



GLOBAL EXPANSION GUIDEBOOK

TAX

Colombia



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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COLOMBIA



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RESIDENCE AND BASIS FOR TAXATION

A resident company is a corporation that:

- Is incorporated in Colombia,
- Has its principle domicile in Colombia, or
- Has its place of effective management in Colombia.

Domestic

Resident companies are subject to income tax on their worldwide income. A credit method for taxes paid on foreign source income is provided to avoid double taxation if certain criteria are met.

Foreign

Foreign companies are subject to income tax on their Colombian source-income, including capital gains obtained within Colombian territory. Foreign companies having a permanent establishment in Colombia are subject to income tax on their worldwide income attributable to the permanent establishment.

TAXABLE INCOME

Domestic

The taxable income for resident companies is equal to the gross income (ordinary and extraordinary) less costs and expenses authorized for tax purposes incurred in the income-producing activity. Taxable income may be adjusted for exempt or non-taxable income.

Foreign

Non-resident companies may be subject to 3 different tax regimes in Colombia:

- Tax on the gross payments through the withholding mechanism which results in its final income tax liability, if the tax is withheld in accordance to articles 407 to 411 of the Colombian Tax Code (eg, interest, royalties, services, and taxable dividends)
- If non-resident entities obtain a different type of income, if the withholding tax is not applied, or if the payor is not a qualified withholding agent, they could be required to file an income tax return and, therefore, their Colombian-source income may be subject to income tax at a rate of 35 percent as of 2022.
- If the non-resident entity has a permanent establishment (PE) in Colombia, they are subject to income tax on the worldwide income attributable to the PE at a rate of 35 percent as of 2022. The relevant rule indicates that the determination of the income and capital gains attributable to the PE shall be determined taking into consideration the functions, assets, risks, and people involved in obtaining said income or capital gain.

TAX RATES

Corporate Income Tax Rate is 35 percent as of 2022. Financial institutions that report a taxable income exceeding 120,000 UVT (in 2022, COP4,598,484,000) are subject to a special rate of 38 percent from 2022 to 2025.

TAX COMPLIANCE

A tax year in Colombia starts on January 1 and ends on December 31. Corporate tax returns have to be filed after the tax year ends, on due dates determined by the Colombian government every year. In general, due dates of Corporate Income Tax are between April and June.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

3 days a year, certain goods are exempted from VAT, such as clothing, household appliances, toys and games, sport elements, school supplies, and certain supplies for the agricultural sector.

Tax rulings

Taxpayers can request rulings from the tax authority in Colombia. Tax rulings are not binding for taxpayers; however, they are mandatory for the tax authority.

Tax incentives

Some of the tax incentives set forth in the Colombian tax code are:

Income exempted from corporate income tax, under certain requirements

The income obtained from the following activities is exempted from Income Tax, provided that certain requirements are met:

- Income received by companies carrying certain activities classified as activities of "Orange Economy" will be exempt from Income Tax for 5 years. These activities include software development, film production, architecture, among others.
- Companies carrying out investments in the Colombian agricultural sector will be exempt from Income Tax for 10 years.
- Income obtained in the sale of energy generated based on renewable sources specially indicated in the tax code.
- Income related to the development and sale of interest or priority housing projects is exempt from Income Tax.

We highlight that, under Colombian Law, Income Tax exemptions are not transferable to shareholders.

Special corporate income tax rates

- 27 percent for taxpayers that perform new investments in fixed assets equal or exceeding UVT30,000,000 (in 2022, COP1,140,120,000,000) and create more than 400 direct employments. The requirements vary for investments in activities with a high technological component, e-commerce, or the aeronautical sector. Profits obtained from such investments are not subject to the dividends tax.
- 20 percent for certain users of Free Trade Zones.
- 9 percent for taxpayers undertaking specific activities (eg, hotel services and ecological tourism).
- 0 percent for companies that create a specific number of employments, and perform commercial, industrial, agricultural, touristic, or health activities in certain Colombian territories (Arauca, Guajira, Norte de Santander, Quibdó and Armenia). This tax rate applies for the first 5 years, and for the following 5 years these companies would be subject to the 50 percent of the general corporate tax rate (ie, 17.5 percent as of 2022).

Tax incentives for using, developing, and generating of renewable energy

Subject to certain requirements, the following tax incentives apply for developing and generating renewable energy:

- A special income tax deduction equivalent to 50 percent of the investments completed in renewable energy projects. This tax deduction cannot exceed 50 percent of the net taxable income and can only be deducted in the 15 years following the taxable year in which the investment took place.

- Accelerated depreciation rate of 20 percent for machinery, equipment and other assets used in the project. This is a tax incentive because, generally, there are maximum annual tax depreciation rates provided by law in respect of different types of tangible assets (between 2.2 percent and 20 percent). The accelerated depreciation only applies to the generation of renewable energy.
- Purchase and import of machinery and equipment, and related services, acquired for renewable projects will be VAT- exempt
- Imports of equipment and machinery will be exempt from customs duties.

CONSOLIDATION

Not applicable for this jurisdiction.

PARTICIPATION EXEMPTION

Colombia has a Colombian Holding Companies (CHC) regime for resident corporations. This regime establishes that:

- Foreign dividends and capital gains obtained by the CHC Holding are exempted from corporate income tax. The same treatment applies for Distribution of dividends by the CHC Holding to non-Colombian residents is not taxable in Colombia.
- Sale of shares in the CHC Holding by non-Colombian residents could be a non- taxable income. This benefit is limited if the CHC Holding performs activities in Colombia.

CAPITAL GAIN

Capital gains tax rate is 10 percent. This tax rate will apply in general to:

- Gains obtained on the sale of fixed assets held for, at least, 2 years.
- Gains obtained on the liquidation of a company that has been in existence for at least 2 years, in excess to paid-in capital or investment. This rate would not apply to the extraordinary distribution of profits triggered by the liquidation.
- Inheritances, gifts, legacies and donations.

Capital gains obtained from lotteries, gaming, or similar activities are taxed at a 20 percent tax rate.

DISTRIBUTIONS

Dividends taxation in Colombia depends on whether the dividends are paid from profits obtained before 2017.

Profits obtained before 2017

- Dividends distributed out of profits taxed at the level of the distributing company do not trigger additional income taxes for the shareholder. Conversely, dividends paid out of profits untaxed at the company's level are taxed at the corporate income tax rates (35 percent).

Profits obtained as of 2017

- **Individuals tax residents, non-residents (individuals and entities), and permanent establishments of foreign entities**

If the beneficiary of the dividend is an individual tax resident, a non-resident, or a permanent establishment of a foreign entity, the dividends tax rate is 10 percent. If the profits were not taxed at a corporate level, the profits will be taxed at the ordinary Corporate Income Tax (35 percent) plus the 10 percent dividends tax (the 10 percent applies on the distributed amount after subtracting the 35 percent).

These tax rates can be reduced under Tax Treaties.

For individual tax residents, the dividends tax does not apply if the amount of the dividends is less than 300 UVT (in 2022, COP11,401,200).

- **Colombian companies**

If the beneficiary of the dividends is a Colombian Company, the dividends are subject to a withholding dividends tax of 7.5 percent. If the profits were not taxed at a corporate level, the profits will be taxed at the ordinary Corporate Income Tax (35 percent) plus the 7.5 percent withholding dividends tax rate. The withheld amount (7.5 percent) is creditable towards the dividends tax of the ultimate beneficial owner (individual tax resident or foreign investor).

The withholding dividends tax does not apply in the following cases:

- (i) Colombian companies that have registered a control situation or a corporate group with respect to the distributing Colombian company before the Chamber of Commerce; or
- (ii) Companies registered in the CHC regime (described in the Participation Exemption section of this Guide).

LOSS UTILIZATION

Utilization of tax losses depends on whether such losses were obtained before 2017:

- Tax losses generated before 2017 can be offset with ordinary taxable income obtained in any of the subsequent fiscal years.
- Tax losses generated as of 2017 can only be offset with ordinary taxable income obtained in the twelve subsequent fiscal years.

Carry-back of losses is not permitted. Capital losses cannot be offset against ordinary income.

TAX-FREE REORGANIZATIONS

There are tax-free reorganizations (in-kind contributions, mergers, and spin offs) if they comply with certain requirements.

It is worth noting that Colombia taxes the indirect sales of Colombian assets through the sale of foreign entities, whenever Colombian assets represent more than 20 percent of the total assets of the foreign entity being sold considering their book value and/or commercial value.

Income tax or capital gain tax should be determined as if the Colombian asset is sold directly. If the seller fails to comply with its tax duties under this tax regime, the subsidiary in Colombia and the purchaser will be jointly liable.

Once the indirect sale is made subject to income tax, the tax cost that shall be considered for a subsequent purchase, will be the value proportionally paid for the shares, participations or rights in the foreign entity that owns the underlying assets located in Colombia.

This tax regime is not applicable when the shares or rights in the foreign entity are listed in a Stock Exchange Market recognized by the Colombian government, and the shares are not more than 20-percent owned by the same beneficial owner.

Mergers and spin-offs between foreign entities where Colombian assets are being transferred are not subject to tax in Colombia when Colombian assets do not represent 20 percent or more of the worldwide assets of the multinational group to which the foreign entity belongs to.

ANTI-DEFERRAL RULES

Under Colombian controlled foreign company (CFC) rules, domestic corporations or tax residents in Colombia that hold, directly or indirectly, a share percentage equal or greater to 10 percent of the total equity of the CFC or in its results, shall include in their income tax return the passive income obtained by such CFC.

A CFC is an entity that:

- Is controlled by a Colombian tax resident, and
- Does not have tax residency in Colombia.

CFC includes corporations, trusts, interest private foundations, investments funds or any other corporation or entity constituted or domiciled abroad, regardless of whether such entity is a legal entity or a disregarded entity for tax purposes.

The Colombian Tax Code sets forth a list of items of income that are considered as passive income. This list includes:

- Dividends, with some exceptions.
- Interests.

- Royalties.
- Sale of assets that generate passive income (such as certain shares or bonds).
- Lease or sale of immovable property.
- Sale of corporate goods provided that certain conditions are met.
- Some services that meet certain requirements.

If a Colombian tax resident includes in its income tax return the passive income obtained by the CFC, the dividends distributed from the CFC will be untaxed in Colombia.

FOREIGN TAX CREDITS

Colombian tax residents that receive foreign-source income subject to income tax in the source country are entitled to a tax credit in Colombia for income tax purposes. Foreign tax credits cannot exceed the Colombian income tax attributable to the net foreign taxable income but it is possible to carry forward indefinitely the unused foreign tax. The Colombian taxpayer must obtain a certification of the foreign tax paid.

Foreign tax credits are not allowed if the tax was applied on income qualified for tax purposes as a Colombian source income. Different rules apply under double taxation treaties.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Real property is subject to municipal taxation, which depends on the value of the property, the economic use of each property, and the municipal regulations. In general, this tax is levied annually on the ownership, usufruct or possession of real estate property. It is collected by the municipality where the property is located, and the tax rate varies between 0.3 percent and 3.3 percent.

TRANSFER PRICING

Colombia's transfer pricing regime is based on the OECD guidelines and is applied to transactions between related companies. Taxpayers subject to the transfer pricing regime must consider and follow commercial standards, under which a transaction between related parties must satisfy the conditions that would have been used in comparable transactions with unrelated parties.

WITHHOLDING TAX

Payments to non-tax residents are subject to withholding tax at the following rates, among others:

- 20 percent for personal services, fees, royalties, lease and any other payment for the use of intellectual property.

- 20 percent for technical services, technical assistance and consultancy, either rendered in Colombia or abroad.
- 20 percent on interest payment for loans with a term less or equal to 1 year.
- 15 percent on interest payment for loans with a term exceeding 1 year or financial lease payments.
- 5 percent on interest payments on cross-border loan agreements that have a term equal to or greater than 8 years and are destined to public-private infrastructure projects under the conditions set in Law 1508 of 2012.
- 10 percent on capital gains.
- There is a general 15 percent withholding rate when the type of income has not an specific withholding tax rate.

Withholding tax rate on payments made to non-tax residents may be reduced under double taxation treaties.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

- **Capital and Stamp Duties**

The Registry Tax levies the registration of documents before the Chamber of Commerce and before the Registry of Public Deeds, including the increase of capital in a corporation and any transfer of immovable property. Tax rates vary from 0.1 percent to 1 percent.

Generally, for capitalizations the rate is 0.7% for capital and 0.3% for share premium, but rates may vary depending on the local jurisdiction where the entity is registered.

For documents that do not embed any value it applies a fixed value.

- **Financial Transactional Tax**

The 0.4 percent financial transactional tax is accrued on every transaction aimed, in general, at withdrawing resources from checking, deposit or savings accounts, and cashier checks.

50 percent of Financial Transaction Tax is a deductible expense regardless if it is related or not to the income-producing activity.

EMPLOYMENT TAXES

Social security

Employees in Colombia must be enrolled in the social security system (for pension, health, and labor risks) and employers have the obligation to make the relevant monthly contributions.

If foreign employees are enrolled to a pension system abroad, they are not obligated to be enrolled or pay contributions to the Colombian pension system.

Payroll taxes

Employers in Colombia must make contributions to SENA, ICBF, and Family Compensation Fund, known as payroll taxes, that should be determined on the ordinary monthly salary earned by the employee, including any vacation. In the case of employees earning integral salary, the contribution will be determined on the 70 percent of the salary. Non-salary payments are excluded from payroll taxes. Payroll taxes do not have any cap.

For employees earning an ordinary salary lower than 10 MMLW (in 2022, COP10,000,000), employers are exempted for making contributions to SENA, ICBF and to the healthcare system.

Payroll taxes and social security charges correspond to the following percentage over the employee's salary:

Contributions ¹	Rate	Employer	Employee
Pension	16 percent	12 percent	4 percent
Health	12.5 percent	8.5 percent	4 percent
Solidarity Pension Fund ²	1 percent - 2 percent	N/A	1 percent - 2 percent
Labour Risks	0.348 percent - 8.7 percent	0.348 percent - 8.7 percent	N/A
Payroll Taxes ³	4 percent - 9 percent	4 percent - 9 percent	N/A

¹ The basis to calculate contributions to the social security system (pensions, solidarity pension fund, health and labor risks) is the ordinary monthly salary earned by the employee. However, if the monthly salary exceeds 25 times the minimum wage, contributions to the social security system will be calculated on the maximum basis of 25 times the minimum wage. Non-salary payments agreed between the employer and the employee are not included in the basis to calculate social security contributions, if such payments do not exceed 40 percent of the employees' compensation. If these non-salary payments exceed 40 percent, the difference will be subject to social security contributions. In case of employees earning integral salary, 70 percent of salary will be the basis to calculate contributions to the social security system.

² The contribution to the Solidarity Pension Fund only applies for employees who earn more than 4 times the legal minimum wage. This payment is equivalent to 1 percent of the monthly salary, but in the case of employees earning more than 16 times the minimum wage the rate will be increased as follows: between 16 and 17 times the minimum wage, an extra 0.2 percent; between 17 and 18 times the minimum wage an extra 0.4 percent; between 18 and 19 times the minimum wage an extra 0.6 percent; between 19 to 20 times the minimum wage an extra 0.8 percent and between 20 and 25 times the minimum wage an extra 1 percent. Contributions to the solidarity fund also have the cap of 25 times the minimum wage.

3 Contributions to SENA, ICBF, Family Compensation Fund (payroll taxes) shall be calculated based on the ordinary monthly salary earned by the employee, including any paid rest, such as vacation. In case of employees earning integral salary, 70 percent of salary will be the basis for this contribution. Non-salary payments are excluded from payroll taxes. Payroll taxes do not have any cap.

OTHER TAX CONSIDERATIONS

Equity tax

The latest version of the equity tax (Law 2010, 2019) levied Colombian tax resident individuals and non-tax residents that held a net equity equal to or exceeding COP5,000,000,000 as of January 1, 2020 for fiscal years 2020 and 2021.

Non-tax residents' individuals are subject to equity tax only with respect to its assets held in Colombia unless they have a permanent establishment in the country. In that case, the non-tax resident could be subject to equity tax with respect to the net equity attributable to it.

According to the Law 2010, 2019 foreign entities were levied with this tax in respect to its assets located in Colombia different to shares, receivable accounts, and portfolio investments.

As of 2022 no equity tax is applied; however, it could be re-introduced as from 2023.

Value added tax – VAT

VAT is an indirect national tax applicable on:

- Sales and imports of tangible goods.
- Provision of services in Colombia or from abroad (if the beneficiary is located in Colombia).
- Sale or transfer of rights over certain intangibles associated with industrial property.
- Gambling activities (except of those operated online).

Generally, VAT's taxable base is the price of the goods or services, and the tax rate is 19 percent. However, there is a special taxable base and/or a special tax rate (5 percent or 0 percent) for certain goods or services.

Usually, a taxpayer may reduce input VAT by offsetting it against output VAT.

Foreign suppliers providing services, including digital services, rendered in Colombia to Colombian recipients that are not VAT responsible (eg, individuals) must generally register with the Colombian Tax Office and account for VAT on their supplies.

Consumption tax

National consumption tax is levied on the following services

- Mobile phone, internet and mobile navigation services, with a 4 percent rate.
- Sale of certain vehicles, aircraft, and other goods, with a rate of 8 percent or 16 percent.
- Restaurant and cafeteria services with an 8 percent rate, provided that these services are not rendered under a franchise agreement (restaurant franchise services are levied with VAT). According to Law 2155, 2021, Consumption Tax would not apply to bars and restaurants in 2022.

Turnover Tax – ICA

Local Tax on Industrial, Commercial and Service Activities Tax (“ICA”) levies the gross income generated from industrial, commercial, or service activities carried out in the corresponding municipality. The tax rates are between 0.2 percent and 1.4 percent.

50 percent of the ICA paid in a certain period can be used as a tax credit to offset the Corporate Income Tax or, alternatively, 100 percent can be used as a deductible expense.

SIMPLE Taxation Regime

Colombia provides for a voluntary simple tax regime for small businesses (“SIMPLE Taxation”). The SIMPLE tax replaces income tax, the consumption tax and the turnover tax, with a single, unified payment.

In order for a taxpayer to be able to access to the SIMPLE Taxation regime, among other requirements, gross annual income of the previous taxable year must be less than 100,000 UVT (In 2022, COP3,800,400,000).

The simple consolidated rate will depend on the annual gross income, as well as the business activity of each company. Tax rates range between 1.8% and 14.5% on the gross ordinary and extraordinary income accrued during the taxable year.

Taxpayers of the SIMPLE Taxation regime will not be subject to withholding income tax neither self-withholding, and shall not act as withholding agents except in the case of labor payments.

KEY CONTACTS



Andres Gonzales

Partner

DLA Piper Martinez Beltran

agonzalez@dlapipermb.com

T: +57 | 3174720

[View bio](#)

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