations of official concepts regarding cryptocurrencies are the following:

- Cryptocurrencies are intangible assets whose value can be expressed in legal currency;
- Cryptocurrencies are not legal currency in Colombia under existing law;
- Cryptocurrencies can generate income;
- Cryptocurrencies can be used to pay liabilities, not as legal currency, but as an asset.

According to the Colombian Tax Authority, as cryptocurrencies are considered to be assets, and Colombian residents who hold crypto assets must declare them in their annual income statement, even if the assets are held abroad. The fiscal cost of these assets must be determined by applying the tax rules on intangibles assets. Therefore, the taxpayer must determine the condition of the asset as fixed or movable and apply the rules pursuant to Article 74 of the Tax Code referred to above in determining the fiscal cost.

Furthermore, the Colombian Tax Authority pointed out that, in general terms, income from cryptocurrencies may arise from two concepts:

(i) When the cryptocurrency is received as payment generating income that increase a taxpayer's equity and, therefore, is subject to income taxation; and

(ii) When the cryptocurrency is alienated.

According to these official concepts, the taxpayer must recognize only the fluctuations in the value of the cryptocurrency at the time of liquidation or disposal.

(7) Fiscal Costs of Investments

Expenses paid in advance: The fiscal cost corresponds to the disbursements made by the taxpayer. Disbursements must be capitalized in accordance with the accounting method and amortized when the services are received or the costs or expenses are accrued, as the case may be.[600]

Establishment expenses: The fiscal cost corresponds to the expenses incurred during the start of the operations, such as start-up costs and pre-opening costs, among others. Expenses must be capitalized. Taxpayers may deduct accumulated disbursements when the investments start generating income.[601]

Research, development and innovation expenses: Fiscal cost is made up of all expenses associated with the research, development and innovation project, except for those associated with the acquisition of buildings and real property. This concept includes assets produced in the development of software (for use, sale or exploitation rights).[602]

This regime does not apply to those research, development and innovation projects that opt for the provisions set forth under Article 256 of the Tax Code. However, the definitions of research, development and innovation may be the same as those applied for purposes of Article 256.

[595] Col. Tax C., art. 74, num 3.
[596] Col. Tax C., art. 74, num 4.
[597] Col. Tax C., art. 74, num 5.
[598] Col. Tax C., art. 75.
[599] *See* Oficio Nº 020733 DIAN—*Comercialización de criptomonedas*, issued August 8, 2018.
[600] Col. Tax C., art. 74-1, num. 1.
[601] Col. Tax C., art. 74-1, num. 2.
[602] Col. Tax C., art. 74-1, num. 3.

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Evaluation and exploitation of non-renewable natural resources: Fiscal costs that may be capitalized are as follows:[603]

(i) Acquisition of exploration rights;

(ii) Seismic, topographical, geological, geochemical and geophysical studies, if they are linked to finding non-renewable natural resources;

(iii) Exploratory drilling;

(iv) Excavation of ditches, trenches, exploratory tunnels, quarries, and tunnels, among others;

(v) Sampling;

(vi) Activities related to the evaluation of the commercial viability of the exploitation of a natural resource;

(vii) Labor costs and expenses, and depreciation, as the case may be, taking into account limitations under the Col. Tax. C.; and

(viii) Other costs, expenses and necessary acquisitions in the stages of evaluation and exploration of non-renewable natural resources that may be capitalized in accordance with the accounting method, other than those already mentioned.

Capitalization may cease after the technical feasibility and commercial viability of extracting the non-renewable natural resource has been assessed, as contractually established. Real property shall be capitalized and amortized only when there is an obligation to revert it to the nation.

Costs and expenses may not be applicable to disbursements incurred before obtaining the economic exploitation rights.

If the assets are sold, the cost of the sale will be determined in accordance with the above rules, excluding the value of amortization, as long as it has been deducted for tax purposes (if applicable).

Financial instruments:[604]

(i) Variable income securities: the fiscal cost is the acquisition value.

(ii) Fixed-income securities: the fiscal cost is the acquisition value plus straight-line interest not paid at face rate, from the acquisition date or the last payment date until the sale date.

Shares, quotas or social quotas: the fiscal cost corresponds to its acquisition value.[605]

(8) Deductibility of Related-Party Expenses

Generally, costs incurred in transactions between related parties are deductible, although certain restrictions apply in the case of costs or expenses incurred abroad (see a., above).[606] However, costs and expenses are non-deductible if, according to the Tax Code, the related party beneficiary of the payment is considered a non-taxpayer for income tax purposes.[607]

(9) Non-Deductible VAT

Creditable VAT cannot be taken as a deduction for corporate income tax purposes.[608]

Except for taxpayers who develop fossil fuels exploration activities, VAT arising from the acquisition or importation of fixed assets is not creditable. However, it is deductible for income tax purposes.[609]

However, those responsible for VAT may treat as a discount over the income tax payable the VAT that is paid in the acquisition, construction, creation and importation of productive fixed assets (including VAT associated with the services required to put the assets in operating condition).[610]

(10) Costs for Marketing Certain Imported Goods

Costs and advertising expenses[611] related to certain products that are classified as "mass smuggling items" by the Colombian Government[612] are not allowed as a deduction when the expenses exceed 15% of the sales of the respective legally imported products in the relevant tax year. This is subject to certain exceptions:

(i) The 15% rate may be increased to 20% of projected sales if authorized by the Director of the DIAN, on submission of a request during the first three months of the fiscal year.

Costs and expenses of advertising, promotion and publicity that exceed the 15% or 20% ceiling, as the case may be, are non-deductible.[613]

(ii) Expenses of advertising and promotion of products that are not legally imported are not deductible. Furthermore, the value of goods brought into the country without payment of customs duties may not be treated as an expense or deduction for income tax purposes by the offender, or other persons that participated in the infringement were aware of the infringement but still purchased the assets concerned.

(iii) Advertising agencies must disregard expenses associated with advertising, promotion and publicity that are hired from abroad by people who do not have residence or domicile in Colombia.

However, it is possible to fully deduct advertising costs incurred with a view to the initial positioning of foreign products in Colombia without authorization being required, provided such costs are supported by marketing studies and revenue projections demonstrating that goal.

(11) Travel Expenses

A corporate taxpayer may deduct travel expenses (food, lodging and transportation) reimbursed to employees with re-

[603] Col. Tax C., art. 74-1, num. 4.
[604] Col. Tax C., art. 74-1, num. 5.
[605] Col. Tax C., art. 74-1, num. 6.
[606] Col. Tax C., arts. 121–122, 124.
[607] Col. Tax C., art. 85.
[608] Col. Tax C., art. 493.
[609] Col. Tax C., art. 491.
[610] Col. Tax C., art. 258-1.
[611] Col. Tax C., art. 88-1.
[612] Under Decree 1625, art. 1.2.1.18.40, this category includes items such as televisions, stereo equipment, refrigerators, washers, cigarettes and alcoholic beverages.
[613] Decree 1625/2016, art. 1.2.1.18.43.

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spect to business travel in Colombia or abroad, if the expenses are necessary for carrying out the business activity and are not deemed to be compensation in the hands of the employees.[614] Such expenses that are deemed, from a labor law perspective, to be compensation are deductible, provided the deemed compensation is subject to income withholding tax and the obligations relating to the social security system have been fulfilled.[615]

(12) Royalties, Technical Assistance, and Technical Service Fees

There is no limitation on the deductibility of royalties, technical assistance and technical service fees and, in general, fees related to technology import contracts. If the relevant payment is made to a beneficiary located outside Colombia, the following requirements must be met with respect to the transaction giving rise to the royalty/technical assistance/and technical service fee for the payment to be tax deductible:

(i) A written contract must be signed by the parties;

(ii) The contract must be registered with the DIAN;[616] and

(iii) The income tax due on the outbound payment must be properly withheld by the Colombian payer. In the case of royalties, the effective withholding tax rate is 20%.[617] Outbound fees paid in connection with technical assistance or technical services performed by a non-Colombian resident in Colombia or from abroad to a Colombian beneficiary are subject to a flat 20% withholding tax.[618] For purposes of determining the actual withholding tax rate, it is necessary to consider the provisions of Colombia's tax treaties, as such treaties may reduce the withholding rate on certain payments (for example, under the Colombia-Spain tax treaty, the rate of withholding tax on Colombian-source royalties may not exceed 10%). See XVI.B., below.

Royalties paid to a related party located abroad or located in a free trade zone that correspond to the exploitation of an intangible asset created in the Colombian customs territory and are associated with the acquisition of a finished product, are not deductible.[619]

d. Charitable Contributions

Charitable contributions to a non-profit organization in Colombia[620] subject to the special tax regime are not deductible for income tax purposes, but give rise to a credit against the income tax of 25% of the total amount donated in the corresponding taxable year.[621] To apply the foregoing, the following conditions must be fulfilled:[622]

(i) The beneficiary must be legally incorporated and subject to the inspection, control and surveillance of a state entity;

(ii) Before the donation is made, the beneficiary must be recognized as an organization in Colombia classified under the special tax regime;

(iii) The beneficiary (unless it is an entity incorporated during the same taxable year as that in which the donation is made) must have complied with its obligation filed an income and equity return or income tax return, as applicable, for the fiscal year immediately prior to that in which the donation was made;

(iv) The donated income must be handled in accounts or investments with financial institutions.

A charitable contribution must also meet the following rules:[623]

(i) When money is donated, payments must have been by check, credit card or through a financial intermediary;

(ii) When title to securities is donated, the amount of the charitable contribution is estimated at market prices, in accordance with the procedure establish by the *Superintendencia de Valores;* or

(iii) Other assets: the amount of the charitable contribution is the cost of acquisition, adjusted for inflation, less accumulated depreciation as of the date of the donation. In any case, the amount will be the lower of the market value and the cost of acquisition of the asset involved.

e. Casualty Losses

To be deductible, a casualty loss must result from a *force majeure* event.[624] A casualty loss is deductible in the year in which it is incurred (and may be carried forward for up to five years, when it cannot be deducted in the year in which it was incurred) to the extent it is not reimbursed by insurance, bonds or indemnity payments during the tax year in which it was incurred.

Once such a loss has been deducted, any amount subsequently recovered from insurance, bonds or indemnity payments from third parties must be included in taxable income[625] or, if the loss was not deducted, the portion of such compensation corresponding to consequential damages may be treated as untaxed income.[626] Nevertheless, to obtain this treatment for consequential damages, the taxpayer must demonstrate, within the time limit for submitting the income tax return, that it invested the entire indemnity received in the acquisition of goods that are equal or similar to those that were subject to the insurance.

If it is not possible to make the investment within the indicated term, the taxpayer must constitute a fund with the compensation received, with the sole purpose of acquiring the aforementioned goods. If in a year the fund is used for other

[614] Col. Tax C., art. 107.
[615] Col. Tax C., arts. 87-1, 108.
[616] Col. Tax C., arts. 123, 419; Decree 4176/2011; Col. Tax and Customs Admin. Ruling 6276/2017 and Resolution 8742 of 2023.
[617] Col. Tax C., art. 408.
[618] Col. Tax C., arts. 123, 419.
[619] Col. Tax C., art. 120.
[620] Col. Tax C., arts. 22 and 23.
[621] Col. Tax C., art. 257.
[622] Col. Tax C., art. 125-1.
[623] Col. Tax C., art. 125-2.
[624] Col. Tax C., art. 148.
[625] Col. Tax C., art. 196.
[626] Col. Tax C., art. 45.

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purposes, the compensation received will constitute taxable income in that year.[627]

In the case of losses with respect to fixed assets, the deduction granted is equivalent to the value obtained by subtracting depreciation, amortization from the sum of the cost of acquisition and the cost of improvements, less amounts recovered from insurance and the like.

f. Bad Debts

A taxpayer that is required to maintain an accounting system is entitled to deduct a provision for unrecoverable or bad debt.[628] To qualify for the deduction, the debt giving rise to the provision must:[629]

(i) Have been acquired with just cause and for valuable consideration;

(ii) Have been incurred for consideration and for purposes of carrying on the economic activity of the taxpayer;

(iii) Exist at the moment at which the provision was accounted for;

(iv) Have been taken into account in determining the income declared in previous years;

(v) Have given rise to the provision during the taxable period for which the deduction is claimed; and

(vi) Have been due for more than one year. In addition, the taxpayer must be able to justify the designation of the debt as unrecoverable or bad.

If these conditions are fulfilled, taxpayers will be able to claim a deduction for unrecoverable or bad debt, using either a general or an individual provision system, as described in (1) and (2), below.

Taxpayers that are not required to maintain accounting systems may deduct unrecoverable or bad debts, provided they keep documentary evidence of the debts concerned and their write-off.

Debts contracted among economically related parties or by the partners and the company will not be considered as unrecoverable or bad debts.

(1) General Provision System

Under the general provision system,[630] which can be used by taxpayers that keep accounting and whose operations regularly and permanently generate credits in their favor, are entitled to deduct a percentage of past due debts owed to them from their gross income, as follows:

Past Due Period	Deductible Provision (% of Debt)
Between 3 and 6 months	5%
Between 6 and 12 months	10%
More than 12 months	15%

This deduction will only be recognized if the debts and the provision are accounted for and if the taxpayer has not opted for the individual provision.

(2) Individual Provision System

Under the individual provision system, it is possible to deduct up to 33% each year of the nominal value of debts that have been due for more than one year.[631]

(3) Unrecoverable or Worthless Debts

The value of debts that are manifestly unrecoverable (or the non-collectible part thereof) may be deducted,[632] provided that it is possible to demonstrate the existence of the debt obligation, the discharge of the debt obligation is justified, and it is possible to prove that the original debt obligation was connected with income-generating transactions.[633] Unlike the deduction for bad debts, this deduction does not depend on the time elapsed, but rather the possibility of demonstrating that, according to sound business practices, the debts concerned should be considered lost, even though recovery-oriented measures have been taken.[634]

g. Rents

Rental payments with respect to real property may be deducted for income tax purposes, as long as (i) the use of the property concerned is linked to the business purposes and (ii) the payment is proportionate and necessary.[635]

h. Salaries and Benefits

Salary payments made by a company are deductible for income tax purposes, if:

(i) The salaries and any fringe benefits are actually paid to employees within the taxable year;

(ii) The employer complies with all social security and payroll withholding regulations; and

(iii) The employer complies with all its obligations to contribute to the National Training Service (SENA), the Social Security Institute (ISS), and the Colombian Family Welfare Institute (ICBF).[636]

Companies are exempted from the payment of parafiscal contributions to:

(i) The National Training Service (SENA);

[627] Decree 1625/2016, art. 1.2.1.12.3.
[628] Col. Tax C., art. 145.
[629] Decree 1625/2016, art. 1.2.1.18.19.
[630] Decree 1625/2016, art. 1.2.1.18.21.
[631] Decree 1625/2016, art. 1.2.1.18.19.
[632] Decree 1625/2016, art. 1.2.1.18.23.
[633] Col. Tax C., art. 146.
[634] In addition to this, the general requirements set forth in Decree 1625 of 2016, arts. 1.2.1.18.23 and 1.2.1.18.24 must be met.
[635] Col. Tax C., art. 107.
[636] Col. Tax C., art. 108.

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(ii) The Colombia Family Welfare Institute (ICBF); and

(iii) The health tax regime, corresponding to employees who earn, on an individual basis, less than 10 minimum wages per month.[637]

With respect to management or executive compensation, bonuses or fees paid to administrators, directors, general managers, or members of the board of directors, advisory board or any other board are deductible expenses, provided social security and payroll withholding and income tax withholding requirements are met.

For payments to the board of directors to be deductible, the board must comply with the legal requirements for its operation and exercise in accordance with the provisions of civil and commercial law.[638]

i. Research and Development

Investments in research, technological development and innovation, in line with the criteria and conditions set forth by the National Council for Economic and Social Policies, through a CONPES document, are deductible in the taxable period in which they are made.[639] This does not preclude the discount referred to in article 256 of the Tax Code, when the conditions and requirements therein are met.

The National Council for Tax Benefits in Science, Technology and Innovation (the "Council") will determine the maximum amount permitted as a deduction for expenditure on research, technological development and innovation annually, and the maximum amount that companies may individually claim as investments in, and contributions with respect to, these types of projects. If a taxpayer's investments in science, technology and innovation projects exceed the ceilings set by the Council, the taxpayer may request that the Council raise the ceiling based on the benefits of the projects concerned. Projects lasting multiple years are subject to the same ceiling for their duration, unless the Council raises the ceiling.

Additionally, Article 256 of the Tax Code establishes that taxpayers that invest in research, technological development and innovation may discount 30% of the value invested in projects carried out by researchers, research groups, research centers and institutes, technological development centers and other similar institutions, as long as such researchers, etc., are recognized by the Ministry of Science, Technology and Innovation during the taxable year in which the investments are made.[640]

The National Tax Board controls, monitors and assesses the process of qualifying projects as research, technological development or innovation and defines the requirements for ensuring the disclosure of the results. Thus, this National Board is in charge of controlling the investment of resources.

Likewise, the treatment provided for investments in research, technology, development and innovation will also apply to:[641]

(i) Donations to the *Unidad de Gestión de Crecimiento Empresarial* (INNpulsa) made by income taxpayers. Such resources shall be allocated under the conditions set forth in the third paragraph of Article 256 of the Col Tax C., and in accordance with the regulations issued for such purpose by the Colombian Government;

(ii) Donations made to programs created by institutions of higher education, or to the *Instituto Colombiano de Crédito Educativo y de Estudios Técnicos en el Exterior* (ICETEX) under the conditions set forth in paragraph 2 of article 256 of the Col Tax C.;

(iii) Donations made to the *Fondo Nacional de Financiamiento para la Ciencia, la Tecnología y la Innovación, Fondo Francisco José de Caldas*, intended to finance science, technology and innovation programs or projects, in accordance with the criteria and conditions indicated by the Council; and

(iv) Remuneration corresponding to the hiring of individuals with doctorate degrees, under the conditions set forth in paragraph 2 of article 256 of the Col Tax C.

j. Interest

Interest paid or accrued to other persons is deductible to the extent the interest is connected to the production of income, and the interest rate[642] does not exceed the maximum rate authorized by the banking establishment during the respective taxable year or period, as certified by the Superintendence of Finance.[643]

Interest payments made to related parties located abroad, in a free-trade zone or in a non-cooperative, low-or no-tax jurisdiction are not deductible if the comparability criteria referred to in Article 260-4(1)(a) of the Tax Code are not met. Consequently, such operations will be considered as capital contributions and dividends rather than as loans or interest.[644]

Under Colombia's thin capitalization rule, in the case of interest-bearing liabilities between related parties located in Colombia or abroad, in order to deduct interest paid Colombian taxpayers must apply a debt-to-equity ratio of 2:1. Only interest on debts whose total average for the corresponding taxable year does not exceed the result of multiplying by two the taxpayer's net worth, as determined on December 31 of the preceding fiscal year, is deductible. In the event the average amount of a debt exceeds that limit, interest attributable to the excess will not be deductible.[645]

This rule applies to all types of interest-bearing liabilities between related parties located in Colombia or abroad, regardless of when or where they originated (i.e., it applies even to debts incurred prior to 2013—the year in which the rule entered into force), regardless of whether they originated in Colombia or abroad, if they are contracted directly or indirectly and in favor of national or foreign companies. This rule applies only in the context of income tax.

The exceptions to this rule are as follows:

[637] Col. Tax C., art. 114-1. Under Decree 1572 of 2025, the minimum wage for 2025 is COP 1,423,500.

[638] Col. Tax and Customs Admin. Ruling 7747 of 2016.

[639] Col. Tax C., art. 256.

[640] Col. Tax C., art. 256.

[641] Col. Tax C., art. 256.

[642] Col. Tax C., art. 11 para. 2.

[643] Col. Tax C., art. 117.

[644] Col. Tax C., art. 260-4 (1) (a). Decree 1625/2016, art. 1.2.2.1.3.

[645] Col. Tax C., art. 117.

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(i) Infrastructure projects (public services and transportation) carried out by special purpose vehicles;[646]

(ii) Taxpayers under the surveillance of the Financial Superintendence;[647]

(iii) Taxpayer that perform factoring activities, within the terms of Decree 2669 of 2012,[648] if the activities of the factoring company are not lent by more than 50% to related parties under the terms of Article 260-1 of the Tax Code;[649]

(iv) Income tax taxpayers that set up businesses in an unproductive period, in accordance with Articles 1.2.1.19.6 and 1.2.1.19.14 of Decree 1625 of 2016.[650]

An unproductive period for industrial processing, hotel and mining companies, is comprised by the following stages:[651]

(i) Prospecting;

(ii) Construction, installation, assembly; and

(iii) Tests and start-up.

An unproductive period in the industry of real estate construction and sale is comprised by the following stages:[652]

(i) Prospecting; and

(ii) Construction.

In other cases (non-related parties), for interest deduction purposes, the taxpayer must be able to demonstrate to the DIAN, through certification issued by the creditor, that the credit does not correspond to indebtedness operations with related parties by means of guarantee, back-to-back, or any other operation in which substantially such related parties are creditors.

k. Depreciation and Amortization

Companies may depreciate tangible fixed assets (excluding land and securities, as defined in article 135 of the Tax Code) other than amortizable assets.[653] Acquired intangibles subject to demerit, deferred charges, preliminary expenses, organization or facility development, as well as the costs of exploration for, the exploitation of and mining oil and gas, and other natural resources, must be amortized (see V.B.6.b., above).[654]

For a depreciation deduction to be allowed, it must be demonstrated that the asset in question has been used in income-producing activities during the respective tax period. For taxpayers required to maintain an accounting system, depreciation deductions will be based on the difference between the fiscal cost of the asset concerned and the residual value of the asset over the course of its useful life.[655] The depreciation method will be that outlined in the relevant accounting method.[656]

A taxpayer that purchases a used asset can make a reasonable estimate of its probable useful life, taking into account the use made of the asset by the previous owner(s). The sum of such estimated life and the already elapsed period may not be less than the estimated useful life of a comparable new asset.[657]

Accelerated depreciation is allowed when an asset is used for more than 16-hour work shifts. In these circumstances, the taxpayer may accelerate depreciation by 25% for each extra 16-hour shift for which the asset is used or for a proportional fraction thereof.[658]

The depreciation rate is determined in accordance with the relevant accounting method each year but may not exceed the ceiling determined by the Colombian Government. The government regulates the maximum rates of depreciation, which range from 2.22% to 33%. If depreciation deductions exceed the ceilings set by the government in a taxable year or period, the excess may be deducted in the following taxable period.[659]

Under article 143 of the Tax Code, investments in intangible assets that are necessary for the business activity are deductible by way of amortization based on the cost of the principal assets (as provided for article 74 of the Tax Code). The rate of amortization is limited to an annual rate that may not exceed 20% of the fiscal cost of the asset concerned. Amortization expenses in excess of this limit and that are therefore not deductible in the current year may be carried forward during the useful life of the asset concerned and may be deducted each year subject to the 20% limitation.[660]

l. Taxes

As from 2019, taxpayers can deduct for income tax purposes 100% of taxes, rates and contributions (excluding income tax, wealth tax, and tax paid under the voluntary disclosure introduced by Law 2010) if they have been effectively paid during the taxable year and are directly related to the taxpayer's economic activity.

In addition, 50% of the financial transaction tax (FTT) is deductible, regardless of whether it is linked to the economic activity of the taxpayer.

m. Foreign Exchange

Income, costs, deductions, assets and liabilities in foreign currency are measured at the time of their initial recognition at the representative market rate of exchange.

Exchange rate fluctuations in entries on statements of financial positions expressed in foreign currency will not have tax effect until the assets concerned are disposed of or paid for, or until full or partial payment in the case of liabilities. Such events will be recognized at the market exchange rate at the time of their initial recognition. The exchange rate differential between the representative market rate as of the initial date of recognition of the income, cost, deduction, asset or liability and the representative market rate at the time of disposal or payment is deemed to constitute taxable income or a deductible cost or expense, as the case may be.[661]

[646] Col. Tax C., art. 118-1, para. 5.
[647] Col. Tax C., art. 118-1, para. 3.
[648] Col. Tax C., art. 118-1.
[649] Col. Tax C., art. 118-1, para. 3.
[650] Col. Tax C., art. 118-1, para. 4.
[651] Decree 1625/2016, art. 1.2.1.19.6.
[652] Decree 1625/2016, art. 1.2.1.19.6.
[653] Col. Tax C., arts. 127.
[654] Col. Tax C., arts. 143 and 143-1.
[655] Col. Tax. C., art. 128.
[656] Col. Tax. C., art. 134.
[657] Col. Tax C., art. 139.
[658] Col. Tax C., art. 140.
[659] Col. Tax C., art. 137.
[660] Col. Tax C., art. 134.
[661] Col. Tax C., art. 288.

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n. Pension Provisions

Payments made by employers to cover pensions for employees are deductible for income tax purposes. Reserves created to cover future pension payments are also deductible for corporate income tax purposes.[662]

An employer's contributions to a private pension insurance company or a voluntary pension fund are deductible up to 3,800 UVT per employee.

Voluntary contributions made by an employee or an employer to a private pension insurance company or a voluntary or statutory pension fund administered by an entity supervised by the Superintendence of Finance are not taken into account in calculating the taxable base for withholding tax purposes and are treated as exempt income to the extent of 30% of the employment income, including contributions made to an "AFC account", to the extent they do not exceed 3,800 UVT per year.[663]

o. Net Operating Losses

Net operating losses incurred by a company may be carried forward for the following 12 taxable periods. Shareholders may not deduct company losses or set them off against their own net income.[664] Net operating losses of one company may not be set off against taxable income generated by another company, except in the event of a merger or a spin-off as long as the economic activities of the companies involved are the same as before the merger or spin-off. In the event of a merger, the acquiring company may set off against its net income the tax losses incurred by the merged companies in the same proportion as the percentage shares of assets of the merged companies in the equity of the resulting company. Losses may not be set off if they are not real economic losses.[665] The set off of carried forward losses of a merged company must take into account the taxable periods already elapsed and the annual set-off limitation in effect in the period when the losses were incurred and declared. The carryback of net operating losses is not permitted.

In the event of a spin-off, the resulting company may set off against its net income the tax losses incurred by the spun-off company, up to an annual limit equal to the percentage of equity of the company that was split held by the resulting company. The set-off of carried forward losses incurred by the company that was split must take into account the taxable periods already elapsed and the annual limitation in effect in the period when the losses were incurred and declared.[666]

In the event that the company being split is not dissolved, it will be able to set off its tax losses incurred prior to the spin-off, up to a limit equivalent to the percentage of assets that it retains after the spin-off. The compensation for the carried forward losses suffered by the spun-off company must be made taking into account the taxable periods already elapsed and the annual limits in effect in the period in which the tax losses were generated and declared.[667]

p. Capital Losses

Subject to some exceptions, principally in the case of shares and other participations in entities, losses arising on the disposal of assets are deductible,[668] unless the acquirer is a related party of the original owner, or the assets belonged to individual members of the transferor or his or her relatives.

7. Tax Credits

a. Foreign Tax Credit

See XVIII.A., below.

b. VAT Offset

Taxable persons may offset against their income tax liability VAT paid for the acquisition, creation, and import of productive fixed assets, including VAT associated with the services required to put such assets into operating condition.[669]

In the case of self-created real productive fixed assets, taxpayers may offset VAT in the year in which the asset is activated and subject to depreciation or amortization, or in any of the following taxable periods.

Lessees may offset VAT when the productive fixed assets are acquired, created or imported under financial leasing or leasing with an irrevocable purchase option.

In this case, the VAT paid may not be taken simultaneously as a cost or expense in the taxpayer's income tax or offset against invoiced VAT.

8. Tax Incentives

The primary exemptions from income tax from which legal entities may benefit are discussed in V.B.8.a. to g., below.[670]

a. Industrial Users of Free Trade Zones

Industrial users in free trade zones are subject to a special 20% income tax rate on income from the export of goods and services. Any income of such industrial users that does not derive from the export of goods and services is subject to the general 35% income tax rate.

Industrial users of free trade zones that sign an internationalization and annual sales plan agreement may access the special rate of 20%. The agreement must be signed before the Ministry of Industry and Commerce for each of the taxable years concerned.[671] The requirements that must be met to obtain this tax benefit are set out in article 89 of Decree No. 2147 of 2016.

[662] Col. Tax C., arts. 111, 112, 126-1.

[663] *Cuenta de Ahorro para el Fomento de la Construccion*, i.e., special bank accounts created for savings to promote construction activities in Colombia.

[664] Col. Tax C., art. 147.

[665] Decree 1032/1999, art. 1.

[666] Decree 1032/1999, art. 1.

[667] Decree 1032/1999, art. 1.

[668] Col. Tax C., arts. 149, 153.

[669] Col. Tax C., art. 258-1.

[670] Prior to January 1, 2017, Law 1429 of December 29, 2010, provided a number of benefits for small businesses, as defined. These tax benefits were modified by Law 1819 of 2016 and were discontinued for new taxpayers pursuant to Law 1943 of 2018. However, the benefits (which apply for a maximum of five years) remain in force for taxpayers that were under this regimen before the issuance of Law 1943 of 2018, and it was modified by Law 2277 of 2022.

[671] Col. Tax C., art. 240-1.- para 6. Decree 047 of 2024 sets out the requirements that must be met for the subscription of the internationalization and annual sales plan allowing industrial users of free trade zones to access the special rate of 20% provided for in Col. Tax C., art. 240-1.

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Non-subscription or non-compliance with the internationalization and annual sales plan by the free zone industrial user results in the application of the general income tax rate (35%).

Under Law 2277 of 2022, the special 20% income tax rate will apply until 2025 to qualified free trade zone companies demonstrating revenue growth of 60% in 2022 in comparison to the revenue for 2019.[672]

For taxpayers that have entered into a legal stability contract before the issuance of Law 2277 of 2022, the applicable rate will be the one set forth in the corresponding contract.[673] Taxpayers that have entered into a legal stability contract will not be able to deduct payments of parafiscal contributions made to the National Training Service (SENA); and the Colombia Family Welfare Institute (ICBF).[674]

Industrial users: (i) are not required to export their production; and (ii) qualify if they are engaged in certain activities in addition to industrial and manufacturing activities, including logistic, product transport, telecommunications, technology and scientific research, tourism, and health services.[675]

Note: The Superintendence of Industry and Commerce, the Tax Authority, and the General Controller will carry out a joint audit of all tax benefits, exemptions, and deductions, among other matters, with the purpose of determining whether to continue, amend and/or eliminate them. Furthermore, in 2020, the Colombian Government must draft a bill that, among others, will tax the accounting profits and eliminate exempted income and special tax benefits for free trade zones.

b. Interest on Foreign Public Debt

Interest income related to foreign public debt, debentures and securities derived by individuals or entities located outside Colombia is exempt from Colombian national taxes.[676] Interest from foreign public debt received by resident individuals or entities is subject to Colombian income tax.

c. Hotel Services, Ecotourism, Agrotourism, Theme Parks

Income derived from hotel services, ecotourism theme parks and/or agrotourism theme parks provided in new hotels, theme park projects, new ecotourism and agrotourism park projects will be subject to an income tax rate of 15% applicable for a period of 10 years starting from the commencement of the provision of the relevant service by the (i) new hotel, ecotourism and/or agrotourism theme parks projects, (ii) hotels, ecotourism and agrotourism theme parks that have been renovated or expanded provided that the value of the renovation and/or expansion is not less than 50% of the acquisition value of the property that is remodeled or expanded. In addition, the following conditions must be fulfilled:[677]

(i) Services provided by new hotels, ecotourism and/or agrotourism theme parks must be built, renovated and/or expanded in municipalities of up to 200,000 inhabitants, as certified by the National Statistics Department (DANE) on December 31, 2022, and/or municipalities listed in the development programs with a territorial economic impact ("PDET");

(ii) The new hotel, ecotourism and/or agrotourism theme park project must have a construction license issued by the competent authority;

(iii) The renovated and/or expanded hotels, ecotourism and/or agrotourism theme park must obtain prior approval from the Urban Curator's Office or the corresponding Municipal Mayor's Office;

(iv) The hotel must have been authorized by the national tourism registry at the time of rendering the services; and

(v) Construction, renovation and/or expansion must be completed in its entirety within five years from the effective date of this law.

These provisions will not apply to motels and residences.

Additionally, as from January 1, 2019, hotel services provided in the municipalities that form part of the following special customs zones, are excluded from VAT:[678]

(i) The Urabá, Tumaco and Guapi special customs regime zones;

(ii) The Inírida, Puerto Carreño, la Primavera and Cumarimbo special customs regime zones; and

(iii) The Maicao, Uribía and Manaure area special customs regime zones.

d. Publishing Companies

Publishing companies that are established in Colombia for purposes of editing Colombian books and journals of a scientific or cultural nature are subject to income tax at a rate of 15%.[679] Under article 1 of Resolution No. 1508 of 2000, issued by the Ministry of Culture, any books, magazines, brochures and collectible series, whether paper-based or published by electromagnetic means, may be considered scientific or cultural in nature. Exceptions to the above definition include horoscopes, *novelas*, fashion, pornographic, and gambling publications.

e. Renewable Energy Production

The sale of non-conventional renewable energy, carried out exclusively by generating companies, is exempt from income tax for a term of 15 years as from 2017, if the following requirements are met:[680]

(i) Carbon dioxide emission certificates are processed, obtained and sold in accordance with the Colombian Government regulations;

(ii) At least 50% of the resources obtained from the sale of carbon dioxide emission certificates, are invested in social benefit works in the region where the generator operates.

Section 5 of Law 1715 of 2014, provides that biomass, small hydropower, wind, geothermal, solar and ocean sources

[672] Col. Tax C., art. 240-1.- transitory para.
[673] Col. Tax C., art. 240-1.
[674] Col. Tax C., art. 240-1, para. 3.
[675] Law 1004/2005, art. 3.
[676] Col. Tax C., art. 218.
[677] Col. Tax C., art. 240, para. 5; Decree 1625/2016, art. 1.2.1.28.2.1.
[678] Col. Tax C., art. 476 (26).
[679] Col. Tax C., art. 240, para. 74.
[680] Col. Tax C., art. 235-2 no. 3.

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are considered non-conventional renewable energy generation projects.

This benefit may not be applied concurrently with benefits established in Law 1715 of 2014 mentioned under V.B.8.f., below.

f. Renewable Energy Projects

According to Law 1715 of 2014 (amended by Law 2099 of 2021) and Decree 2143 of 2015 (as updated by Decree 829 of 2020 and further amended by Decree 895 of 2022), companies that invest in non-conventional energy (FNCE) projects or in actions or measures of efficient management of energy (GEE) may be eligible for:

(i) A special deduction;

(ii) Accelerated depreciation;

(iii) VAT exclusions; and

(iv) Exemptions from customs duties in connection with the purchase and/or importation of machinery, equipment, materials and supplies exclusively for reinvestment and investment in FNCE and GEE activities.[681]

The investor can apply the tax benefits only if, among other conditions, prior to the investment:[682]

(i) The investor obtains an investment benefit certificate for tax benefits, issued by the Energy Mining Planning Unit (*Unidad de Planeación Minero Energética*, UPME); and

(ii) The UPME certifies the project and the equipment, machines, and services that compose the investment.

(1) Special Deduction

Taxpayers with an accredited FNCE or GEE project can deduct 50% of the cost of the direct investment.[683] This special deduction is available over a maximum period of 15 years, following the fiscal year when the respective investment was carried out.

The value of the annual deduction is limited to 50% of the net income reported by the taxpayer before applying the special deduction.

(2) Accelerated Depreciation

Accelerated depreciation is a special depreciation regime that FNCE and GEE generators/developers can apply to the machines, equipment, and civil works acquired or built for an accredited project.[684] Pursuant to this special regime, investors can depreciate the mentioned assets up to a global annual rate of 33.33%.[685]

The depreciation rate may be modified in any taxable year if the investor notifies the change to the DIAN before filing the corresponding income tax return.

The 50% special deduction, discussed above, may be applied jointly with the accelerated depreciation.

Investors will lose the right to avail of these benefits (both the 50% special deduction and accelerated depreciation) and thus the amounts become subject to recapture in the following cases:[686]

(i) The corresponding project contracts that were entered into are either declared null or terminated by an agreement among the parties or pursuant to a court order;

(ii) The assets of the investment are transferred by the investor before the end of the applicable depreciation or amortization period; or

(iii) The assets of the investment are transferred and then reacquired by the investor.

In any of the situations described above, the recognition of the net income derived from the recapture of benefits must be accounted for during the taxable year in which the respective event occurs.

(3) VAT Exemptions

FNCE and GEE project assets and services that are included in the list approved by the UPME, including certain services rendered in Colombia and abroad, are eligible for VAT exemption.

To obtain this benefit, the project must have been approved by the UPME. However, if the certification is issued after the importation or acquisition of the relevant assets and services, the investor may request for a VAT refund.[687]

(4) Customs Duty Exemption

Imported machinery, equipment, material and other supplies in connection with approved FNCE and GEE projects are eligible for a tariff exemption. This benefit must be requested of the DIAN at least 15 business days before the importation of an item, in accordance with the project documentation endorsed in the certificate issued by the UPME.

Additionally, after the UPME has issued the project certificate, the investor must file the prior (import) license request with the Ministry of Commerce, Industry and Tourism, attaching the certificate. Once this application has been made, the import committee of the Ministry will issue a decision on the request for the tariff exemption.[688]

g. Environmental Stewardship

Legal entities that directly invest in the control, conservation, and improvement of the environment, may offset 25% of investments made in the respective taxable year against their income tax, provided they have prior accreditation by the corresponding environmental authority.[689]

Investments made by mandate of an environmental authority to mitigate the environmental impact produced by an activity subject to an environmental license, are not eligible for this benefit.

[681] Law 1715 of 2014, arts. 11, 12, 13 and 14.
[682] Decree 895 of 2022, art. 1.2.1.18.91.
[683] Decree 895 of 2022, art. 1.2.1.18.71.
[684] Decree 895 of 2022, art. 1.2.1.18.75.
[685] Decree 895 of 2022, art. 1.2.1.18.75.
[686] Decree 895 of 2022, arts. 1.2.1.18.73 and 1.2.1.18.76.
[687] Decree 895 of 2022, art. 1.3.1.12.24.
[688] Decree 895 of 2022, art. 1.3.1.12.25.
[689] Col. Tax C., art. 255.

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9. Tax Rate

As discussed in IV.B., above, income tax for legal entities consists of the following components:

(i) Basic income tax for corporations and other similar entities, including foreign corporations and similar entities that derive income through Colombian branches or PEs, is levied at the rate of 35% for fiscal year 2023 onwards.[690] As previously mentioned, an income tax surcharge for financial entities, extended by Law 2155 of 2021, is levied at the rate of 5% for fiscal years 2023 to 2027;

(ii) Capital gains tax is levied on gains such as those derived from the sale of fixed assets held for at least two years, as well as donations, legacies and bequests. The general rate of capital gains tax is 15%, regardless of whether the taxpayer is an individual or a legal entity, and whether the taxpayer is a resident or a nonresident.[691] For occasional profits from lotteries, raffles, betting and the like, the rate is 20%.[692] Net capital gains are obtained by subtracting capital gains that are expressly exempted and occasional losses (i.e., losses arising from the disposal of fixed assets held for two years or more), as set forth by law, from gross capital gains.[693] Gains derived from the sale of assets held for less than two years are subject to the basic income tax.

10. Alternative Minimum Tax

Law 2277 of 2022 introduced an alternative minimum effective corporate income tax rate of 15%, for tax years beginning on or after January 1, 2023.[694] Subject to certain exceptions, the alternate minimum tax is generally applicable to all Colombian legal entities, irrespective of entity structure and income thresholds, and extends to branches, permanent establishments, and companies operating in duty-free zones.[695] Law 2277/2022 does not change the standard corporate tax rate of 35%, but instead it creates a floor for taxpayers whose effective tax rate falls under 15%. Hence, the alternative minimum tax functions as a sort of top-up tax, but it is not a qualified domestic minimum top-up tax as per the OECD Pillar Two rules. Generally, the alternative minimum tax is calculated by dividing a taxpayer's adjusted income tax by its adjusted, pre-tax accounting profit, calculated based on its adjusted, pre-tax financial profit. To reach a 15% effective rate, adjustments can be made to various accounting elements, such as tax-exempt income, capital gains, and tax losses. Importantly, the 15% alternative minimum tax does not apply to foreign corporations and certain industries, including companies with operations in special economic and social development zones (ZESE) or regions afflicted by armed conflict (ZOMAC).[696]

The alternative minimum tax was introduced into the Colombian legal framework in parallel to the implementation of the OECD's Pillar Two global minimum tax under the Inclusive Framework on BEPS. However, the Colombian rule diverges from the OECD's global minimum tax, which seeks to prevent profit shifting to low-tax jurisdictions. The main differences between the Colombian alternative minimum tax and the OECD global minimum tax are as follows: (i) the OECD global minimum tax targets multinational enterprises (MNEs) and only those with revenues above 750 million euros, whereas the Colombian alternative minimum tax applies to all, and only to, domestic companies subject to Colombian corporate income tax, with certain exceptions; and (ii) the OECD approach is intended to facilitate a proper distribution of income between jurisdictions, whereas the Colombian approach employs a specific formula that targets economic speculations by domestic companies, which do not always reflect the actual economic reality of those companies.

The Colombian alternative minimum tax was initially challenged by a lawsuit, with the plaintiffs arguing that the tax was unconstitutional because it violated the principles of equity, efficiency, and progressivity. However, the Constitutional Court upheld its constitutionality. In Ruling C-488 of 2024,[697] the Court concluded that the alternative minimum tax effectively addresses the issue of tax base erosion, a problem caused by entities accumulating tax benefits to significantly reduce the amount subject to taxation. According to the Court, the tax as designed ensures that taxpayers pay at least 15% of their adjusted financial profits, with an additional "supplementary tax" required if the calculated amount falls below this threshold. The Court also determined that this measure is effective in combating tax avoidance and increasing public revenue, aligning with the government's legitimate goal of strengthening fiscal resources without breaching constitutional principles. The Court, accordingly, declared the rule constitutional. As a result, all Colombian corporate income taxpayers are required to comply with the alternative minimum tax requirements, ensuring a fairer contribution to public finances and reinforcing the country's fiscal stability.

11. Assessment and Filing

a. Calendar Tax Year

Resident corporate income taxpayers are required to file corporate income tax returns on a calendar-year basis. Companies and individuals are required to use the calendar year ending December 31 as their financial year. However, for liquidated companies, the year will end for this purpose on the date in which the competent authority authorizes the liquidation act.[698]

[690] Col. Tax C., art. 240.

[691] Col. Tax C., arts. 313, 314, 316.

[692] Col. Tax C., art. 317.

[693] Col. Tax C., art. 311.

[694] In a case challenging the constitutionality of the Colombian minimum tax, the Constitutional Court, in its ruling of November 21, 2024, upheld the provision. See Court press release: https://www.corteconstitucional.gov.co/comunicados/Comunicado%2051%20-%20Noviembre%2020%20y%2021%20de%202024.pdf.

[695] Col. Tax C., art. 240, para 6.

[696] In accordance with Law 98 of 1993.

[697] For further discussion of Ruling C-488, see the Court's press release (*Communicado 51*) of November 2024, at: https://www.corteconstitucional.gov.co/comunicados/comunicado%2051%20-%20noviembre%2020%20y%2021%20de%202024.pdf (in Spanish).

[698] Col. Tax C., art. 595; Decree 2588/1999.

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b. Returns for Legal Entities

Corporate income tax returns are filed between April and July of the year following the tax year.[699] The due dates are determined each year by the Colombian Government and differ depending on whether the company is classified as a large taxpayer. The exact return due date is based on the taxpayer's tax identification number.[700] For a list of tax returns due dates, see Worksheet No. 27.

Under rules prescribed by the tax authorities, for some legal entities and other taxpayers electronic filing is required, and they may not file paper returns.[701]

According to Ruling 1253 of 2022 issued by the Colombian Tax Authority, taxpayers falling into any of the following categories will be considered to be large taxpayers:

(i) Taxpayers within the group of subjects that contributed 60% of the total gross collection of the entity, at current prices for tax concepts without including the value of any penalties, during the five years prior to the date when the qualification is made.

(ii) Legal entities that, in the taxable year prior to the year in which the classification is made obtained net income (not including any occasional profits treated as capital gains) for an amount equal to or exceeding 5,000,000 UVT.

(iii) Individuals that, in the taxable year prior to the year in which the classification is made declared gross income equal to or exceeding 3,000,000 UVT.

(iv) Individuals or legal entities that belong to the same corporate group as the taxpayer that meets the requirements set out in (i) above, for control purpose.

Ruling 12220 of 2022 issued by the Colombian Tax Authority sets out the individuals and legal entities that are classified as large taxpayers for taxable years 2023 and 2024.[702]

Colombian entities that on January 1 of each year own assets abroad worth over 2,000 UVT must file an annual return reporting their assets held abroad.[703] The return, a special form (Form 160) provided by the DIAN, must include the following:

(i) Taxpayer identification;

(ii) Details of the foreign assets to be reported, specifying the value, jurisdiction, nature and kind, from January 1 of each year, when the value exceeds 3,580 UVT;

(iii) Foreign assets with a value of less than 3,580 UVT, reported on an aggregate basis according to the jurisdiction in which they are located; and

(iv) The signature of the person required to file the return (generally, the legal representative and the statutory auditor).

c. Tax Audits

A tax audit is an examination of a tax return or information report carried out by the DIAN.[704] The DIAN may also start an administrative proceeding in order to request the taxpayer to file a tax return that is pending.

Using the taxpayer's tax identification number, the DIAN's central computer system checks all returns filed to verify their mathematical accuracy and other indices. Based on this information, some taxpayers are selected for more detailed scrutiny. However, the DIAN is authorized to initiate enforcement procedures, even randomly, in the event of any hint of inaccuracy or omission by the taxpayer.

Regarding the amendment of a tax return, the DIAN provides written notification to a taxpayer that is to be audited.[705] The audit agent has considerable discretion as to the items to be examined and what may constitute acceptable documentation for proving the accuracy of the corresponding return, although the taxpayer is afforded procedural opportunities to present arguments and evidence regarding the case.[706] The administrative procedure depends on the nature of the possible infringement, but in general the taxpayer is guaranteed the right to defend itself in the process, including the possibility of starting a lawsuit for the annulment of acts issued by the DIAN before administrative courts.

Tax audits may cover returns of all tax obligations, including income tax, VAT and withholding taxes. The results of tax examinations are provided to taxpayers, and, depending on the findings, returns may be amended by the taxpayers.

For national tax purposes, supporting documents must be retained for five years, counted from January 1 of the next year to the date in which those documents were drafted or prepared.[707] However, documents will likely need to be retained for a longer term (up to 10 years), under non-tax rules, such as article 28 of Law 962 of 2005. These record-retention requirements should be complied with, as they will allow a taxpayer better to assist the tax authorities in the event of an audit.[708]

In the case of an income tax return, the law provides for:

(i) A three-year statute of limitations, beginning on the return filing date established by Decree, if the return is filed on time or the date on which the return is filed if the return is filed late;[709]

(ii) A five-year statute of limitations in the case of a return on which tax losses are calculated or offset; and[710]

(iii) A five-year statute of limitations in the case of taxpayers obliged to apply the transfer pricing regime.[711]

As a rule, the statute of limitations for VAT and withholding tax returns is linked to the statute of limitations for the in-

[699] Col. Tax C., arts. 571–572, 574–576 (describing taxpayer filing and compliance obligations).
[700] Col. Tax C., art. 575.
[701] Col. Tax C., art. 579-2.
[702] Ruling 12220 of 2022. Ruling 1253 of 2022 sets out the criteria for individual and legal entities being classified as large taxpayers.
[703] Col. Tax C., art. 607.
[704] Col. Tax C., art. 684.
[705] Col. Tax C., art. 685.
[706] Col. Tax C., art. 744.
[707] Col. Tax C., art. 632. Law 962/2005, art. 46.
[708] Col. Tax C., art. 774.
[709] Col. Tax C., art. 714.
[710] Col. Tax C., art. 147.
[711] Col. Tax C., arts. 147 and 714.

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come tax return for the period to which the VAT and withholding returns correspond.[712]

During the statute of limitations period, the DIAN may assess the tax liability and request the amendment of a tax return.[713] A return will not be subject to audit or amendment after the statute of limitations with respect to it has expired.

If a taxpayer that is required to file a tax return fails to do so, the DIAN has five years to require the taxpayer to submit the outstanding return and to impose penalties if the taxpayer does not comply.[714]

A company may carry forward net operating losses for the following 12 taxable periods.[715]

When a taxpayer files or amends a tax return after accepting an official tax assessment, the statute of limitations for the tax return is six months from the date on which the tax return is filed or amended.[716]

A taxpayer may amend its tax returns within a three-year period after the filing due date and before it has received a special summons, or a statement of objections issued by the DIAN.[717]

However, where the taxpayer's amendments result in a decrease in tax payable or an increase in the positive balance in favor of the taxpayer, article 589 of the Tax Code establishes a one-year statute of limitations from the date on which the return must be filed.

d. Disputes and Appeals

If the DIAN decides, based on the tax audit, that the return is inaccurate, it may send a written notice (*requerimiento especial*) to the taxpayer assessing the additional value of the taxes and requesting that the taxpayer file an amended return.[718] In this case, the taxpayer may accept all or part of the DIAN's proposals and pay the additional taxes, its corresponding late interest and 25% of the inaccuracy penalty assessed by the DIAN.[719] Alternatively, if the taxpayer considers that the DIAN's position is incorrect, it can provide a response to the written notice, defending its position and presenting the relevant evidence.[720] If the DIAN persists in its position, it must issue an official tax assessment (*liquidación de revisión*), in which it will determine the tax due and impose the penalties noted in the written notice.[721] If the taxpayer decides to correct its return after this official assessment is issued, it must pay 50% of the penalty.[722] The official assessment may also be appealed before the DIAN (*recurso de reconsideración*). The result is issued through a resolution and may be challenged in a lawsuit before the administrative courts.[723]

e. Payment of Tax

Each year, normally in December, the Colombian Government issues a decree establishing the deadlines for the submission of tax returns and the payment of the respective national taxes.[724] Traditionally, the decree has distinguished between the terms granted to entities designated by the DIAN as "large taxpayers" and those granted to other taxpayers.[725]

For income tax purposes, in addition to paying the tax balance of the corresponding fiscal year, if any, every taxpayer required to file an income tax return is required to pay an amount equal to 75% of the income tax determined in that return, as an advance payment for income tax for the following taxable year.

The 75% rate will be applied on the net income tax of the fiscal year or on the average of the last two years, at the option of the taxpayer. From the result obtained, any amounts withheld corresponding to the fiscal year that is being declared will be discounted. The result obtained will be the advance to be paid by the taxpayer.

In the case of taxpayers that are filing their income tax return for the first time, the advanced payment is 25% for the first year, 50% for the second year, and 75% for the following years.[726]

f. Penalties

The DIAN is empowered to assess penalties on taxpayers. The penalties imposed will depend on the offense. The following are the most common:

(i) Inaccuracy penalty: in the case of a dispute over the content of a filed return (for example, where there is an omission of income or tax generated, or inclusion of nonexistent expenses), the DIAN could impose a penalty equal to 100% of the difference between the amount actually due, according to the official assessment, and the amount declared by the taxpayer.[727] This penalty does not apply when the dispute originates from a reasonable difference of opinion between the DIAN and the taxpayer regarding the interpretation of the applicable law.[728] However, in practice, tax inspectors will impose this penalty and leave it to the courts to establish whether there is in fact a difference of opinion that exonerates the taxpayer. This penalty will be 200% of the higher tax to be paid determined by the DIAN when the taxpayer omits assets or reports false expenses.

(ii) Penalty for late submission: the late filing of a tax return will lead to the imposition of a penalty of 5% of the total tax due, for each month or fraction of delay, not to exceed 100% of the tax due. This penalty is imposed in addition to interest for late payment.[729]

[712] Col. Tax C., arts. 705-1 and 714 and Ruling No. 048953 of 2007.
[713] Col. Tax C., arts. 702–709, 714.
[714] Col. Tax C., art. 717.
[715] Col. Tax C., art. 147.
[716] Col. Tax C., art. 764-4.
[717] Col. Tax C., art. 588.
[718] Col. Tax C., arts. 702–708.
[719] Col. Tax C., art. 709. Normally, the penalty at issue is for inaccuracy, and is equivalent to 100% (or 160% or 200% depending on the case) of the additional tax paid to the DIAN (Col. Tax C., art. 647 and 648).
[720] Col. Tax C., art. 707.
[721] Col. Tax C., arts. 709–712.
[722] Col. Tax C., art. 713.
[723] Col. Tax C., art. 720. Specific procedures for filing a tax case with the Tax Courts and the Administrative Supreme Court of Justice are set out in the Administrative Litigation Code and the Civil Procedure Code.
[724] Col. Tax C., art. 811.
[725] For example, see Decree 1778 of 2021, which sets out the schedule for filing and payment of national taxes in 2022.
[726] Col. Tax C., art. 807.
[727] Col. Tax C., art. 648.
[728] Col. Tax C., art. 647.
[729] Col. Tax C., art. 641.

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If no tax is payable, the penalty for each month or fraction is equivalent to 0.5% of the gross income received by the taxpayer in the reporting period, without exceeding the lesser amount resulting from applying 5% to said income or double the credit balance (*saldo a favor*), if any, or the amount equivalent to 2,500 UVT when there is no balance in favor.

If there is no income, the penalty for each month or fraction is 1% of the net worth of the immediately preceding year, without exceeding the lesser amount resulting from applying 10% to said net worth, or double the credit balance, if any, or the equivalent to 2,500 UVT when there is no credit balance.

This penalty and its thresholds will double if the tax return is filed after a formal notice has been sent by the DIAN.

In the case of late submission of a foreign assets tax return, the penalty will be 0.5% of the value of the assets held abroad, for each month or fraction of delay if the return is filed before a formal notice sent by the DIAN. If the taxpayer files the tax return because of a notice sent by DIAN but before a resolution imposing a non-filing penalty, the rate of the penalty will be 1%. The penalty cannot exceed 10% of the assets' value.[730]

(iii) Penalty for failure to file: a taxpayer that is required to file a tax return and that, despite being requested to do so by the DIAN,[731] fails to do so, will be subject to a penalty, the amount of which depends on the nature of the return that has not been filed:[732]

- Income tax return: the penalty for non-filing is 20% of the value of the bank deposits or gross income of the respective taxable year, or 20% of the gross income stated in the last filed income tax return, whichever is higher;[733]
- VAT and Consumption Tax return: the penalty for non-filing is 10% in all instances;[734]
- Withholding return: the penalty for non-filing is the greater of: 10% of the amount of checks issued or other means of payment through the financial system or of costs and expenses as determined by the DIAN for the relevant period and 100% of the amount of withholding stated in the last withholding tax return filed;
- Foreign asset tax return: the penalty for non-filing is the greater of 5% of the gross assets reported in the last filed income tax return and 5% of the gross assets as determined by the DIAN for the period in which the tax return was not filed.
- Net worth return: the penalty for non-filing is 160% of the tax determined by the DIAN.

(iv) Penalty for failure to submit tax-related information: individuals and entities that are required to provide tax information, as well as those requested to furnish specific information or evidence to the DIAN, and that: fail to do so within the time limit allowed; or provide information that falls short of the request, is not what is required, or is not filed on time, are liable to a penalty of: 1% of the amount that was the object of the information request; 0,7% of the amount that was explicitly requested or if the taxpayer provided the wrong information to the DIAN; or 0,5% of the amount with respect to which there was a failure to file on time. Where it is not possible to establish the proper basis for assessing the penalty, or the information does not include liquid amounts, the fine may be 0.5 UVT for each piece of information not provided. The penalty for not submitting tax-related information may not exceed 7,500 UVT.[735]

(v) Amendment penalty: when a tax return is amended to increase the tax due or decrease the credit balance, the taxpayer must pay a penalty equal to 10% of the increase or decrease, as the case may be. In the event the correction is preceded by a summons to correct or a tax inspection order, the penalty will be increased to 20%. Unlike the penalties listed above, this penalty is to be calculated by the taxpayer.

If the taxpayer fails to calculate the penalties or calculates incorrectly, the DIAN will determine the penalty with a 30% increase.[736]

g. Refunds

A taxpayer generally has two years, after the due date to file the return, to request the refund or the offset of a credit balance liquidated in its tax return.[737] However, in the case of VAT, the refund of credit balances can only be requested by the entities expressly referred to in articles 481, 477, 468-1 and 468-3 of the Tax Code (which, fundamentally, refer to exporters, providers of VAT-exempt goods and services, goods and services subject to a VAT rate of 5%, and entities subject to VAT withholding). VAT credit balances for which refunds cannot be requested can be credited in the VAT return for the next tax period.[738]

In the case of authorized entities mentioned above under articles 477, 468-1 and 468-3, the credit balances originating in VAT returns for excess deductible tax due to rate a differential may only be requested as a refund once the income tax return of the corresponding taxable period has been filed, unless the VAT-responsible taxpayer is an authorized economic operator under the terms of Decree 3568 of 2011, in which case the refund may be requested every two months.[739]

[730] Col. Tax C., art. 641. par. 1.
[731] Col. Tax C., art. 715.
[732] Col. Tax C., art. 643.
[733] Col. Tax C., art. 643.
[734] Col. Tax C., art. 643.
[735] Col. Tax C., art. 651.
[736] Col. Tax C., art. 701.
[737] Col. Tax C., arts. 816, 850, 866.
[738] Col. Tax C., art. 815.
[739] Col. Tax C., art. 481.

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In addition, producers of exempt goods referred to in article 477 of the Tax Code and producers and sellers referred to in paragraphs 4 and 5 therein, may request a refund, after the compensation to be made, the positive VAT balance generated during the first three two-month periods of the year, starting from the month of July of the same taxable year, provided they have complied with the obligation to file the income tax return of the previous taxable year, if applicable.

The refund of excessive or undue payments can be requested during the five-year period following their occurrence.[740]

12. Withholding Tax and Dividends

a. Withholdings

In general terms, every payment made by a legal entity is subject to a withholding tax. In the case of a resident recipient of such a payment, the tax withheld is in practice an advance payment of the recipient's income tax liability and is creditable against the recipient's total annual tax due.[741] In the case of a nonresident recipient, the withholding tax is usually a final tax, insofar as the recipient is not required to file a tax return in Colombia. In the event the nonresident is required to do file such a return, amounts withheld will be credited against the tax due.[742]

The withholding agent is responsible for issuing withholding certificates, filing returns and paying over the withheld amounts to the DIAN within the month following the one in which the withholding is made.[743] Withholding tax certificates are issued by the withholding agent to taxpayers that have been subject to withholding tax. For example, a corporation purchasing professional services from a consulting firm in Colombia will withhold tax on its gross payments for such services at the rate of 11%.[744] At year-end, the withholding agent in Colombia will issue a certificate to the consulting firm reflecting the amount of tax withheld and paid to the tax authorities on its behalf.[745] This certificate is the withholding tax certificate. The withholding agent is required to file a monthly withholding tax return. These returns serve as the basis for issuing the withholding tax certificate.

Withholding returns must be filed and the amount withheld paid on the dates set forth by the tax calendar issued by the Colombian Government. If tax is not withheld or is only partially withheld, or it is not paid over to the authorities, the withholding agent is charged a penalty plus interest. Non-payment of tax withheld may constitute a criminal offense. Below is a schedule of the basic withholding tax rates.

Type of Payment	Recipient	
	Resident	**Nonresident** [746]
Dividends[747]	0%,[748] 10%,[749] 15%,[750] 20%,[751] 33%[752], 35%	0%,[753] 20%,[754] 33%[755], 35%
Taxable interest	2.5%,[756] 4%[757]	15%, 20%[758]
Royalties	3.5%, 10%, 11%[759]	20%[760]
Fees for personal services	4%,[761] 6%,[762] 10%,[763] 11%[764]	20%[765]
Fees for technical services	10%, 11%[766]	20%[767]

[740] Decree 1625/2016, arts. 1.6.1.21.22 and 1.6.1.21.27, Col. Civ. C., art. 2536.

[741] Col. Tax C., art. 365.

[742] Col. Tax C., arts. 6, 592.

[743] Col. Tax C., art. 367.

[744] Decree 1625/2016, art. 1.2.4.3.1.

[745] Col. Tax C., art. 379.

[746] Double tax treaties may apply.

[747] Decree 567/2007. Col. Tax C., arts. 242-1, 242, and 245. The rate of withholding tax on dividends depends on whether the dividends are paid out of profits taxed at the corporate level, in accordance with Col. Tax C., arts. 48 and 49. E.g., under arts. 48 and 49, dividends received by a Colombian company will be subject to the tax on dividends at the rate of 10% if they are paid out of profits that were taxed at the corporate level. Other dividends distributed to a Colombian company are taxed first at the general corporate income tax rate (35% for FY 2024) and subsequently at the dividend tax rate of 20%. The applicable withholding corresponds to 100% of the dividend tax liability. These rules do not apply to dividends paid out of profits generated in 2016 or prior years.

[748] When dividends of less than 1,090 UVT are paid out to resident individuals.

[749] Col. Tax C., art. 242-1. Applicable to domestic companies. The applicable withholding corresponds to 100% of the tax on dividends.

[750] Col. Tax C., art. 242. Applicable to Colombian residents (individuals). The applicable withholding corresponds to 15% when the tax on dividends paid is more than 1,090 UVT.

[751] Decree 1625/2016, art. 1.2.4.7.1. Applicable as withholding income tax to resident individuals when: (i) they are required to file income tax returns, (ii) dividends are paid out of profits generated in 2016 or previous years, and (iii) dividends were not taxed at corporate level. If the beneficiary is not obliged to file an income tax return, the withholding rate will be 33%. In any case, if the beneficiary is not required to file an income tax return and the amount of such dividends is equal to or more than 1,400 UVT in a year, the 20% rate will apply.

[752] Decree 1625/2016, art. 1.2.4.7.1. Applicable as withholding income tax to resident individuals regarding dividends paid out of profits generated in 2016 or previous years that were not taxed at the corporate level when beneficiaries (i) are not required to file income tax returns and (ii) the amount of such dividends is less than 1,400 UVT.

[753] Under certain tax treaties, the rate could be 0%.

[754] Col. Tax C., art. 245. Payments to foreign companies for tax effects and nonresident individuals of dividends paid out of profits that were taxed at the corporate level, are subject to 20% withholding tax. If the profits were not taxed at the corporate level, such dividends are subject to the general corporate income tax rate (35% for FY 2023) and the balance thereafter subject to 20%.

[755] Decree 1625/2016, art. 1.2.4.7.2. (transitory paragraph). Applicable to dividends paid to foreign companies for tax matters and nonresident individuals out of profits corresponding to 2016 or previous years that were not taxed at the corporate level. All the above is subject to the provisions of an applicable tax treaty.

[756] Decree 1625/2016, art. 1.2.4.2.85.

[757] Decree 1625/2016, art. 1.2.4.2.83.

[758] Col. Tax C., art. 408. This Article establishes the 15% rate applicable to interest payments on foreign loans with a term of not less than one year or under international leasing contracts. If the term is less than one year, the rate is 20%.

[759] Decree 1625/2016, art. 1.2.4.3.1.

[760] Col. Tax C., art. 408.

[761] Decree 1625/2016, arts. 1.2.4.4.14 and 1.2.4.4.15.

[762] Col. Tax C., art. 392.

[763] Decree 1625/2016, arts. 1.2.4.4.9 and 1.2.4.10.2.

[764] Decree 1625/2016, arts. 1.2.4.4.9 and 1.2.4.10.2.

[765] Col. Tax C., art. 408.

[766] Decree 1625/2016, art. 1.2.4.3.1.

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Fees for technical assistance services	10%, 11%[768]	20%[769]
Payments under turnkey contracts	1%[770]	1%[771]
Purchases	2.5%,[772] 3.5%[773]	0%,[774] 20%[775]
Payments for the transportation of cargo	1%[776]	0%,[777] 5%[778]
Payments for the transportation of passengers	1%,[779] 3.5%[780]	0%, 5%[781]
Fees for general services	4%,[782] 6%[783]	20%
Real property rentals	3.5%[784]	20%
Commissions	10%,[785] 11%	20%
Salaries and wages	Progressive rates	20%[786]
Interest paid on loans with an eight-year term or longer, to finance infrastructure projects in the context of Public-Private Associations (APPs)	2.5%,[787] 4%[788]	5%[789]

See XVI.H., below, for a discussion of withholding on outbound payments a non-cooperative, low-tax or no-tax jurisdiction (known as "tax haven jurisdictions" before the enactment of Law 1819 of 2016).

b. Dividends Tax

As of January 1, 2023, dividends paid to Colombian companies are subject to a withholding rate of 10%, if they are paid out of profits that were subject to income tax at the level of the Colombian distributing company. Otherwise, the distribution will be taxed at the corporate income tax rate applicable to the corresponding fiscal year (FY 2024: 35%).[790]

This 10% withholding rate will not apply to dividends paid between Colombian companies within a commercial group or under a control situation duly registered before the chamber of commerce.

The 10% withholding rate is only applicable to Colombian companies that receive dividends for the first time. The amount withheld will be a credit transferable to the final beneficiary (Colombian resident individual or investors abroad).

Example: A Colombian company receives dividends out of profits that were not taxed at the corporate level in an amount of COP 100. When it on-distributes these dividends to a Colombian legal entity, the Colombian company must withhold: (i) 35% of COP 100 (100 × 35% = COP 35); and (ii) 10% of the balance (COP 65 × 10% = COP 6,5). The final amount of the distribution will be COP 58,5.

Dividends paid to foreign companies or to nonresident individuals by a Colombian company will be subject to tax at a rate of 20% if they are paid out of profits that are subject to tax at the level of the Colombian distributing company. Otherwise, the distribution will be first taxed with the corporate income tax applicable to the corresponding fiscal year and, thereafter, by applying the 20% rate on the balance. The 10% withholding rate mentioned above, if any (i.e., the tax withheld where a dividend is first distributed to another Colombian company before being on-distributed to the nonresident shareholder), will be creditable.

The dividend income tax is withheld by the distributing company.

For Colombian resident individuals, the dividend tax is 15%, if the dividend to be paid is higher than 1900 UVT. The 10% withholding rate mentioned above, if any, (i.e., the tax withheld where a dividend is first distributed to another Colombian company before being on-distributed to the resident individual shareholder), will be creditable.

Law 1943 of 2018 (declared unconstitutional but applicable for fiscal year 2019) establishes that this dividend regime (also included by Law 2010 of 2019, issued as a consequence of the unconstitutionality of Law 1943) will not be applicable to dividends declared by the Colombian company until December 31, 2018. If the dividend corresponding to profits generated in 2018 or in a previous fiscal year was not declared up to that date, it will be necessary to determine which dividends taxation regime will be applicable (Law 1819 of 2016 or the previous dividends regime).[791]

[767] Col. Tax C., art. 408.
[768] Decree 1625/2016, art. 1.2.4.3.1.
[769] Col. Tax C., art. 408.
[770] Col. Tax C., art. 412.
[771] Col. Tax C., art. 412.
[772] Decree 1625/2016, arts. 1.2.4.9.1 and 1.2.4.9.2.
[773] Decree 1255/2016, art. 1.2.4.9.2 (par 3).
[774] Under Col. Tax C., arts. 25 and 418, income arising from the sale of goods not located in Colombia is not taxed in Colombia and is, therefore, not subject to withholding tax.
[775] Col. Tax C., art. 415. Under art. 415, the general withholding tax rate for payments abroad is 20%.
[776] Decree 1625/2016, arts. 1.2.4.4.6 and 1.2.4.4.8.
[777] If a tax treaty applies, the rate is 0%.
[778] Col. Tax C., art. 414-1. International air and sea transportation (when companies are not Colombian).
[779] Decree 1625/2016, art. 1.2.4.4.6. Applicable to domestic air and sea transportation.
[780] Decree 1625/2016, arts. 1.2.4.10.6 and 1.2.4.9.1. Applicable to domestic and international ground transportation (taxpayers not required to file income tax return).
[781] Col. Tax C., art. 414-1. International air and sea transportation (when companies are not Colombian).
[782] Decree 1625/2016, art. 1.2.4.4.14.
[783] Col. Tax C., art. 392.
[784] Decree 1625/2016, art. 1.2.4.10.6.
[785] Col. Tax C., art. 392.
[786] Col. Tax C., art. 408. Col. Tax and Customs Admin. Op. 35980/1997.
[787] Decree 1625/2016, art. 1.2.4.2.85.
[788] Decree 1625/2016, arts, 1.2.4.2.32, 1.2.4.2.83.
[789] Col. Tax C., art. 408. Interest payments to nonresidents corresponding to loans for a term equal to or higher than eight years, intended for the financing of infrastructure projects under the Public-Private Partnerships scheme within the framework of Law 1508 of 2012, are subject to a withholding rate of 5%.
[790] Col. Tax C., art. 240.
[791] Decree 1625/2016, arts. 1.2.1.10.4.

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13. Holding Companies

Pursuant to the new Colombian holding company (CHC) regime in effect from January 1, 2019,[792] a CHC and its shareholders are subject to the general income tax regime regarding taxable activities carried out in Colombia and abroad through permanent establishments.

Additionally, the following rules also apply:

(i) Companies under the CHC are considered as Colombian tax residents for purposes of the double taxation treaties signed by Colombia;

(ii) Only costs and expenses attributable to income obtained from taxable activities carried out in Colombia or abroad through a permanent establishment, are deductible for income tax purposes;

(iii) Companies under the CHC are subject to the controlled foreign corporations' regime. Taxes paid abroad will be creditable.[793] However, income that must be taxed according to the controlled foreign regime will not be subject to the benefits established under the CHC regime.

(iv) Companies under the CHC are subject to the Industry and Commerce Tax (turnover tax) if they perform the taxable event within a Colombian municipality or district. Dividends distributed by foreign legal entities and treated under the CHC regime will not be subject to the Industry and Commerce Tax.

Domestic companies that wish to benefit from the CHC regime must have as one of their main activities the holding of securities, the investment or holding of shares or participations in Colombian and/or foreign companies or entities, and/or the administration of such investments, provided they comply with the following conditions:[794]

(i) Have a direct or indirect participation in at least 10% of the capital of two or more Colombian and/or foreign companies for a minimum period of 12 months; and

(ii) Have human and material resources for the development of their corporate purpose. This requirement will be deemed to be met if a company has at least three employees, its own management in Colombia, and can demonstrate that strategic decision-making of the investments and assets of the CHC is carried out in Colombia.[795]

Colombian companies under the CHC regime are not subject to the withholding rate of 7.5% on dividends distributed by other Colombian companies.

Companies that wish to benefit from the CHC regime must send a request to the DIAN using the applicable forms and providing the information requested under Decree 1625 of 2016.[796]

14. General Anti-Avoidance Rule

A General Anti-Avoidance Rule (GAAR) was introduced into the Colombian legal system by Law 1607 of 2012 (article 869 of the Tax Code). The GAAR allows the DIAN to recharacterize or reconfigure any transaction that constitutes abuse in tax matters and, consequently, to disregard its effects.

Article 869 also establishes that a legal act or business is understood to be contrived and therefore lacks economic and/or commercial purpose when it is evidenced, among other things, that:

(i) The legal act or business is executed in a manner that, in economic and/or commercial terms, is not reasonable;

(ii) The legal act or business results in a substantial tax benefit that is not reflected in the economic or business risks assumed by the taxpayer; or

(iii) The execution of a structurally correct legal act or business is only apparent, since the manner in which the act or business is structured conceals the true intention of the parties. The tax benefit may be manifested, among other ways, in the elimination, reduction or deferral of tax, an increase in a favorable balance or tax losses, or the granting of tax benefits or exemptions.

C. Other Taxes

1. Registration Tax

Registration tax must be paid to the Chamber of Commerce or the Registry of Public Deeds on the drawing up of a legal deed, contracts or other legal document that, under any provision of law, is required to be registered with those entities, where a private legal entity or an individual is a party to, or a beneficiary under, the deed, etc.[797] If a document or act is subject to registration with both the Chamber of Commerce and the Registry of Public Deeds, the registration tax will be triggered only on registration with the latter.

The basis for calculating the registration tax is the amount established in the document, deed or contract. In the case of incorporation or changes affecting a corporation, the tax base is the total value of the contribution, including both capital and additional paid-in capital. In the case of the sale or transfer of immovable goods, the tax base cannot be less than the administrative assessment of the property, the self-appraisal used for the property tax purposes or the amount established at auction, as the case may be.[798]

The applicable rate is determined by the Departmental authorities and ranges from 0.1% to 1%, depending on the type of deed or contract concerned, as follows:[799]

(i) Deeds or contracts that incorporate liquid amounts and are subject to registration with the Registry of Public Documents (such as sales of immovable property): the rates range from 0.5% to 1%.

[792] Col. Tax C., art. 898.
[793] Col. Tax C., art. 892.
[794] For more information regarding direct and indirect participations, see Decree 1625 of 2016, art. 1.2.1.23.3.1.
[795] Simply holding a formal annual shareholders meeting will not suffice.
[796] Decree 1625/2016., arts. 1.2.1.23.3.3.
[797] Law 223/1995, art. 226.
[798] Law 223/1995, art. 229, as modified by art. 187 of Law 1607/2012.
[799] Law 223/1995, art. 230, as modified by art. 188 of Law 1607/2012.

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(ii) Deeds or contracts that incorporate liquid amounts and are subject to registration with the Chamber of Commerce, other than those involving additional paid-in capital: the rates range from 0.3% to 0.7%.

(iii) Deeds or contracts subject to registration with the Chamber of Commerce that involve additional paid-in capital: the rates range from 0.1% to 0.3%.

(iv) Deeds or contracts that do not incorporate liquid amounts but must be inscribed in the Registry of Public Documents or with the Chamber of Commerce (such as the appointment of representatives or a statutory auditor, and any reforms that do not involve the transfer of rights or an increase in capital): the tax to be paid is a lump sum of between two and four times the legal minimum wage.

2. Industry and Commerce Tax (Turnover Tax)

The Industry and Commerce Tax (ICA) is a municipal tax levied on a company's gross receipts derived from industrial, commercial or services activities.[800] A taxpayer is subject to ICA if it carries on industrial, commercial or service-oriented activities in the municipality or district concerned.

Municipalities or districts may impose ICA within certain rate parameters, as follows:[801]

(i) Industrial activities: at rates ranging from 0.2% to 0.7%; and

(ii) Commercial activities and the rendering of services: at rates ranging from 0.2% to 1%. In the case of Bogota, the rate theoretically can range from 0.2% and 3%,[802] but the enacted rates range from 0.414% to 1.38%.[803]

Generally, the taxable period lasts for a year, except in the case of Bogotá, which has a bimonthly period as allowed by its special legal regime.[804]

The most important exemptions pertaining to ICA are for:

(i) Revenue derived from exempt activities;

(ii) Revenue derived from excluded activities;

(iii) Revenue derived from activities that are not subject to ICA;

(iv) Revenue from export activities;

(v) Discounts and rebates;

(vi) Profits derived from the sale of fixed assets;

(vii) Profits derived from the primary production of agricultural, livestock and poultry, excluding profits from food factories or industries involving a transformation process;

(viii) Profits derived from the exploitation of salt mines, emeralds and precious metals, when the amount of royalties or shares payable to the municipality is equal or greater than what would be payable under the Industry and Trade Tax; and

(ix) Profits derived from the provision of health services in clinics and hospitals.

In principle, ICA taxpayers are only individuals and legal entities. However, the law has extended the application of the tax to consortia and joint ventures.[805]

3. Value Added Tax

a. Taxable Transactions

As a general rule, Colombian VAT is levied on: (i) the sale or transfer of movable assets and real property assets; (ii) the sale or assignment of rights over intangible goods associated with industrial property; (iii) the provision of services within Colombia or from abroad; (iv) the importation of tangible goods; and (v) the circulation, sale or operation of games of chance, with the exception of lotteries and games of chance operated exclusively via the internet.[806] Some assets and services are expressly excluded from VAT.

VAT is levied at a general rate of 19%, although there are special rates ranging from 0% to 5% for certain goods and services.[807]

One hundred percent of the VAT paid for the acquisition, construction or import of real productive fixed assets[808] can be credited in the income tax return, as previously mentioned. The VAT applied as a credit for income tax purposes may not be treated as an expense or as a credit for VAT purposes.[809]

For further research on Colombia's VAT system, see also the VAT Navigator.

b. Exemptions and Exclusions

The VAT law excludes or exempts from VAT a number of goods and services, such as foodstuffs, books and scientific magazines, chemical raw material used for medicines, financial interests, and leasing transactions, among others.[810] Exports of goods and services are also exempt from VAT.[811]

While both exclusions and exemptions mean that the good or service is not charged to VAT, the regimes differ mainly in that exclusion rules out the possibility of crediting input VAT,[812] while in the case of exempt goods and services such credit is allowed and the refund of any resulting credited balance can be requested (an exception to the general rule under which VAT credit balances cannot be refunded but only credited in subsequent periods).[813]

c. Import VAT

In general, the standard VAT rate on imports is 19% and is levied at the time of customs clearance, based on the CIF value plus tariffs and the cost of services (in the case of goods the val-

[800] Law 14/1983, art. 32 and Law 1819 of 2016, arts. 342, 343.
[801] Law 1819 of 2016., art. 342.
[802] Decree-law 1421/1993, art. 154, no. 6.
[803] Decree of the District 352 de 2002, art. 53.
[804] Law 14/1983, art. 33. Decree-law 1421/1993, art. 154(1).
[805] Law 1607/2012, art. 177.
[806] Col. Tax C., art. 420.
[807] Col. Tax C., arts. 468-1, 468-3, 476, 477, 481.
[808] For the definition of "real productive assets," see Decree 1625 of 2016, art. 1.2.1.27.1.
[809] Col. Tax C., art. 258-1. Decree 1625 of 2016, arts. 1.2.1.27.2 and following.
[810] Col. Tax C., arts. 424, 477, 478, 481.
[811] Col. Tax C., art. 481.
[812] Col. Tax C., art. 488.
[813] Col. Tax C., arts. 488, 850.

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ue of which involves the provision of services or is increased by the inclusion of an intangible good).[814] The VAT chargeable on imports depends not only on the nature of the imported goods, but also on the regime used, as follows:

(i) Ordinary imports are generally subject to customs duties, i.e., both VAT and tariffs.

(ii) Temporary imports of goods for their re-exportation in the same condition: imports that last no more than six months, renewable for three additional months, do not give rise, totally or partially, to the payment of customs duties (VAT and tariffs).[815]

(iii) Temporary long-term imports of goods for their re-exportation in the same condition: imports of heavy machinery not produced in Colombia for basic industries such as mining and fossil fuels do not give rise to VAT. If the term during which such goods will remain in Colombia is less than five years, the payment of the applicable tariff may be deferred and paid in equal semi-annual installments during the period in which the goods remain within the national customs area.[816]

(iv) Some customs regimes, such as those related to special import-export regimes (for example, the "Plan Vallejo") and the temporary importation of capital goods to be repaired or otherwise modified qualify for the suspension of customs duties (VAT and tariffs), if the goods concerned are intended to be re-exported.[817]

d. Export VAT

Exports are deemed to be VAT-taxed operations, but the applicable rate is 0%.[818] An exporter is entitled to obtain a refund of VAT previously paid on inputs, which can be credited on its VAT returns and would generally result in a credit balance (provided the exporter only engages in VAT-exempt transactions).[819] Exporters must register with the DIAN.[820]

e. VAT Rates

Colombia applies multiple VAT rates, the standard rate being 19% for most transactions.[821] Certain goods and services, as specifically designated by law, are taxed at the rate of 0% (e.g., live bovines, meat, pork, poultry and eggs)[822] or 5% (e.g., coffee, oats and electric vehicles used for public transportation).[823] Some goods and services, such as certain types of vehicles and mobile communications, are subject to both VAT and the national consumption tax.

f. Registration

All companies and individuals that carry out taxable activities are responsible for VAT.

However, the following are not responsible for VAT: individuals, merchants and artisans who are retailers, small farmers or ranchers, as well as providers of services:

(i) Whose gross receipts in the previous and current fiscal years amount to less than 3,500 UVT;

(ii) Who do not have more than one going concern; and

(iii) Who are not customs users (i.e., exporters or importers), among other conditions set out in the law.[824]

Currently Colombia does not have a VAT registration threshold.

Taxpayers under the Simple Tax Regime are not responsible for VAT, if they develop the activities established under numeral 1 of article 908 of the Col. Tax Code (small shops, mini-markets, micro-markets and hairdressers).

Those responsible for VAT are required to issue pre-numbered invoices[825] and to maintain purchases and sales books.[826] Furthermore, as from FY 2019, they are required to issue electronic invoices in accordance with the DIAN and National Government regulations.[827] The DIAN established a calendar to implement the electronic invoicing in which the dates depend on the activity code of the taxpayer (CIIU) and the qualification of the VAT responsible party, e.g., Simple Regime taxpayers or large taxpayers, among others.[828]

As from January 1, 2020, electronic invoices must be issued to deduct taxes, costs and expenses, in accordance with the following table:[829]

Fiscal Year	Maximum Rate Allowed Without Electronic Invoicing
2021	20%
2022	10%

An automatic refund mechanism will proceed for producers of exempt goods referred to in Article 477 of the Col.Tax.C. on a bimonthly basis under the terms set out in Article 481, provided 100% of the creditable taxes that give rise to the credit balance, and the income that generates the exempt operation, are duly supported by the electronic invoicing system.[830]

[814] Col. Tax C., arts. 459, 468.
[815] Decree 1165/2019, arts. 200 and 201.
[816] Decree 1165/2019, art. 201.
[817] Decree Law 444/1967, Decree 631/1985, and Decree 285/2020; Col. Tax C., art. 428(e)..
[818] Col. Tax C., arts. 479, 481.
[819] Col. Tax C., arts. 489, 850.
[820] Decree 2788/2004, art. 5.
[821] Col. Tax C., art. 468.
[822] Col. Tax C., arts. 479, 481.
[823] Col. Tax C., arts. 468-1, 468-3.
[824] Col. Tax C., art. 437, par. 3.
[825] Col. Tax C., art. 615; Decree 1165/1996; Col. Tax and Customs Admin. Op. 1277/Jan. 10, 1997.
[826] Col. Tax C., art. 632
[827] Ruling 042 of 2020 DIAN.
[828] Ruling 20 of 2019 DIAN and Resolution 30 of 2019 DIAN.
[829] Col. Tax C., art. 616-1 (transitory paragraph). It should be noted that Law 2155 of 2021 modified article 616-1 of the Col Tax C. establishing that costs and expenses are only deductible for tax purposes if they are supported by an electronic invoice or equivalent document. However, this provision will only enter into force when the corresponding regulation is issued. For 2021 and 2022 income tax returns, the provisions of article 616-1 of the Col. Tax Code will continue applying.
[830] Col. Tax C., art. 855, par 5. Lit c.

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4. Financial Transactions Tax

The Financial Transaction Tax (FTT) at the rate of 4 per 1,000 is levied on most financial transactions.[831] The tax was first introduced as a temporary levy to bail out Colombia's financial sector from a near-collapse in 1999 and, by most accounts, has proved successful.

FTT taxpayers are: Colombian financial system users; financial institutions comprising Colombian financial system; and the Colombian Central Bank (*Banco de la República*).[832] FTT is triggered by the conduct of financial transactions that utilize funds deposited in checking or savings fund accounts or in deposit accounts with the Central Bank, the drawing of cashier's checks, and the transfer or assignment of resources deposited in investment portfolios managed by financial institutions, as well as accounting debits made by these entities that result in payments to third parties.[833]

The regulations provide that a financial transaction may include any withdrawal of cash, whether by check, deposit/withdrawal slip or charge card, at a cash station or cash payment location, through a debit note or by any other means of disposal of cash held in a deposit, savings or checking account, in whatever currency, including a debit to the account of funds held as "positive credit card balances," a transaction whereby a financial institution repays an amount held as a term deposit by means of a credit to the account of the respective deposit holder, and the cancellation of a liability or the transfer of ownership of an asset in a registered account.[834]

A taxpayer that qualifies for an FTT exemption must inform the financial institution where the respective account is held and ask for that account to be marked as exempt. Failure to comply with this requirement results in the forfeiture of the exemption.

Exemptions from FTT provided for in the regulations include:[835]

(i) Withdrawals made from savings accounts or on prepaid cards managed by financial institutions and/or cooperatives overseen by the Financial Superintendence, up to the limit established by law (350 UVT per month). Each person may have only one account or prepaid card benefiting from this exemption.[836] Additionally, withdrawals made from special savings accounts for pensioners are exempt, up to the limit established by law (41 UVT per month);[837]

(ii) Transfers between checking accounts, savings accounts and prepaid cards held with the same financial entity in the name of the same holder. This exemption also applies where the transfer is made between collective savings accounts or between such accounts and checking or savings accounts belonging to the same holder, provided the accounts concerned are held with the same financial entity. Likewise, transfers between investment portfolios made by a financial institution on behalf of a single beneficiary are exempt;[838]

(iii) Transactions carried out directly by the Director of the National Treasury or via its executive agents. Under the regulations, this exemption applies to transactions that affect the national budget, even where the respective funds are transferred to an outlying territorial division. The Director of the National Treasury must designate the exclusive accounts into which or from which these funds are paid or transferred. In conjunction with this exemption, Decree 405 of 2001, incorporated into Decree 1625 of 2016, makes it clear that the state-owned fund that operates as the guarantor of local financial institutions (FOGAFIN) is an executive agent of the Director of the National Treasury, whenever it repays debt represented by securities issued for the capitalization of the local public banking system. This rule applies regardless of whether the funds FOGAFIN uses to do so are its own or are an allocation from the national budget;[839]

(iv) Central Bank transactions carried out to improve liquidity.[840] As the ultimate bank and lender for Colombia's public and private financial institutions, the Central Bank may offer special support to improve the liquidity of the financial system by means of discounts and rediscounts, as determined by the Board of Directors;[841]

(v) Interbank loans[842] and sell/buy-back or buy/sell-back transactions[843] in securities carried out by institutions regulated by the Superintendence of Finance.[844] This exemption does not apply when the final payment is made to a third party (for example, a person designated by the Creditor Bank to receive the payment without being party to the transaction);[845]

(vi) Interbank set off transactions, made through deposit accounts opened with the Central Bank;[846]

(vii) The clearing and settlement of transactions carried out on the stock, derivatives or foreign currency markets, as well as transactions on the agricultural or other commodities markets. This exemption includes guarantees given on behalf of participants in those markets and payments for the administration of securities. The exemption

[831] Col. Tax C., art. 872.
[832] Col. Tax C., arts. 871, 873, 875–876, 878.
[833] Col. Tax C., art. 873; Decree 405/2001.
[834] Col. Tax C., art. 871, Inc. 1.
[835] Col. Tax C., art. 879, ¶2.
[836] Col. Tax C., art. 879(1).
[837] Col. Tax C., art. 879, no. 14.
[838] Col. Tax C., art. 879, nos. 2, 14. The detailed list of transfers which may be exempt is in art. 1.4.2.2.21 of Decree 1625/2016.
[839] Col. Tax C., art. 879; Decree 1625/2016, art. 1.4.2.2.4. *See* Cen. Bank Ext. Reg. DCO-Jan. 2, 2001.
[840] Col. Tax C., art. 879; Decree 1625/2016.
[841] Law 31/1992, art. 12.
[842] Interbank loans are loans between financial institutions that are conducted to balance out treasury positions derived from liquidity surplus or deficit. Such transactions must occur between financial institutions that are regulated by the Superintendence of Banks. Decree 405/2001.
[843] A sell/buy-back or buy/sell-back transaction (*reporto* in Spanish) is also carried out as a means of temporary financing to correct treasury positions, where a financial institution sells (or buys) assets (usually securities) to (from) a third party and makes a commitment to buy (or sell) back the assets within a fixed term.
[844] Col. Tax C., art. 879; Decree 405/2001.
[845] Col. Tax C., art. 879, no. 5; Decree 1625/2016., art. 1.4.2.2.5.
[846] Col. Tax C., art. 879. no. 6; Decree 1625/2016., art, 1.4.2.2.6; Decree 1207/1996, art. 1.

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does not apply if the resulting payments are received by an entity that was not a party to the cleared/settled transaction concerned;[847]

(viii) Sell/buy-back and buy/sell-back transactions carried out by FOGAFIN and the guarantor of cooperative entities (FOGACOOP) with their affiliated entities;[848]

(ix) The management of public funds by the treasury divisions of territorial entities. For the exemption to apply, departmental, municipal or district treasuries must identify the checking or savings accounts they use to manage their budget resources to the relevant financial institutions. The regulations also dictate that the management of public funds also involves the transfer of taxes collected from collection entities of the territorial divisions to entities designed for that purpose;[849]

(x) Financial transactions carried out with the resources of the General Social Security Health System, the General Pension System and workers' compensation funds.[850] The financial transactions that are exempt in this context are confined to transactions carried out by the entities in charge of managing these resources, up to the point of payment to the "health promoting entities" (*Entidades Promotoras de Salud* or EPSs) or the relevant pension holder, affiliated individual or beneficiary, as the case may be. Special accounts must be set up for the exemption to apply, and the legal representatives of the entities concerned must prove and certify to the relevant financial institutions that the resources handled through their offices are such resources, and that the checking or savings accounts they identify at the time are exclusively devoted to the handling of such resources. Any resources or funds handled in any other accounts or any portion of the social security funds that is mixed with funds owned by the managing entities are not exempt from FTT;

(xi) Loan disbursements by means of credits to accounts or the drawing of checks.[851] For FTT exemption purposes, a credit to an account is the disbursement of loan funds into a checking account, a savings account or a deposit account made by credit establishments, cooperatives with financial activity or savings and credit cooperatives regulated by the Colombian Superintendence of Finance or the Superintendence of Economic Solidarity, or the disbursement of loan funds from credits obtained from abroad in Colombian currency by nonresident agents, under the terms of the foreign exchange regulations of the Colombian Central Bank. The disbursement of loan funds by check with the printed restriction stating that it is drawn "for credit to the account of the primary payee" also qualifies for these purposes. For the exemption to apply, the loan funds must actually be credited to an account held by the actual borrower. Loan disbursements to a third party are also exempt, but only if the receiving party uses the credit for the purchase of housing, vehicles or fixed assets. Loan disbursements in foreign currencies (where possible, under foreign exchange regulations) are not subject to FTT;[852]

(xii) The purchase and sale of foreign currency by exchange market intermediaries. The exemption applies to transactions between exchange market intermediaries regulated by the Superintendence of Finance or between those intermediaries, the Director of the Treasury and the Central Bank, when made through deposit accounts held with the same bank or through special purpose checking accounts that are fully identified;[853]

(xiii) Cashier's checks for the account of the person requesting them. Where a cashier's check is issued and charged to the savings or checking account of the person requesting the check, FTT does not accrue on the drawing of the check, provided the account is held with the same financial institution as issues the check; and

(xiv) The disposition of resources to carry out factoring operations, when performed by a company whose corporate purpose includes this type of transaction.[854]

5. Motor Vehicles Tax

A tax is imposed on the ownership of automotive vehicles at rates ranging from 1.5% to 3.5%, depending on the value, characteristics and intended use of the vehicle concerned.[855] The tax is paid in the jurisdiction (department or municipality, depending on the case) in which the respective vehicle is registered and the tax base is equal to the market value of the vehicle, as established year-to-year by the Ministry of Transport in the case of used vehicles, and in the bill of sale or import declaration in the case of new vehicles. Agricultural machinery, public works vehicles and vehicles and machinery for industrial use are exempt from this tax since, by their nature, they are not intended for travel on public or private roads open to the public are exempt from this tax.[856]

6. Property Tax

Tax on real property is levied by municipalities or districts on owners or holders of real estate assets located in both urban and rural zones. Tax rates vary according to the size, use and location of the real property concerned.[857] The tax is based on the taxpayer's real property appraisal, which, in any case, cannot be less than the official cadastral property valuation (or the cadastral self-assessment, if applicable).[858] Every municipality is allowed to determine the tax rate within a range from 0.1% to 3.3% of the real property appraisal.[859] The rates for developed

[847] Col. Tax C., art. 879, no. 7; Decree 1625/2016, arts., 1.4.2.2.15 and 1.4.2.2.16; Decree 405/2001, arts. 13 and 15.
[848] Col. Tax C., art. 879, no. 8; Decree 1625/2016, art. 1.4.2.2.8.
[849] Col. Tax C., art. 879, no. 9; Decree 1625/2016, art. 1.4.2.2.3.
[850] Col. Tax C., art. 879, no. 10; Decree 1625/2016, art. 1.4.2.2.11.
[851] Col. Tax C., art. 879, no. 11; Decree 1625/2016, arts. 1.4.2.2.15, 1.4.2.2.17, 1.4.2.2.18, 1.4.2.2.19.
[852] Decree 660/2011, art. 4, ¶2.
[853] Col. Tax C., art. 879, no. 12; Decree 405/2001.
[854] Col. Tax C., art. 879, no. 21.
[855] Law 488/1998, art. 145.
[856] Law 488/1998, art. 141.
[857] Law 14/1983, art. 17. Law 1450/2011, art. 23.
[858] Law 14/1983, art. 13.
[859] Law 1450/2011, art. 23.

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land in urban areas range from 0.1% to 1.6%, while the rates for undeveloped urban land range from 1.6% to 3.3%.[860]

7. Consumption Tax

As previously mentioned, as of 2013, a national consumption tax is levied on the rendering of certain services (for example, mobile communications and services such as those provided at restaurants, bars and similar establishments) and on sales to the final consumer. The tax may be charged simultaneously with VAT rates ranging from 4% to 16%.[861]

In addition, other special taxes are imposed on goods, such as cigarettes, beer, liquor and petroleum products.

D. Financial Accounting

1. In General

Prior to the adoption of IFRS (International Financial Reporting Standards) in Colombia, the World Bank conducted an assessment of the Colombian accounting (and auditing) system and concluded that it was not consistent with IFRS, U.S. GAAP or other international standards.[862] Colombian GAAP prior to the adoption of IFRS was principle-based. By contrast to the detailed accounting rules under U.S. GAPP (a rules-based system) or IFRS, Colombian rules covered only basic provisions without providing sufficient substantive direction.

On the other hand, the multitude of sources of accounting standards and supplementary rules issued by various Colombian regulators at times conflicted with each other resulting in confusion for preparers and users of financial statements. According to the World Bank, the most frequent problem was the pervasive influence of tax authorities on the choice and application of accounting principles.[863]

Prior to IFRS, it was typical for tax laws to include accounting rules. In fact, many taxpayers and even some accountants considered that accounting was purely for tax accounting purposes as if the only user of the financial information were the tax administration.

Law 1314 of 2009 ('Law of Convergence') introduced global accounting, financial reporting, and information assurance standards. Colombian companies were classified into three groups for purposes of transitioning to the new reporting standards. The groups and the fiscal year in which each company had to adopt IFRS were as follows:

- All companies whose securities are publicly traded and are legally defined as public interest entities, large companies whose parent or subsidiary reports under IFRS, and companies deriving 50% or more of their revenues from exports or imports, were required to adopt IFRS in full in 2015 (transition date 2014).
- Large and medium-sized companies, other than those included in Group 1, above, had to adopt the IFRS for SMEs standard in 2016.
- Micro-entities were required to adopt a new standard developed by the Technical Council for Public Accounting in 2015. Microenterprises can choose the IFRS for SMEs.

The extent of adoption of IFRS in Colombia to date is outlined below.[864]

Extent of IFRS Application	Status	Additional Information
IFRS Standards are required for domestic public companies	Adopted	Required for all listed companies and some others including large subsidiaries of IFRS parent companies, export-import companies, and government owned/controlled companies. Banks and other financial institutions use IFRS Standards with several modifications.
IFRS Standards are required or permitted for listings by foreign companies	Adopted	Permitted.
The IFRS for SMEs Standard is required or permitted	Adopted	Required for all except micro sized, unless full IFRS Standards are required or used.

Note that new IFRS rules issued by the International Accounting Standard Board (IASB) are not yet adopted in Colombia. The rules must first be reviewed by the Colombian government.

All accounting information is recorded and expressed in Colombian pesos, i.e., the functional and legal unit of measurement in Colombia. Foreign currency transactions in Colombia must be converted into Colombian pesos.

2. Accounting Period

Business entities in Colombia are required to prepare and disclose their financial statements periodically. An entity's closing dates are defined in advance in accordance with the controlling law and the entity's operating cycle. Business entities are required to prepare and issue general-purpose financial statements at year-end.[865]

Although a business entity is required to issue financial statements at least once a year on December 31, an entity's by-

[860] The cadastral appraisal is readjusted each year by the national government. For the year 2024, the readjustment for urban properties is 4.51%, for rural properties dedicated to agricultural activities it is 2.55% and for other rural properties it is 4.51%. Decree 1082 of 2015, modified by Decree 2311 of 2024.

[861] Col. Tax C., arts. 512-2, 512-3, 512-4.

[862] World Bank. Colombia: Accounting and Auditing (2003), available at: https://openknowledge.worldbank.org/handle/10986/14470 (accessed Sept. 15, 2019).

[863] *Ibid.*

[864] IFRS Foundation, *Who uses IFRS Standards?*, available at: http://www.ifrs.org/use-around-the-world/use-of-ifrs-standards-by-jurisdiction/colombia/ (accessed Sept. 15, 2019).

[865] Decree 2649/1993, art. 9.

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laws may dictate that statements be prepared using a different timetable.[866]

3. Financial Statements

a. Characteristics of Colombian Financial Statements

The IFRS Conceptual Framework sets out the concepts that underlie financial statements; defines the objective of financial reporting; defines the qualities of financial information (so that it is useful, relevant, and a faithful representation); and defines elements of financial statements (assets, liabilities, equity, income, and expenses) and their recognition and measurement. Basic financial statements consist of the following:

1. Statement of Financial Position, also known as a balance sheet, that consists of assets, liabilities, and equity. IFRS influences the ways in which the components of a balance sheet are reported.

2. Statement of Comprehensive Income, which can take the form of one statement, or it can be separated into a profit and loss statement and a statement of other income. The total sum of applicable revenues, costs, expenses, and monetary correction should show the results of the period.

3. Statement of Changes in Equity or statement of retained earnings which documents the company's change in earnings or profit for the financial period.

4. Statement of Cash Flow reports the company's financial transactions in the given period, separating cash flow into Operations, Investing, and Financing.

In addition to these basic reports, a company must give a summary of its accounting policies. The full report is displayed alongside the previous report, to show the changes in profit and loss. A parent company must create separate account reports for each of its subsidiary companies.

Consolidated financial statements present an entity's financial position, results of operations, net equity changes, financial position, and parent company and subsidiary (or subordinate and dominant company) cash flows (as if the parent and subsidiary were deemed to be a single enterprise).

Special-purpose financial statements are prepared to satisfy specific accounting information needs. Such statements have limited circulation and/or use and provide greater detail as to particular items and/or transactions. Some examples of special purpose financial statements are: the initial balance, the intermediate fund financial statements, the costs statement, the inventories statement, extraordinary financial statements, liquidation statements, financial statements presented to governmental regulatory agencies (subject to special classification rules).

When commencing activities, every business entity must prepare a general balance sheet providing clear and complete information on its initial assets. In addition, given that net worth constitutes a warranty held by creditors against the business entity, all business entities must prepare a balance sheet reflecting their net worth position at least once a year. The law also requires the preparation of intermediate period financial statements.[867] These are the basic financial statements prepared during the course of the period to satisfy management needs, government regulatory agency inspections (audits), and entity supervision and control.

Extraordinary financial statements are prepared when, among other situations, a transformation, merger or split up, public securities offer, bankruptcy filing, preventive creditor agreement or commercial establishment sale decision is made.

Extraordinary financial statements are typically prepared in the event of the following:

(i) Merger or spin-off transactions;

(ii) Sales of going concerns;

(iii) Non-acquisitive reorganizations;

(iv) If a company's stock will be listed on the stock market (initial or subsequent public offerings);

(v) Applications for debt forgiveness; and

(vi) Bankruptcy filing and declaration.

Financial statements are prepared in a comparative manner, showing the prior period and the current period.[868] Financial statements are compared by reference to closing dates and accounting period dates.

Certified financial statements are signed by an entity's legal representative and are prepared by a certified public accountant and statutory auditor attesting that the information provided has been taken in good faith from the entity's books.[869] An audited financial statement is a statement accompanied by a professional opinion from the certified public accountant who has examined the statement and is subject to generally accepted auditing rules.

All companies with the following characteristics must appoint an external auditor:

(i) Companies with assets higher than 5,000 minimum monthly salaries (MMS);

(ii) Companies with income higher than 3,000 MMS; and

(iii) International branches and stock companies.[870]

Colombian regulation requires companies to appoint an external auditor (*revisor fiscal*) with broad oversight responsibilities. The auditor performs annual audits and is legally required to perform various activities that do not constitute auditing of financial statements.

b. Recording of Entries

For Colombian purposes, account entries must be made in Spanish, by double entry, and must summarize a month's operations. Any omissions or mistakes are to be corrected following the rules of IAS 8-Accounting Policies, Changes in Accounting Estimates and Errors.

[866] Decree 2649/1993, art. 9.

[867] IAS 34 — Interim Financial Reporting.

[868] IAS 1 - Presentation of Financial Statements.

[869] Law No. 222 of 1995, art. 37.

[870] In accordance with the Code of Commerce and Law No. 43 of 1990.

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Before issuing financial statements, management in Colombia must verify that explicit or implicit representations are satisfactorily complied with as to each of their elements.[871]

c. Valuation and Measurement

Under the IFRS, assets are usually recorded at historical cost, except for some exceptions, such as property, plant and equipment (PP&E), investment property, biological assets, and certain financial instruments that can be reported according to fair or market value.

IFRS 13 - Fair Value Measurement is an accounting standard that defines in a single IFRS a framework for measuring fair value and requires disclosures about fair value measurements. IFRS 13 does not regulate when an asset, a liability or an equity instrument is measured at fair value. Rather, the measurement and disclosure requirements of IFRS 13 apply when another IFRS requires or permits the item to be measured at fair value.

IFRS 13 defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."

d. Colombian Financial Statements Principles — Aligned to IFRS

As previously said, the IFRS Conceptual Framework sets out the concepts that underlie financial statements, defines the objective of financial reporting (which is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity), and defines the qualitative characteristics of useful financial information: relevance, faithful representation, comparability, verifiability, timeliness, and understandability.

For information to be useful it must both be relevant and provide a faithful representation of what it purports to represent. Relevance and faithful representation are the fundamental qualitative characteristics of useful financial information:

(i) Relevance: information is relevant if it can make a difference to the decisions made by users, and financial information may make a difference in decisions if it has predictive value or confirmatory value;

(ii) Faithful representation: information must faithfully represent the substance of what it purports to represent. A faithful representation is, to the maximum extent possible, complete, neutral and free from error.

Additionally, comparability, verifiability, timeliness, and understandability are four qualitative characteristics that enhance the usefulness of information; however, they cannot make non-useful information useful.

e. Compilation of Accounting Standards in 2018

The Ministry of Commerce approved Decree 2483 of December 2018 through which the technical frameworks of the IFRS Financial Information Standards for Group 1, and IFRS for SMEs, Group 2, are compiled and updated.

This compilation decree has as its primary purpose "(...) to provide a single legal instrument that facilitates interested parties a better understanding and application of the financial information standards applied in the country."[872]

[871] Decree 2649/1993, art. 57.

[872] Decree 2483/2018.

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VI. Taxation of Foreign Corporations

A. What Is a Foreign Corporation?

A foreign corporation is a corporation that does not meet the requirements to be considered a domestic corporation.[873]

B. Scope of Income Tax

Foreign corporations are subject to taxation only on their Colombian-source income.[874] However, permanent establishments (PEs) in Colombia are treated for tax purposes as Colombian entities and are taxed on their worldwide income and assets attributable to the PE.[875]

As from fiscal year 2023, a foreign corporation that is required to file an income tax return in Colombia is subject to an income tax rate of 35%.[876] However, it is possible for the final rate to be lower, as is the case when a foreign corporation is not required to file an income tax return and, for example, receives payments subject to withholding tax pursuant to articles 407 to 411 of the Tax Code.[877]

Whether a foreign corporation is required to file income tax returns depends on the nature of its Colombian-source income and whether any withholding taxes due on that income has been duly charged.[878]

The above rules may be affected by an applicable double taxation treaty.

Corporations that are considered tax resident due to having their effective place of management in Colombian territory will not be considered nonresident for tax purposes from the moment they establish their effective place of management in the national territory.[879] At that point, they become subject to the tax regime applicable to resident Colombian corporations and must comply with all applicable tax obligations.[880]

C. Significant Economic Presence

1. In General

Law 2277 of 2022 introduced a regulatory framework for applying the new significant economic presence rule, effective from January 1, 2024, which created a new criterion for taxable nexus in Colombia based on significant economic presence.[881] It applies to nonresident companies or individuals involved in the sale of goods to Colombian clients or providing "qualified digital services" to Colombian clients/users.[882]

2. Sales of Goods and Services

A nonresident individual or entity is considered to have a significant economic presence in Colombia if:

(i) The nonresident maintains deliberate and systematic interactions in the Colombian market with clients and/or users located in Colombia[883]; and

(ii) During the previous or current tax year, the nonresident has gross income of 31,300 UVT or more from transactions involving the sale of goods to clients and/or users located in Colombia.

3. Provision of Digital Services from Abroad

A nonresident individual or entity is considered to have a significant economic presence in Colombia if:

(i) The nonresident satisfies the criteria applicable to the sale of goods and/or services set out above; and

(ii) The nonresident provides any of the following services:

- Online advertising services;
- Digital content services, whether online or downloadable, such as mobile applications, e-books, music, and movies;
- Broadcasting services, including TV programs, movies, streaming, music, multimedia transmissions such as podcasts and any other form of digital content;
- Monetization of information and/or data of users located in Colombia generated by user activity in digital markets;
- Online services of intermediary platforms;
- Digital subscriptions to audiovisual media, including, among others, news, magazines, newspapers, music, video, and games of any kind;
- Management, administration or handling of electronic data, including web storage, online data storage, file sharing services or cloud storage;

[873] Col. Tax C., art. 21.

[874] Col. Tax C., arts. 20, 576; Col. Tax and Customs Admin. Op. 26371/ March 22, 1996.

[875] Col. Tax C., arts. 12, 20, 20-2 and Law 1943/2018, art. 58.

[876] Col. Tax C., art. 240.

[877] Col. Tax C., art. 408.

[878] Col. Tax C., art. 592 num. 2.

[879] Col. Tax C., art. 12-1

[880] Decree 1625 of 2016., art 1.2.1.3.8.

[881] Col. Tax C., art. 20-3 par 2: A non-resident individual or entity not domiciled in Colombia, as referred to in this provision, may choose to declare and pay a three percent (3%) tax on the total gross income from the sale of goods and/or provision of digital services from abroad to users located in Colombia, using the income tax form. If the non-resident individual or entity opts for this mechanism, they may request the non-application of the withholding tax specified in paragraph 8 of Article 408 of the Tax Code. The form to declare this tax can be found on https://www.dian.gov.co/atencionciudadano/formulariosinstructivos/Formularios/2025/Formulario_115_2025.pdf

[882] Decree 1625 of 2016 arts.1.2.1.28.4.1 through 1.2.1.28.4.11 regulates taxation of significant economic presence established in Article 57 of Law 2277 of 2022. Among others, this draft would: (i) Define the concepts such as "client," "user," "digital interface," and "digital service"; (ii) Set out when the sale of goods and/or provision of services to clients and/or users located in Colombia is to be treated as creating a significant economic presence in Colombia; (iii) List the minimum information to be provided to the tax authorities by taxpayers with significant economic presence in Colombia; and (iv) Provide further information in relation to the registration, update and cancellation of the Tax Registry (RUT) applicable to nonresident individuals or entities not domiciled in Colombia who have significant economic presence in Colombia and who choose to declare and pay income tax and other taxes through the prescribed form. At the time of writing, the final text of this regulatory decree has not yet been approved.

[883] Col. Tax C., art 20-3 par 1: It is presumed by law that a non-resident individual or entity is engaging with customers in Colombia if: (1) They interact with or market to 300,000 or more clients or users in Colombia during the previous or current taxable year; or (2) They offer the option to display prices or accept payments in Colombian pesos (COP).

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- Services or licensing of online, standardized or automated search engines, including custom software;
- Supply of the right to use or exploit intangibles;
- Other electronic or digital services for users located in Colombia; or
- Any other service provided through a digital market to users located in Colombia.

D. Determination of Taxable Income

The computation of taxable income, in the case of a foreign entity, depends on whether the entity is required to file an income tax return. If the entity is so required, the tax base must be calculated in accordance with the ordinary system (35% for fiscal year 2023), taking into account the fact that the entity can only deduct costs and expenses linked to Colombian-source income received. If, on the contrary, the foreign entity is not required to file an income tax return, its final tax will be equal to the withholding tax levied on its Colombian-source income received or accrued during the relevant fiscal year. This will apply exclusively if the total Colombian-source income is subject to withholding under articles 407 to 411.[884] Double tax treaties may apply.

For the rates of source country taxation applying to investment income, services income and capital gains under Colombia's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

E. Technical Services

Payments corresponding to technical assistance and services rendered by non-residents in Colombia are subject to withholding tax at a flat rate of 20%.[885] Foreign entities that only receive this type of Colombian-source income (or other items of income listed in articles 407 to 411 of the Tax Code, such as interest and royalties) are not required to file income tax returns.[886] Double tax treaties may apply.

F. International Transportation

Income derived from air, sea, river and ground transportation by nonresident corporations and individuals from rendering transportation services between Colombia and other countries is considered to be partly Colombian-source and partly non-Colombian-source income.[887]

Colombia is a party to various treaties for the avoidance of double taxation of income from international transportation activities. Currently, Colombia has such treaties with Argentina,[888] Brazil,[889] Chile,[890] France,[891] Germany,[892] Italy,[893] Panama,[894] the United States[895] and Venezuela.[896]

G. Turnkey Contracts

There is no formal definition of the term "turnkey contract" in Colombia. The courts, however, have come to define a turnkey contract as a contractual arrangement under which one party is solely responsible for the performance of the steps necessary to build a ready-to-use and finished operating asset and deliver it to a purchaser.[897] The pricing of such contracts typically includes a cost and profit margin based on the procurement, building and transfer of the asset to the eventual purchaser.[898] The total value of the turnkey contract is considered to be Colombian-source income.[899] The hiring or purchasing party must collect a withholding tax of 1% on the gross value of all the payments made under the turnkey contract.[900] Nonresidents that derive Colombian-source income by way of turnkey contracts are required to file income tax returns in Colombia.[901] Double tax treaties may apply.

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[884] Col. Tax C., arts. 6, 592 num. 2.

[885] Col. Tax C., art. 408.

[886] Col. Tax C., arts. 6, 592.

[887] Col. Tax C., art. 203.

[888] Exchange of Notes Constituting an Agreement between the Government of the Argentine Republic and the Government of the Republic of Colombia Concerning the Elimination of Double Taxation on Profits Derived from the Operation of Ships and Aircraft, signed on Dec. 15, 1967; Law 15/1970.

[889] Exchange of Notes Constituting an Agreement between Colombia and Brazil Concerning the Reciprocal Elimination of Double Taxation of Sea and Air Transport Enterprises, signed on June 28, 1971; Law 71/1993.

[890] Agreement between the Republic of Colombia and the Republic of Chile for the Avoidance of Double Taxation of Sea and Air Transport Enterprises in Respect of Taxes on Income and Capital, signed on March 19, 1970; Law 21/1972.

[891] Air Transport Agreement between the French Republic and the Republic of Colombia, signed on April 28, 1953; Law 6/1988.

[892] Agreement between the Federal Republic of Germany and the Republic of Colombia for the Avoidance of Double Taxation of Sea and Air Transport Enterprises in Respect of Taxes on Income and Capital, signed on Sept. 10, 1965; Law 16/1970.

[893] Agreement between the Government of the Italian Republic and the Government of the Republic of Colombia for the Avoidance of Double Taxation of Income and Capital Derived from Sea and Air Transport, signed on Dec. 21, 1979; Law 14/1981.

[894] Agreement between the Government of the Republic of Colombia and the Government of the Republic of Panama to avoid double taxation in the operation of aircraft in the International Air Transport, signed on April 13, 2007, Law 1265/2008.

[895] Relief from Double Taxation on Earnings from Operation of Ships and Aircraft — Agreement between the United States of America and Colombia Effected by Exchange of Notes, signed on Aug. 1, 1961; Law 124/1961; Law 4/1988.

[896] Agreement between the Republic of Colombia and the Republic of Venezuela to regulate state taxation of investment and international transport companies, signed on Nov.22, 1975, Law 16/1976.

[897] Col. Tax and Customs Admin Op. 50065/June 20, 1996; Col. Tax and Customs Admin. Op. 17228/July 6, 1987.

[898] Col. Tax and Customs Admin. Op. 50065/June 20, 1996; Col. Tax and Customs Admin. Op. 17228/July 6, 1987.

[899] Col. Tax C., arts. 24, 412.

[900] Col. Tax C., art. 412. Decree 2509/1985, art. 8.

[901] Col. Tax C., arts. 412, 592.

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VII. Taxation of a Branch

A. In General

A foreign entity that carries out a permanent business in Colombia must establish a branch in the country.[902] For these purposes, the following, among others, are deemed to constitute permanent businesses:[903]

(i) Business establishments or offices within Colombia, including those of a purely technical or advisory nature;

(ii) Being dedicated to an extractive industry, in any of its branches or services;

(iii) Holding a concession or participating in the exploitation of a concession;

(iv) Holding meetings of general assemblies, boards of directors or management, or carrying on administrative activities in Colombia; and

(v) Participating in any way in activities that relate to the management or investment of private savings.

As discussed in III.D., above, a branch is supervised by the Superintendence of Companies and is generally considered to be a formal entity for purposes of Colombia's corporate law.[904] Branches of foreign companies are considered permanent establishments for tax purposes and are treated as taxpayers in Colombia with respect to their worldwide income and assets that are attributable to the Colombian branch.[905] For this reason, and for accounting purposes, branches must maintain records as to the functions, assets and personal risks involved in the derivation of their income.[906]

B. Determination of Taxable Income

Registered branches of foreign entities operating in Colombia are taxed on their worldwide source income and assets attributable to the branch located in Colombia, applying the same income tax system applied by Colombian companies.[907] As previously mentioned, to allocate the income and gains, branches of foreign entities must keep separate accounts in which their income, costs, and expenses are identified.

C. Method of Taxation

Branches of foreign companies operating in Colombia as registered branches are taxed on a net basis, on only their attributable worldwide-source income and assets and liabilities,[908] and are required to file corporate income tax returns at year's end.[909] The taxable income of a branch is determined by deducting from gross attributable worldwide-source income the branch's allocable Colombian ordinary and necessary business expenses.[910]

The basic corporate tax rate applicable to net branch income is 35% for fiscal year 2023 onwards.[911]

The remittance of profits by a Colombian branch to its foreign home office is deemed to be a dividend distribution[912] and is consequently subject to tax on dividends at a rate of 20% (FY 2023). However, if dividends to be paid are out of profits that were not taxed at the branch level, the dividends will be taxed at the general corporate income tax rate (35% for FY 2023) and, thereafter, subject to the dividend withholding tax of 20% on the balance. Double tax treaties may apply.

D. Branch Accounting

The registered branch of a foreign company operating and registered in Colombia is subject to Colombian accounting rules (which depend on the characteristics of the entity concerned, as explained in V.B.4.a., above) and the accounts of a branch mirror those of a Colombian domestic company or corporation.[913] The exception to this rule concerns the recording of transactions with the home office or headquarters, such transactions being booked in special equity accounts established under Colombian foreign exchange control law. These accounts are known as Supplementary Capital Investment Accounts.[914] Colombian law dictates that, generally, liabilities may not exist between a Colombian branch and its offshore headquarters, as they are assumed to be part of the branch's equity.[915]

E. Subsidiary vs. Branch

The subsidiary of a foreign company operating in Colombia operates as a Colombian company and takes the form of a *sociedad anónima* (SA), a *Sociedad de Responsabilidad Limitada* (SRL) or one of the other forms permitted under Colombia's commercial law, as discussed in III., above. This is the major difference between a subsidiary and a branch from a corporate governance perspective.

From a tax perspective, branches are taxed on the worldwide-source income and assets and liabilities allocated to them and must prepare a study for purposes of determining the assets, liabilities, capital, income, costs and expenses that are attributable to them, under the arm's length principle,[916] while subsidiaries are taxed on a worldwide basis like ordinary Colombian entities.

The taxation of subsidiaries is determined on a net basis (as is that of branches) by deducting from gross income ordinary and necessary business expenses and making other adjustments for nontaxable income items and credits under the law (as explained in IV.B., above).[917] Subsidiaries are also required to file corporate income tax returns for each fiscal year.[918]

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[902] Col. Com. C., art. 471.
[903] Col. Com. C., art. 474.
[904] Col. Com. C., art. 470.
[905] Col. Tax C., art. 20-2.
[906] Col. Tax C., art. 20-2.
[907] Col. Tax C., arts. 20, 20-2 and Law 2010/2019, art. 66.
[908] Col. Tax C., arts. 26, 178 and Law 2010/2019, art. 66.
[909] Col. Tax C., arts. 576, 591.
[910] Col. Tax C., arts. 105, 107, 178.
[911] Col. Tax C., art. 240.
[912] Col. Tax C., art. 30 num. 2.
[913] Commercial Code., art. 488.
[914] Cen. Bank Ext. Res. No. 8/May 25, 2018.
[915] Cen. Bank Ext. Res. No. 8/May 25, 2018, art. 56.
[916] Law 1943/2018, art. 58;. Col. Tax C., art. 20-2;. Decree 1625/2016, art. 1.2.1.14.2.
[917] Col. Tax C., arts. 105, 107, 178, 206–260. In determining net taxable income, the presumptive income tax (the Colombian alternative minimum income tax) must also be calculated. Col. Tax C., art. 188.
[918] Col. Tax C., art. 591.

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VIII. Taxation of Permanent Establishments

Law 1607 of 2012 introduced the notion of a permanent establishment (PE) for Colombian tax purposes in articles 20-1 and 20-2 of the Tax Code. A PE is defined as a fixed place of business located within Colombia, through which a foreign enterprise, whether in the form of a corporation or any other kind of entity, either wholly or partially, or a nonresident individual, develops all or part of its activities. A PE can include offices, branches, factories, workshops, and similar facilities. The concept of a PE also comprises the activities of a non-independent agent acting on behalf of a foreign enterprise, with the authority to bind that enterprise legally. While remote work by itself does not automatically create a PE, factors such as the duration and nature of the activities, the level of control and direction exercised by the non-resident company, and the use of substantial infrastructure and resources in Colombia, can influence this determination.

Comment: In Colombia, there is no specific time frame after which a PE is deemed to exist. Instead, the presence of a PE is determined based on the nature and continuity of the activities conducted by the foreign company within the country.

A foreign entity will not be considered to have a PE in Colombia if it carries on exclusively preparatory or auxiliary activities, such as:

(i) The use of facilities solely for the purpose of the storage, display or delivery of goods or merchandise belonging to the enterprise;

(ii) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise, among other activities.[919]

A foreign company or individual that is deemed to have a PE in Colombia is liable to income tax and complementary capital gain tax at the regular rates on its attributable worldwide-source income. Payments attributable to the PE made by a withholding agent are subject to a withholding tax at the same rates applicable to a Colombian resident individual or company.[920]

A foreign company or individual that has a PE in Colombia must file an annual income tax return on which it reports income and assets attributable to the PE. A foreign company or individual that has more than one PE in Colombia must file a tax return for each PE individually. It should be noted that a foreign company or individual with a PE in Colombia must register the PE in the National Tax Registry (RUT).

Comment: The Colombian Tax Code stipulates that the sole requirement for establishing a PE is its registration in the RUT (*Registro Único Tributario*). However, it is important to note that certain types of PEs, such as branches, must comply with additional specific legal requirements.

On the other hand, a foreign company or individual with a Colombian PE that derives Colombian-source income directly (i.e., Colombian-source income that is not attributable to the PE in Colombia) must file an income tax return whenever that income is not subject to the withholding tax provided for in articles 407 through 411 of the Tax Code.[921] It should be noted that the returns required for income that is not allocated to the PE are different from those with regard to income attributable to the PE. (See VI.B., above). To determine the tax obligation of a PE in Colombia, it is important to bear in mind the following:

(i) Gross equity in Colombia of a foreign company or individual with a PE in Colombia is attributed to that PE under article 20-2 of the Tax Code and Decree 3026 of 2013 (compiled in Decree 1625 of 2016);

(ii) A study of the functions, assets, personnel and risks assumed in the derivation of taxable income by the foreign entity or individual having the PE, must be made for purposes of the allocation of assets, liabilities, income, costs, and expenses attributable to a PE. The analysis must conform with the arm's-length principle and must be retained for five years.[922] This analysis must be included in the transfer pricing analysis that must be filed if the PE conducts operations with any related parties abroad;

(iii) Separate accounting records must be prepared by a company or individual with PEs in Colombia for each PE through which it carries on its activities. The determination of income, costs and expenses, and deductions attributable to a PE are subject to the same Tax Code rules as apply to resident companies; and

(iv) Dividends derived by a foreign company or individual through a Colombian PE are not subject to income tax or income tax withholding since the income derived through the PE will already have been taxed at the PE level.

[919] Decree 1625/2016, art. 1.2.1.3.7.

[920] Decree 1625/2016, art. 1.2.4.11.1.

[921] Col. Tax C., art. 592.

[922] Law 1943/2018, art. 58;. Col. Tax C., art. 20-2;. Decree 1625/2016, art. 1.2.1.14.2.

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IX. Controlled Foreign Corporations

The taxation of foreign income earned by a controlled foreign corporation (CFC) is governed by article 882 of the Tax Code, which provides for the inclusion of passive income of a CFC in the gross income of a Colombian tax resident (individuals and entities) in the same taxable year in which the income is earned by the CFC. The notion of passive income encompasses, among other items: dividends that are not generated by active business activities carried out by the CFC, its subsidiaries or its permanent establishments (PEs); interest; income derived from the disposal or transfer of assets that generate passive income; income derived from the disposal or leasing of immovable property; income derived from the transfer, use or exploitation of intangible assets; income derived from the sale of tangible assets under certain conditions; income derived from the provision of technical services and technical assistance, engineering, architectural, scientific, qualified, industrial and commercial services to or on behalf of related parties domiciled in a jurisdiction other than the residence of the CFC.[923] Furthermore, if 80% or more of the total income of the CFC is passive, all the income, costs, and expenses of the CFC are legally presumed to generate passive income subject to CFC taxation.[924] If, on the other hand, 80% or more of the income is considered as active income, all income, costs, and expenses are legally presumed to generate active income. The Colombian CFC provisions are modeled on the U.S. tax system, in as much as their purpose is the prevention of the artificial deferral of tax using of offshore low tax jurisdictions.

For tax purposes, a CFC is any foreign corporation that is not domiciled in Colombia that meets the following two requirements:[925]

(i) The foreign corporation is controlled by a Colombian tax resident (individuals and entities) by virtue of one of the following:[926]

- More than 50% of the foreign corporation's capital is held by a Colombian parent company, directly, through an intermediary or through the parent's lower tier subsidiaries.
- A Colombian parent and its subsidiaries jointly or separately: (a) hold sufficient voting rights in the foreign corporation to adopt decisions at its shareholders' meetings; or (b) hold the number of votes necessary to elect the majority of the members of the foreign corporation's board of directors.
- A resident person (whether an individual or a legal person), exercises control of the foreign corporation either directly or through any intermediary entity in which it holds: (i) more than 50% of the capital; or (ii) it the number of votes necessary to adopt decisions or to exercise a dominant influence in the direction or decision making of the entity.
- A resident person (whether an individual or a legal entity) is entitled to receive 50% of the profits of the foreign company.
- An operation of the foreign company takes place between two subordinates of its Colombian parent company.
- A transaction of the foreign corporation takes place between two subordinates that belong, directly or indirectly, to the same Colombian resident person (whether an individual or a legal entity).
- A transaction of the foreign corporation is carried out between two companies in which the same Colombian resident individual or legal person participates directly or indirectly in the administration, control or capital of both. A resident individual or legal person may directly or indirectly participate in the administration, control or capital of a company when it: (a) owns, directly or indirectly, more than 50% of the company's capital; or (b) holds sufficient votes to adopt company decisions.
- A transaction of the foreign corporation takes place between two companies in both of which more than 50% of the capital belongs, directly or indirectly, to resident individuals tied to each other by marriage, kinship to the second degree of consanguinity or affinity, or civil union.
- A transaction of the foreign corporation is carried out between two Colombian related companies through an unrelated third party.
- More than 50% of the gross income of the foreign corporation belongs individually or jointly to its Colombian resident partners, shareholders, or members or associates.

(ii) The foreign corporation does not have its tax residence in Colombia.

If both conditions are fulfilled, the Colombian tax resident who owns, directly or indirectly, a 10% or greater interest in the foreign corporation must declare all passive income attributable to the CFC.[927] Expenses and cost attributable to that income are deductible if they meet the general requirements for deductibility. Income tax paid by the CFC abroad is creditable.[928]

[923] Col. Tax C., art. 884.
[924] Col. Tax C., art. 885.
[925] Col. Tax C., arts. 882 and 260-1.
[926] Col. Tax C., art. 260-1 number 1. lit. b) i, ii, iv and v., and number 5.
[927] Col. Tax C., arts. 882, 883.
[928] Col. Tax C., art. 892.

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X. Indirect Transfers

The indirect transfer of shares, rights or assets located in Colombia, through the sale of shares, participations or rights in foreign entities, is taxed in Colombia as if the sale of the underlying assets had taken place directly.[929]

The indirect transfer may involve the transfer of an asset, in whole or in part, owned indirectly, regardless of whether such transfer is made between related or independent parties.

When the first point of contact in Colombia is a domestic corporation, the shares, participations or rights in such domestic corporation will be deemed to be the underlying assets.

When the acquirer is a Colombian tax resident considered as a withholding agent, the payment must be subject to withholding income tax.

Withholding must be calculated based on the proportion that corresponds to the market value of the underlying assets located in Colombia on the total purchase value.

A seller who indirectly transfers the underlying asset must file an income tax return in Colombia within the month following the transaction, unless the seller is a Colombian resident.[930]

The indirect sale regime will not apply when:

(i) The shares or rights being sold are registered in a stock exchange recognized by a governmental authority and have an active secondary market, and if the real beneficiary's shareholding does not exceed 20%.

(ii) The shares or participation in Colombian companies or assets located in Colombia represent less than 20% of the book value and less than 20% of the market value of all the assets owned by the foreign entity being sold.

[929] Col. Tax C., art. 90-3.

[930] According to Decree 1625 of 2016 Art. 1.2.1.26.13., the income tax return must be filed on Form No. 150.

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XI. Taxation of Partnerships

Colombia's income tax law has no special partnership tax rules and, while pass-through treatment is available in limited circumstances, for example, in the case of joint-venture or temporary union arrangements (and, in general, those types of cooperation agreements that do not have status as legal persons).[931] Entities such as *Sociedades de Responsabilidad Limitada* (SRLs — i.e., limited liability companies), *Sociedades en Nombre Colectivo* (i.e., partnerships), and *Empresas Unipersonal* (i.e., sole proprietorships) are taxed at the entity level.

[931] Although, as explained in V.B.1., consortia and other joint ventures may become liable for value added tax (VAT), local turnover tax (ICA) and withholding.

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XII. Taxation of Resident Individuals

A. Scope of Taxation

Resident individuals are subject to income tax.[932] Individuals who meet the legal requirements to be considered as Colombian tax residents, as described in XII.B., below, are subject to tax in Colombia on their worldwide income as well as their worldwide assets and liabilities. Nonresident individuals, on the other hand, are subject to Colombian income tax only on their Colombian-source income and assets and liabilities located in Colombia.[933] The extent of the liability of individuals to Colombian income tax is determined in accordance with the following rules:[934]

(i) Individuals who do not qualify as residents for tax purposes are subject to tax at a flat rate of 35% on their Colombian-source income.[935]

(ii) Individuals (whether Colombian or foreign) who are considered to be Colombian residents for tax purposes must pay tax on their worldwide income at progressive rates of 0%, 19%, 28%, 33%, 35%, 37% and 39% on their income.[936]

(iii) Aliens considered to be Colombian residents for tax purposes are taxable in Colombia on their worldwide income and worldwide assets and liabilities from the period in which they are considered as tax residents.[937]

B. Residence

An individual is considered a Colombian resident for tax purposes if he or she fulfills the following conditions:[938]

(i) He or she stays continuously or non-continuously in Colombia for more than 183 calendar days, including days of arrival and departure, during any period of 365 consecutive calendar days, with the understanding that when such stay falls within more than one taxable year, the person will be considered a resident as of the second year; and

(ii) If the individual is carrying out a mission on behalf of the Colombian Foreign Service and under the Vienna Conventions for Diplomatic and Consular Relations, he or she is exempt from taxation with respect to all or part of his/her income and capital gains for the relevant taxable year in the country in which he or she is carrying out the mission.

A Colombian national is also deemed to be a resident for tax purposes if he or she fulfills one of the following conditions:

(i) His or her spouse or life partner, from whom the Colombian national is not legally separated, or his or her dependent under-aged children, have their tax residence in Colombia;

(ii) If 50% or more of his or her income is derived from a Colombian source;

(iii) If 50% or more of his or her assets are managed in Colombia;

(iv) If 50% or more of his or her assets are held in Colombia;

(v) He or she is not able to prove that he or she is a tax resident abroad by means of a certificate of tax residency or similar document issued by the country in which he or she has become resident; or

(vi) He or she is a tax resident of a jurisdiction classified by the Colombian Government as a non-cooperative, low-tax or no-tax jurisdiction (commonly referred to as tax havens).

However, if a Colombian national fulfils any of the six conditions mentioned above, he or she will not be considered as tax resident if he or she meets one of the following conditions:[939]

(i) If 50% or more of his or her annual income has its source in the jurisdiction where he or she has his or her domicile; or

(ii) If 50% or more of his or her total assets are in the jurisdiction in which he or she has his or her domicile.

C. Determination of Gross Income

1. Items Included in Gross Income

The system for determining taxable income in Colombia is, in general terms, the same for both individuals and corporations. The main differences revolve around the fact that, as a general rule, individuals (other than merchants) are not required to keep accounts, which affects the time at which their income must be recognized for tax purposes (i.e., when the income is actually received, in the case of individuals who are not required to keep accounts, and when the income accrues, in the case of taxpayers that are so required).[940] Additionally, income from labor (which can only be received by individuals) can only be reduced by deductions when this expressly permitted by law, and is subject to certain exemptions and special tax benefits.[941]

A Colombian resident's gross income includes all income, whether received in the form of cash, property, credit, services, loan donation, rents, employment fees or professional fees, and other income whether ordinary or extraordinary.[942] Income is defined as all proceeds that may increase a person's net worth.[943] Further, the law provides that a payment or a prepayment of a

[932] Col. Tax C., arts. 5, 7.
[933] Col. Tax C., art. 9.
[934] Col. Tax C., arts. 9, 10.
[935] Col. Tax C., art. 247.
[936] Col. Tax C., art. 241.
[937] Col. Tax C., arts. 9, 241.
[938] Col. Tax C., art. 10.
[939] Col. Tax C., art. 10.
[940] Col. Tax C., art. 27.
[941] Col. Tax C., art. 206.
[942] Col. Tax C., art. 26.
[943] Decree 187/1975, art. 17.

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receivable constitutes taxable income only when the taxpayer has a legal right to receive or accrue such income.[944]

To avoid misinterpretation of the concept of income, the law lays down specific rules regarding when income arises for tax purposes. These rules are as follows:

(i) Income is realized when it is received or when the taxpayer has a legal right to receive it.[945]

(ii) Income received in kind is appraised at its fair market value.[946]

(iii) Income received in foreign currency is calculated in Colombian pesos using the exchange rate on the date on which the income accrues.

(iv) Loans between shareholders and the company in which they hold shares are presumed to be made with a minimum interest component that is deemed to be taxable income.[947] For the year 2023, the minimum interest rate is 13.70%.[948]

(v) Income from the disposition of securities and shares must be estimated based on the assets' values.[949]

2. Capital Gains and Losses

Under Colombian law, an individual (like a corporation) who sells a fixed asset that he or she has owned for at least two years is subject to capital gains tax on the net profit from the sale.[950] The following are also subject to capital gains tax:[951]

(i) Amounts received as a result of the liquidation of a company in excess of the investment made by the shareholder (fiscal cost), that are not considered income, reserves or profits that have to be distributed as dividends, provided that the company has been constituted for two or more years at the date of liquidation;

(ii) Inheritances, legacies, donations and, in general, anything received for no consideration; and

(iii) Payments received under a policy of life insurance compensation on the value that exceeds 350 UVT.

The above capital gains are taxed at a flat rate of 15%, regardless of whether they are received by residents or nonresidents.[952]

Capital gains corresponding to winnings from lotteries, raffles, betting and the like are taxed at a 20% rate in all cases.[953]Capital gains in national currency must be recognized at their nominal value, while those obtained in kind must be quantified according to the rules laid down in article 303 of the Tax Code. Under these rules, in some cases (for example, in the case of capital gains from the disposal of motor vehicles and precious metals) the capital gain is based on the market value of the asset disposed of, while in others (for example, in the case of capital gains from the disposal of real property and shares) the capital gain is based on the cost of the asset disposed of.[954]

Additionally, the capital gains regime provides certain exemptions for inheritances or legacies (for example, exemption for the first 3,250 UVT for certain personal items of the deceased and the first 13,000 UVT for urban residential property owned by the deceased, etc.),[955] and gains arising from the sale of a taxpayer's dwelling place.[956]

Regular distributions made by trusts or private foundations to Colombian tax residents are also subject to the capital gains tax.

3. Exempt Income

Individuals are not subject to income tax on the following items, among others:

(i) Indemnification payments received as a result of work accidents, maternity compensation, and workers' funeral compensation;[957]

(ii) Severance payments and interest on severance payments, when the average monthly salary of the employee receiving them does not exceed an amount established by the government based on the minimum monthly salary;[958]

(iii) Pension plan payments and other retirement benefits, up to 1,000 UVT (monthly);[959]

(iv) Payments received under a policy of life insurance compensation under 3,250 UVT (exempted from capital gains);[960]

(v) Twenty-five percent of employment-related payments, up to 790 UVT (per annum). This percentage rate is applied to a basis arrived at by subtracting from the total amount of labor payments, non-taxable income, allowable deductions and other exempt income;[961]

(vi) Contributions made by employees, employers and independent stakeholders to private pension insurance, voluntary and mandatory pension funds, that are administered by entities supervised by the Financial Superintendence, are not part of the withholding base and are treated as exempt income to the extent they do not exceed 30% of the annual labor or taxable income (including contributions to Savings for the Promotion of Construction accounts), up to a maximum of 3,800 UVT. However, withdrawals, whether partial or total, made before 10 years from the date the contributions were made, for purposes other than acquiring housing (with or without financing), will cause the loss of those benefits. As a consequence, the corresponding financial entity must withhold the applica-

[944] Col. Tax C., art. 27.
[945] Col. Tax C., arts. 27, 28.
[946] Col. Tax C., art. 29.
[947] Col. Tax C., art. 35.
[948] Decree 1625/2016, art. 1.2.1.7.5.
[949] Col. Tax C., art. 31.
[950] Col. Tax C., arts. 299, 300.
[951] Col. Tax C., arts. 301, 302.
[952] Col. Tax C., arts. 313, 314, 316.
[953] Col. Tax C., art. 317.
[954] Col. Tax C., art. 393.
[955] Col. Tax C., art. 307.
[956] Col. Tax C., art. 311-1.
[957] Col. Tax C., art. 206 (1), (2), (3).
[958] Col. Tax C., art. 206 (4).
[959] Col. Tax C., art. 206 (5).
[960] Col. Tax C., arts. 206 (6), 303-1.
[961] Col. Tax C., art. 206 (10).

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ble amounts that were not made in the year in which the income was received, and the contribution was made;[962] and

(vii) Deposits in savings accounts called Savings for the Promotion of Construction (*Ahorro para el Fomento de la Construcción* — AFC) to the extent they do not exceed 30% of the annual labor or taxable income (including pension payments and voluntary contribution funds), up to a maximum of 3,800 UVT. Such deposits are not part of the withholding base and are classified as exempt income. However, withdrawals, whether partial or total, made before 10 years from the date they are deposited, for purposes other than acquiring housing (with or without financing), will cause the loss of those benefits. As a consequence, the corresponding financial entity must withhold the applicable amounts that were not made in the year in which the income was received and the contribution made.[963]

The total sum of deductions and tax-exempt items of income may not exceed 40% or 1.340 UVT[964] of the result obtained by subtracting from the amount of payment or credit to account the non-taxable items of income not attributable to regular income or occasional gains. This limitation shall not apply in the case of payment of retirement, disability, old age, survivorship and occupational risk pensions, substitute indemnities for pensions and pension savings refunds.[965]

4. Equity Incentives

Employee stock-based incentive or equity compensation programs sponsored by employers are those through which an employee: (i) acquires the right to exercise an option to purchase shares or equity interests in the company that employs them or an affiliated company, or (ii) receives shares or equity interests in the employing company or an affiliated company as part of their remuneration.[966]

For tax purposes, the treatment of such employee incentives is as follows:

• For the company: (i) in the first modality, no liability or expense will be recognized until the employee exercises the purchase option; (ii) in the second modality, the corresponding expense will be recognized at the time of realization; (iii) the deductible amount in both cases will be: (a) for shares or equity interests listed on a recognized stock exchange, the value of the shares on the day the option is exercised, or the shares are delivered; (b) for unlisted shares or equity interests, the value will be determined in accordance with the provisions of Article 90 of the Tax Code; (iv) in both cases, deductibility requires the payment of social security contributions and the corresponding withholding tax on labor payments.

• For employees: (i) in the first modality, the income will be recognized at the time the option is exercised and will be calculated based on the difference between the value of the shares on the date the option is exercised or the date the shares are delivered and the amount paid by the employee; (ii) in the second modality, the income will be recognized on the date the shares or equity interests are delivered, the date the employee is registered as a shareholder of the respective company, or the date the corresponding account entry is made, whichever occurs first, and will be calculated based on the value of the shares on the date the option is exercised or the shares are delivered.

D. Deductions and Credits

1. Business and Personal Deductions

Individuals who receive income from the performance of independent personal services may deduct all expenses related to such income.[967] Individuals engaged in business activities also may deduct necessary expenses incurred in connection with such activities.[968] Employees generally may not deduct employment-related expenses but benefit from a number of exemptions for labor-related payments (see XII.C.3., above).[969]

2. Small Taxpayers

Individual taxpayers may be exempt from the obligation to file a tax return, subject to meeting certain requirements relating to the value of their assets and their total income.[970]

Under article 592 of the Tax Code, resident individuals who meet the following requirements during the previous year, are exempt from the obligation to file tax returns:

(i) Are not liable for VAT;

(ii) Derive gross income of less than 1,400 UVT in the taxable year concerned; and

(iii) Have gross assets which do not exceed a value of 4,500 UVT.[971]

Additionally, individuals are not required to file an income tax return if they meet the following conditions:

(i) Their credit card consumption during the taxable year does not exceed 1,400 UVT;

(ii) Their total purchases and consumption during the taxable year do not exceed 1,400 UVT; and

(iii) The total value of their bank deposits and financial investments during the taxable year does not exceed 1,400 UVT.[972]

Non-resident individuals are not required to file tax returns for income tax purposes if the total amount of their income has been subject to withholding tax, provided in articles 407 to 411 of the Tax Code.[973]

The final tax liability of an individual who is not required to file an income tax return will be equivalent to the withholding taxes charged during the relevant year, unless the individual

[962] Col. Tax C., art. 126-1.
[963] Col. Tax C., art. 126-4.
[964] Decree 1625 of 2016, art 1.2.1.20.4 modified by Decree 2231 of 2023.
[965] Col. Tax C., art. 388 (2).
[966] Col. Tax C., art. 108-4.
[967] Col. Tax C., arts. 104, 107.
[968] Col. Tax C., art. 107.
[969] Col. Tax C., arts. 119, 387.
[970] Col. Tax C., arts. 592, 593, 594-1.
[971] Col. Tax C., art. 591.
[972] Col. Tax C., art. 594-3.
[973] Col. Tax C., art. 592.

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voluntarily declares and calculates his or her tax liability under the ordinary system.[974]

E. Tax Rates

1. In General

Law 2277 of 2022 maintained the schedular system introduced by Law 1819 of 2016 with three types of income for individuals that must be reported separately in the corresponding section of the income tax return and taxed according to the specific rates established by the Tax Code.

An individual must determine his or her amount of tax payable based on the classification of income only under the following schedules:[975]

(i) Labor, non-labor, and capital income, i.e., salaries, commissions, social benefits, travel expenses, representation expenses, fee compensation received for associated cooperative work and, in general, compensation for personal services; Capital income, i.e., interest, financial income, lease payments, royalties and payments for the exploitation of intellectual property; and non-labor income, that corresponds to all income not expressly classified as falling within any other schedule;

(ii) Pension income: retirement, old-age and survivors' pensions, and payments for occupational hazards, as well as for substitution pensions or pension savings.

The labor, non-labor, capital, and pension income, and pension income (i.e., categories (i) and (ii), above) must be considered together and are subject to income tax at progressive rates of 0%, 19%, 28%, 33%, 35%, 37%, and 39% for tax resident individuals; and[976]

(iii) Dividends and other profit shares. Income in this schedule does not allow costs or deductions.

Dividends that exceed 1,090 UVT, distributed out of profits that are taxed at the level of the Colombian distributing company are subject to withholding at the rate of 15%. On the other hand, dividends that exceed 1,090 UVT, distributed out of profits that were not taxed at the level of the Colombian distributing company are subject to income tax recapture applying the corporate income tax rate of the relevant fiscal year (2023: 35%). After income tax recapture is applied, the balance that exceeds 1,090 UVT will be subject to a withholding tax of 15%. For example, if a Colombian company receives profit of COP 100,000,000, in order to make further distributions, the Colombian company must:

(i) Withhold at the corporate income tax rate of 35% on the COP 100,000,000 (100,000,000× 35% = COP 35,000,000);

(ii) Obtain the balance and subtract 1,090 UVT (COP 65,000,000 – COP 42,229,000);[977] and

(iii) Withhold at a 15% rate on the balance to be distributed (COP 22,710,000 × 15% = COP 3,406,500).

Amounts that are withheld are creditable to the final beneficiary (Colombian tax resident individuals or investors abroad). For this reason, dividends that come from profits obtained from dividends distributed by other Colombian companies and that were subject to a dividend withholding tax, will not be subject to this withholding.

On the other hand, capital gains derived by individuals are taxed at the rate of 15%,[978] except for capital gains resulting from lotteries, raffles, betting, and the like, which are subject to tax at the rate of 20%.[979] Capital gains derived from assets held for less than two years are taxed at the general income tax rate.

2. Excluded Income

Compulsory contributions to the social security system for pensions and health care made by workers, employers and affiliates do not constitute taxable income or occasional gains. These contributions are deductible for income tax purposes by the employer, if the applicable requirements are met.[980]

Voluntary contributions to the individual saving schemes (*regimen de ahorro individual con solidaridad*) are not considered as taxable income or gains to the extent they do not exceed 25% of the annual labor or taxable income, up to a maximum of 2,500 UVT. However, withdrawals, partial or total, of voluntary contributions made by affiliates for purposes other than obtaining a higher pension or early retirement, will constitute taxable income subject to income tax withholding at the rate of 35%.[981]

3. Withholding Tax

Payments originating from an employment relationship, from retirement, old age or survivors' pensions, or from labor risks are subject to withholding tax, as follows:[982]

Range		Marginal Rate	Tax
From	To		
>0	95	0%	0
>95	150	19%	(Taxed labor income expressed in UVT – 95 UVT) × 19%
>150	360	28%	(Taxed labor income expressed in UVT – 150 UVT) × 28% + 10 UVT
>360	640	33%	(Taxed labor income expressed in UVT – 360 UVT) × 33% + 69 UVT
>640	945	35%	(Taxed labor income expressed in UVT – 640 UVT) × 35% + 162 UVT

[974] Col. Tax C., art. 6.
[975] Col. Tax C., arts. 329 to 343.
[976] Col. Tax C., art. 241.
[977] 300 UVT is equivalent to COP 11,401,200 (according to 2022 UVT).
[978] Col. Tax C., art. 314. The capital gains tax and the income tax are considered as a single tax, reported on the same tax return, but subject to different rates.
[979] Col. Tax C., art. 317.
[980] Col. Tax C., arts. 55, 56.
[981] Col. Tax C., art. 55.
[982] Col. Tax C., art. 383. Decree 1625 of 2016., art. 1.2.4.1.17.

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>945	2300	37%	(Taxed labor income expressed in UVT − 945 UVT) × 37% + 268 UVT
>2300	onwards	39%	(Taxed labor income expressed in UVT − 2.300 UVT) × 39% + 770 UVT

4. Withholding Tax Base Deductions

A resident individual can deduct the following from the taxable base subject to withholding:[983]

(i) Monetary corrections or interest paid for the acquisition of real property that is the individual's principal residence;

(ii) Payments for health care up to 16 UVT per month, provided that: (I) payments are made for health care services to prepaid medical companies that imply the protection of an employee, an employee's family member and/or dependents; or (II) correspond to health insurance payments made by insurance companies under surveillance of the Colombian Superintendence of Finance; and

(iii) Dependent expenses to the extent of 10% of total gross income derived from employment, up to a maximum of 32 UVT per month.

F. Assessment and Filing

1. Return Due Dates

Individuals are only required to file an annual income tax return if they have a gross income or net-worth above a certain threshold (see XII.D.2., above). The dates for filing income tax returns are established, year by year, by the National Government. For example, individuals must file income tax returns for fiscal year 2024 between August and October 2025. For a list of tax return due dates, see Worksheet 22.

The income tax withholding satisfies the income tax liability of individuals who are not required to file annual tax returns ("small taxpayers"), unless such individuals voluntarily choose to file returns, in which case they will be subject to the same rules as apply to other taxpayers. Payers/withholding agents must provide individuals with annual statements of taxes withheld (*Certificado de retenciones*) in each year, within a timeframe set by the National Government (traditionally by mid-March of the year following that in which the withholdings were made).[984]

Taxpayers required to file tax returns must pay their tax due in accordance with a schedule fixed by law.

Each year the DIAN publishes the due dates for filing: income tax returns for individuals, large taxpayers and legal entities; declarations of significant economic presence; information on foreign assets; bi-monthly and quarterly VAT returns; withholding tax, consumption tax, carbon tax and simple taxation regime returns, together with their respective advance payments; and information with respect to equity, transfer pricing, single-use plastic products, ultra-processed sweetened beverages and beneficial owners.

2. Payment of Tax

Almost all items of income are subject to income tax withholding. The following is a list of the most commonly applicable withholding tax rates:

- Monthly salaries 0% to 39%
- Fees and income from independent personal services 4% to 11%[985]
- Interest 4% to 7%[986]
- Net lease income from real property 3.5%[987]
- Gains from the sale of fixed assets by individuals 1%[988]

If the final income tax liability exceeds the amounts withheld during the year, the excess must be paid at the time the annual return is filed. If, however, excess withholding is charged, the resulting credit balance can be set off against other tax liabilities or refunded, at the request of the taxpayer.

3. Information Reporting

To enable studies and cross-checks of tax information to be carried out,[989] taxpayers (individuals and legal entities) are periodically required to file a report known as *Información Exógena Tributaria,* which is submitted online via the DIAN website. The purpose of the report is to collect and register information of taxpayers related to third-party transactions and fiscal and commercial relationships with other entities and individuals.

To this end, the DIAN issues an annual ruling setting out the information that it may collect from taxpayers and determining which taxpayers are subject to the reporting obligation. For year 2024, the following entities, among others, are required to file the *Información Exógena Tributaria*:

(i) Public or private legal entities that enter into cooperation and technical assistance agreements with international organizations for the support and execution of their programs or projects;

(ii) Individuals and their relations who during the taxable year to be reported on or the immediately preceding taxable year derived gross income in excess of 11,800 UVT (for the taxable year concerned) and whose gross income from capital or non-labor income during the tax year to be reported on exceeds 2,400 UVT;

(iii) Individuals taxed under the simple taxation regime (SIMPLE) who, during the year to be reported on or the immediately preceding taxable year, derived gross income

[983] Col. Tax C., art. 387.

[984] The deadline for submitting such statements for 2021 was March 31, 2022, under Decree 1625/2016, art. 1.6.1.13.2.40.

[985] Decree 1625/2016, arts. 1.2.4.4.14.

[986] Decree 1625/2016, arts. 1.2.4.2.5, 1.2.4.2.83.

[987] Decree 1625/2016, art. 1.2.4.10.6.

[988] Decree 1625/2016, art. 1.2.4.5.1.

[989] Col. Tax C., art. 631

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in more than 11,800 UVT (for the tax year concerned), regardless of the type of income;

(iv) Individuals and their relations, legal entities and their related entities, public and private legal entities, and other entities required to withhold and/or self-withhold for income tax, VAT or stamp duty during the tax year to be reported on;

(v) Legal entities and their related parties and other entities (public and private) that in the taxable year to be reported or the immediately preceding taxable year received gross income exceeding 2,400 UVT; and

(vi) The members or shareholders and related parties of a private (unlisted) legal entity who did not provide information to the entity on the transfer of shares, quotas or portions of social interest or contributions, when such transfer or accumulated transfers in the taxable year being reported is equal to or exceeds 5,000 UVT.

4. Ultimate Beneficial Owners

Colombia has implemented rules on beneficial ownership reporting with a view to enhancing transparency and combatting financial crimes.

Under article 631-5 and 631-6 of the Tax Code, the term "beneficial owner" now refers to the individual(s) who ultimately hold(s) significant control of, or significantly benefit(s) from, a legal entity. This definition places the emphasis on identifying the owners behind companies and other structures.

Entities and other types of structures are required to report information about their beneficial owners through the Unique Registry of Ultimate Beneficial Owners (RUB). The RUB is an extension of the Unique Tax Registry (RUT).

The DIAN has issued Ruling 164 of 2021, which provides detailed guidelines for reporting ultimate beneficial owners (UBOs) in the RUB. This ruling sets out: (i) the entities and other types of structures required to provide information in the RUB; (ii) guidelines for identifying UBOs; (iii) the content of the UBO information to be reported; (iv) reporting deadlines; and (v) the obligation to keep the RUB updated.

Comment: Through an agreement between the DIAN and the Superintendency of Companies, the latter can access the DIAN's RUB to investigate and identify control situations and corporate groups within its jurisdiction.

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XIII. Taxation of Nonresident Individuals

A. Scope of Taxation

Nonresident individuals are subject to tax in Colombia only on their Colombian-source income.[990] The income tax rate for non-resident individuals is a flat 35%.[991] Occasional earnings and capital gains from disposals of fixed assets held for at least two years are taxed at a rate of 15%.[992] Gains from lotteries, raffles, gambling and the like are subject to a 20% tax rate.[993]

B. Salaries, Wages, and Fringe Benefits

Salaries and fringe benefits are considered to be Colombian-source income if the activities or dependent personal services giving rise to them are performed in Colombia.[994] The salary of a nonresident individual is subject to withholding tax at a rate of 20%.[995] The base for withholding and taxation may be reduced by the same exemptions and tax benefits as are available to resident individuals (see XII.C.3., above).[996]

C. Independent Personal Services

Fees paid for the performance by a nonresident individual of independent personal services are considered to be Colombian-source income when the services are performed in Colombia.[997] Fees for some activities carried on abroad, such as the provision of consulting services, technical services and technical assistance to the Colombian State, are also considered to be Colombian-sourced income.[998] The rate of withholding on payments made to nonresidents for consulting services, technical services, technical assistance and other personal services is 20%.[999]

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[990] Col. Tax C., art. 9. The criteria for classifying individuals as residents or nonresidents of Colombia for tax purposes are explained in XII.B., above.

[991] Col. Tax C., art. 247.

[992] Col. Tax C., art. 314.

[993] Col. Tax C., art. 317.

[994] Col. Tax C., art. 24 (5).

[995] Col. Tax C., arts. 247, 409. In the case of a nonresident foreign professor hired for a period of no more than four months, the rate is 7%.

[996] Col. Tax C., art. 206 (10). The exemption applies to resident and nonresident individuals employed under a Colombian labor contract.

[997] Col. Tax C., art. 24 (5).

[998] Col. Tax C., art. 24 (6,7,8).

[999] Col. Tax C., art. 409 establishes a special rate of 7% for foreign teachers who are not resident in Colombia and are hired for periods not exceeding four months by higher education institutions.

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XIV. Estate/Inheritance and Gift Tax

Colombia has no estate/inheritance or gift taxes. Proceeds from gifts, inheritances and legacies are treated as capital gains in the hands of individual beneficiaries (see XII.C.2., above).

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XV. Taxation of Foreign Portfolio Investments

A special regime has applied to the taxation of foreign portfolio investments in Colombia (as discussed in II.A.1., above) since 2013.[1000] Foreign portfolio investors are subject to tax in Colombia only on profits derived from their Colombian investments and they are usually not required to file a local tax return for this purpose, because the tax is collected at source. The general withholding rate is 14%. Furthermore, with respect to income distributions from public or private fixed income securities or financial derivatives with underlying fixed income securities, the withholding tax rate is 5%. An exception applies where, during a tax year, a foreign investor has disposed of more than 10% of the stock of a public corporation traded on the Colombian stock exchange.

In cases where the foreign investor is domiciled in a jurisdiction designated by the Colombian Government as a non-cooperative, low-tax or no-tax jurisdiction or the profits are derived from distributions which have not been taxed at the corporate level (see V.B.11., above), the withholding rate is increased to 25%.

If profits distributed to a foreign portfolio investor would not be taxable if received by a Colombian investor, such profits will not be subject to withholding tax when received, directly or indirectly, by the foreign portfolio investor.

The rules above are not applicable in case an investment is held and controlled by an ultimate beneficial owner who is also a Colombian resident. Colombian tax residents are deemed to control a foreign investment if they meet one of the criteria from the definition of related parties (see XVI.B., below).[1001]

Finally, it should be noted that a dividends tax of 20% will apply in any case, provided the distribution has been taxed at the corporate level. However, distributions of income from untaxed profits are subject to recapture and taxed at an effective rate of 48%.[1002]

[1000] Col. Tax C., art. 18-1.

[1001] Col. Tax, art. 260-1.

[1002] Col. Tax., art. 49.

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XVI. Transfer Pricing

A. Scope of Provision

Under Colombian law and only for purposes of determining income and complementary[1003] taxes, a taxpayer that conducts transactions with foreign-related parties is required to determine its ordinary and extraordinary income, costs and deductions, and assets and liabilities, taking into account the arm's-length principle with respect to such transactions. Under the arm's-length principle, transactions between related parties must fulfill the conditions that would have applied in comparable transactions among independent entities. Additionally, the arm's length principle must be applied where:

(i) A foreign entity related to a permanent establishment (PE) in Colombia carries out a transaction with another foreign entity, in favor of such PE:

(ii) A taxpayer carries out transactions with a related party resident in Colombia, in relation to a foreign PE of one of either the taxpayer or the related party;

(iii) A taxpayer resident, located or domiciled in the National Customs Territory (TAN) carries out transactions with a related party located in a non-cooperative, low- or no-tax jurisdiction; or

(iv) A taxpayer carries out transactions with individuals, companies, entities or enterprises located, resident or domiciled in a non-cooperative, low- or no-tax jurisdiction. In these circumstances, unlike those listed in (i) through (iii), the obligation to apply the arm's-length principle is not dependent on the gross equity on the last day of the taxable year or period, or the gross income of the relevant year (as detailed below for other cases). Moreover, if the parties are related and the transactions entail the making of a payment abroad, the Colombian taxpayer involved must also document and provide details of the functions performed, assets used, risks assumed and all costs and expenses incurred by the party receiving the payment in the performance of the activities that generated the payment. If the Colombian taxpayer fails to do so, the payment will not be deductible for Colombian tax purposes.[1004]

In exercising its verification and control powers, the Colombian Tax Administration (DIAN) can establish for tax purposes the ordinary and extraordinary income, costs and deductions, assets and liabilities derived from the transactions described above by determining the conditions applied in comparable transactions with or between unrelated parties.[1005]

Interest payments that do not comply with the arm's-length principle, regardless of the agreed interest rate, are nondeductible. Further, if the terms and conditions of the financing transaction concerned are not in accordance with market practices, the transaction will not be considered a loan giving rise to interest payments, but instead it will be treated as a capital contribution giving rise to dividends.[1006]

[1003] Col. Tax C., art. 260-2.
[1004] Col. Tax C., art. 260-7, ¶¶2 and 3.
[1005] Col. Tax C., art. 260-2.
[1006] Col. Tax C., art. 260-4.

B. Definition of Related Parties

For income tax purposes, a related party exists:[1007]

(i) In the case of subordination: an entity is subordinated to another person or entity when its power of decision is subject to the will of that other person or entity, whether directly or with the assistance or through the subsidiaries of a parent company.

There is deemed to be subordination where:

- More than 50% of a company's capital is owned by its parent company, whether directly or with the assistance of the parent's subsidiaries. For these purposes, preferred dividend shares that carry no voting rights are not counted.
- A company's right to cast the votes constituting the required majority for a decision of the board or shareholders' meeting, or to elect a majority of the board members (if any), belongs to its parent company and its subsidiaries, whether together or separately.
- A company's dominant influence on the decisions of its governing bodies is exercised by its parent company, whether directly or through or with the assistance of its subsidiaries with regard to an act or transaction with the company or its members.
- The control described in the previous paragraphs can be exercised by one or more natural persons, companies, entities or non-corporate structures, whether directly or through or with the assistance of entities in which such persons own more than 50% of the capital or over which they have the minimum votes required for making decisions or having a dominant influence in management or decision-making.
- The same natural person(s), company(ies), or non-corporate structure(s), jointly or separately, is (are) entitled to receive 50% or more of the profits of a company.

(ii) In the case of branches *vis-à-vis* their headquarters.

(iii) In the case of agents *vis-à-vis* their principals.

(iv) In the case of PEs, with regard to the entities whose activities they carry on, either in whole or in part.

(v) When a transaction is carried out between two (direct or indirect) subordinates of the same entity.

(vi) When a transaction is carried out between two companies and the same person or company is involved in the management, control or capital of both companies, meaning that such same person or company has, directly or indirectly contributed more than 50% of the capital, or has the ability to control the business decisions, of the two companies.

(vii) When a transaction is carried out between two companies more than 50% of whose capital is owned, directly

[1007] Col. Tax C., art. 260-1.

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or indirectly, by persons related by marriage or up to the second degree of kinship or the second degree of affinity.

(viii) When a transaction is carried out by related parties, acting through third parties.

(ix) When more than 50% of an entity's gross revenues are derived, either individually or jointly, from members, partners, subscribers or the like.

(x) When a consortium, temporary union, joint account or other non-corporate structure, or other joint venture contract exists, and operations are carried out between the consortium, etc. and a party related to any of its members.

C. Transfer Pricing Methods

A cornerstone principle of Colombian transfer pricing, in line with the transfer pricing rules of many jurisdictions, is that while various methodologies for determining a comparable arm's-length price are available, ultimately the taxpayer and the DIAN are entrusted with applying the best method applicable to a particular type of transaction. The acceptable transfer pricing methods in Colombia are as follows:[1008]

(i) Comparable uncontrolled price (CUP): the CUP method compares the pricing of goods and services charged among related parties with the pricing of goods and services charged among unrelated parties in comparable transactions, under comparable conditions;

(ii) Resale price method (RPM): under the RPM, the appropriate gross profit margin is subtracted from the applicable resale price of the property involved in the controlled transaction. The gross profit margin is a ratio (expressed as a percentage) equal to gross profit over revenue;

(iii) Cost-plus: under the cost-plus method the appropriate gross profit is added to the controlled taxpayer's cost of producing the property involved in the controlled transaction. The gross profit markup is a ratio (expressed as a percentage) equal to gross profit over cost of goods sold;

(iv) Comparable profit method (CPM): the CPM evaluates whether the amount charged in a controlled transaction is at arm's length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities in similar circumstances; and

(v) Profit split method (PSM): the PSM evaluates whether the allocation of the combined operating profit to controlled transactions is at arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The relative value of each controlled taxpayer's contribution must be determined reflecting the assets, expenses and costs assumed by each participant in the relevant business activity. The combined operating profit from the relevant business activity is allocated between the controlled taxpayers in a two-step process. The first step requires that a market return for routine contributions be allocated to each party under one of the other specified methods. Under the second step, the residual profit is generally divided among the controlled taxpayers based on the relative values of their contributions to the relevant business activity.

When there are two or more comparable transactions and, from the application of the most appropriate of the above methods, it would be possible to obtain a range of prices or profit margins (the arm's-length range), such margins can be adjusted by applying appropriate statistical methodologies, particularly the interquartile range.

For purposes of these methods, income, costs, gross profits, net sales, expenses, transaction profits, and assets and liabilities will be determined in accordance with Colombian generally accepted accounting principles (COLGAAP through which most of mainly IFRS rules apply in Colombia).

In the event prices or profit margins of a taxpayer are within the arm's-length range, they will be considered in line with the prices or margins used in transactions between independent parties. If prices or profit margins of a taxpayer are outside the arm's-length range, the median of that range is considered the price or profit margin for the transaction between related parties for income tax purposes.

In determining which of the above methods is the most appropriate in each case, the following criteria must be used: (i) the facts and circumstances of controlled or analyzed transactions, based on a detailed functional analysis; (ii) the availability of reliable information, particularly as regards transactions between independent parties, necessary for the implementation of the method; (iii) the degree of comparability of the controlled transactions with those between independent parties; and (iv) the reliability of comparability adjustments that may be necessary to remove the material differences from transactions between related versus those between independent parties.

D. Comparability Criteria

Two transactions are considered comparable when there are no material differences between them or when such differences can be eliminated with appropriate adjustments.[1009]

To determine whether transactions are comparable or significant differences exist, the following attributes or factors will be considered, based on the transfer pricing method utilized:

(i) The characteristics of the transactions;

(ii) The functions performed, including the assets involved and the risks assumed;

(iii) The contractual terms;

(iv) Significant risks affecting price or profit;

(v) Economic and market circumstances; and

(vi) Negotiation strategies.

The taxpayer must take into consideration internal comparables, if any, as a priority in the transfer pricing analysis.

E. Special Rules

Special rules apply in some cases, as follows:[1010]

[1008] Col. Tax C., art. 260-3.

[1009] Col. Tax C., art. 260-4.

[1010] Col. Tax C., art. 260-3.

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(i) Where a used asset is purchased by a taxpayer from a related party, the CUP method must be applied based on the purchase invoice issued when the asset was purchased new from an independent party, considering the depreciation written off subsequent to the acquisition of the asset, in accordance with the regulatory accounting frameworks.

(ii) In the case of the purchase or sale of shares that are not publicly traded or transactions that involve the transfer of other assets that present difficulties in terms of comparability, the taxpayer must use commonly accepted financial valuation methods, in specifically methods used to calculate market value by reference to the present value of future income. In no circumstances will the market value of equity or intrinsic value be accepted as valid methods of valuation.[1011]

(iii) In the case of an intra-group service or a cost-sharing arrangement with related parties, the taxpayer must prove that the service was actually rendered and that the amount charged or paid for the service meets the arm's-length principle.

(iv) Arm's-length consideration is also required in the case of a corporate restructuring, i.e., the redistribution of functions, assets or risks of a domestic company to a foreign related party.

F. Documentation and Reporting

Taxpayers whose gross equity on the last day of the taxable year or period is equal to or greater than the equivalent of 100,000 UVT, or whose gross income for the relevant year is equal to or greater than the equivalent of 61,000 UVT,[1012] that conduct transactions with related parties, must file, in accordance with the terms and conditions established by the National Government, supporting documentation (i.e., the transfer pricing report, *Informe Local*) and an information return relating to each type of transaction, demonstrating the proper application of the transfer pricing rules. The supporting documentation must be retained for a minimum of five years from January 1 of the year following the tax year in which it is submitted.[1013]

A transfer pricing report is not required for transactions carried out with related parties if the total amount of all transactions in the taxable year does not exceed 45,000 UVT[1014] (the threshold is 10,000 UVT if the transaction is carried out with parties located or resident in non-cooperative, low-tax or no-tax jurisdictions).[1015] The basis for this calculation in the case of financial transactions, including loans involving interest, is the amount of the principal and not the interest agreed to between the parties.

The financial and accounting information used for the preparation of the transfer pricing report must be certified by a Statutory Auditor.

G. Pricing Adjustments

When, in accordance with the provisions of a tax treaty entered into by Colombia, the competent authorities of the other country make an adjustment to the prices paid, or the consideration received, by a taxpayer resident in that country that is accepted by the DIAN, the related party resident in Colombia may submit an amended return, without penalty, so as to reflect the appropriate adjustment.

H. Tax Havens and Preferential Tax Regimes

1. Tax Havens

The tax reform introduced by Law 1819 of 2016 established a series of criteria that the Government must use to identify non-cooperative, low-tax or no-tax jurisdictions, and secrecy jurisdictions.

In accordance with article 260-7 of the Tax Code, the criteria for identifying such jurisdictions are as follows:

(i) A lack of applicable tax rates;

(ii) Low-income tax rates, as compared to those applicable in Colombia to similar tax operations;

(iii) A lack of exchange of information with other jurisdictions;

(iv) Limitations on the exchange of information due to existing legal norms or administrative practices;

(v) A lack of transparency in legal, regulatory or administrative functioning; and

(vi) The absence of a requirement that there should be substantive local presence, the exercising of a real activity and economic substance.

It should be noted that, based on these criteria, the Colombian Government is required to issue an annual list of jurisdictions that are to be treated as non-cooperative, low-tax or no-tax jurisdictions. This list which had not been updated since 2015 was most recently updated in 2024, as follows:

Svalbard Archipelago; Saint Pierre and Miquelon; Kuwait; Qatar; Independent State of Western Samoa; Qeshm Island, Pitcairn, Henderson, Ducie and Oeno Islands; Solomon Islands, Labuan; Macau; Bahamas; Bahrain; Jordan; Guyana; Angola; Cape Verde; Marshall Islands; Liberia; Maldives; Nauru; Trinidad and Tobago; Vanuatu; Yemen; Saint Helena, Ascension and Tristan de Cunha; and Oman.[1016]

Barbados, Monaco, Panama and the United Arab Emirates, which were originally included in the tax haven list by Decree 1966 of 2014, were removed from the list by Decree 2095 of 2014.

[1011] Col. Tax C., art. 260-3. par. 1.

[1012] Col. Tax C., 260-7. par. 2. The threshold is not applicable if the transaction is carried out with parties located or resident in non-cooperative, low-tax or no-tax jurisdictions.

[1013] Col. Tax C., arts. 260-5 and 260-9, and Decree 1625/2016., art. 1.2.2.1.2.

[1014] Decree 1625/2016., art. 1.2.2.1.2.

[1015] Decree 1625/2016., art. 1.2.2.1.2.

[1016] The list of tax haven jurisdictions was last updated by the National Government pursuant to Decree 1496 of 2024 and Decree 0095 of 2014. Decree 1625/2016., art. 1.2.2.5.1.

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Antigua and Barbuda, State of Brunei, Darussalam, Grenada, Hong Kong, Cook Islands, Dominica, Mauritius, Seychelles, Lebanon, Saint Kitts and Nevis, Saint Vincent and the Grenadines and Saint Lucia were removed from the list by Decree 1496 of 2024.

2. Preferential Tax Regimes

For income tax purposes, preferential tax regimes are those that meet at least two of the following criteria:[1017]

(i) Non-existence of tax rates or existence of low nominal tax rates on income, compared to those that would apply in Colombia in similar transactions;

(ii) Lack of an effective exchange of information or existence of legal regulations or administrative practices that limit it;

(iii) Lack of transparency at the legal, regulatory or administrative operation level;

(iv) Absence of the requirement of a substantive local presence, or of the exercise of a real activity with economic substance;

(v) Those regimes to which only individuals or entities considered as non-residents of the jurisdiction in which the corresponding preferential tax regime operates (ring fencing) may have access.

The National Government, based on the aforementioned criteria and those internationally accepted, may, by means of regulations, list the regimes that are considered as preferential tax regimes, and update said list when it deems it appropriate.

I. Limitations on Deductions

Related-party transactions that comply with the arm's-length standard are not subject to the limitations and ceilings established under the following rules of the Col Tax C.:[1018]

(i) Article 35: presumptive interest in the case of companies that grant loans to their members or shareholders or loans granted to the company by their members or shareholders;

(ii) Article 90: determination of gross income from the disposal of assets and the provision of services;

(iii) Article 124-1: non-deductibility of payments (interest, costs and expenses, foreign exchange differences) related to debt owed to a foreign home office, agency, branch or subsidiary;

(iv) Article 124-2: non-deductibility of payments to individuals or companies located in a low- or no-tax jurisdiction, or a jurisdiction with a preferential tax regime, unless the payments were subjected to withholding at source;

(v) Article 143: non-deductibility of amortization of intangible assets if the annual rate exceeds 20% of the fiscal cost of the assets;

(vi) Article 151: non-deductibility of losses on the transfer of assets to related parties;

(vii) Article 152: non-deductibility of losses on the transfer of corporate assets to members;

(viii) Article 260-7: non-deductibility of payments made to a related company located in a non-cooperative, low-tax or no-tax jurisdiction or to a company subject to a preferential tax regime, unless it is demonstrated that the company actually carries on a for-profit activity; and

(ix) Article 312 Number 2 and 3: non-recognition of capital losses on the transfer of fixed assets between: (a) related parties; and (b) companies and individual members, their spouses and their relatives.

Provided there are no losses affecting labor income, transactions that comply with the transfer pricing rules are not subject to the limitations laid down in the Tax Code in relation to costs and expenses incurred with respect to transactions entered into with related parties.

J. Advance Pricing Agreements

1. In General

Under Colombian law, an advance pricing agreements (APA) is an agreement entered into between the DIAN and any taxpayer, in which criteria and a methodology are determined for purposes of fixing prices or profit margins that will apply during certain fiscal periods (i.e., the current year, the immediately preceding year and the three following years) to transactions entered into by the taxpayer with foreign related parties.[1019]

2. Application Procedure

Taxpayers subject to the transfer pricing rules may file a written request for an APA with the General Director of the DIAN or his delegate.

Within the nine months following the filing of a request for a unilateral APA, the DIAN will make the relevant analysis and request and receive the pertinent modifications and clarifications necessary for it to approve or reject the request. In the case of a bilateral or multilateral APA, the time will be determined jointly by the competent authorities of the two or more jurisdictions involved.

Where there is a significant change in the facts from those pertaining at the time an APA was executed, the APA may be modified to adapt it to the new circumstances, at the request of the taxpayer or the DIAN. A request for a modification of an APA at the taxpayer's initiative must be filed and, within the following two months, the DIAN must make the relevant analysis and request and receive the pertinent modifications and clarifications necessary for it to approve or reject the request. If the DIAN establishes that there has been a significant change in the facts from those pertaining at the time an APA was executed, it may notify the taxpayer of the situation. The taxpayer will then have one month from the date of notification to formulate a duly justified modification or to identify and prove the rea-

[1017] Col. Tax C., art. 260-7.

[1018] Col. Tax C., art. 260-8.

[1019] Col. Tax C., art. 260-10.

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sons why it considers that there has been no substantial change that would justify the modification of the APA.

A taxpayer that has concluded an APA must file an annual report addressed to the General Director, in which it must demonstrate the compliance of its transfer pricing with the conditions stated in the APA.

3. Termination of an APA

An APA may be terminated in any of the following circumstances:

(i) Termination as a result of non-compliance. This occurs when the DIAN establishes that the taxpayer has not complied with one of the conditions agreed on in the APA. In these circumstances, the DIAN will issue a Resolution duly stating the grounds for termination, which will prevent the APA from applying to any transactions entered into after the Resolution was issued.

(ii) Termination due to non-filing of a modification request. This occurs when the DIAN establishes that there a significant change in the facts from those pertaining at the time the APA was executed and the taxpayer does not file a corresponding request for the modification of the APA or does not identify or sufficiently prove, in writing, the reasons for not making such a modification within the term provided for. In these circumstances, the DIAN will issue a Resolution duly stating the grounds for termination, which will prevent the APA from applying to any operations carried out after the Resolution was issued.

(iii) Termination due to the DIAN establishing that, at any time during the negotiation process or while the APA is in effect, the taxpayer provided information that does not correspond to the facts. In these circumstances, the APA will lose its effect as of the date of its execution.

(iv) Termination by mutual agreement. This may occur at any time during the duration of the APA, when the parties decide to terminate the APA, as expressly stated in a deed.

4. Appeals

If a request for an APA or the modification of an APA is rejected, or an APA is cancelled by the DIAN, the taxpayer may file an appeal (*Recurso de Reposición*) within 15 days following the date of notification of the DIAN's decision. The DIAN will have two months from the date on which the appeal was filed to issue a response.

K. Compliance Regime

The Col Tax C. imposes a series of penalties for non-compliance with requirements regarding transfer pricing supporting documentation and information returns.[1020]

In addition to the penalties discussed in 1. and 2., below, a general penalty applies in the case of repeated offenses, amounting to 20,000 UVT for each year of non-compliance.

1. Penalties Related to the Transfer Pricing Report

The following acts of non-compliance with respect to the filing of the transfer pricing report will result in DIAN's imposing the penalties shown in the table below:

[1020] Col. Tax C., art. 260-11.

Issue	Amount	Maximum	Penalty Reduction
Untimely filing penalty within five business days following the expiration of the term	0.05%	417 UVT	N/A
Untimely filing penalty after five business days following the expiration of the term	0.2% per month, not exceeding 1,667 UVT per month	20,000 UVT	N/A
Inconsistencies penalty	1% of the total value of the transaction; or 0.5% of the total value of the operations recorded in the Transfer Pricing Report. If it is not possible to determine the value of the transaction, the penalty will correspond to 0.5% of the taxpayer's net income as declared in the last income tax return filed; or 0.5% of the taxpayer's gross equity as declared in the last income tax return filed	5,000 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied, before the taxpayer is served with the notice of the decision imposing the penalty or the official assessment.

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Omission of information penalty (transactions equal to or exceeding 80,000 UVT)	2% of the total value of the transaction. If it is not possible to determine the value of the transaction, the penalty will be 1% of the operations reported in the Transfer Pricing Report. If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income as declared in the return corresponding to the current fiscal year or in the taxpayer's net income reported in the last income tax return filed. If there is no income, the penalty will be 1% of the taxpayer's gross equity as declared in the current fiscal year or in the last income tax return filed. Also, the DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer rectifies the information return prior to notification of an official assessment	5,000 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirements, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with the notice of the decision imposing the penalty or the official assessment.
Omission of information penalty (transactions below 80,000 UVT)	2% of the total value of the transaction. If it is not possible to determine the value of the transaction, the penalty will be 1% of the operations reported in the Transfer Pricing Report. If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income as declared in the return corresponding to the same fiscal year or in the tax payer's net income reported in the last income tax return filed. If there is no income, the penalty will be 1% of the taxpayer's gross equity as declared in the same fiscal year or in the last income tax return filed. Also, the DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer rectifies the information return prior to notification of the official assessment	1,400 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with the notice of the decision imposing the penalty or the official assessment.
Omission of information penalty (transaction carried out with an individual, a corporation or an entity located, resident or domiciled in a non-cooperative, low-tax or no-tax jurisdiction)	4% of the total value of the transaction. If the omission does not correspond to the value of the transaction but to other information required in the supporting documents, the penalty will be 4% of the value of the transaction in respect of which the information was not reported. If it not possible to determine the base, the penalty will be 2% of the operations reported in the Transfer Pricing Report. If it is not possible to determine the base considering the Transfer Pricing Report,	10,000 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with the notice of the decision imposing the penalty or the official assessment.

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	the penalty will be 2% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 2% of the taxpayer's gross equity as declared in the same fiscal year or in the last income tax return filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer rectifies the information return prior to notification of an official assessment		
Non-filing penalty	4% of the total value of the non-reported transaction. If it is not possible to determine the base, the penalty will be 1% of the total value of the transactions reported in the Transfer Pricing Report. If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 1% of the taxpayer's gross equity reported in the same fiscal year or in the last income tax return filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer files the Transfer Pricing Report prior to notification of an official assessment	25,000 UVT	N/A
Non-filing penalty (transaction carried out with an individual, a corporation or an entity located, resident or domiciled in a non-cooperative, low-tax or no-tax jurisdiction)	6% of the total value of the non-reported transaction. If it is not possible to determine the base, the penalty will be 1% of the total value of the transactions reported in the Transfer Pricing Report. If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 1% of the taxpayer's gross equity reported in the same fiscal year or in the last income tax return filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer files the Transfer Pricing Report prior to notification of an official assessment	30,000 UVT	N/A

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2. Penalties Related to the Information Return

The following acts of non-compliance with respect to the filing of the information return will result in the DIAN's imposing the penalties shown in the table below:

Issue	Amount	Maximum	Penalty Reduction
Untimely filing penalty, if filed within five business days following the expiration of the term	0.02% of the total value of the transactions subject to the Transfer Pricing Regime	313 UVT	N/A
Untimely filing penalty, if filed more than five business days following the expiration of the term	0.1% per month or fraction of a month of the transactions subject to the Transfer Pricing Regime (not to exceed 1,250 UVT per month or fraction)	15,000 UVT	N/A
Non-filing penalty	4% of the total value of the transaction subject to the Transfer Pricing Regime	20,000 UVT	N/A
Inconsistencies penalty	0.6% of the total value of the inconsistently reported transaction	2,280 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with notice of the decision imposing the penalty or the official assessment.
Omission of information penalty	1.3% of the amount of the totally or partially omitted information If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 1% of the taxpayer's gross equity reported in the same fiscal year or in the last income tax return filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer files the Transfer Pricing Report prior to notification of an official assessment.	3,000 UVT	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with notice of the decision imposing the penalty or the official assessment.
Omission of information penalty (transactions below 80,000 UVT)	1.3% of the amount of the totally or partially omitted information If it is not possible to determine the base considering the Transfer Pricing Report, the penalty will be 1% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 1% of the taxpayer's gross equity reported in the same fiscal year or in the last income tax return	1,000 UVT.	This penalty will be reduced to 50% of the amount determined in the return of objections or official requirement, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with notice of the decision imposing the penalty or the official assessment.

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	filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer files the Transfer Pricing Report prior to notification of an official assessment		
Omission of information penalty (transaction carried out with an individual, a corporation or an entity located, resident or domiciled in a non-cooperative, low-tax or no-tax jurisdiction)	2.6% of the total value of the totally or partially omitted transaction. If the omission does not correspond to the value of the transaction but to other information required in the Information Return, the penalty will be 2.6% of the value of the transaction in respect of which the information was not reported. If it not possible to determine the base, the penalty will be 1% of the taxpayer's net income reported in the same fiscal year or in the last income tax return filed. If there is no income, the penalty will correspond to 1% of the taxpayer's gross equity reported in the same fiscal year or in the last income tax return filed. The DIAN will deny deductibility of the costs and expenses related to the transaction. However, this penalty (denial of deductibility of costs and expenses) will not apply if the taxpayer files the Transfer Pricing Report prior to notification of an official assessment		This penalty will be reduced to 50% of the amount determined in the return of objections or official requirements, as appropriate, if the inconsistencies or omissions are remedied before the taxpayer is served with notice of the decision imposing the penalty or the official assessment.

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XVII. Criminal Offense Provisions Applicable to Tax Matters

A. Omission by the Withholding Agent

Any withholding or self-withholding agent that does not pay the taxes it has withheld within two months of the date set by the Government for filing the withholding tax return and paying the corresponding withholding tax commits a criminal offense carrying 48 to 108 months' prison time and a fine equal to double the amount that was not paid, up to a maximum of 1,020,000 UVT.[1021]

This will also apply to:

(i) Those responsible for VAT or National Consumption Tax that, having the legal obligation, do not file the corresponding tax return and pay the collected amount within two months of the date set by the Government.

(ii) The withholding agent or person responsible for VAT or National Consumption Tax who is under an obligation to collect these taxes and fails to do so.

In the case of companies and other entities, the penalties apply to the individuals responsible for complying with these obligations. Payment of the total amount owed plus interest will eliminate the criminal, but not the administrative, penalties, if any.

The statute of limitations in criminal matters corresponds to the maximum penalty prescribed for the offense in question, taking into account any aggravating factors. However, in the case of a criminal offense committed by a withholding agent, the statute of limitations is extended by half. Since the maximum penalty for such an offense is a maximum of 108 months' (i.e., nine years') imprisonment, this offense has a statute of limitations of 162 months (i.e., 13.5 years).

The 162-month statute of limitations is calculated from the time the relevant offense is deemed to have been committed, which is two months after the deadline established by the tax authorities for filing the tax return and paying the tax, where the amount withheld is not paid.

B. Omission of Assets or Inclusion of Non-Existent Liabilities

Taxpayers who (i) omit assets, (ii) report assets as having lower values, or (iii) report non-existent liabilities for income tax purposes for a value equal or exceeding 100 MMS, commit a criminal offense that carries 48 to 108 months of prison time. If the value of these assets/liabilities is equal to or exceeds 2,500 MMS but is lower than 5,000 MMS, the criminal penalty will be increased by one-third and if their value is equal to or exceeds 5,000 MMS, the penalty will be increased by half.[1022]

The value of the omitted assets or those reported at a lower value is established in accordance with the rules for equity valuation set forth by the Tax Code. The non-existent liabilities are determined according to the value included in the income tax return.

The criminal penalties will be extinguished, up to two times, if: (i) the tax return is filed or amended and (ii) the total amount of tax owed, including interest and penalties, is paid.

A taxpayer who commits a criminal offence may avoid the imposition of criminal penalties, up to two times, if he or she files or amends the relevant tax return(s), subject to the applicable statute of limitations set out in the Tax Code, and pays any tax, penalties and interest due.

In addition, criminal penalties will also not be imposed if administrative remedies are being pursued or if the correct interpretation of the tax rules on which the taxpayer had relied is unclear.

Special attention should be paid to cases where a deferred prosecution agreement has been executed or where criminal liability had already been avoided by the taxpayer on two or more occasions in the past by payment of taxes, penalties and interest. In such circumstances, settlement of existing tax liabilities will only allow a reduction of the relevant penalties by half. Criminal convictions cannot be extinguished and, unless such an agreement is already in place, it is not possible to execute a deferred prosecution agreement. The statute of limitation for this criminal offense is 108 months (i.e., nine years).

C. Tax Fraud or Evasion

Provided the behavior does not fall under another criminal offense that entails a higher imprisonment penalty, the taxpayer who (i) does not file a tax return, being obliged to do so, (ii) fails to report all the income received, (iii) includes non-existent expenses, or (iv) claims inappropriate tax credits, withholding or tax advances for a value equal or higher than 100 MMS, will commit a criminal offense punishable with a 36 to 60-month prison term.[1023]

If the value of the officially assessed tax is equal to or higher than 2,500 MMS but lower than 5,000 MMS, the criminal penalties will increase by one-third and if equal to or higher than 5,000 MMS they will increase by half.

The criminal penalties will cease, up to two times, if the taxpayer:

(i) Files or amends the tax return; and

(ii) The total amount of tax owed is paid, including interest and administrative penalties.

A taxpayer who commits a criminal offence may avoid the imposition of criminal penalties, up to two times, if he or she files or amends the relevant tax return(s), subject to the applicable statute of limitations set out in the Tax Code, and pays any tax, penalties and interest due.

In addition, criminal penalties will also not be imposed if administrative remedies are being pursued or if the correct interpretation of the tax rules on which the taxpayer had relied is unclear.

[1021] Law 599/2000, art. 402.

[1022] Law 599/2000, art. 434A.

[1023] Law 599/2000, art. 434B.

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Special attention should be paid to cases where a deferred prosecution agreement has been executed or where criminal liability had already been avoided by the taxpayer on two or more occasions in the past by payment of taxes, penalties and interest. In such circumstances, settlement of existing tax liabilities will only allow a reduction of the relevant penalties by half. Criminal convictions cannot be extinguished and, unless such an agreement is already in place, it is not possible to execute a deferred prosecution agreement. The statute of limitation for this criminal offense is 60 months (i.e., five years).

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XVIII. Avoidance of Double Taxation

A. Foreign Tax Credit

As discussed in V.B.3. and XII.A., above, Colombian tax residents, whether entities or individuals, are taxed on a worldwide income basis. However, Colombian tax law permits some relief from double taxation by means of a foreign tax credit mechanism. This foreign tax credit relief allows Colombian residents to claim a credit for foreign taxes against their Colombian basic income tax (see IV.B. and V.B., above).[1024]

A foreign tax credit is afforded with respect to foreign-source income subject to foreign income tax that is paid by Colombian residents. The tax credit does not apply with respect to income that is considered to be domestically sourced under Colombian law, whether or not such income has been taxed in another jurisdiction.[1025] The credit permitted is subject to a general limitation, i.e., the credit may not exceed income tax at the Colombian statutory rate applicable to the foreign income concerned. Specifically, the tax credit is limited to the tax that would have been imposed in Colombia on the same type of income. This is important, for example, in view of the fact that Colombia applies income tax rates for individuals that vary depending on the type and amount of the income to be taxed. Excess foreign tax credits, which may be claimed against income tax in the following four taxable periods, is also limited by reference to the income tax due in those periods, and may not be aggregated with any excess tax credits generated from Colombian-source income in other taxable periods.

Additionally, a Colombian taxpayer may now claim foreign tax credits even if the taxpayer calculates its income tax liability under the presumptive income regime (see V.B.5.e., above). Previously, the Colombian tax authorities' position was that the foreign tax credit was not available in such circumstances.[1026]

In the case of dividends received from a foreign company, the tax credit is calculated as follows:[1027]

(i) The amount of the credit equals the result of multiplying the amount of the dividends by the income tax rate applied abroad to the profits out of which the dividends are paid; and

(ii) When the dividend distributing foreign company has in turn received dividends from other foreign entities, whether located in the same or other jurisdictions, the amount of the credit equals the result of multiplying the amount of the dividends received by the Colombian taxpayer by the rate at which the profits out of which the dividends were paid were taxed.

B. Tax Treaties

1. In General

Before 2005, Colombia was not a signatory to many international tax treaties and related agreements, primarily because Colombia is a capital importer, rather than a capital exporter. However, there has been a trend in Colombia toward greater openness to trade. In the past few years, Colombia has negotiated and signed several tax treaties.

Colombia is bound by three types of double taxation agreements:

(i) Comprehensive agreements for the avoidance of double taxation;

(ii) Agreements for the avoidance of double taxation of income from shipping and/or air transportation; and

(iii) The Andean Pact Agreement on double taxation.

Colombia has also signed a mutual assistance and information sharing agreement with the United States.[1028] The Colombian Congress ratified the Agreement on July 9, 2013.

In addition, on October 30, 2009, Colombia and the United States entered into the Supplemental Agreement for Cooperation and Technical Assistance in Defense and Security between the Governments of the United States of America and the Republic of Colombia (the "Supplemental Agreement").[1029] The Supplemental Agreement is significant from an international tax perspective because: (i) it provides an exemption from taxation for income earned in Colombia by U.S. military and civilian personnel who are in Colombia for a certain period to carry on activities within the framework of the General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of Colombia (the "General Agreement") and the Supplemental Agreement and that such period will not be considered a period of residence or domicile while in the country,[1030] and also exempts income earned by such persons from sources outside Colombia; (ii) it provides an exemption from taxation for U.S. contractors and their personnel (employees)[1031] in connection with activities carried on under both the General Agreement and the Supplemental Agreement; and (iii) it exempts U.S. personnel (defined as U.S. Military and civilian personnel) and their dependents from taxation on the ownership, possession, use, transfer to other U.S. personnel and dependents, or transfer by death, of property that is located in Colombia due solely because of the presence of such persons in Colombia in connection with the above bilateral agreements.[1032]

In recent years, Colombia has negotiated several comprehensive tax treaties based on the OECD Model Convention.

[1024] Col. Tax C., art. 254.

[1025] Col. Tax C., art. 254. Col. Tax and Customs Admin. Op. 67558/2011.

[1026] Col. Tax and Customs Admin. Op. 65231/2009.

[1027] Col. Tax C., art. 254.

[1028] Agreement Between the Government of the Republic of Colombia and the Government of the United States of America for the Exchange of Tax Information, signed on March 30, 2001.

[1029] This agreement supplements the "General Agreement for Economic, Technical and Related Assistance between the Government of the United States of America and the Government of Colombia," TIAS 5123, 13 U.S.T. 1778 (effective July 23, 1962).

[1030] These bilateral agreements are for the fostering of regional cooperation, in particular within the scope of peace, stability, and security threats, such as terrorism, the global drug problem, organized transnational crime, and the proliferation of small and light weapons. See the Preamble to the Supplemental Agreement.

[1031] Legal entities that have entered into a contract with the U.S. Department of Defense to provide goods and services to carry on activities within the framework of the Agreement. U.S. contractor employees are defined under Art. I as individuals employed by U.S. contractors who are located in Colombia in connection with activities within the framework of the Agreement.

[1032] Supplemental Agreement, art. XVIII.

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Some of these treaties are still awaiting either ratification or constitutional review, by one or both parties, before they take full effect. Colombia has also signed nine bilateral tax treaties concerning international shipping and/or air transportation activities.

For a complete list of Colombia's tax treaties and other tax-related agreements, including the texts and information on signature, entry into force and effective dates, see International Tax Treaties.

2. Andean Community Agreement for the Avoidance of Double Taxation and Prevention of Tax Evasion

The Andean Community of Nations (comprising Bolivia, Colombia, Ecuador, Peru, and, until its resignation in 2006, Venezuela) has established a regime for the avoidance of double income taxation among the Andean countries. This regime was initially contained in Decision 40 of the Cartagena Agreement and its current version is found in Decision 578 of the Andean Community Commission. This Decision, which has been in effect in Colombia since 2005, provides, among other things, that:

(i) Taxation is to be imposed only in the country in which the source of income is located, regardless of the nationality or domicile of the recipient, except as otherwise provided in the Decision.[1033] For example, Article 14 of the Decision provides:

> Income derived by companies engaging in professional, technical, technical assistance, and consulting services shall be taxable only in the Member Country in whose territory the profit from such services is produced. Unless proven otherwise, it is presumed that the place where the profit is produced is where the corresponding expenses are charged and recorded.

(ii) Business profits are to be subject to taxes in the Member State in which the profits are earned. According to the Decision, a company is considered to have been operating in the territory of a Member State when it has in that territory, among other things: a place of business management; a factory, plant, industrial workshop or assembly shop; a construction project in progress; a place or facility where natural resources are extracted; an agency for the sale or purchase of goods; a depository, storage facility, warehouse or any similar establishment used for receiving, storing or delivering goods; or an agent or representative.[1034]

(iii) Interest on loans is taxable only in the Member State in which the interest is paid.[1035]

(iv) Dividends may only be taxed by the Member State in which the distributing company is domiciled. The Member State in which the company or individual receiving the dividends is domiciled cannot tax those dividends, even if they are subsequently distributed to the shareholders of the recipient entity.[1036]

(v) Capital gains may only be taxed by the Member State in whose territory the relevant assets were located at the time of sale, except for those arising from the sale of ships, aircraft, buses and other transport vehicles, which are taxable only by the Member State in which the owner is domiciled, and gains derived from the sale of securities, which may only be taxed by the Member State in which the securities were issued.

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(i) Tax is to be levied only in the country in which the source of the income is located, regardless of the nationality or domicile of the recipient, except as otherwise provided in the Decision.[1037]For example, under Article 14 of the Decision: "Income derived by companies engaging in professional, technical, technical assistance, and consulting services shall be taxable only in the Member Country in whose territory the profit from such services is made. Unless proven otherwise, it is presumed that the place where the profit is made is where the corresponding expenses are charged and recorded."

(ii) Business profits should be subject to tax in the Member State in which the profits are earned. According to the Decision, a company is considered to have been operating in the territory of a Member State when it has in that territory, among other things: a place of management; a factory, plant, industrial workshop or assembly shop; a construction project in progress; a place or facility where natural resources are extracted; an agency for the sale or purchase of goods; a depository, storage facility, warehouse or any similar establishment used for receiving, storing or delivering goods; or an agent/representative.[1038]

(iii) Interest on loans is taxable only in the Member State in which the interest is paid.[1039]

(iv) Dividends may only be taxed by the Member State in which the distributing company is domiciled. The Member State in which the company or individual receiving the dividends is domiciled cannot tax those dividends, even if they are subsequently distributed to the shareholders of the recipient entity.[1040]

(v) Capital gains may only be taxed in the Member State in whose territory the relevant assets were located at the time of sale, except for the gains arising from the sale of ships, aircraft, buses and other transport vehicles, which are taxable only in the Member State in which the owner is domiciled, and gains derived from the sale of securities, which

[1033] Andean Community Decision 578, art. 3.
[1034] Andean Community Decision 578, art. 6.
[1035] Andean Community Decision 578, art. 10.
[1036] Andean Community Decision 578, art. 11.
[1037] Andean Community Decision 578, art. 3.
[1038] Andean Community Decision 578, art. 6.
[1039] Andean Community Decision 578, art. 10.
[1040] Andean Community Decision 578, art. 11.

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may only be taxed in the Member State in which the securities were issued.

3. Interpretation of Tax Treaties

Interpretation of double tax treaties in Colombia adheres to the provisions outlined in the relevant treaty and the accompanying protocol. In the absence of such provisions, the parties are expected to interpret the treaty in accordance with the international commercial customs and the principles set out in Section 3 (Interpretation of Treaties) of the Vienna Convention on the Law of Treaties.

It should be noted that, as confirmed by the Constitutional Court of Colombia, the OECD guidance on the interpretation of double tax treaties is not legally binding. However, it can be used as supplementary means of treaty interpretation , offering valuable insights in line with the internationally accepted tax practices.[1041]

C. The Multilateral Instrument

As of 2018, Colombia is a member of the OECD. In that regard, the Government has prompted the enactment of laws addressing tax evasion and profit shifting, in accordance with the OECD's BEPS Action Plan.

Furthermore, Law 1819 of 2016 established an uncontrolled price method[1042] and introduced transfer pricing documentation requirements and Country-by-Country Reporting, to be applied as of the 2016 taxable year.[1043] Law 1819 also amended the anti-abuse rule contained in articles 869 to 869-2 of the Col. Tax C. In accordance with this amendment, the authorities must consider the genuine economic purpose of a transaction to determine its tax consequences. In addition, the addition of articles 882 to 893 to the Col. Tax C. introduced a tax regime for controlled foreign corporations (CFC), as discussed in IX., above.

Law 1943 of 2018 established an offshore indirect transfer regime when there is an indirect transfer of shares, companies, rights or assets located in Colombia through the sale of shares, participations or rights of foreign entities.

Finally, on June 7, 2017, Colombia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS and committed itself to modifying the tax treaties it has already ratified. After signature, the Multilateral Convention must obtain congressional ratification and, once ratified, the enacted law will be automatically reviewed by the Constitutional Court, in accordance with article 241-10 of the Constitution. At the time of writing, this Convention has yet to be ratified.

[1041] Colombian Constitutional Court, Sentence C-640 of 2010.

[1042] Col. Tax C., art. 260-3.

[1043] Col. Tax C., art. 260-5.

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