COLOMBIA

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1. INTRODUCTION

a. Forms of Legal Entity

Colombian law provides for several types of legal entities:

Corporations

Business in Colombia is typically carried on through two types of corporate vehicles, Simplified Stock Companies ("SAS") and Corporations ("SA").

Although there are other corporate legal entities, SAS is the most common type of corporation used by both local and foreign investors, due to the flexible and simplified structure. This allows easier administration and management of the company. Traditional legal entities such as SA and Limited Liability Companies are still used. SA is mandatory, for instance, in the case of listed (public) entities on the Colombian stock exchange.

"Patrimonios autónomos" ("PA")

A PA is a sort of local trust, deemed to be a pass through vehicle for Colombian income tax purposes. The activities of a PA should be recognised by the beneficiaries as if no PA exists (i.e. income, costs, expenses, assets, liabilities, and equity).

Non-profit organisations (Foundations and associations)

These entities are characterised by having a general interest social purpose. Under Colombian laws, non-profit entities cannot distribute profits among their members at any given moment, including at the dissolution of the entity. In addition, non-profit organisations meeting certain requirements can ask the Tax Office to include them within the Special Tax Regime ("STR").

The STR implies:

(i) A special way of determining the taxable income (net profit or surplus);

(ii) Exemption and/or a lower tax rate (20%); and

(iii) Exemptions whose application depends on the destination of the profits or surplus of the entity.

Private equity funds

Colombian funds are not liable to income tax. However, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle) provided certain legal requirements are met. Therefore, investors must assess and pay only the corresponding income tax liability whenever there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.

b. Taxes, Tax Rates

National taxes[1]

i Income Tax and Corporate Income Tax ("IT")

Colombia employs a progressive income tax system for individuals, under which tax rates increase as the taxpayer's taxable income increases (rates vary from 0% to 39%).

Colombian entities and permanent establishments ("PEs") are subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) at a flat rate of 35%. A 20% special tax rate applies to companies located in free trade zones (commercial users in these zones must apply the general corporate tax rate).

Foreign non-resident entities and individuals are subject to income tax only on their Colombian sourced income and capital gains.

For income tax purposes, the taxable period is the calendar year. Every year, the Government establishes the due dates (deadlines) for filing and payment purposes regarding taxes at national level.

ii Capital Gains Tax ("CGT")

Certain income is deemed to be a capital gain (not ordinary income) and is, therefore, subject to capital gains tax at a 10% rate (instead of income tax). Among others, the following are considered capital gains:

- Gains on the transfer of fixed assets owned for at least two years.
- Gains derived from the winding-up or liquidation of companies in excess of the amount of capital being contributed if the company has existed for at least two years.
- Income derived from donations, or any other type of free of charge transfer, is deemed to be capital gains and therefore, subject to CGT.

iii Value Added Tax ("VAT")

As a general rule, VAT in Colombia is levied on the following:

- The sale of tangible movable and immovable goods, except for those expressly excluded by law.
- The sale or transfer of rights over intangible assets related to industrial property.
- The provision of services within Colombian territory or from abroad, except on those expressly excluded.
- The importation of tangible assets, except on those expressly excluded.

1 Under Colombia's political system, there are three different taxing authorities: (i) the National Government; (ii) States (departamentos) authorities and (ii) the Municipal and District authorities.

In general, the VAT taxable base is the total amount of the transaction, including financing expenses and complementary expenses. The general VAT rate of 19% applies to all supplies of goods or services unless a specific measure provides for a reduced rate of 5%, a zero rate (exempted goods or services) or an exclusion.

VAT responsible entities (i.e. Colombian companies that carry out activities subject to VAT) are allowed to offset in their VAT returns, the input VAT (VAT paid) against output VAT (VAT charged) provided that the input VAT is paid on costs and expenses deemed as deductible for income tax purposes and that goods or services acquired are related to transactions subject to VAT.

iv Financial Transaction Tax ("FTT")

Also known as debit tax, FTT is triggered by:

- The transfer of funds from savings and checking accounts, as well as from accounts held with the Central Bank of Colombia.
- The disbursement of loans.
- Debits made by entities subject to surveillance by the Colombian Financial Superintendence, for accounting purposes, or to make any payments or transfers to third parties different from the disposal of funds from savings, deposit and checking accounts.

When triggered, the FTT rate is 0.4% of the total amount of the transaction. The tax is applied on every transaction made to dispose of the funds deposited in the bank account and will be levied directly by the Colombian bank where the account is opened. The payer of this tax is the transferor. Consequently, the beneficiary of the transfer does not have to bear any economic burden.

Regional Taxes

v Turnover Tax or Industry and Commerce Tax

Individuals, legal entities and de facto companies who carry out industrial, commercial or service activities in a municipal jurisdiction in Colombia, directly or indirectly, permanently or occasionally, are subject to turnover tax on gross income at rates that vary from 0.2% to 0.7% for industrial activities and 0.2% to 1.5% for commercial and services activities.

vi Real Estate Tax

This tax is levied on the ownership of real estate. It is payable annually and the rate varies depending on the designation of the property (schools, churches, housing, commercial and industry facilities, etc.). Each municipality has its own rules on real estate tax rates. However, the maximum rate is 1.6%.

c. Common divergences between income shown on tax returns and local financial statements

Although Colombia adopted the formal connection between income tax rules and the International Financial Reporting Standards ("IFRS" adjusted to the Colombian economic reality) in 2016, the taxable base for income tax purposes regularly differs from the accounting profit in the financial statements. These differences may be caused by differences on accrual of revenues and expenses, depreciation/ amortisation, deductibility of certain expenses, and the treatment of applicable exemptions, among others. These differences may impact the taxation of dividends to shareholders, as explained below.

2. RECENT DEVELOPMENTS

Recent tax reforms have recognised several corporate reorganisations as tax neutral transactions. Current tax rules recognise mergers, spin-offs and capital/in-kind contributions as tax neutral transactions. These new rules (introduced and developed since 2012) submit the tax neutral status to different requirements that must be complied with; among others, tax neutral status depends on different business purpose criteria, no substantial transfer of assets/shares, and corporate documentation.

As of 2020, the Colombian tax regime introduced new rules on the participation exemption regime and indirect transfer of Colombian assets.

Under these new rules, the Colombian Tax Code provides for a participation exemption regime, the so-called Colombian Holding Company Regime ("CHC") applicable to Colombian companies whose main purpose is to invest or hold interests in Colombian and foreign entities.

Additionally, the transfer of shares, rights, or assets located in Colombia through the transfer (at any legal title) of shares or rights in a foreign non-resident entity, is subject to income tax in Colombia as if the transaction were on the Colombian assets directly. This rule is applicable whether the transfer is made to a related entity or not, and whether there is a partial or a full transfer of the shares, rights or assets. The direct transferor (seller) is compelled to comply with formal tax duties in Colombia. This rule is not applicable under certain circumstances.

3. SHARE ACQUISITION

a. General Comments

As a general rule, the transfer of shares in Colombian companies is deemed as taxable Colombian source income for the seller. The gain derived from the transfer of shares is subject to capital gains tax in Colombia at a rate of 10%, provided the sold shares have been held for more than two years. If this rule is not complied with, the profit is subject to corporate income tax at a rate of 35%.

According to Colombian tax law, the purchase price must be the fair market value of the assets being transferred at the time of transfer (the FMV principle). If the purchase price is lower than 85% of the market value, or higher than 125% of it (the 25% Deviation Rule), the Tax Office has the power to readjust the purchase price in such a way that the appropriate tax effects are derived from the transaction. The FMV principle is applicable to non-related and related transactions among related parties in Colombia; if the transaction is performed with related entities outside Colombia, the FMV principle is not applicable, though the transfer pricing regime is.

From a buyer's perspective:

The acquisition of shares does not have immediate implications for the buyer. The tax cost basis of the shares is the purchase price, and the tax cost basis of the assets at the target company level remains the same - it is not stepped up. In cases where the seller is a non-Colombian resident and the buyer is a Colombian resident, an income tax withholding applies on the full price paid to the seller.

From a seller's perspective:

As a general rule, the transfer of shares of Colombian companies is deemed as taxable Colombian source income for the seller. The capital gain derived from the transfer of shares is subject to capital gains tax in Colombia at a rate of 10%, provided that the shares being sold have been owned for more than two years; otherwise, the profit is subject to income tax at a rate of 35%.

The profits derived from the sale of shares listed in the Colombian stock exchange are not subject to income tax or capital gains tax, provided that the sale does not exceed 10% of the outstanding shares of the company in the same taxable year.

Under the double tax treaties ("DTTs") in force, in general, capital gains derived from the transfer of Colombian shares are subject to tax in Colombia only if more than 50% of the value of the shares is, derived, directly or indirectly, from real estate located in Colombia. Some DTTs provide for rules under which a capital gains obtained from the transfer of Colombian shares is also subject to tax in Colombia if the seller has owned at any time in the 12 months prior to the sale, directly or indirectly, 25% or more of the capital of the Colombian company.

b. Tax Attributes

In a shares deal, the target company preserves its tax attributes such as net operating losses and tax credits without any modification or limitation due to the change in control. Income tax payers may offset tax losses against ordinary net income of the subsequent 12 taxable years.

The ability to offset tax losses is limited in the case of a corporate reorganisation. Companies resulting from mergers or spin-offs are allowed to offset net operating losses of the spin-off or merged companies up to an amount equivalent to the ratio of the equity of these entities to the equity of the company resulting from the merger or spin-off. The offset of tax losses is only allowed if the economic activity of the entities involved in the merger or spin-off is the same before and after the reorganisation.

Shareholders are not allowed to offset losses generated by the company against their net income (there are no provisions on the transfer of losses by the company to its shareholders).

c. Tax Grouping

Tax grouping does not exist under current tax rules in Colombia.

d. Tax Free Reorganisations

Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events provided they meet certain requirements applicable to both the shareholders of the involved entities and the absorbing entity or spin-offs beneficiaries. For instance, tax neutral status depends on different business purpose criteria, no transfer of assets/shares, transfer of ongoing businesses units (in spin-off cases) and corporate documentation. Failure to comply with these requirements means the reorganisation could be treated as a transfer of assets or a transfer of shares. Such transfers may be taxable for income tax purposes as explained in Section 3.a.

e. Purchase Agreement

When the buyer is a Colombian resident, income tax withholding ("WHT") is generally required only if the seller is a foreign, non-resident person. This withholding is based on the gross amount being paid as purchase price for the shares (i.e. final price to pay is net of the WHT, which must be paid directly to the Colombian Tax Office).

As a general rule, the statute of limitations ("SoL") to audit tax returns is three years starting from:

(i) The filing due date;

(ii) The date of filing (in case of late filing); or

(iii) The date of a refund request or compensation of balances in favour.

Hence, the purchase agreement may include representation and warranties clauses to protect the purchaser against possible tax contingencies that may arise during the SoL.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The sale of shares in a Colombian company is not subject to VAT, stamp tax, or registration tax. The sale of social quotas of limited liability companies is subject to registration tax at a rate of 0.7% on the transfer value.

g. Share Purchase Advantages

- Acquisitions of shares are not subject to VAT or stamp tax in Colombia.
- No transfer taxes are triggered by a share acquisition (e.g. documentation transfer taxes such as registration taxes due to the transfer of real estate).
- The acquisition price will be the tax cost basis of shares of the buyer for subsequent sales.
- Tax attributes of underlying assets and attributes remain at the acquired entity level.

h. Share Purchase Disadvantages

- The target company's liabilities and possible tax contingencies remain at the target company level. As general rule, the SoL in Colombia is three years (refer to 3.e. above).
- Losses derived from the sale of an entity are not deductible for Colombian tax purposes.
- Goodwill deductibility for the acquisition of shares is not allowed.

4. ASSET ACQUISITION

a. General Comments

Structuring asset deals usually involves Colombian entities or PEs as buyers, since activities developed by using such assets imply a taxable presence in Colombia. Buyers are allowed to amortise or depreciate assets by considering the purchase price as their new tax cost basis; no step up in basis higher than the price paid is allowed. A buyer may benefit from amortisation on the price paid attributed to intangible assets other than goodwill (i.e. goodwill is not tax deductible).

From a buyer's perspective:

As a general rule, under Colombian tax law, in an asset deal, the pre-closing tax liabilities of the seller are not assumed or transferred to the buyer of the assets.

Additionally, the purchase price paid by the buyer and allocated to each asset (asset by asset allocation is required) will be the tax cost basis of such assets.

From a seller's perspective:

Profits derived from the transfer of assets are subject to either income tax or capital gains tax in Colombia, depending on whether such assets are fixed assets to the seller or not and the ownership period of the assets.

If the assets being transferred are not deemed to be fixed assets of the seller, gains derived from the transfer will be subject to income tax. Taxable income is determined by the positive difference between purchase price and the taxable base, which is subject to tax at the corporate rate of 35% (legal entities).

If the assets are fixed assets of the seller, but they were owned for less than two years, profits derived from the transfer are subject to income tax under the above rules and rates. On the other hand, if the assets being transferred are deemed fixed assets of the seller and such fixed assets were owned for two years or more, profits derived from the transfer are subject to capital gains tax at a rate of 10%.

In the case of fixed assets, if they were subject to deductible depreciation or amortisation, profit derived from the transfer should be deemed to be a taxable recapture at the corporate rate. Any profit in excess of the recapture should be subject either to capital gains tax or to income tax according to the above rules.

b. Purchase Price Allocation

In an asset deal, the purchase price paid by the buyer must be allocated to each asset, and such allocation will be the tax basis of such assets.

According to Colombian tax law, the purchase price must follow the fair market value ("FMV") Principle and the 25% Deviation Rule. If the 25% Deviation Rule is not complied with, the Tax Office has the power to readjust the purchase price so that the appropriate tax effects are derived from the transaction. The FMV principle is applicable to non-related transactions and to related transactions among related parties in Colombia. If the transaction is performed with related entities outside Colombia, the FMV principle is not applicable, but the transfer pricing regime is.

c. Tax Attributes

Existing tax attributes of the seller, such as net operating losses, are not transferred to the buyer of the assets.

d. Tax Free Reorganisations

Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events insofar as they meet certain requirements applicable to both the shareholders of the involved entities and the absorbing entity or spin-off beneficiaries.

Among other criteria, tax neutral status depends on different business purpose criteria, no transfer of assets/shares to third parties (i.e. there can be no change in ownership to different parties other than those involved in the reorganisation), transfer of ongoing businesses units (in spin-off cases) and corporate documentation. Failure to comply with these requirements, can result in the reorganisation being treated as a transfer of assets or a transfer of shares, as the case may be. Such transfers are taxable for income tax purposes as explained in Section 4.a.

e. Purchase Agreement

There are two relevant aspects to consider in a Purchase Agreement:

- The responsibility of the acquirer, particularly in cases where there may be a potential transfer of an ongoing business (the transfer of assets may be subject to income tax withholding, VAT, other indirect taxes and formal responsibilities to be borne by the buyer).
- The purchase price must be allocated to the acquired assets to determine the tax cost basis for purposes of depreciation or amortisation and invoicing. Consequently, there must be a purchase price agreed among the parties for the purpose of transferring the assets. Otherwise, the Colombian Tax Office may:
- Challenge the transaction by readjusting or determining the applicable purchase price, assessing a taxable profit, demanding the applicable tax, and imposing penalties (ranging from 10% to 100%) and late payment interests; or
- Consider that the assets were transferred free of charge to the acquirer, meaning such transfer represents a gift subject to the gift tax at a 10% rate on the equity value of the asset (this tax is payable by the buyer).

f. Depreciation and Amortisation

The purchase price paid by the buyer and allocated to each asset will be the tax basis of such assets. This cost is the depreciation or amortisation base for tax deductibility purposes. Under Colombian tax regulations, the useful life for income tax purposes is the one applicable under the accounting standards (e.g. IFRS), provided that such useful life for accounting purposes ("Accounting UL") does not exceed the maximum rates set forth by law ("Tax UL") or by the Colombian Government whenever it issues an applicable decree.

g. Transfer Taxes, VAT

Sales of movable assets not excluded or exempted from VAT are subject to tax, generally at a rate of 19%. The sale of fixed assets is not subject to VAT.

There is a special VAT income tax credit upon the acquisition of productive fixed assets. Colombian VAT payers have the right to a tax credit equivalent to 100% of the input VAT for the acquisition or importation of productive fixed assets subject to VAT at the general rate. This credit must be used in the income tax return of the relevant taxable year in which the productive fixed asset is imported or acquired or in any of the following years. It may not be treated as a deductible expense for income tax purposes, or as offsetable input VAT for VAT purposes. However, if the special VAT credit is not used, the investor may use the input VAT amount as a higher value of the asset acquired and treat it as a deductible expense for depreciation purposes.

In addition, if the buyer is an income tax withholding agent (i.e. Colombian entity), it will have the obligation to apply a 2.5% income tax withholding on the amount paid or accrued for the acquisition of the assets.

h. Asset Purchase Advantages

- The target company's liabilities and possible tax contingencies remain at the seller's level.
- Although goodwill deductibility for the acquisition of shares is not allowed, the acquisition of other intangible assets could give rise to tax deductibility at the buyer's level.

i. Asset Purchase Disadvantages

- Existing tax attributes of the seller, such as net operating losses, are not transferred to the buyer of the assets.
- Acquisition of movable tangible assets is subject to VAT.
- Transfer taxes are triggered by a share acquisition (e.g. documentation transfer taxes such as registration taxes due to the transfer of real estate).

5. ACQUISITION VEHICLES

a. General Comments

When determining the ideal type of vehicle to make an acquisition, an investor must weigh the facts and circumstances of the situation, including the financing structure that will be used and the desired legal and tax consequences of the acquisition. Under a share deal, it is customary to use acquisition vehicles outside Colombia, while under an asset deal, the acquisition vehicle is local. However, should the transaction be financed, tax structuring is required to perform a debt pushdown to facilitate financing cost deductibility.

b. Domestic Acquisition Vehicle

There are two main types of corporations used for these purposes, an SAS or SA. Both have legal personality and are deemed to be independent income tax payers for Colombian tax purposes.

Disregarded entities for income tax purposes are also common in certain acquisitions, these include:

***Patrimonio Autónomo* ("PA")**

This is a type of local trust which is transparent, or pass through for income tax purposes. The PA acts as a pass through entity and thus its beneficiaries should declare all revenue, costs, expenses, assets and liabilities arising at the trust level, as if they were owned directly in absence of the trust. The trust is not a taxpayer for income tax purposes, income tax due is determined at the level of the beneficiaries.

Private Equity Funds

Colombian funds are not liable to income tax. Rather, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle), provided certain legal requirements are met. Therefore, investors will have to assess and pay the corresponding income tax liability only when there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.

c. Foreign Acquisition Vehicle

There are no restrictions on investment in Colombia through a foreign vehicle. It is usual to plan acquisitions by using investment vehicles located in DTT jurisdictions, since withholding income tax rates applicable to outbound payments (i.e. interest, dividends, royalties, and capital gains) may be reduced [2].

d. Partnerships and joint ventures

For Colombian tax purposes, joint venture agreements are non-incorporated (i.e. they do not create or incorporate a separate legal entity different from the joining parties). Entities such as consorcios and uniones temporales (types of partnership) and association agreements are not separate income tax payers for Colombian income tax purposes.

2 As of the date of this document, Colombia has enforceable DTTs with the following jurisdictions: (i) Canada, (ii) Mexico, (iii) Chile, (iv) Spain, (v) Portugal, (vi) India, (vii) Czech Republic, (viii) Switzerland, (ix) South Korea, (x) United Kingdom, (xi) France; (xii) Italy, and (xii) the Andean Community (Ecuador, Peru, and Bolivia).

Based on this, the joining parties shall independently declare assets and liabilities that contribute to the joint business (if any), as well as income, costs, and expenses under the joint business, according to their participation in the joint venture in absence of such a non-incorporated joint venture agreement.

Hence, members of the joint venture must keep a record of the activities executed to comply with their obligations under the agreement, in such a way that the Tax Office (upon official audit) is able to determine the distribution of income, costs, and expenses under the agreement.

Since the joint venture is effectively a tax pass-through, if a foreign entity is a party to the joint venture, it could create the risk of having a PE in Colombia. Hence, if the foreign entity directly performs activities in Colombia, it could have a fixed place of business in Colombia. The existence of a PE would imply that the PE would be subject to corporate income tax on its worldwide attributable income. Therefore, tax structuring alternatives should be analysed closely.

e. Strategic vs Private Equity Buyers

Certain non-income tax payers (e.g. local pension funds) prefer to structure their investments via non-taxed acquisition vehicles (e.g. private equity funds) for the purpose of not adding taxable layers of activity (e.g. if the acquisition is made by using an income tax payer such as a company). This is also applicable whenever foreign non-resident persons subject to special exemption regimes due to international rules (e.g. treaties) are involved.

Other than that, there are no special differences between the ways that strategic corporate buyers and private equity buyers invest in Colombia.

6. ACQUISITION FINANCING

a. General Comments

Transactions in Colombia may be funded either by capital or debt. The decision over funding the transaction depends on the specific financial and corporate requirements at the moment of funding, by balancing, besides the financial criteria:

(i) The tax aspects applicable to capitalisations in Colombian companies (i.e. registration taxes, non-applicability of the transfer pricing rules and cash-out strategies (dividends); and

(ii) The tax aspects applicable to granting loans to Colombian companies (i.e. interest deductibility, thin capitalisation rules, withholding income tax rate on interest payments, interest accruing and the transfer pricing regime when applicable).

b. Foreign Acquirer

This section is left intentionally blank.

c. Debt

As a general rule, foreign non-resident entities are subject to income tax in Colombia solely on their Colombian source income. For instance, interest derived from loans owned in Colombia is usually deemed as Colombian source income.

Based on the above, interest paid by a Colombian resident entity (a Colombian borrower) to a foreign non-resident lender is subject to tax in Colombia. Payments of interest to foreign non-resident entities are subject to income tax withholding. The general rate is 15% if the term of the loan is longer than one year; otherwise it is 20%.

Nevertheless, certain special rules apply to the tax rate applicable, the source of the interest income, or on interest payments in DTT jurisdictions:

Special tax rates

1%, 5%, or 35% depending on the nature of the loans being granted or the specific assets to be acquired by using the proceeds (e.g. the mentioned 1% is applicable to acquisition or leasing of aircraft, ships and helicopters, or 35% on loans granted by lenders located in low tax or non-cooperative jurisdictions (formerly known as tax havens) or subject to preferential tax regimes, under certain circumstances.

Other non-Colombian source income loans

Certain foreign debt granted to Colombian residents gives rise to interest payments not subject to withholding taxes in Colombia, since interest income is deemed non-Colombian source income for the foreign non-resident lender (e.g. short-term loans, export financing, loans to certain financial entities, among others and subject to certain legal requirements).

Interest payments under DTTs

The general income tax withholding rate may be reduced if the payment is made for the benefit of a tax resident of a jurisdiction with which Colombia has entered into a DTT. In general, all DTTs signed by Colombia include rules under which:

(i) Interest payments to resident entities/individuals in such jurisdictions are reduced to 10%; and

(ii) Interest payments to resident financial entities (banks) in such jurisdictions are reduced to 0% (although this is not a provision accepted in all the enforceable Colombian DTTs).

Payments made from Colombia to foreign lenders will be deductible in Colombia provided certain requirements are met, namely:

- Any applicable withholding tax in Colombia is duly performed.
- The cost/expense has a cause effect relation with the payer's income producing activity.
- The cost/expense is necessary.
- The cost/expense is proportional under commercial criteria.
- The transaction is duly subject to the transfer pricing regime (only applicable to financing granted by related entities outside Colombia).
- The transaction is duly subject to the thin capitalisation regime (only applicable to financing granted by related entities).
- The transaction is duly subject to the foreign exchange regime (i.e. loan disbursement and payments are duly registered by the Central Bank).

i Limitations on Interest Deductions

Deductions of interest arising from debts between related parties (either local or foreign) are subject to the thin capitalisation rules. Under these rules, interest payments are deductible when the total average amount of said debts, during the taxable period, does not exceed the 1:2 debt to equity ratio compared to the net worth on 31 December of the previous year. If it does exceed that ratio, excess interest expenses would not be deductible.

This thin capitalisation rule is not applicable to:

(i) Borrowers subject to surveillance of the Colombian Financial Superintendence.

(ii) Borrowers authorised to be devoted to factoring transactions, and provided such factoring transactions are not granted, in more than 50%, to related parties.

(iii) Borrowers who are in pre-operative phase (i.e. with no subject-to-tax earnings).

(iv) Loans aimed at financing transport infrastructure projects or public service infrastructure.

Based on this, and on loans granted by non-related parties, the Colombian borrower must demonstrate such loans are not granted by conduit lenders under transactions in which, in substance, the actual lender is a related party. To such end, the lender (either local or foreign non-resident) must issue a certification that states the relevant loan does not correspond to a conduit loan transaction. Such certification will be deemed as a declaration under oath.

ii Related Party Debt

In general terms, Colombian taxpayers who are engaged in transactions with non-resident related parties are subject to the Colombian transfer pricing regime. Accordingly, taxpayers subject to this regime must conduct their transactions with related parties on an arm's length basis.

From an international tax standpoint, under the arm's length principle, related parties in a specific transaction should not agree a price or a profit margin differing from prices and profit margins used in similar transactions between independent parties. This principle was adopted in Colombia under section 260-2 of the Colombian tax code.

Based on the above, such transactions would be subject to the transfer pricing regime. Consequently, th e terms and conditions of any loan subject to the regime should meet the arm's length principle. Such arm's length conditions in the context of a foreign debt transaction should consider the capital amount, the term, the risk rating, warranties, the borrower's credit worthiness and the interest rate.

When a foreign debt transaction does not comply with the above comparability criteria, interest payments will not be deductible and the foreign indebtedness will be recharacterised as a capital contribution and the interest payments thereon as a dividend payment.

iii Debt Pushdown

One of the strategies used to perform a debt pushdown on acquisitions is the use of a special purpose vehicle ("SPV") funded by way of a loan to carry out the acquisition of a Colombia target company. After the acquisition, the SPV may be merged into the target company to pushdown the debt into the target company. Generally, interest expenses arising in this regard are deductible against target's taxable income, however, depending on how this pushdown is achieved, the deducibility could be jeopardized since the Tax Office does challenge such deductibility.

d. Hybrid Instruments

Preferred shares in Colombian entities may be treated as debt for tax purposes, provided that the following conditions are met:

(i) The shares do not encompass political/voting rights.

(ii) The Colombian entity (issuer of the shares) has the obligation to repurchase the shares at a fixed date.

(iii) The owner of the shares is entitled to receive payments before the winding up of the Colombian entity.

(iv) The shares are not listed on the Colombian Stock Exchange.

Additionally, whenever a foreign indebtedness transaction does not comply with the comparability criteria (see section 6.c. above), interest payments will not be deductible and the foreign indebtedness will be recharacterised as a capital contribution. As a result, the interest payments thereon, would be treated as a dividend payment.

e. Other Instruments

This section is left intentionally blank

f. Earn-outs

Earn-outs are usually agreed as adjustments to the purchase price. Hence, such an increase in price will follow the same tax treatment of the initial profit derived from the transaction (i.e. it is subject to income tax in Colombia under the rules applicable to the sale of shares; capital gains tax at a 10% rate if the sold shares have been owned for more than two years, 35% otherwise).

If structured as a service fee, it would be subject to income tax at the general corporate income tax rate (35%) and to VAT at the general rate of 19%.

7. DIVESTITURES

a. Tax Free

In general, transfers of shares or assets are taxable events. However, there are special regimes under which a sale of shares may not subject to income tax (either because of an exemption, a tax neutral event - in-kind contributions, mergers or spin-offs - or transactions that do not trigger the tax:

- Profits derived from the sale of shares listed on the Colombian Stock Exchange will not be subject to income tax or to capital gains tax, provided that the sale does not exceed 10% of the outstanding shares of the company in the same taxable year.
- Gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events, provided they meet certain requirements.
- Capital gains obtained by a Colombian Holding Company ("CHC") because of the transfer of shares in its affiliates, are tax exempt in Colombia (see section 11.e.).

b. Taxable

Please refer to Sections 3.a and 4.a.

c. Cross Border

As a general rule, the transfer of Colombian assets is deemed to be subject to tax and therefore Colombian source income for the seller. However, gains derived from a transfer of Colombian assets carried out as part of in-kind contributions to Colombian entities and merger or spin-off transactions (provided that the absorbing entity or the spin-off beneficiary are Colombian entities) are generally non-taxable events provided they meet certain requirements.

The transfer of assets located in Colombia because of international mergers or spin-off transactions (between non-resident entities) is deemed a taxable transfer of assets. Nevertheless, this general rule does not apply to such a transfer of Colombian assets when 100% of the book value of the assets located in Colombia, owned by the group to which the merging/spin-off entities belong to, do not represent more than 20% of the total assets of such a group according to the consolidated financial statements. That means, should this 20% rule be met, the transfer of assets is not deemed to be a taxable event in Colombia.

Additionally, the transfer of Colombian assets through the disposal of any legal title of non-Colombian shares/entities, is subject to Colombian income tax or Colombian capital gains tax as if the transaction were on the Colombian assets directly (i.e. this transaction implies the indirect transfer of Colombian assets for income tax purposes in Colombia). Under the indirect transfer tax regime, the transferor is subject to Colombian income tax.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Colombian entities and PEs are subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) at a rate of 35% (i.e. Colombia has a worldwide tax system). A 20% special tax rate is applicable to companies located in free trade zones (commercial users in such zones must apply the general corporate tax rate).

However, foreign non-resident entities and individuals are subject to income tax only on their Colombian sourced income and capital gains.

For income tax purposes, the taxable period is the calendar year. Every year, the Government establishes the filing due dates (deadlines) for filing and payment of taxes at national level.

b. CFC Regime

Under the Colombian CFC regime, an entity is considered a CFC if it has no tax residence in Colombia, and is controlled by one or more Colombian tax residents (whether they are entities or individuals) as per the criteria laid down by the Colombian transfer pricing regime to regard an entity as an affiliate or subordinated entity (related party).

For instance, a non-resident entity is considered as a CFC if a Colombian tax resident holds an interest representing 50% or more of its capital or has the right to obtain 50% or more of its profits.

If an entity is considered as a CFC, a Colombian tax resident who owns a direct or indirect interest representing 10% or more of its capital or 10% or more of its profits must comply with the Colombian CFC regime. Under this, any passive income obtained by the CFC must be attributed (i.e. deemed income) to the Colombian tax payer in the fiscal year when it is accrued by the CFC, regardless of whether such CFC has been distributed or not to the Colombian tax resident.

Except for some exceptions, dividends, royalties, leases, financial yields are deemed passive income.

Colombian residents who are liable to apply the Colombian CFC regime, may use the corresponding foreign tax credits in Colombia (if any).

c. Foreign Branches and Partnerships

Foreign branches are permanent establishments (“PEs”) in Colombia, subject to corporate income tax on their Colombian and non-Colombian source income (worldwide source income) (see section 8.a.).

d. Cash Repatriation

Capital redemption

Capital redemptions will not be subject to taxation in Colombia to the extent the amounts reimbursed to the shareholders/partners do not exceed the amounts originally contributed to the Colombian entity.

Dividends

Dividends paid to foreign entities and profits paid by PEs to foreign shareholders/ or to a holding company outside Colombia are subject to income tax as follows:

(i) Dividends paid out of profits that were subject to income tax at the corporate level will be subject to income tax, via withholding at a rate of 10%

(ii) Dividends paid out of profits that were not subject to income tax at the corporate level will be subject to a recaptured corporate income tax, via withholding, at a rate of 35% plus, the above 10% tax rate, to be levied on the net amount after the recaptured 35%. The WHT rates may vary if a Double Tax Treaty is applicable.

Interest

Outbound payments for foreign indebtedness are subject to a 15% withholding tax rate if the loan exceeds one year and to 20% WHT if the loan is for less than one year. The WHT rates may vary if a Double Tax Treaty is applicable.

Winding-up

The repayment of capital to the shareholders, as a result of the winding-up of a Colombian company, will not be deemed to be income. Any gain resulting from the settlement of a company, in excess of capital contributed or invested, not distributable as dividends will be deemed to be a capital gain (subject to tax at 10%) as long as the company has fulfilled two or more years of existence at the date of settlement. The gain resulting from the liquidation of a company whose term of existence is less than two years will be treated as net income (and taxed at a rate of 35%, FY 2022). Any retained profit distributed as a consequence of a company winding-up is deemed as an extraordinary dividend distribution subject to the above rules.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Under the DTTs in force, in general, capital gains derived from the transfer of Colombian shares are subject to tax in Colombia only if more than 50% of the value of the shares is derived, directly or indirectly, from real estate located in Colombia. Some DTTs provide for rules under which the capital gain obtained from the transfer of Colombian shares is also subject to tax in Colombia if the seller has owned, at any time during the 12 months prior to the sale, directly or indirectly, 25% or more of the capital of the Colombian company.

Note that the transfer of real property is also subject to stamp or documentation taxes, such as:

Notary rights

Pursuant to the provisions of Resolution 1450 of 2004 of the Superintendence of Notaries and Registries, solemnisation of private agreements triggers notary fees from 0.27% to 0.3% of the value of the agreement to be notarised. As an example, the notary rights are due in the register of companies' incorporations or the sale of real property in Colombia.

Registration tax

Registration of a private document or a public deed of incorporation at the Chamber of Commerce triggers a registration tax, which amounts to 0.7% of the subscribed capital. If real estate property is sold, or contributed to the capital of a company, this tax must be paid at the Public Instruments Bureau (Oficina de Instrumentos Públicos) and evidence of such a payment must be attached to the other documents of incorporation to be filed at the Mercantile Registry.

b. CbC and Other Reporting Regimes

Transfer pricing disclosure returns

Income tax payers who carry out transactions with related parties and have gross assets equal to or greater than 100,000 Tax Value Units (about USD1 million) or with gross income equal to or greater than 61.000 Tax Value Units (about USD610,000) must comply with the following obligations:

(i) File the transfer pricing return for information purposes.

(ii) Submit and send the transfer pricing documentation, which must include a Master File with global information about the MNE and a Local File with information about each operation.

Additionally, income tax payers who comply with certain conditions must file a Country by Country ("CbC") report, with the global allocation of income and taxes paid by the MNE group.

Ultimate beneficial owners

As of 2022, Colombian entities, PEs, non-incorporated vehicles managed in Colombia (e.g. PAs and funds) and foreign entities whose assets located in Colombian represent more than 50% of the total value of their assets, must supply the Colombian Tax Office with information regarding the ultimate beneficial owners ("UBO") of the corporate structures. The information submitted must include the relevant names, tax identifications, nationalities, and locations of the UBOs. In addition, information is required on the criteria that will determine the ultimate beneficial owner, shareholding percentages, and dates on which UBO status is acquired or lost.

10. TRANSFER PRICING

In general terms, Colombian taxpayers who engage in transactions with non-resident related parties are subject to the Colombian transfer pricing regime. Accordingly, taxpayers subject to this regime must conduct transactions with related parties on an arm's length basis.

From an international tax standpoint, under the arm's length principle, related parties to a specific transaction should not agree a price or a profit margin differing from prices and profit margins used in similar transactions between independent parties.

Taxpayers exceeding the amounts established by law who carry out transactions with foreign related parties are required to file annually an Informative Return and provide supporting documentation (i.e. transfer pricing study) to prove the application of the transer pricing regime. Formal obligations related to the country by country ("CbC") reporting and the Master File were introduced by a 2016 tax reform in accordance with the Base Erosion and Profit Shifting ("BEPS") OECD Report of 2015.

Based on the above, transactions executed between related parties are subject to the transfer pricing regime.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The concept of hybrid vehicles is not expressly recognised by Colombian law. Though there are different tax regimes globally applicable to different types of vehicles outside Colombia, if such vehicles accrue Colombian source income, they generally become income tax payers in Colombia.

Colombian tax law assumes that if a Colombian resident owns participations in a foreign entity domiciled in a low tax or non-cooperative jurisdiction (formerly known as tax havens) or a preferential tax regime, such foreign entity is a controlled foreign corporation ("CFC"). To consider a given jurisdiction as a tax haven for Colombian tax purposes, it is included in a Government black list[3] issued by way of a decree under certain grounds established by law (which follow, in general, the guidelines issued to such purposes by the OECD). Meanwhile, preferential tax regimes are defined by law, which lists grounds under which a given tax regime would be regarded as preferential; these grounds must be considered by the taxpayer to make their own qualification (i.e. there is no black list in this regard).

3 Tax haven jurisdictions: The Government has qualified the following jurisdictions as tax haven jurisdictions: (i) Antigua and Barbuda; (ii) Svalbard Archipelago; (iii) Overseas Collectivity of Saint Pierre and Miquelon; (iv) Commonwealth of Dominica; (v) Commonwealth of the Bahamas; (vi) Kingdom of Bahrain; (vii) Nation of Brunei; (viii) Abode of Peace; (ix) Independent State of Samoa; (x) Grenada; (xi) Hong Kong; (xii) Queshm Island; (xiii) Cook Islands; (xiv) Pitcairn, (xv) Henderson; (xvi) Ducie and Oeno Islands; (xvii) Salomon Islands; (xviii) Labuan; (xix) Macau; (xx) Hashemite Kingdom of Jordan; (xxi) Co-operative Republic of Guyana; (xxii) Republic of Angola; (xxiii) Republic of Cape Verde; (xxiv) Republic of the Marshall Islands; (xxv) Republic of Liberia; (xxvi) Republic of the Maldives; (xxvii) Republic of Mauritius; (xxviii) Republic of Nauru; (xxvix) Republic of Seychelles; (xxx) Republic of Trinidad and Tobago; (xxxi) Republic of Vanuatu; (xxxii) Yemeni Republic; (xxxiii) Lebanese Republic; (xxxiv) Saint Kitts and Nevis; (xxxv) Saint Vincent and the Grenadines; (xxxvi) Saint Helena, (xxxvii) Ascension and Tristan da Cunha; (xxxviii) Saint Lucia; (xxxix) Sultanate of Oman; (xl) State of Kuwait; and, (xli) the State of Qatar.

b. Use of Hybrid Instruments

Preferred shares in Colombian entities can be treated as debt for tax purposes provided that the following conditions are met:

(i) The shares do not encompass political/voting rights.

(ii) The Colombian entity (issuer of the shares) has the obligation to repurchase the shares at a fixed date.

(iii) The owner of the shares is entitled to receive payments before the winding-up of the Colombian entity.

(iv) The shares are not listed on the Colombian Stock Exchange.

Additionally, when a foreign indebtedness transaction does not comply with the comparability criteria (see section 6.c.ii. above) interest payments will not be deductible and the foreign debt will be recharacterised as a capital contribution and the interest payments on it as dividend payments.

c. Principal/Limited Risk Distribution or Similar Structures

No specific rules exist in Colombian tax law regarding hybrid entities or instruments, or any other feature covered by Action 2 under BEPS.

However, the Colombian general anti-abuse rule ("GAAR") grants the Tax Office sufficient administrative powers to re-characterise a transaction or series of transactions as abusive and disregard their tax effects. The Tax Office can exercise such powers in the context of an ordinary audit with no other prior processes.

The Tax Office is empowered to issue all the necessary official actions to assess the corresponding tax effects (that would otherwise be derived from the actual transaction), penalties and late payment interest derived from a transaction or series of transactions deemed abusive (such as tax avoidance, the abuse of law and simulation). Colombian tax law defines tax abuse as using or implementing one or several artificial legal acts, with no economic/commercial purpose or reason, to obtain an improper tax benefit, irrespective of any other subjective reason.

d. Intellectual Property

Outbound payments for granting the use or enjoyment of patents, certificates of invention or improvement, brands, trade names, authors' rights over literary, artistic or scientific works, including films and recordings for radio or television, formulas, industrial, commercial or scientific procedures or equipment, or information relating to commercial, industrial or scientific experiences, are subject to income withholding tax at a 20% rate and are subject to VAT to be collected and paid to the Tax Office via the reverse charge mechanism.

The transfer of intellectual property by the seller is subject to the same tax treatment as the transfer of intangible assets described in section 4.f. above. Income obtained by a foreign resident from the transfer of goods or rights located in Colombia at the time of the transfer is deemed to be Colombian sourced income, subject to income tax in Colombia as described in Section 3.

As a general rule, amortisation of acquired intangible assets for income tax purposes is allowed for the buyer. If the intangible asset has the following features:

(i) It has a defined useful life.

(ii) It can be identified and measured reliably.

(iii) Its acquisition triggers income which is subject to tax in Colombia for the seller ("FMV"), or when the transfer is made to a non-related third party.

Currently, there are two tax incentives for international productions filming, partly or entirely, in Colombia:

- Audio-visual Investment in Colombia Certificates ("CINA"): This is a tax credit certificate that can be sold, transferred, or traded in the financial markets equivalent to a value of 35% of the total qualifying foreign filming investment in Colombia. A fee of 5% is payable to the Colombian Film Commission on the issued certificates resulting in a net value of 33.25% of the total qualifying spend.
- Colombian Film Fund: Production companies of audio-visual works, filmed totally or partially within Colombian territory, may benefit from a cash rebate of up to:

  (i) 40% of the value of the expenses incurred in the country for film services contracted with Colombian film service companies, before VAT; and

  (ii) 20% of the value of hotel, food, and transportation expenses, before VAT. This benefit applies to producers of national and non-national works.

e. Special Tax Regimes

Participation exemption / Holding company regimes

From 2020, the Colombian tax regime introduced new rules on the participation exemption regime and the indirect transfer of Colombian assets.

Under these rules, the Colombian Tax Code provides for a participation exemption regime, applicable to Colombian companies whose main purpose is to invest or hold interests in Colombian and foreign entities.

To apply to the CHC regime, a domestic corporation must:

- Have a direct or indirect participation in, at least, 10% of the capital of two or more national and/or foreign companies or entities for a minimum period of 12 months;
- Develop its corporate purpose in Colombia with at least 3 direct employees and one administrative office in the country; and
- Make an application to the Colombian Tax Office.

Under this regime, income received by a CHC through dividends from foreign non-resident entities and affiliates and capital gains from transferring shares in such affiliates, is tax exempt in Colombia. In addition, dividends distributed by the CHC to foreign non-resident shareholders out of exempt profits at the level of the CHC, will not be subject to income tax at the level of such foreign non-resident shareholders (i.e. no Colombian income tax withholding would be applicable).

Private Equity Funds

Colombian funds are not liable to income tax. Instead, funds' investors are liable to tax as if they had obtained income or gains. Consequently, funds are treated as transparent or pass-through entities for tax purposes in Colombia. Additionally, income obtained through Colombian funds accrues for investors only upon effective profit distributions by funds (unlike the general rule that applies to other transparent vehicles, such as PAs, whereby income accrues at the same time it is received by the vehicle) – provided certain legal requirements are met. Therefore, investors must assess and pay the corresponding income tax liability only when there is a profit distribution by the fund (i.e. there is a deferral in the accrual of income until there are effective distributions). Note that private equity funds are allowed to distribute cash to investors as reimbursements of capital with no taxation for the investors.

Patrimonio autónomos ("PA")

A PA is a type of local trust, deemed to be a pass-through vehicle for Colombian income tax purposes. Economics at the PA level shall be recognised by the beneficiaries, as if no PA exists (i.e. income, costs, expenses, assets, liabilities, and equity).

Non-profit organisations

These entities are characterised as having a general interest social purpose. Under Colombian regulations, non-profit entities cannot distribute profits among their members at any given moment, including at the dissolution of the entity. In addition, non-profit organisations meeting certain requirements can request before the Tax Office to be included within the Special Tax Regime ("STR"). The STR implies:

(i) A special way of determining the taxable income (net profit or surplus).

(ii) Exemption and/or a lower tax rate (20%).

(iii) Exemptions whose application depends on the destination of the profits or surplus of the entity.

12. OECD BEPS CONSIDERATIONS

Colombia officially became the 37th member of the OECD on 28 April 2020. Tax reforms introduced in Colombia since 2016 have led to an early adoption of BEPS actions within the Colombian tax regime (i.e. CFC rules, transfer pricing regime and anti-abuse rules, among others).

Additionally, Colombia is one of the jurisdictions that have signed the Multilateral Instrument ("MLI"). Once the MLI is ratified, two rules regarding treaty abuse will be added to Double Tax Treaties ("DTT") defined as covered tax agreements by Colombia (i.e. minimum standards to counter treaty abuse and limitation on benefits). The modifications the MLI will make with regard to treaty abuse will imply further analysis for taxpayers when of applying a DTT.

13. ACCOUNTING CONSIDERATIONS

In 2016, Colombia adopted the formal connection between income tax rules and the International Financial Reporting Standards ("IFRS", IFRS adjusted to the Colombian economic reality). However, the taxable base for income tax purposes regularly differs from the accounting profit under the financial statements. These differences may be caused by factors including differences on accrual of revenues and expenses, depreciation/amortisation, deductibility of certain expenses and the treatment of applicable exemptions. These differences may impact the taxation of dividends to shareholders, as explained below.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Dividend tax is triggered when the distribution of profits is declared by the shareholders, even if they are not effectively paid at that point in time.

Colombian tax law provides for a system aimed at avoiding the double taxation of corporate profits by identifying dividends out of profits which have been subject to tax and dividends not taxed at the corporate level.

If the dividends distributed to shareholders are paid out of profits not subject to corporate income tax at the level of the distributing company, they will be subject to corporate income tax at the level of the shareholders (corporate income tax recapture). In such cases, the recapture is collected via withholding tax. The recapture WHT rate for foreign shareholders of a Colombian company is 35%. In general, this local rule applies regardless of the country of residence of the shareholder, unless a tax treaty is applicable.

Note that such dividend tax will be applicable upon the distributions of dividends, whether or not such dividends are paid out of profits which have been subject to tax at the distributing entity's level (i.e. the 10% WHT is applicable whether the corporate income tax recapture is applicable or not). This is, if dividends are distributed out of profits subject to corporate income tax at the level of the distributing company, the withholding tax would be 10%; and, if dividends are distributed out of profits not subject to corporate income tax at the level of the distributing company, the withholding tax would be 35% (income tax recapture), plus a 10% income tax withholding on dividends on the net amount once the recapture is performed (i.e., effective tax rate of 41.5%).

b. Application of Regional Rules

This section is left intentionally blank.

c. Tax Rulings and Clearances

The Colombian Tax Office issues non-binding opinions for taxpayers. Such opinions are entitled to support the Tax Office's actions based on the law. They are useful to understand the applicable interpretation the Tax Office may adopt in the event of an audit process.

The non-binding opinions should be delivered within 30 days by the Tax Office. However, the Tax Office usually takes longer to answer.

15. MAJOR NON-TAX CONSIDERATIONS

As a general rule, the transfer of Colombian assets and shares in Colombian entities is deemed to be subject to tax, i.e. it is Colombian source income for the seller.

Foreign entities transferring Colombian assets subject to the direct investment registry of the Central Bank, must file a transactional income tax return reporting the profit, if any, derived from the transaction within the month after the transaction is performed. Other types of assets carry the same filing obligation, but such a tax return must be filed within the first four months of the year after the one in which the transaction is performed, according to the deadlines imposed by the Government.

To this end, foreign entities must register with the Colombian Tax Office to obtain a Colombian Tax ID. The process of obtaining a Tax ID usually takes at least two weeks.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Albania	10 if arising from taxed profits at corporate level, or consolidated 41.5 if dividends arise from untaxed profits.	20	20	[A], [B]
Argentina	10 or 41.5 consolidated	20	20	[A], [B]
Armenia	10 or 41.5 consolidated	20	20	[A], [B]
Australia	10 or 41.5 consolidated	20	20	[A], [B]
Austria	10 or 41.5 consolidated	20	20	[A], [B]
Azerbaijan	10 or 41.5 consolidated	20	20	[A], [B]
Bangladesh	10 or 41.5 consolidated	20	20	[A], [B]
Barbados	10 or 41.5 consolidated	20	20	[A], [B]
Belarus	10 or 41.5 consolidated	20	20	[A], [B]
Belgium	10 or 41.5 consolidated	20	20	[A], [B]
Bolivia	10 or 41.5 consolidated. In Bolivia, the dividends paid by a Colombian entity shall be treated as exempted income.	20	20	[A], [C]
Bosnia and Herzegovina	10 or 41.5 consolidated	20	20	[A], [B]
Botswana	10 or 41.5 consolidated	20	20	[A], [B]
Brazil	10 or 41.5 consolidated	20	20	[A], [B]
Bulgaria	10 or 41.5 consolidated	20	20	[A], [B]
Canada	5 if the recipient is an entity that owns at least 10% of the shares of the paying entity. 15 if otherwise.	10	10	[A], [D]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Chile	0 if the recipient is an entity that owns at least 25% of the shares of the paying entity. 7 if otherwise.	5 if the recipient is a bank or insurance company. 15 if otherwise.	10	[D]
China	10 or 41.5 consolidated	20	20	[A], [B]
Croatia	10 or 41.5 consolidated	20	20	[A], [B]
Cyprus	10 or 41.5 consolidated	20	20	[A], [B]
Czech Republic	5 if the recipient is an entity that owns at least 25% of the shares of the paying entity. 15 if otherwise.	10 provided the interest arises from a credit sale of merchandise or equipment, or from a banking loan with a term longer than three years.	10	[D]
Denmark	10 or 41.5 consolidated	20	20	[A], [B]
Egypt	10 or 41.5 consolidated	20	20	[A], [B]
Estonia	10 or 41.5 consolidated	20	20	[A], [B]
Faroe Islands	10 or 41.5 consolidated	20	20	[A], [B]
Finland	10 or 41.5 consolidated	20	20	[A], [B]
France	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: Loans arising from public entities or the central bank; Credit sales of commercial, scientific or industrial equipment; Credits with a term of at least 3 years. 10% if otherwise.	10	[D]
Gambia	10 or 41.5 consolidated	20	20	[A], [B]
Georgia	10 or 41.5 consolidated	20	20	[A], [B]
Germany	10 or 41.5 consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Greece	10 or 41.5 consolidated	20	20	[A], [B]
Hungary	10 or 41.5 consolidated	20	20	[A], [B]
Iceland	10 or 41.5 consolidated	20	20	[A], [B]
India	5	10	10	[A], [B]
Indonesia	10 or 41.5 consolidated	20	20	[A], [B]
Ireland	10 or 41.5 consolidated	20	20	[A], [B]
Israel	10 or 41.5 consolidated	20	20	[A], [B]
Italy	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity or a pension fund. 15 if otherwise.	0 for: Loans arising from public entities or the central bank; Credit sales of commercial, scientific or industrial equipment Credits with a term of at least three years, 5 if the recipient is a pension fund, 10 if otherwise.	10	[D]
Jamaica	10 or 41.5 consolidated	20	20	[A], [B]
Japan	10 or 41.5 consolidated	20	20	[A], [B]
Kazakhstan	10 or 41.5 consolidated	20	20	[A], [B]
Kenya	10 or 41.5 consolidated	20	20	[A], [B]
Korea, Republic of	5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 10 if otherwise.	0 if the grantor is a public entity, 10 if otherwise.	10	[D]
Latvia	10 or 41.5 consolidated	20	20	[A], [B]
Lithuania	10 or 41.5 consolidated	20	20	[A], [B]
Luxembourg	10 or 41.5 consolidated	20	20	[A], [B]

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Macedonia	10 or 41.5 consolidated	20	20	[A], [B]
Malaysia	10 or 41.5 consolidated	20	20	[A], [B]
Malta	10 or 41.5 consolidated	20	20	[A], [B]
Mauritius	35	35	35	[A], [B]
Mexico	0	0 for loans arising from public entities or the central bank; 5 if the recipient is a bank or pension fund. 10 if otherwise.	10	[D]
Montenegro	10 or 41.5 consolidated	20	20	[A], [B]
Namibia	10 or 41.5 consolidated	20	20	[A], [B]
Netherlands	10 or 41.5 consolidated	20	20	[A], [B]
New Zealand	10 or 41.5 consolidated	20	20	[A], [B]
Nigeria	10 or 41.5 consolidated	20	20	[A], [B]
Norway	10 or 41.5 consolidated	20	20	[A], [B]
Pakistan	10 or 41.5 consolidated	20	20	[A], [B]
Philippines	10 or 41.5 consolidated	20	20	[A], [B]
Poland	10 or 41.5 consolidated	20	20	[A], [B]
Portugal	10	10	10	[D]
Romania	10 or 41.5 consolidated	20	20	[A], [B]
Russia	10 or 41.5 consolidated	20	20	[A], [B]
Saudi Arabia	10 or 41.5 consolidated	20	20	[A], [B]
Serbia	10 or 41.5 consolidated	20	20	[A], [B]
Singapore	10 or 41.5 consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Slovakia	10 or 41.5 consolidated	20	20	[A], [B]
Slovenia	10 or 41.5 consolidated	20	20	[A], [B]
South Africa	10 or 41.5 consolidated	20	20	[A], [B]
Spain	0 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 5 if otherwise.	0 for: loans arising from public entities or the central bank; Related to credit sales; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
Sri Lanka	10 or 41.5 consolidated	20	20	[A], [B]
Switzerland	0 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: loans arising from public entities or the central bank; Related to credit sales; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
Taiwan	10 or 41.5 consolidated	20	20	[A], [B]
Tanzania	10 or 41.5 consolidated	20	20	[A], [B]
Thailand	10 or 41.5 consolidated	20	20	[A], [B]
Trinidad and Tobago	35	35	35	[A], [B]
Tunisia	10 or 41.5 consolidated	20	20	[A], [B]
Turkey	10 or 41.5 consolidated	20	20	[A], [B]
Ukraine	10% or 41.5% consolidated	20	20	[A], [B]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
United Kingdom	0 if the recipient is a pension fund; 5 if the recipient is an entity that owns at least 20% of the shares of the paying entity. 15 if otherwise.	0 for: Loans arising from public entities, the central bank or pension funds; Related to credit sales of scientific, commercial, and/or industrial equipment; Credits granted by a bank or financial institution. 10 if otherwise.	10	[D]
United States	10 or 41.5 consolidated	20	20	[A], [B]
Venezuela	10 or 41.5 consolidated	20	20	[A], [B]
Vietnam	10 or 41.5 consolidated	20	20	[A], [B]
Zambia	10 or 41.5 consolidated	20	20	[A], [B]
Zimbabwe	10 or 41.5 consolidated	20	20	[A], [B]

Footnotes	
[A]	Section 245 of the CTC
[B]	Section 408 of the CTC (Interests & Royalties).
[C]	Section 11 of the Andean Community decision 578, Section 408 of the CTC (Interests & Royalties).
[D]	Sections 10, 11 and 12 of the DTT.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Financial statements	Balance sheet and income statement for the years open to review by the tax authorities.
2	Tax Due Diligence	Financial statements	Balance sheet with the temporary or permanent book/tax differences.
3	Tax Due Diligence	Corporate tax	Copy of the corporate income tax returns for the fiscal years open to review.
4	Tax Due Diligence	Corporate tax	Copy of the annexes of the income tax returns for the three previous years.
5	Tax Due Diligence	Income withholding tax	Copy of the income withholding tax returns for the fiscal years open to review.
6	Tax Due Diligence	Transfer pricing	Transfer Pricing Studies of the last five fiscal years.
7	Tax Due Diligence	Formal duties	Updated copy of the Registro Único Tributario Tax ID, including all of its pages.
8	Tax Due Diligence	Formal duties	Account tax statement (Estado de cuenta corriente de impuestos) issued by the Colombian Tax Authority and district and/or municipal tax authorities where the company is a taxpayer.
9	Tax Due Diligence	Litigations	Brief description of any pending litigation procedures that could affect the company's results, including an estimate of the contingency.
10	Tax Due Diligence	Balances in favour	Information about any requests for the refund of balances in favour.
11	Tax Due Diligence	VAT	Copy of VAT returns filed for the three previous taxable years, along with the payment receipts (Including the bank stamp or watermark as applicable).
12	Tax Due Diligence	Turnover tax	Copy of the turnover withholding tax returns filed on the three previous taxable years, along with the payment receipts.
13	Tax Due Diligence	Assets located abroad	Copy of the Assets Located Abroad return, including their corresponding annexes, for the three previous taxable years.
14	Tax Due Diligence	Transfer pricing	Copy of the transfer pricing supporting documentation (e.g. local file and master file) for the three previous taxable years (if applicable).
15	Tax Due Diligence	Formal duties	Ten (10) invoices issued by the company and ten (10) invoices received by the company.
16	Tax Due Diligence	Real estate	Real estate tax receipts for the current year and supporting documents for payment in the fiscal years open to review.

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