

ELANBiz Info card

Taxes in Colombia

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Introduction

On December 29, 2016, Congress approved Law 1819 that introduces significant changes in tax regulation with the purpose of replacing the \$ 24 billion (approximately 7.7 billion Euros) of income that the State stopped receiving after the collapse of commodity price in August 2014. Additionally, the credit rating agencies have made the recommendation to the government to introduce changes to the tax regime in order to maintain the credit rating and therefore the investment grade of the country.

The main changes introduced by Law 1819 are related to the increase in the general Value Added Tax - VAT rate from 16% to 19%, fines and imprisonment for tax evaders, the rise of the income tax tariff from 15% to 20% for users of the free trade zones, the gradual reduction of corporate income tax until reaching 33% from 2019. The changes also affect the withholdings tax both for payments abroad and for dividends.

The purpose of this document is to provide EU exporters or investors with an overview of the Colombian tax system related to the following issues: residence for tax purposes, main taxes by companies, mechanism of tax withholdings, main tax incentives, foreign tax credit, free trade zones regime, legal stability agreements, main customs levies and agreements signed by Colombia for the avoidance of double taxation.

Legislation provides several tax incentives to promote investment in sectors of particular relevance to the national government. Finally, Colombia has two mechanisms of interest to foreign investors. There are the Free Trade Zones regime which provides a reduced income tax rate of 20% and legal stability agreements that investors may subscribe with the National Government. These agreements are interesting to protect investments from tax changes.

Residence for tax purposes

- **Natural persons**

Pursuant to Law 1607 of 2012, tax residence for Colombian nationals and foreigners will be the continuous or discontinuous presence in Colombia for more than 183 days during a 365 days calendar period. If the presence comprises different calendar years, the person will be considered tax resident as of the second year. **In accordance to the**

above, foreigners with tax residence in Colombia will be taxed in Colombia with respect to their foreign source income starting the first year of residence.

Legal entities incorporated in Colombia or effectively managed from Colombia are considered to be resident for income tax purposes. **As a consequence, they are taxed with respect to their foreign source income.** Tax law defines as effective place of management the place where the commercial and management decisions that are decisive and necessary to carrying-on the activities of the company or entity as a whole are materially taken.

Permanent Establishment Regulation

Law defines “permanent establishment” as a fixed place of business located in the country through which a foreign legal entity performs all or part of its activity.

Dependant agents may also generate a permanent establishment situation, especially if they can conclude agreements.

Permanent establishments are subject to Colombian taxation only on their Colombian source income.

Non-resident entities, permanent establishments including branches of foreign companies are subject to Colombian income tax exclusively on their Colombian-source income.

Main taxes by companies

The Colombian tax system foresees national, departmental and municipal taxes. The main national taxes are the income tax and complementary, the Value Added Tax (VAT), and the debit tax (GMF). Within the municipal and departmental taxes, the industry and commerce tax (ICA) and the property tax are highlighted.

Companies are subject to the following taxes:

- **Unified Income tax of 33% from 2019:** This tax is levied on ordinary revenues of the company. During 2017 the rate will be 34% plus a surcharge of 6% and by 2018 it will be 33% plus a surcharge of 4%. The surcharge only applies to companies that have profits greater than \$ 800 million (approximately 260,000 Euros).
- **Capital gains:** it is complementary to the income tax. It levies certain specific incomes obtained in an extraordinary way by the company that do not come from its ordinary economic activities (10%).
- **Value Added Tax (VAT) (general rate of 19%):** it is an indirect tax levied on the sale of goods in Colombia, the provision of services and the import of goods not expressly excluded from it.

- **Consumption tax (4% and 8% of the consumption value):** It is an indirect tax levied on the provision of mobile phone services, service of food and beverages.
- **Industry and commerce tax (between 0,2% and 1% of revenues):** It is a **municipal tax on gross revenues obtained from the** performance of industrial, trade and services activities carried out in the relevant jurisdiction.
- **Real estate tax (between 0,3% and 3,3% of the property valuation):** It is **levied** on the property, possession of real estate located in the relevant municipal jurisdiction
- **GMF (debit tax) (0,4% for each transaction):** It is an indirect tax on the carrying out of financial transactions by means of which the funds deposited in current or savings accounts are disposed of.
- **The National tax on carbon and the “parafiscal contribution” to fuel.** There are the new green taxes created by law 1819 of 2016

Tax withholdings on payments to foreign parties.

Tax withholdings is an early tax collection mechanism. This means that tax withholdings are only applicable to taxable activities.

Pursuant to Law 1819 of 2016, the income tax withholdings rate for payments of Colombian-source income made abroad to entities not domiciled in Colombia, are as follows:

- Payments for **interest, commissions, fees, royalties, leases, compensation for personal services, or exploitation of any kind of industrial property or know-how, provision of technical services or technical assistance, benefits or royalties from literary, artistic and Scientific** are subject to a tax withholding at the rate of 15% on the nominal value of the payment.
- Payments for **consulting services, technical services or technical assistance services rendered by non resident persons** are subject to a tax withholding at the rate of 15% whether **rendered in Colombia or from abroad.**
- The tax withholding on **dividends, received by companies without principal domicile in the country**, will be five percent (5%). Note that when dividends correspond to profits which would have been taxed if they have been distributed to a national company according to the rules of the Fiscal Code, they will be subject to the general rate of thirty five percent (35%) of the amount paid. In this case, the tax withholding of 5% will be applied once this tax has been reduced.

Main tax incentives

There are no specific tax incentives for foreign investment in Colombia. However, given the interest of the Colombian government in the economic development of several sectors, the tax regulation provides several incentives that may be of interest to foreign investors. There are a reduced income tax rate of 9%, some exemptions or reduction of income tax, some incentives for the realization of investments and finally the possibility to deduct VAT paid for the acquisition of capital equipment.

The reduced income tax rate of 9% applies to the following activities:

- **Publishing activities** which purpose is the publication of books, magazines, booklets or serial collectable booklets of a scientific or cultural nature.
- **Hotel services provided in new hotels that are built in municipalities of up to two hundred thousand inhabitants** (the 9% rate will apply to hotels built during the 10 years following the adoption of Law 1819 of December 2016 for a term of 20 years).
- **Hotel services provided in hotels that are expanded or remodelled in municipalities of up to two hundred thousand inhabitants** (the 9% rate will apply to hotels built during the 10 years following the adoption of Law 1819 of December 2016 for a term of 20 years).

Income from the following activities are exempted from income tax:

- **The sale of electric power generated using wind based energy, biomass or agricultural waste.**
- The provision of **fluvial transportation services** with boats and slabs of shallow.
- Income arising from investment in **new forest plantations** sawmills and timber-yielding tree plantations.
- Income arising from activities related to **social or priority interest housing**.

Special incentives for areas affected by the armed conflict.

- **Incentives for locating companies in 350 municipalities specially affected by the armed conflict.** Law 1819 of 2016 provides for a tax exemption for the first 5 years (2017-2021) for small and medium-sized companies, then the payment of 25% of the normal rate (2022-2024) and finally the payment of 50% of the normal rate (2015-2017). Companies will be subject to the normal income tax rate from 2028. Large and medium-sized companies must pay 50% of the normal rate during the first five years (2017-2032), then 75% of the normal rate (2022-2027). They will be subject to the normal income tax rate from 2028.

- **Tax discount for infrastructure works:** Companies that have the obligation to pay taxes, can choose to dedicate half of these to infrastructure works (schools construction for instance).

Special discounts to promote investment.

- Discount for investments made in the control, conservation and improvement of the environment. Companies are entitled to subtract from their income tax 25% of the investments they have made during the respective taxable year.
- Discount for investments made in research, technological development or innovation. Companies are entitled to subtract from their income tax 25% of the investments they have made during the respective taxable year.

Special VAT deduction.

- Companies may deduct from their income tax base the VAT paid on capital goods (purchased or imported) used in production processes. These equipments must have been bought to expand or improve business (machinery, factories, new technologies, among others).

Foreign tax credit

Companies incorporated in Colombia may credit against their income tax **taxes paid abroad on their foreign source income**, up to an amount that does not exceed the tax that they would have had to pay in Colombia on the same income.

Free Trade Zones regime

Free trade zones are not considered national territory for customs purposes. This circumstance allows to avoid payment of customs levies when goods enter FTZs. Regarding income tax, the regime includes a reduced income tax rate of 20% which applies both to exports of goods or services activities and to national operations. One of the most innovative changes of Law 1004 of 2005, is the introduction of the concept of “Single enterprise Permanent Free Trade Zone”, in addition to the existing Permanent Zones. “Single enterprise Permanent Free Trade Zones” are areas within the national territory in which new companies that establish their projects are benefited with a special tax and customs treatment. “Single Enterprise Permanent Free Trade Zones” apply to projects of high economic and social impact for the country (making a significant investment and involving the creation of new jobs).

Legal stability agreements

Law 963 of 2005 allows investors “to stabilize” the regulation they find determining for their investment. Thus, if a regulation is modified in a detrimental way for the investor,

the previous regulation will be applied during the term of the agreement. Legal stability agreements may be signed according to the project, from 3 to 20 years.

Main custom levies in Colombia

EU companies that export goods to Colombia must pay both customs duties and the Value Added Tax (VAT).

- **Customs duties:** It is a tax administered by Customs of Colombia generated at the moment of the import.

In the following link of Colombian customs, you may consult the harmonized tariff to determine the applicable custom duties to your product:

<https://muisca.dian.gov.co/WebArancel/DefMenuConsultas.faces>

Under the FTA between the European Union and Colombia / Peru, many products originating in the European Union benefit from a reduced tariff. Some may even enter the country free of custom duty (wines for example).

Therefore, when a company is initiating any study on the Colombian market, it is important to know the product heading to determine the tariff that will apply to the goods.

The categories of tariff dismantling can be consulted in the Annex 1 – Appendix 1- Section A of the FTA in the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2012:354:TOC>

It is also important to review the Decree No. 1636 of July 31, 2013 by which the commitments of Colombia under FTA are being implemented. This regulation presents the tariff reduction program year to year, according to the goods category with its applicable custom duty

http://www.dian.gov.co/descargas/tlc_UE/Normatividad/Decreto_1636_31072013.pdf

- **-Value Added Tax (IVA):** According to Article 459 of the tax code, in the case of imported goods, the tax base on which VAT is settled will be the same as that taken into account to settle customs duties, **added with the value of such customs duties.** The VAT's general rate is 19%.

Agreements for the avoidance of double taxation

The only EU Member States that have a Convention for the Avoidance of Double Taxation in force with Colombia are: Spain since 2008, Portugal since 2014 and the Czech Republic since 2015. Colombia is currently negotiating double taxation agreements with Belgium, Germany and The Netherlands.

France signed an agreement in 2015 but it has not yet been ratified. The process of ratification of international agreements by Colombia requires the approval of Congress

and a constitutional review by the Constitutional Court. Such a procedure can take about two years for the agreement to enter in force.

It is highly recommended to review the contents of this fact card in the light of the existing double taxation agreements. The rules contained in those supranational agreements should be applied in preference to national provisions, in particular with regard to dividend taxation and tax withholdings for payments made abroad.

Links of interest

Directorate of National taxes and customs – DIAN

www.dian.gov.co

Frequent Asked Questions of DIAN on Unique Tax Register (RUT) or company's ID for tax purposes.

http://www.dian.gov.co/contenidos/servicios/rut_menupreguntasfrecuentes.html

Frequent Asked questions of DIAN on foreign trade.

<http://www.dian.gov.co/DIAN/15Servicios.nsf/cb0b582428cd50c605256fe4007ea157/6e355c9c4924739f052570ff00746af1?OpenDocument>

Frequent asked questions of DIAN on foreign exchange regime

<http://www.dian.gov.co/DIAN/15Servicios.nsf/cb0b582428cd50c605256fe4007ea157/77043eac5a73a3f6052570ff00746af2?OpenDocument>

Law 1607 of 2012 on tax issues.

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=51040>

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