

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 have 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 Colombia⁸⁸³; 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).

- 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 Argenti-

na,⁸⁸⁸ Brazil,⁸⁸⁹ Chile,⁸⁹⁰ France,⁸⁹¹ Germany,⁸⁹² Italy,⁸⁹³ Panama,⁸⁹⁴ the United States⁸⁹⁵ 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.

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.

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.