Deloitte.

Taxation and Investment in Colombia 2016

Reach, relevance and reliability

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Contents

1.0 Investment climate

1.1 Business environment

Colombia is a unitary republic. The president heads the executive branch and is elected for a four-year term; re-election is allowed under the constitution. Legislative power is vested in a bicameral legislature and members are elected by popular vote for a four-year term.

The constitution was amended in 1991 to provide a more modern institutional framework and mechanisms to maintain economic stability. This included separating the central bank from the executive, legislative and judicial branches of the government and improving the efficiency and transparency of state entities.

Colombia is not yet a member of the OECD, but is an OECD accession candidate country.

OECD member countries		
Australia	Hungary	Norway
Austria	Iceland	Poland
Belgium	Ireland	Portugal
Canada	Israel	Slovakia
Chile	Italy	Slovenia
Czech Republic	Japan	Spain
Denmark	Korea (ROK)	Sweden
Estonia	Luxembourg	Switzerland
Finland	Mexico	Turkey
France	Netherlands	United Kingdom
Germany	New Zealand	United States
Greece		
Enhanced engagement countries		
Brazil	India	South Africa
China	Indonesia	
OECD accession candidate countries		
Colombia	Latvia	Lithuania
Costa Rica		

Colombia has a diversified economy by regional standards. The principal agricultural activities are cattle rearing and coffee growing. Industrial activities, concentrated around the cities of Medellín, Bogotá, Cali, Barranquilla and Cartagena, are dominated by a number of large private conglomerates, as well as small and medium-sized enterprises. Telecommunications has been one of the most dynamic sectors due to the development of services, such as long-distance and wireless communications, in large urban centers. The government is the main supplier of personal services. Colombia also has many natural resources, such as minerals and fuel.

Colombia’s top four exports are oil, coal, coffee and ferrous nickel.

Colombia is a member of the Andean Community (CAN) and the Latin American Integration Association, and has established trade agreements with Mexico and Venezuela (through the Group of Three, or G3, accord). No tariffs apply to intragroup trade (except for certain manufacturing products). Trade agreements with Caricom (the Caribbean Community) and Mercosur (southern customs union) aim to eliminate internal duties and trade barriers. The Andean

Community has created a free trade zone with Bolivia, Colombia and Ecuador that has increased trade and integration among these countries. Ecuador and Venezuela are major markets for Colombia's exports.

The 2004 Mercosur-Andean Community Free Trade Area agreement (under which Mercosur partners agreed to link their trade area to that of the Andean Community) states that import duties should be eliminated among the signatories within 15 years. To respect previous bilateral agreements within Mercosur and within the Latin American Integration Association, the bloc has 67 schedules for the reduction and eventual elimination of import duties among the nine members.

Mercosur signed an agreement in 2004 to adopt special tariffs in its trade with the countries of the Southern African Customs Union, comprising Botswana, Lesotho, Namibia, South Africa and Swaziland. The agreement aims to gradually reduce and eventually eliminate tariffs. A similar agreement was signed with India in 2005.

Colombia has signed free trade agreements with Chile and the US.

In 2006, the EU approved a 10-year "GPS Plus" that benefits Colombian exports entering the EU market and grants duty-free access to more than 6,600 goods exported by Colombia to the EU.

Price controls

The government generally allows market forces to determine price levels for most goods and services, with price controls imposed only in select areas. Prices under control or regulation generally fall into three categories:

1. Direct control, under which the Ministry of Commerce, Industry and Tourism (or the Ministry of Mines and Energy, for gas and oil) defines price ceilings based on cost studies;
2. Monitored price freedom, under which companies must report and justify price changes to the authorities, which reserve veto power over the changes; and
3. Special regimes, under which the ministry controls price increases at the producer and distributor levels, depending on factors such as profit margins.

Requests for price increases must be submitted to the Industry and Commerce Superintendence (SIC) at the Ministry of Commerce, Industry and Tourism, the central agency for price control information and enforcement. Price hikes generally are approved based on increases in the cost of production, although this is not guaranteed by law. Penalties may be imposed for violations.

Independent regulatory commissions exist for energy, sanitation and telecommunications.

Intellectual property

Intellectual property rights in Colombia are protected by a combination of national laws and Andean Community decisions. Andean Community Decision 486 of 2000 updated patent and trademark legislation in the community member nations. Colombia adheres to the World Trade Organization (WTO) and the Trade-Related Aspects of Intellectual Property (TRIPs) agreement. It is a member of the World Intellectual Property Organization (WIPO) and has negotiated to join the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Union for the Protection of New Plant Varieties and the Madrid System for the International Registration of Marks.

Under Decision 486, the term for patents is 20 years, with no extensions permitted. Industrial designs may be registered for 10 years, and the same term is provided for utility models and integrated circuits. Trademarks are registered for 10 years, with an indefinite number of 10-year renewals available if the trademark remains in use.

Colombian and CAN legislation protects business secrets, with stringent penalties for violations. Penalties also apply for copyright violations.

Decision 486 allows the holder of a well-known and previously registered or used trademark to go directly to the SIC to request cancellation of the registration of a similar trademark in Colombia, without resorting to the courts. A trademark also may be cancelled if it is not being used in Colombia or another Andean Community country.

1.2 Currency

The currency in Colombia is the peso (COP).

1.3 Banking and financing

The central bank is the *Banco de la República de Colombia*.

Financial holding companies, both domestic and foreign, are allowed to participate in all areas of the financial sector through a "parent company affiliate" scheme. As such, large financial groups form direct subsidiaries with operations across the financial spectrum, including banking, insurance, pension fund management and leasing.

Commercial banks concentrate on the financing of commercial operations and international trade payments, although several of the larger commercial banks have taken on mortgage lending activities. Commercial financing companies grant consumer loans, and some specialize in leasing operations. Other financial sector players include finance companies that act as investment banks, principally in corporate finance; brokerage firms; warehouses; insurance and reinsurance companies and their intermediaries; private pension and severance funds; and trust houses or fiduciary corporations.

Foreign competitors and liberalization measures allowing nonbanking entities to participate in areas previously exclusive to banks and finance companies have resulted in greater competition.

Colombia's main financial centers are Bogotá, Medellín and Cali.

1.4 Foreign investment

Colombia allows foreign investment in all sectors of the economy, except for sectors related to national security and the disposal of hazardous waste products. Foreign investors generally are treated the same as local investors, but the law requires reciprocity (Colombian investors must be allowed to operate in the sector in the country of origin of the foreign investor). The Ministry of Trade, Industry and Tourism formulates foreign investment policy in coordination with the Ministry of Finance and Public Credit, taking into account specific guidelines.

A foreign investor may own up to 100% of the capital of a Colombian company, although limits may be imposed in certain cases, e.g. companies receiving concessions to broadcast television programmers in Colombia are limited to 40% foreign investment. Investment in the banking and insurance sectors requires prior authorization by the Financial Superintendence and may be subject to special capital requirements. In addition, authorization or registration is required in the following cases:

- Authorization of the Financial Superintendence is required where a nonresident wishes to invest in or acquire an existing Colombian financial institution;
- Authorization of the Financial Superintendence is required for portfolio investments. Only foreign investment funds are permitted to make portfolio investments, which must be channeled through Colombia's stock exchange. Foreign funds must have a local administrator, either an authorized stockbroker or a trust agent. Investments in fixed-term instruments with a maturity date of less than two years may not exceed 20% of a given issue.
- Authorization of the National Planning Department is required for the processing of toxic waste produced in Colombia; and for projects requiring coverage issued by providers of investment protection, guarantees or insurance derived from existing international agreements.
- Registration and a license from the Ministry of Mines and Energy and the Hydrocarbons National Agency are required to exploit oil, natural gas or coal.
- For exchange purposes, all foreign investment must be registered with the central bank for the foreign investor to be able to repatriate its investment profits and take other actions.

1.5 Tax incentives

Foreign investment is welcome in all economic sectors, except in activities related to defense and national security. A foreign investor may hold up to 100% of the capital of a Colombian company. All foreign capital investments must be registered with the central bank.

Colombia offers a variety of incentives for investment in priority sectors (manufacturing, agro-industry, mining and petroleum and exports). Preference is given to investments that generate significant employment, stimulate technological advances, have a positive effect on the balance of payments or reduce general price levels. Incentives increasingly require firms to create new jobs, or at least maintain a certain level of jobs.

Incentives often reflect regional considerations. Border zones have been offered protection because currency movements in neighboring countries may harm local economies. Regions facing catastrophes may receive temporary incentives. Some industries are eligible for special treatment.

Incentives include preferential import tariffs, tax exemptions and credit or risk capital from the government. Local governments also offer special incentives, such as tax holidays, to attract industry. Incentives are granted by Congress (through laws), the national government (through decrees) and state and local councils.

There are a number of free trade zones that offer special incentives, such as a 15% corporate income tax rate and exemptions from customs duties and VAT.

Stability contracts are no longer available. Before 2013, companies were able to conclude individual stability contracts with the government for a term of three to 20 years; such agreements guaranteed the stability of certain taxes during the relevant period, provided the investor complied with specified requirements.

1.6 Exchange controls

The board of directors of the central bank, headed by the minister of public finance, is the highest authority for foreign exchange matters, although the government retains the authority to regulate foreign investment.

Foreign exchange that is to be used for foreign direct investment may enter the country without central bank registration. However, the exchange market in Colombia comprises authorized exchange intermediaries, through which most foreign currency transactions by foreign investors must be transferred. Foreign capital investments, imports of goods, exports and currency used to repatriate profits must be directed through the exchange market. “Foreign residents” (a category different from foreign investors) in Colombia also must use the authorized exchange market for investments outside the country.

Colombian residents can maintain accounts abroad, but if mandatory exchange transactions (including foreign investment) are made through an account, the resident must provide the central bank with monthly reports of the balance and exchange declarations stating the origin and use of the funds. Although companies that receive foreign investment have the right to convert currency to transfer funds abroad, the government retains the power to suspend this right temporarily if foreign exchange reserves fall below three months’ worth of imports.

Colombian banks adhere to international standards and conventions with respect to cross-border transactions, and the country has strong anti-money laundering legislation. A special unit of the Ministry of Credit and Public Finance handles the reporting activity of institutions operating on the local foreign exchange market.

Special exchange rules apply to foreign investors operating in Colombia through a branch and carrying out activities in the oil and gas exploration and production sector, or providing oil and gas services.

2.0 Setting up a business

2.1 Principal forms of business entity

The forms of business organization most often used by foreign investors in Colombia are the joint capital stock corporation (*sociedad anónima* or SA), simplified joint capital stock corporation (*sociedad por acciones simplificada* or SAS), limited liability company (LLC) and branch of a foreign company. Most investors use the SAS.

The liability of the shareholders of an SAS, SA or LLC is, in principle, limited to the amount of their capital contribution.

Foreign companies that seek to have regular operations in Colombia must establish a branch or subsidiary. A branch or subsidiary is governed by the Financial Superintendence (for financial entities) or the Superintendence of Corporations (for all others).

Main forms of entity

Joint capital stock corporation: A joint capital stock corporation is a corporate structure in which the shareholders are liable up to the amount of their contribution. The company's name must include the letters "SA." The company must be formed with at least five shareholders. The management functions of an SA are exercised by the shareholders' general meeting, the board of directors and a legal representative. Each capital share represents one vote. Decisions must be approved by an absolute majority.

The capital of an SA is represented by shares of equal value. At the time of incorporation, no less than 50% of the authorized capital must be subscribed and no less than one-third of each share's value must be paid. If payments are to be made by installment, the total payment must be made within one year from the time of subscription.

Simplified joint capital stock corporation: A simplified joint capital stock corporation is a corporation in which shareholders are liable up to the amount of their contribution under a more flexible standard than that applicable to a normal SA. The name of the company must be followed by the letters "SAS." An SAS must have at least one shareholder, and an SAS's management functions are exercised by the shareholders' general meeting, an optional board of directors and a legal representative.

Each capital share represents one vote, but shareholders can approve different kinds of shares with different vote capability in the company's bylaws. Decisions generally must be approved by an absolute majority, but shareholders can specify a different majority in the company's bylaws.

Capital of an SAS is represented by shares of equal value. At the time of incorporation, shareholders may decide the percentage of capital that must be subscribed, as well as the share value that must be paid. If payments are to be made in installments, the total payment must be made within two years from the time of subscription.

Limited liability company: Partners in an LLC are liable up to the amount of their contributions and they are jointly and severally liable for unpaid debts of the LLC. The registered name of an LLC must include the word "Limitada" or the letters "Ltda." An LLC must have at least two partners, but not more than 25 partners. Management of an LLC is carried out by the partner meeting and a legal representative. Each quota or share represents one vote. Decisions require approval by an absolute majority. Capital is represented in quotas of equal value and must be completely paid at the time of incorporation, or at any time capital is increased.

Branch of a foreign corporation

A foreign company may set up a branch office in Colombia.

The head office must register with the local chamber of commerce and must provide information on the type of business the branch will conduct in Colombia, its capital, location, expected duration, possible reasons for termination of business in Colombia and the names of its manager-designate and auditor, who must be Colombian. Proof that the branch's assigned capital has been paid must be provided. A notary public from the chosen domicile of the branch must authenticate a copy of the head office's bylaws and statutes.

Several documents must be submitted to the local chamber of commerce, including the documents of incorporation, bylaws of the foreign head office and the board resolution that authorized the establishment of a branch in Colombia, with details of the capital assigned to the branch and the appointment of officers. The documents require an apostille, or authentication or notarization by a Colombian consulate and the Ministry of Foreign Affairs in Colombia. A statement from the chamber of commerce that the books have been registered and a certificate from the managing director and auditor that the capital for the branch has been paid in also must be on file. Like a domestic corporation, a branch must submit an annual statement to the relevant superintendence. It must pay the same fees, keep the same books and build up the same legal reserves as required for an SA. Branches must appoint a statutory auditor.

A branch is legally an extension of the head office and thus is considered the same legal person under Colombian law.

A branch in Colombia is subject to the standard Colombian corporate income tax rate. The remittance of profits abroad is exempt from withholding tax.

2.2 Regulation of business

Mergers and acquisitions

Mergers involving companies under the control of any superintendence must be reported to the relevant superintendence. Mergers and acquisitions within a single industry require the authorization of the Superintendence of Industry and Commerce (SIC) if the annual sales and/or assets of the companies involved exceed 150,000 times the minimum legal monthly wages. If the market participation of the involved companies exceeds 20%, full authorization is required; if less, only notification is required.

International mergers are possible, but they must comply with the local requirements and procedures established for local mergers.

Monopolies and restraint of trade

Market dominance is allowed, but it may not be used to keep or force competitors out of a market, discriminate against a consumer or supplier or sell to buyers at different prices to restrict competition.

The constitution prohibits monopolies, other than those established by law. Colombia's antitrust law seeks to curb concentrations of power that restrict competition and boost prices. It forbids board members of credit institutions and ranking officers and directors of large firms from serving on the boards of other firms engaged in similar businesses. It also prohibits the distribution of a firm's products by company presidents, managers, directors, legal representatives or other administrators, acting by themselves or through third parties.

2.3 Accounting, filing and auditing requirements

Official books must be maintained in accordance with commercial and tax laws. All SAs and SASs under the control of a superintendence must submit annual balance sheets and pay a supervisory fee of 0.05% of total assets. An SA also must employ a statutory auditor to carry out internal control functions, including reconciling monthly bank statements and authorizing company balance sheets. An SAS or LLC must appoint a statutory auditor only if its assets or income exceed specified limits established by law.

If an SA is registered on the stock exchange, it must report detailed financial information on a monthly basis.

Colombia is in process of adopting IFRS, which is expected to be completed by 2018.

3.0 Business taxation

3.1 Overview

Companies doing business in Colombia may be subject to a number of taxes. The main national taxes are the corporate income tax, presumptive tax, "income tax for equality" (CREE), value added tax (VAT), financial transactions tax, registration tax, real estate tax, municipal industry and trade tax and consumption tax. As noted in section 1.5 above, some incentives are available.

Taxation in Colombia is mainly regulated by the Tax Code. Taxes are administered and collected by the DIAN (*Dirección de Impuestos y Aduanas Nacionales*).

Colombia Quick Tax Facts for Companies	
Corporate income tax rate	25%
CREE	9%
Branch tax rate	25%
Alternative minimum tax	25% (applies to 3% of net worth, but only if that amount exceeds taxable income)
Capital gains tax rate	10%
Basis	Worldwide income
Participation exemption	No
Loss relief	
− Carryforward	Indefinite
− Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	No
Tax year	Calendar year
Advance payment of tax	Yes
Return due date	Between 9 April and 22 May
Withholding tax	
− Dividends	0%/33%
− Interest	0%/5%/14%/33%
− Royalties	26.4% (software licenses)/33%
− Technical service fees	10%
− Management fees for services rendered in Colombia	33%
− Branch remittance tax	0%/33%
Capital tax	No
Registration duty	0.3%-1%

Net worth tax	See alternative minimum tax, above; temporary wealth tax of 1% also may apply
Financial transactions tax	0.4%
Payroll tax	9%
Social security contributions	20.5%, plus a variable percentage for work accident insurance
Real estate tax	Varies
Transfer tax	No
Municipal industry and trade tax	0.2%-1%
VAT	16% (standard rate)
Consumption tax	4%/8%

3.2 Residence

A corporation is resident if it is organized under Colombian law, has its main domicile in Colombia or its administration headquarters is located in Colombia.

3.3 Taxable income and rates

The corporate income tax rate is 25% for all Colombian firms and branches or permanent establishments (PEs) of foreign companies. The rate does not apply to consortia, which generally are part of administrative contracts with government agencies; instead, the individual partners in the consortia pay tax. The rate on foreign companies that do not have a branch or PE in Colombia generally is 33%; however, the rate has been temporarily increased for the 2015 to 2018 tax years. The rate is 40% for 2016 (increased from 39% for 2015), 42% for 2017 and 43% for 2018. Companies located in free trade zones are subject to a special 15% corporate income tax rate.

The CREE is levied in addition to the corporate tax; the CREE rate is 9%. Taxpayers subject to the CREE may benefit from some exemptions regarding employer welfare contributions, such as the Health Care Plan contribution (or Health Social Security System contribution), the 3% Child and Family Protection Services contribution (ICBF) and the 2% Public Training System contribution (SENA). The exemptions are available only for employees earning up to 10 SMMLV (minimum legal monthly wages). CREE taxpayers whose taxable base exceeds COP 800 million also are liable to a CREE surcharge for the tax years 2015-2018 at a rate of 6% for 2016 (increased from 5% for 2015), 8% for 2017 and 9% for 2018. The surcharge will not apply as from 2019.

Under Colombian tax law, companies also must determine their taxable income according to an alternative "presumptive income" system, under which the minimum taxable income must be equal to at least 3% of the company's tax equity determined as of 31 December of the immediately preceding calendar year. The income tax applies to the higher of the net income or the presumptive income.

Taxable income defined

Colombian companies and entities are subject to income tax on worldwide income. Foreign companies, Colombian branches of foreign corporations and Colombian PEs of foreign companies are subject to income tax only on Colombian-source income. In general, the following is considered Colombian-source income:

- Profits derived by Colombian companies;
- Income derived from the transfer or exploitation of tangible or intangible goods located in Colombia;
- Income derived from the transfer of goods produced in the country, regardless of the place of transfer;
- Income derived from the provision of services in Colombia; and

- Income derived from the provision of technical assistance and consulting services and the execution of turnkey contracts, within or outside Colombia.

Foreign-source income includes income arising from the transfer or exploitation of tangible or intangible goods located outside of Colombia, and from the rendering of services abroad.

Taxable income in Colombia is defined as gross income less returns, rebates, discounts, all ordinary costs incurred in obtaining the net income and all allowed deductions. Expenses generally are deductible, provided they are necessary, reasonable and related to the income-generating activity of the taxpayer, as long as they were incurred during the relevant tax year.

Dividends received by a Colombian company from another Colombian company are not taxable if the dividends correspond to profits on which tax already has been paid at the level of the distributing company. Otherwise, a 20% withholding tax applies to dividends paid to a resident. Dividends paid to a nonresident are included in the taxable income of the recipient and taxed at a rate of 33%, or 25% for branches of foreign companies and PEs.

Deductions

All expenses incurred in the normal course of business generally are deductible. Deductible expenses include normal business expenses, depreciation, losses, interest payments, wages and social security payments, industrial and commercial tax, real estate tax and 50% of the financial transactions tax. Interest and financing payments made to other firms may be deducted in an amount that does not exceed the maximum loan interest rate established by the Superintendence of Finance.

Investments that are necessary for the start-up of a business may be amortized (usually over at least five years), provided such outlays have not given rise to any other type of deduction. In general terms, royalties may be included as deductible expenses, as long as withholding tax was applied to the payment and the relevant agreement was registered before the national tax authority.

Payments to agents abroad are deductible up at to 5% of the value of a transaction that involves the sale or purchase of merchandise, and up to 10% if the transaction entails exports and the payments are registered with the central bank.

Firms may set aside reserves for bad debts by deducting either 25% of receivables overdue for more than a year; or 5%, 10% or 15% of all accounts receivable, depending on whether the average period outstanding is three months, six months or one year, respectively.

Certain expenses are not deductible, such as expenses related to tax-exempt income and certain payments made to tax haven jurisdictions.

Depreciation

The acquisition costs of tangible fixed assets generally are fully depreciable for corporate income tax and CREE purposes. Companies may use the straight-line, declining-balance or any other method of calculating depreciation, provided the taxpayer obtains the approval of the tax authorities at least three months before applying the method.

The normal estimated useful lives of various assets are as follows: motor vehicles and computers, five years (annual depreciation rate of 20%); machinery, equipment, boats and aircraft, 10 years (10% rate); and buildings, 20 years (5% rate).

Taxpayers generally can amortize the cost of acquired intangible assets over a period of at least five years, unless the taxpayer can demonstrate that the amortization period should be shorter due to the nature of the intangible or business conditions.

Losses

Normal losses incurred by an SA or other entity subject to state supervision may be carried forward indefinitely. The carryback of losses is not permitted.

3.4 Capital gains taxation

Capital gains are taxed at a rate of 10%. Gains derived from the sale of assets held for at least two years and gains on the liquidation of a company that has been in existence for at least two years are considered capital gains.

3.5 Double taxation relief

Unilateral relief

A foreign tax credit is available to prevent international double taxation. A taxpayer may credit the amount of foreign tax paid on foreign-source income, provided the foreign tax does not exceed the Colombian tax that would be due on the same income received from abroad. For the credit to apply, the taxpayer must be a company resident in Colombia, its foreign income must be taxable in Colombia, the income taxes paid abroad may not exceed the Colombian tax attributable to the income and the taxpayer must obtain a certification of the withholding tax paid abroad.

Tax treaties

Colombia has double taxation agreements with several countries, including agreements with Bolivia, Ecuador and Peru that are in accordance with CAN provisions. Andean Community members have agreed to avoid double taxation of income and net wealth among themselves, but tax legislation has not been harmonized, except for Andean multinational firms. Profits earned by branches of Andean multinational corporations are taxed only in the country in which the branch is located. The portion of dividends distributed by an Andean multinational corresponding to profits earned by a branch in another Andean country will not be taxed in the country of the headquarters.

Colombia Tax Treaty Network			
Bolivia	Czech Republic	Korea (ROK)	Portugal
Canada	Ecuador	Mexico	Spain
Chile	India	Peru	Switzerland

3.6 Anti-avoidance rules

Transfer pricing

Colombia's transfer pricing rules require that taxpayers follow the arm's length principle in transactions between Colombian taxpayers and foreign related parties. Such transactions must be valued according to the prices and profit margins that would have been used in comparable transactions between independent parties.

Parties are deemed to be related if there is any subordination or control, or if the parties are members of an entrepreneurial group within the meaning of the Tax and Commercial Codes. Control can be individual or joint, without participation in the stock of the subordinated company or by a principal head office established abroad.

Colombian law specifies six transfer pricing methods to determine prices or profit margins in controlled transactions: the comparable uncontrolled price, resale price, cost plus, profit split, residual profit split and transactional net margin methods. Where the tax authorities conclude that the pricing is not set at arm's length, adjustments can be made.

Taxpayers are required to maintain records of all transactions involving nonresident related parties for five years and annually must report to the tax authorities all transactions with such parties that meet certain thresholds.

A taxpayer can obtain an advance pricing agreement (APA) from the tax authorities.

Thin capitalization

Under the thin capitalization rules, a Colombian taxpayer must comply with a 3:1 debt-to-equity ratio to deduct interest on a loan. Interest exceeding this ratio is nondeductible. The rules apply to domestic and foreign loans, regardless of whether the loan is from a related or an unrelated party.

Controlled foreign companies

Colombia does not have a CFC regime.

General anti-avoidance rule

A general anti-avoidance rule applies, based on the substance-over-form principle. The rule allows the Colombian tax authorities to disregard (or recharacterize) a transaction in cases where abuse is present.

3.7 Administration

Tax year

The tax year is the calendar year.

Filing and payment

"Major taxpayers" (which the tax authorities list each year) must file a tax return by a specified date. Major taxpayers must make three installment payments of income tax by dates set by the government. The first installment cannot be lower than 20% of the total income tax, and the second and third installments each must be 50% of the total tax remaining after the first installment. All other companies must file a tax return between 9 April and 22 May, depending on the last digit of their tax identification number, and they must pay their first installment at that time.

Tax returns may be filed electronically.

Consolidated returns

Colombian tax law treats every company in a group as an independent unit. No provision is made for affiliated companies to file a consolidated return, or for surrender of losses.

Statute of limitations

The general statute of limitations for assessment purposes is two years from the last day of the period to file the tax return. The period is extended to five years if the return reports tax losses or the utilization of tax losses. The statute of limitations for the collection of tax is five years.

Tax authorities

The DIAN is responsible for the collection of tax and enforcement of the tax laws.

Rulings

APAs may be negotiated under the transfer pricing rules.

3.8 Other taxes on business

Wealth tax

A wealth tax has been introduced for taxable years 2015, 2016 and 2017, payable by entities with equity exceeding COP 1 billion as of 1 January 2015. The tax rate will be progressively reduced for legal entities over that period, with maximum rates of 1% for 2016 (reduced from 1.15% for 2015) and 0.4% for 2017, prior to the withdrawal of the tax as from 2018.

See also section 5.8, below.

4.0 Withholding taxes

4.1 Dividends

Dividends paid to a foreign company or entity not domiciled in Colombia may be remitted abroad free of tax if the profits out of which the dividends are paid already have been taxed at the corporate level. Otherwise, income tax is imposed at a rate of 33%.

4.2 Interest

Interest paid to a nonresident is subject to a final withholding tax of 33% if the loan term does not exceed 12 months, otherwise, the rate generally is 14%. A 5% rate applies to interest on loans granted for the development of infrastructure projects that satisfy certain requirements. Interest derived from the following is exempt: short-term import credits and overdrafts; credit to finance or pre-finance exports; credit obtained by financial corporations and authorized banks; credit for trade transactions obtained through financial corporations or authorized banks; and credit obtained by foreign, mixed or local companies whose activities are considered beneficial to national economic development under guidelines set by the National Council on Economic and Social Policy.

4.3 Royalties

Royalties paid for the exploitation of intellectual property and other intangible assets are subject to a 33% withholding tax. Royalties derived from the exploitation of software also are subject to the 33% rate, but only on 80% of their amount (26.4%).

4.4 Branch remittance tax

Colombia does not levy a branch profits tax. However, profits not taxed at the branch level accrue income tax withholding at a 33% rate when remitted abroad.

4.5 Wage tax/social security contributions

An employer must contribute 9% of monthly payroll, allocated as follows: 3% to the Institute for Family Welfare; 2% to the National Apprenticeship Service; and 4% to the family subsidy fund.

The employer's contribution for pay-related social insurance is 8.5% of salary for health insurance, 12% for the general pension scheme and a percentage (which varies by job type) for work accident insurance. The employer also must withhold and remit the employee’s share of social security contributions.

4.6 Other

Fees paid for technical, consulting or technical assistance services rendered abroad are subject to a 10% withholding tax and are fully deductible for the payer, provided the applicable withholding is made. Management fees are subject to a 33% withholding tax if the services are rendered in Colombia; if they are performed abroad, no withholding tax applies.

The government has issued a list of 44 countries and jurisdictions that are considered tax havens. Payments made to such jurisdictions are taxed at a 33% income tax rate. If no withholding tax is applied, the expense may not be deductible by the payer.

5.0 Indirect taxes

5.1 Value added tax

VAT is imposed on the sale of goods and the provision of services in Colombia and on imports. The standard VAT rate is 16%, with lower rates of 5% and 0% applicable in certain cases. Certain goods and services are exempt or zero-rated.

VAT generally is computed in bimonthly periods using the subtraction method, crediting taxes paid on purchases against tax liabilities arising from sales. Special rules apply to small taxpayers.

For VAT purposes, corporations must register with the Colombian tax authorities, which will assign the company a Unique Tax Register (RUT). The RUT is the company's ID for tax purposes.

VAT tax grouping is not permitted in Colombia.

5.2 Capital tax

Colombia does not levy capital duty, but a registration tax applies to documents (legal acts, bylaws, etc.) registered with the Chamber of Commerce (0.3% to 0.7%) or the Registry of Public Deeds (0.5% to 1%), calculated on items such as subscribed capital, transaction amounts stated in the document to be registered or the appraisal value of immovable property. Relief is available if a document or act is subject to both registration tax and stamp duty (stamp duty will not be levied) or is subject to registration in both the Chamber of Commerce and the Registry of Public Deeds (the public deeds levy is imposed).

5.3 Real estate tax

The municipalities levy an annual real estate tax on the owner or occupier of land. The rate depends on the use of the property, and the tax generally is deductible for corporate income tax purposes.

5.4 Transfer tax

None

5.5 Stamp duty

The rate of the stamp tax is 0%.

5.6 Customs and excise duties

Customs duties on the importation of goods into Colombia are charged as a percentage (tariff rates and sales tax) applied to the customs value of the goods. There are several rates of customs tariffs, depending on the goods, including 0%, 5%, 10%, 15% and 20% rates.

5.7 Environmental taxes

Certain charges may be imposed for damage to the environment.

5.8 Other taxes

Financial transactions tax

A 0.4% financial transactions tax is imposed on all withdrawals from current and savings accounts, including accounts with the central bank. The tax will be phased out gradually, as follows: 0.3% for 2019, 0.2% for 2020 and 0.1% for 2021, and will be eliminated as from 2022.

There are certain exemptions established by the Tax Code.

Municipal industry and trade tax

A municipal industry and trade tax, ranging from 0.2% to 1%, is levied on gross receipts derived from carrying out industrial, commercial and service activities within a municipal territory. The rate is set by the municipality.

Consumption tax

The taxable event for consumption tax purposes is the sale to a final consumer or import by a final consumer. The tax applies to mobile phone services at a rate of 4%, and to sales of certain movable property and food or beverages prepared in restaurants, etc. at a rate of 8%

6.0 Taxes on individuals

Colombia Quick Tax Facts for Individuals	
Income tax rates	Progressive to 33% for residents; 33% for nonresidents
Alternative minimum tax	Progressive to 27%; see also net wealth tax below
Capital gains tax rates	0%/10%
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	Deadline set annually, varies depending on tax ID number
Withholding tax	
− Dividends	0%/20%/33% (domestic individuals); 0%/33% (foreign individuals)
− Interest	7% (resident individuals);14%/33% (nonresident individuals)
− Royalties	3.5% (domestic individuals); 26.4% (software license payments to foreign individuals)/33% (other payments to foreign individuals)
Net wealth tax	Presumptive minimum income for income tax purposes is based on net worth; temporary wealth tax of 0.125%-1.5% also may apply
Social security	8%, withheld by the employer
Inheritance/gift tax	No (but gifts are treated as capital gains)
Real estate tax	Varies
VAT	16% (standard rate)

6.1 Residence

An individual is considered a Colombian resident for tax purposes if he or she is present in Colombia for more than 183 days during a consecutive 365-day period.

6.2 Taxable income and rates

A resident individual is taxed on worldwide income; a nonresident is taxed only on Colombia-source income. A foreign resident individual will be taxed on worldwide income as from the first year he or she resides in the country.

A presumptive minimum income is calculated annually on the taxpayer's net worth held in the year immediately preceding the taxable year at issue. Certain assets may be excluded from this calculation, such as shares in Colombian companies and the individual's residence (up to a certain maximum value).

Individuals must calculate their income according to the ordinary rules (including the rules on presumptive income), as well as under a National Minimum Alternative Tax (IMAN) that contains adjusted tax rate tables that provide for alternative rates ranging from 0% to 27% and a Simple

Minimum Alternative Tax (IMAS) that will allow certain taxpayers to prepare their tax returns electronically.

Taxable income

Most income is subject to tax, including employment income, business income, investment income and capital gains; 25% of all labor income is exempt.

Deductions and reliefs

Colombia provides deductions and allowances for health expenditure and for the purchase of a residence, including related interest costs up to a certain amount. Deductible mortgage interest is limited. A taxpayer may deduct charitable donations, provided certain requirements are met.

Rates

Taxable income ranges are based on the UVT (tax value unit) and are 0% for UVT 0 to UVT 1,090; 19% for UVT 1,091 to UVT 1,700; 28% for UVT 1,701 to UVT 4,100; and 33% for UVT 4,101 and above.

Dividends are taxable if the profits out of which they are distributed were not taxed. A 20% rate applies where a resident individual taxpayer is required to file a tax return (33% if the individual is not required to file a return).

The withholding tax on interest paid to a resident individual is 7%.

Capital gains (e.g. inheritances, gifts and proceeds from the sale of real estate) are subject to tax at a rate of 10%. However, gains derived from the sale of shares through a stock exchange are exempt, provided the shares sold do not represent more than 10% of the total shares of the Colombian company that issued the shares.

6.3 Inheritance and gift tax

There is no inheritance tax. Gifts are treated as capital gains and are subject to tax as extraordinary income.

6.4 Net wealth tax

A wealth tax has been introduced for taxable years 2015-2018, payable by individuals with net worth exceeding COP 1 billion as of 1 January 2015. The tax is levied at progressive tax rates ranging between 0.125% and 1.5%, and is expected to be eliminated as from 2019.

6.5 Real property tax

Real estate is subject to municipal taxation, which usually is levied at rates within a band based on the value of property, without regard to the number of owners or the taxpayer's personal wealth.

6.6 Social security contributions

An employee contributes 8% of salary for pension and health contributions (4% each). The employer withholds and remits the employee’s share of the social security contributions.

6.7 Compliance

The tax year for individuals is the calendar year.

Most Colombian residents need not file an income tax return unless their income or total worth exceeds a limit imposed annually by the government. For those who do not file returns, tax is deducted at source by the employer. If a return is required, it must be filed by a deadline that is set annually, depending on the last two digits of the taxpayer’s identification number.

7.0 Labor environment

7.1 Employee rights and remuneration

Colombia's basic labor law comprises the 1949 Labor Code and three modifying laws: Decree 2351 of 1965, Law 50 of 1990 and Law 798 of 2002.

The Labor Code defines a labor contract, its elements (activities performed by an employee, subordination of the employee to the employer and compensation for services rendered), the form and duration of the contract and probation periods. It also defines the most important features of the wage regime, including ordinary and extraordinary compensation and rules for paying salaries or other compensation. Minimum worker rights and guarantees cannot be modified by an employment contract or waived by an employee.

There are several types of labor contracts, depending on the duration of the agreement: fixed term, indefinite term, work-specific term and temporary contracts. A fixed term contract may last for up to three years and may be renewed. To terminate the contract, the employer must give written notice at least one month before the expiration date; otherwise, the contract is renewed automatically for the same term initially agreed. The period of a work-specific contract is determined by the length of time the work is expected to take. The term for a temporary contract is established by agreement between the employer and the employee.

Working hours

The work day is usually agreed by the employer and the employee, subject to a legal maximum (eight hours per day and 48 hours per week). Night work qualifies for a 35% premium over day rates. Up to 12 hours of weekly overtime is permitted, at premiums of 25% for day overtime, 75% for night overtime and 75% for Sundays and holidays. The Labor Code allows companies that maintain 24-hour production to implement four six-hour shifts per day (compared with three eight-hour shifts) without having to pay overtime premiums for night shifts or Sunday shifts.

7.2 Wages and benefits

Most of the working population in Colombia earns the minimum wage, which is set annually by government decree. Larger companies may grant increases of one to three percentage points above the minimum wage, which usually is increased by a few percentage points above inflation. Workers in foreign-owned firms in industry, construction and some services normally are paid a percentage above the minimum wage.

Companies must pay an extra 30 days of salary each year as a legal service bonus, half in June and half in December.

Employees are entitled to 15 working days of paid annual leave after their first year of service, or to a number of days in proportion to the number of months worked. Employees may accumulate up to three years of unused annual leave, and may withdraw up to half of their accumulated holiday time as a cash payment.

Since hourly payment is rare, employees are paid monthly or biweekly.

There are 18 paid legal holidays, 10 of which are observed on the following Monday (even if the holiday falls on a Sunday).

Mandatory pension, health and professional labor risks contributions

Pension contributions are equal to 16% of total salary (the employer contributes 12%, and the employee the remaining 4%). If the employee earns a salary of at least four times the minimum legal monthly salary (MLMS), the employee must contribute an additional 1% to the pension solidarity fund. An employee earning more than 16 times the MLMS must make an additional contribution between 0.2% and 1%, depending on the salary.

Participants in the state-owned Social Security Institute can earn a pension after the employee reaches age 60 for men and 55 for women, and has contributed for a certain number of weeks.

The employer contributes 8.5% of total wages (the employee contributes 4% of salary) to the general system of social security for health insurance.

The professional labor risks system covers work-related accidents. The monthly contribution ranges from 0.522% to 8.7% of payroll and is paid by the employer. The amount depends on the risks of the employer's activities.

Social insurance

In addition to pension, health and professional labor risk contributions, there are several mandatory benefits and/or contributions that account for 52% of the basic salary, but that can be as high as 55%:

- The employer must contribute 4% of monthly payroll to a family subsidy, 3% to the Institute of Family Welfare and 2% to the National Apprenticeship Service for employees who earn more than 10 times the MLMS. For employees who earn less than 10 times the MLMS, only the family subsidy is applicable.
- A company must provide work uniforms and shoes in April, August and December to each employee earning up to twice the minimum legal salary.
- Women are entitled to 14 weeks' paid maternity leave, which is paid through the social security health system. An employee may not be dismissed while pregnant or breast-feeding. If there is just cause for dismissal, it must be approved in advance by a labor inspector. The father is entitled to four work days of paid paternity leave if he is contributing to the social security system. If both parents contribute, the father is entitled to eight paid work days.

7.3 Termination of employment

To terminate a fixed term contract with just cause, the employer must allege—and, if challenged, prove—one or more of 15 specified types of worker misbehavior. An employee may not be dismissed simply because the company needs to reduce its labor force. If the contract is expiring, the employer must give at least 30 days' notice of termination; otherwise, the contract will be renewed for a period equal to the initial term. If an employee is terminated without just cause, the employer must pay the salary for the remainder of the contract, with a minimum of 15 days' wages.

If an indefinite term contract is terminated without just cause, the employer must pay a dismissal indemnity based on the employee's length of service. All indemnities are calculated on the basis of the last monthly salary.

Severance payments are compulsory for all Colombian employees. Wages are calculated at a monthly salary for every year of service, or the proportion for the time worked during the year. The employer must deposit this amount in the employee's severance account with the pension fund administrator of his or her choice before 14 February of each year.

A company must obtain approval from the Ministry of Labor to reduce operations, close facilities or lay off employees, even temporarily.

7.4 Labor-management relations

All employees, except those in essential public services, have the right to strike. The failure of the parties involved in a labor dispute to reach a complete agreement within a 20-day negotiating period (which may be extended once for an additional 20 days) gives the employees the right to hold a general meeting to vote on whether to declare a strike or to request that the Ministry of Labor convene an arbitration tribunal. A strike must be authorized by an absolute majority of the company's permanent employees. If a strike lasts more than 60 days, the Ministry of Social Welfare may order the dispute to be turned over to a court for resolution.

7.5 Employment of foreigners

A foreigner hired to work in Colombia must obtain a temporary working visa, regardless of the type of activities that will be carried on in Colombia.

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

Connect to the source and discover:

A database that allows users to view and compare tax information for 65 jurisdictions that includes –

- Corporate income tax rates;
- Historical corporate rates;
- Domestic withholding tax rates;
- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Information on holding company and transfer pricing regimes.

Guides and Highlights – Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

Jurisdiction-specific pages – These pages link to relevant DITS content for a particular jurisdiction (including domestic rates, tax treaty rates, holding company and transfer pricing information, Taxation and Investment Guides and Highlights).

Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax resources – Our suite of tax resources includes annotated, ready-to-print versions of holding company and transfer pricing matrices; a summary of controlled foreign company regimes for the DITS countries; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

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