KPMG IMPUESTOS Y SERVICIOS LEGALES LTDA.

DOING BUSINESS IN COLOMBIA

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1. Introduction

Colombia has become an attractive country for investors, and there are many reasons for this: during the past five years, the Colombian economy grew by 4% per year; in 2009, Colombia's GDP registered an increase of 0.4%, a positive growth during global recession; it is the second country in the region with the most qualified workforce, it has a strategic geographic location, which allows reaching markets in the United States, Europe, Asia, Latin America and the Caribbean; it is the third most business-friendly country in Latin America according to the World Bank[1], as well as the first country in the region that best protects investors, with fifth worldwide position.[2]

Taking into account the aforementioned advantages and the facilities for doing business established in Law, this publication has as its main purpose to present to our readers in a simple language the most important legal and tax aspects applicable to foreign investment in Colombia, incorporating the most recent legislative changes. We hope that this information will be useful for those people interested in doing business in Colombia.

The content of this publication was revised in April 2011 and is based on information available at that time.

1.1. Country Outline

Main Information	
Geography:	The Republic of Colombia is located in the northwest of South America and is bordered on the northwest by Panama, on the east by Venezuela and Brazil, and on the southwest by Peru and Ecuador.
Area:	The continental area is 1,141,748km²
Weather conditions:	Colombia has no seasons. However, due to its location on the equator, it is possible to find a wide range of climates.
Population	42,888,592[3]
Official Language:	Spanish
Capital:	Bogotá D.C.
Main Cities:	Medellín, Cali, Barranquilla, Cartagena
Governmental System:	A presidential representative democratic republic, whereby the President of Colombia is both head of state and head of government. Executive power is exercised by the government. Legislative power is vested in two chambers of congress, the Senate of Colombia and the House of Representatives of Colombia. The Judicial power is independent of the executive and the legislature.
Annual Inflation	3.17%[4]

[1] Doing Business Report 2011
[2] Proexport http://www.inviertaencolombia.com.co/por-que-colombia/mejor-ambiente-de-negocios.html
[3] DANE, Census 2005
[4] Banco de la República, December, 2010

2. Infrastructure and Sectors of the Economy

2.1. Overview of Colombian infrastructure

Utilities, transportation and telecommunications are highly important in deciding whether or not to start a business in a certain place.

Therefore, it is appropriate to point out that since 1991's Constitution, Colombian infrastructure has seen a significant improvement due to the fact that the private sector can participate in this type of projects through concessions, direct provision of services, associate contracts with the state companies, etc.

2.1.1. Utilities

Utilities represent an operational cost in every business. Bearing this in mind the following table shows the rates applicable in Colombia.

Utility[5]	Residential USD[6]	Commercial USD	Industrial USD
Water			
Basic Average Rate ($/M3)	0,68	1,05	0,93
Sewerage			
Basic Average Rate ($/M3)	0,58	0,86	0,76
Natural Gas			
Variable cost ($/M3)	0,32	0,34	0,34
Fixed Cost $/month	1,16	1,26	1,26
Electric Power			
Tariff $/ Kwh.	0,15	0,10	0,10
Telephone			
Connection cost	51,37	80,31	82,34
Variable cost ($/IMP)	0,04	0,04	0,04
Fixed cost ($/month)	7,23	6,60	6,75

2.1.2. Transportation

Port infrastructure features

- Colombia has six seaports on the Caribbean Sea and two on the Pacific Ocean[7].

[5] Proexport, Utilities Cost Report 2009. This is an average between the 6 main Colombian cities. http://www.inviertaencolombia.com.co/costos-de-operacion/servicios-publicos.html
[6] 2010. Exchange Rate used in the entire document, USD 1 = COP $1.900

- More than 80% of Colombian foreign trade[8] is transported via maritime means, as follows:

Total Port's Traffic – Caribbean and Pacific Zone[9]	
Item	Tonnes
Foreign trade	111,861,759
Costing trade	364,397
River transportation	157,995
In transit	7,479,920
Total tonnes	119,864,071

Air infrastructure features

As far as the quality of the air transportation infrastructure is concerned, Colombia ranks second among the Latin-American countries. Moreover, El Dorado, which is Bogota's international airport, ranks first in cargo mobilisation in South America and third in passenger transportation[10]. Currently, this airport is being improved through a concession agreement with the private sector, in order to be able to process 16 million passengers and 1.5 million tonnes of cargo[11].

Principal cities airports[12]	International		Domestic	
	Passengers	Cargo and courier (tonnes)	Passengers	Cargo and courier (tonnes)
Bogota	3,642,438	366,713	10,230,749	72,026
Barranquila	148,840	5,666	1,119,512	14,900
Cali	377,233	10,561	2,064,256	13,142
Cartagena	1,333,735	151	213,666	5,245
Medellin	156	1	741,695	2,255
Rionegro	531,649	60,127	2,037,040	17,842
Santa Marta	0	11	622,520	1,648

Road Network

The road network is very important to mention, considering that 66% of the cargo in Colombia is transported by road. Despite the importance, not all national roads in Colombia are paved, and the quality of the paving can vary.

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[7] Conpes' Document 3611, Port expansion plan 2009-2011 September 14th 2009. http://www.dnp.gov.co/PortalWeb/CONPES/DocumentosConpes/ConpesEcon%C3%B3micos/2009.aspx

[8] Proexport, Colombia a golden opportunity, 2008 -1- 22

[9] Port and Transport Superintendence, Colombian Ports 2009 Cargo Movement's report. http://www.supertransporte.gov.co/super/index.php?option=com_phocadownload&view=category&id=177&Itemid=373&lang=es

[10] Global Competitiveness Report, 2006-2007

[11] Proexport, Colombia a golden opportunity, 2008 -1 -22

[12] Aeronautical Authority, Cargo and Passengers transportation report, September, 2010.

Nowadays, the roads are usually built by the Government through the private sector by means of concessions.

The following tables show the aforementioned.

Distribution of cargo by transport means (%)[13]					
Road	Railroad	River	Air	Costing trade	Total
66.2	61.5	2.6	0.1	0.3	100

Paved road network					
Condition					
Very good	Good	Average	Bad	Very bad	Total (km)[14]
12.79%	36.51%	31.44%	18.49%	0.78%	10,147
Unpaved road network					
Condition					
Very Good	**Good**	**Average**	**Bad**	**Very bad**	**Total**
7.66%	13.64%	37.25%	41.09%	0.36%	3,207

2.1.3. Technological Readiness

Pursuant to the Global Competitiveness Report for 2009-2010[15], Colombia registered a better competitive position, improving 14 places in the rank. The factors that contributed to improving the ranking position are: the availability of the latest technologies, the implementation of technology regulations, the transfer of technology resulting from direct foreign investment, the increase of the internet and mobile phone users and the number of personal computers in the country.

Our country has access to 'Cable Transcaribeño', ARCOS, MAYA and Panamericano's submarine cables,[16] as well as other cable systems.

2.2. Special investment opportunities

2.2.1. Oil and gas sector

Colombia has a significant energy potential. *"Ecopetrol estimates that the Colombian potential reserves are equivalent to 47 billion barrels of oil. A mayor part of the territory remains unexplored, and there is the possibility of additional oil discoveries in the Cusiana,*

[13] Colombian Ministry of Transport. Annual Statistics 2007 report. The last information published in this report is form year 2006.
[14]http://www.mintransporte.gov.co/Servicios/Biblioteca/documentos/PDF/DIAGNOSTICO_DEL_TRANSPORTE_2009.pdf Ibid.
[15] National Planning Department (DNP), Global Competitiveness Report , World Economic Forum www.dnp.gov.co
[16] Proexport, Colombia a golden opportunity, 2008 -1- 22

Cupiagua, Caño Limón, La Cira-Infantas and Chuchupa-Ballena fields. All of them have proven reserves of more than a million barrels of oil."[17]

Taking into account the aforementioned, the oil and gas sector represents a great investment opportunity, especially because more than 80%[18] of the country's territory remains unexplored.

Regarding the oil exploration, in order to make matters more appealing, the Government changed the contractual model in 2003. By virtue of the Hydrocarbon Exploration and Production Agreement, the contractor company has more autonomy to develop and operate the facilities and has full title to the project's assets.

Moreover, the Colombian state receives the following benefits from the exploration and exploitation of hydrocarbons:

- Royalties, calculated according to the law. Spread from 5% to 25% according to production levels.
- Fees for subsoil use.
- Fees for high prices.

2.2.2. Energy sector

The Colombian energy sector represents a great opportunity to invest in two different aspects.

On one side, *"the current installed capacity of electricity is around 13,300 minimum legal wages, of which 65% is hydroelectric but the south, west and centre (including Bogota) regions are the largest energy consumers and do not have enough internal supply*."[19] Therefore, as electricity is a public service that can be rendered by private sector, under the auspices of the authorities, the Colombian government is currently searching investors through auctions in order to secure the possibility of supply energy after 2012.[20]

Additionally, there is an "*export plan to Central America, projected to start by 2008, through an electric interconnection project with Panama. Currently, both countries are studying the technical, economic and environmental feasibility of the project*."[21]

On the other hand, renewable energy sources are becoming highly important, taking into account that pursuant to Act 693 of 2001, every Colombian city with a population 500,000 or more must use a gasoline blend between fuels and ethanol (or other kinds of alcohol).

Hence, "*Colombia has the best developed regulatory framework in the region along with Brazil's offering several incentives to promote the sector*,"[22] which includes tax incentives that will be discussed below.

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[17] Nacional Hydrocarbons Agency, Invest in Colombia, http:/www.anh.gov.co
[18] Ibíd.
[19] XM – Economic Model of the Colombian Electricity System
[20] Ministry of Energy, press release, may 7, 2008 http://www.minminas.gov.co
[21] Proexport Colombia, http://www.proexport.com.co
[22] Ministry of Commerce, Industry and Tourism, http://www.mincomercio.gov.co/

2.2.3. Cocking coal reserves[23]

Colombia is the country with the greatest coal reserves in Latin America, with potential resources of 16,992Mt, of which 7,063Mt are measured reserves, 4,571Mt pointed out, 4,237Mt inferred and 1,119 Mt hypothetical reserves.

With the current rates of exploration activities, the measured coal reserves guarantee Colombia production for 120 years.

2.2.4. Tourism sector

An economic overview of this sector shows that "*according to the World Travel & Tourism Council (WTTC), real demand for trips and tourism in Colombia is expected to increase from USD 9,800 million to USD 14,300 million during 2006-2015, a real growth of 4.5% per year, greater than the growth rate of 4.1% expected for Latin America. The tourism sector currently accounts for 2.2% of total GDP in Colombia (USD 2,700 million), contributes 11.2% of total capital investments worth USD 1,800 million, and generates 380,000 direct jobs, equivalent to 2.2% of total employment in the country*."[24]

Beyond the economic information, the tourism sector results are very attractive to invest in, because the Colombian government is really interested in its growth; thus, there are tax incentives in order to make this sector more appealing.

[23] Colombia: a golden opportunity – iron and steel sector
[24] Proexport Colombia, Business Opportunities, Sectorial Information, Tourism.

3. Setting Up Business in Colombia

3.1. Types of business presence

3.1.1. Formalities

Due to recent changes in commercial regulation, the way that a company can be incorporated in Colombia depends on the amount of the assets and employees at the moment of incorporation. Therefore, companies are incorporated in Colombia by:

- Signing a private document that should include the incorporation articles and that must be registered with the Chamber of Commerce if the company that is going to be incorporated has ten or fewer employees or its assets do not exceed five hundred minimum legal monthly wages[25] (approximately USD 141,000 for 2011), or;

- Registering the byelaws with a public deed at any local notary's office and subsequently with the Chamber of Commerce if the company that is going to be incorporated has more than ten employees or its assets exceed five hundred (500) minimum legal wages.

3.1.2. Fees for the Trade Registry

Pursuant to Act 1429 of 2010, Law of First Time Employment ("LFE")[26] enacted on 29 December 2010, companies incorporated after this date will pay progressive fees for the Merchants Registry and its renewal.

This Act establishes gradual discounts for small companies[27] on the fees regarding the registry and renewal with the Trade Registry.

- For registration with the Merchants Registry during the first year of the company's activities, a 0% discount on the total fee established for the Merchants Registry.
- For the renewal of the Merchants Registry during the second year of activities, a 50% discount.
- For the renewal of the Merchants Registry during the third year of activities, a 75% discount.
- For the renewal of the Merchants Registry during the fourth year of activities, a 100% discount.

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[25] The minimum legal wages for 2011 is COP 535,600 (approx. USD 282).
[26] This law encourages the creation of new employment, with different incentives to the companies in their early stages, in order to increase the benefits and reduce the costs related with the set up a business
[27] Those companies which staff does not exceed than 50 employees and assets are not greater than 5,000 minimum legal wages (USD 1,410,000 approx.)

3.1.3. Corporation (SA)

A corporation must be incorporated with a minimum of five shareholders. Each shareholder is liable for the amount of its capital contribution, represented by negotiable shares.

The capital stock of a corporation is divided into authorised share capital, subscribed share capital and paid-up share capital. At the time of the company's incorporation, at least 50% of its authorised share capital must be subscribed and at least 33% of its subscribed share capital must be paid up. The balance must be paid within one year following the subscription.

Some characteristics of corporations are:

- If a corporation needs to be capitalised, it may issue shares or bonds convertible into shares.

- When new shares are issued, they may be offered at a price higher than their face value to increase the corporation's net worth. This excess in the price of the shares over their face value, also known as the premium on share placement, is exempt from income and complementary taxes at the time of the capitalisation. However, this value will constitute a taxable income at corporation level, when it is distributed.

- Shares may be sold at any time without restrictions, unless the corporation's byelaws provide for a special procedure or provides a pre-emptive right in favour of existing shareholders. When a corporation's shares are registered on the stock market, they may be freely negotiated.

- The shareholders' meeting can deliberate and reach decisions in a place other than the corporation's main offices, and even abroad, if the total of the corporation's shares are represented at the meeting.

- Corporations must have a statutory auditor ('revisor fiscal' in Spanish). They will also be supervised and monitored by the Superintendence of Companies, as long as the supervision of the corporation does not correspond to any other Superintendence and their assets or revenues are higher than 30,000 minimum legal wages (approximately USD 8,456,000 for 2011).

- The corporation will be dissolved when the 95% or more of the contributed shares belong to one shareholder.

3.1.4. Limited liability company (Ltda.)

A limited liability company has to be incorporated with a minimum of two partners and a maximum of twenty-five. The partners are liable for the amount of their capital contributions, except for tax and labour liabilities, in which case partners are jointly and severally along with the company in accordance with particular provisions.

The capital of the company must be fully paid at the time of the incorporation and divided into capital quotas of equal amount, which may be assigned in accordance with the provisions in the company's byelaws and Colombian law.

The limited company's highest management and administration body is the board of partners, in which the partners will have as many votes as they own capital quotas in the company. The capital quotas (shares) of limited liability companies may be assigned to other partners or third parties, after approval by the board of partners. Every share assignment implies
an amendment of the byelaws that must be legalised by a public deed and registered with the chamber of commerce of the company's registered seat.

A statutory auditor is mandatory if the byelaws require so, or when the assets are higher than 5,000 minimum legal wages (approximately USD 1,410,000 enforceable in 2011) or the revenues are higher than 3,000 minimum legal wages (approximately USD 846,000).

The limited liability company will be under the Companies Superintendence's supervision if its supervision does not correspond to any other Superintendence and their assets or revenues are higher than 30,000 minimum legal wages (approximately USD 8,46,000 for 2011).

3.1.5. Limited partnership (Sociedad en Comandita)

A limited partnership involves:

- One or more managing partners who are jointly and severally liable for the entity's operations.

- And one or more 'comanditarios' partners who limit their liabilities to their respective capital contributions (silent partners).

The partnership capital consists of the 'comanditario' partners' contributions and those of the managing partners or partners with unlimited liability.

Limited partnership entities can be subdivided into simple limited partnerships and shares partnerships. A simple limited partnership's capital is divided into partnership quotas, while a shares partnership capital is divided into shares.

3.1.6. Branch of a foreign company

A foreign company wishing to pursue permanent activities in Colombia, such as having offices or commercial establishments within Colombian territory, must set up a branch office in Colombia, and for this purpose it must register the following documents at a notary's office in the place chosen for its main office:

- A true and legalised copy of the byelaws of the head office.
- A minute issued by the head office governing body authorising the incorporation of new office in Colombia.
- Documents evidencing the head office company's existence and legal status of its representatives abroad.

3.1.7. Simplified shares corporation (SAS)

The SAS can be incorporated in Colombia with only one shareholder.

In every case, the incorporation of a SAS gives rise to a new legal entity completely independent of its shareholders or shareholder. The equity of the SAS is completely independent of the shareholders' equity.

The liability of the shareholders of SAS is limited to the amount of the capital contributed; the shareholders of a SAS will never be jointly and severally liable for tax or labour liabilities

It is possible to create different kinds of shares, such as shares with fixed dividends. Those are shares that grant the right to receive a fixed dividend notwithstanding the percentage of participation of the shareholder and without resign to the voting right.

A financial auditor is mandatory if stipulated by the byelaws or when the assets are higher than 5,000 minimum legal wages (USD 1,410,000 approximately) or the revenues are higher than 3,000 minimum legal wages (USD 846,000).

The SAS will be under the supervision of the Companies Superintendence if its surveillance does not correspond to any other Superintendence (official entity of enforcement) and the assets or revenues are greater than 30,000 minimum legal wages (USD 8,460,000 for 2011).

The structure of the SAS is simple: i) the SAS does not need a board of directors unless otherwise expressed in the byelaws of the company. All the management and representative activities can be carried out by the legal representative appointed by the shareholder assembly (which could be constituted by single or multiple shareholders); ii) the shareholder assembly could directly implement decisions such as approving the financial statements, the dividends distributions, all the corporative accounts, etc.; nevertheless, the shareholder assembly could assign these activities to a board of directors or to the legal representative.

The SAS can be incorporated with a private document; it is not necessary to grant a public deed before a notary public except if the shareholders will contribute property to the SAS

At the moment of incorporation, the subscription and payment of the capital do not have to comply with the specific proportion, thus the capital could be subscribed and paid under conditions, in proportions and on deadlines other than those provided in the Commercial Code for Corporations (SA). Nevertheless, in no case will the deadline for the payment of the shares exceed two years.

4. Labour Law Overview

Colombian legislation establishes a regular working day of eight hours – 48 hours per working week, from Monday to Friday or Monday to Saturday. The regular work day is from 6:00 a.m. to 10:00 p.m. Workers on shifts between 10:00 p.m. and 6:00 a.m. earn 35% more than the hourly wage.

The maximum length of the regular work day is eight hours, 48 hours per week, except for some special cases mentioned by the labour regulation.

Hours worked in addition to the normal working day are compensated as overtime. Overtime during the regular work day is paid 25% more per hour. Night overtime is paid 75% more.

Overtime is not paid to employees in managerial or trustworthy positions.

4.1.1. Foreign employees

Pursuant to Colombian Labour Code, employers are not restricted in hiring foreign employees.

Colombia used to have a proportion rule[28] which was abolished on 1 January 2011. Therefore, if a company expects to hire a foreign employee, there is currently no requirement or procedure regarding the number of foreign employees who could work for the company.

4.1.2. Types of labour agreements

Pursuant to the Colombian Labour Code, the labour contract is the agreement by which an individual agrees to render services to another individual or to a company, on the basis of the employee's continued dependency or subordination in exchange for compensation.

The labour contract can be verbal or in writing and, depending on its term, can be one of the following kinds of agreements:

- **Fixed-term contract**

This kind of contract can be signed for a period up to three years and is renewable indefinitely. If the period of the agreement is less than one year after having renewed the contract three times, the employer will have to sign a new agreement for at least a period of one year.

If the employer wishes to terminate the contract due to expiry, he/she should notify the employee thirty days before the expiry date. Otherwise, the agreement will be renewed tacitly.

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[28] According to the proportion rule the employer had to respect the following proportion: 90% of their ordinary employees had to be Colombian citizens and at least 80% of the reliable and qualified personal had to be Colombian citizens.

- **Open-ended contract**

This kind of contract does not have an expiry date, because it is not required by the parties or the type of work performed.

If the parties do not agree a specific term, it will be understood that the contract is an open- ended one.

- **Agreement for the duration of the work**

In order to be under an agreement for the duration of the work, the parties must sign a written contract that should include a detailed description of the activity or work to be performed by the employee, since the term of the agreement is determined by the time required to carry out the work.

- **Temporary contract**

This kind of contract is used when the employer is required hire temporary staff for less than one month.

Employees hired under this contract are excluded from receiving those labour benefits arising from work accidents and occupational illness, life insurances and funeral expenses.

4.1.3. Types of wages

There are two types of salary compensation in Colombia, being:

Ordinary salary: The employee will have the right to receive the following labour benefits besides a fixed or variable amount as monthly salary:

a. Severance payment ('cesantía' in Spanish): One month's salary for each year of work based on the last monthly wage, provided it has not been modified in the last three months of the year. If the salary has been modified, the average of the last 12 months is taken into account to determine the annual severance payment.
   This payment is due during the enforceability of the labour contract and its termination and has to be deposited in an individual account on behalf of the employee in a 'cesantias' fund chosen by the employee, until 14 February the following year to the one on which the 'cesantia' was accrued, for instance, 2010 severance (corresponding to one month of salary of 2010) should be deposited in the cesantia fund before 14 February 2011.

b. An annual 12% interest on the outstanding balance of the 'cesantía' as at 31 December of each year. It is payable directly to the employee in January of the year following the accrual of the 'cesantía', or on a *pro rata* basis at the end of the labour contract.

c. Service bonus (prima legal): One month's salary per year 50% payable in June and 50% in December. The bonus is paid proportionally to the time served in a calendar semester.

d. Annual leave: Fifteen paid working days per annum or proportionally to the time that the employee has been working.

Package salary: When the employee earns a salary higher than ten times the minimum legal wage (approximately USD 2,820 per month), the employee might agree to a package or integral salary, which cannot be lower than ten minimum legal wages, plus a benefit factor equivalent to the 30% of said salary.

The benefit factor includes all the social benefits already mentioned for the ordinary salary, except annual leave.

4.1.4. Social security regime

Employers and employees (including independent contractors) are obliged to contribute to the social security system. In addition to paying their own contributions, employers must withhold and remit the contributions of their employees. The system includes subsidies for Colombian citizens who cannot afford to make social security contributions.

All contributions are computed as a percentage of the employee's salary or wage. The ceiling for calculating the contributions that have to be paid by both employers and employees is 25 minimum legal wages. This means that the taxpayers earning more than 25 minimum legal wages will contribute to the social security system having as a contribution base this fixed amount (the excess of it is not taken into account). In the case of employees with a package or integral salary, the maximum base is 70% of the salary that in no case may exceed the cap already mentioned.
The rates for calculating the employer's contributions under the social security system are:

Fund	Employer's contribution rate	Employee contribution rate	Total
Health insurance	8.5 %	4%	12.5%
General pension scheme (old age, disability, survivors' pension and administrative expenses)	12%	4%	16%
Occupational accident insurance[29]	0.5 % (approximately)	N/A	0.5%

Employees who earn more than four minimum legal wages must pay an additional 1% for the general pension scheme towards solidarity fund.

[29] This contribution is only payable by employers and varies per job type, depending on the risks associated with the type of business performed by the employee.

Employees earning 16 minimum legal wages or more will have an additional contribution over their contribution base income, as follows:

Salary base	Employee additional contribution
From 16 to 17 minimum legal wages	0.2%
From 17 to 18 minimum legal wages	0.4%
From 18 to 19 minimum legal wages	0.6%
From 19 to 20 minimum legal wages	0.8%

The above payments are the employee sole's responsibility.

Pursuant to Act 1393 of 2010, from all income that the employee receives from the employer (regardless of this income being salary or non-salary) the base for the payments to general the pension scheme and health insurance most be at least 60% of such total income.

4.1.5. Payroll tax

All employers must contribute 9% of their monthly payroll. The total revenue of this contribution is allocated as follows:

- 3% to the Colombian Institute for Family Welfare (ICBF);
- 2% to the National Learning Service (Servicio Nacional de Aprendizaje, SENA)
- 4% to the family allowance fund (Cajas de Compensación Familiar).

4.1.6. Visas

The kind of visa that an investor or a foreign employee needs depends on the nature of the activities that the individual will perform in Colombia. The following are the main characteristics of the most common types of visas.

Type of Visa	Characteristics
Business visa	**Applicant:** • Legal representatives, directors or executives of foreign business, industrial or service companies with economic ties with a domestic or foreign company in Colombia. • Merchants, entrepreneurs or marketing students bearing a verifiable economic connection with a domestic or foreign company in Colombia. **Characteristics:** • Holders of this visa may conduct entrepreneurial activities in Colombia inherent to the interest they represent, such as attending a board of directors meeting, do business, and supervise the management of the company located in Colombia.

Type of Visa	Characteristics
Business visa	• The holder of this visa may not establish residence in Colombia and the activities conducted may not generate any fee or salary payments inside Colombian territory.Merchants, entrepreneurs or marketing students bearing a verifiable economic connection with a domestic or foreign company in Colombia. **Time granted:** • This visa works for multiple entries and could be valid up to a four-year period. The holder can remain in the country for up to six months per entry.
Investor's resident visa	**Applicant:** • This visa is granted to foreigners bringing a direct foreign investment on their behalf, of at least one hundred thousand dollars (USD $100,000), fulfilling the requirements set forth in the foreign exchange regime regulations.
Temporary employee visa	**Applicant:** This visa is granted, among others, to foreigners who: • Are hired by a public or private company, agency or institution and has to enter the country or remain in it, to carry out a job or activity in his/her field of specialty, or to provide technical training. • Are foreign journalists hired /commissioned by a national or international news or information agency. **Characteristics:** • Temporary employee visa has to be requested by the Company that is hiring the foreigner because the visa will be issued under its liability. • If it is the first time that the foreigner applies for this kind of visa, the request must be filed personally by the foreigner in any Colombian Consular Office, which means that the foreigner cannot be on Colombian territory at the moment of the application. **Time granted:** • Two years with the possibility of multiple entries to Colombia. However, the visa will expire if the foreigner leaves the country for a continuous period of time that exceeds one hundred and eighty days. Renewal of the visa may be requested before the period of two years has expired and the application can be filed in Colombia.

Type of Visa	Characteristics
Visitor's visa	**Applicant:** • This visa is granted to foreigners who enter the country without the intention of establishing residence. **Characteristics:** There are three categories: • (i)Tourist visa (just certain countries), (ii) Temporary visitor's visa and (iii) Technical visitor's visa. • If it is the first time that the foreigner applies for this kind of visa, the request must be filed personally by the foreigner in any Colombian Consular Office, which means that the foreigner cannot be on Colombian territory at the moment of the application. **Time granted:** • One hundred eighty calendar days (maximum) with the possibility of multiple entries to Colombia. • If this visa is granted to a person who is travelling to Colombia in order to render trainee services, the visa will be granted for a period of 45 days.

5. Foreign Exchange Controls

5.1.1. Foreign investment in Colombian companies

Colombia has a foreign exchange regime regulation that applies to foreign investments. Hence, all investment of foreign capital must be channelled through the exchange market by means of an exchange market intermediary (local bank) or a registered foreign currency bank account.

Since 1 December 2003, foreign currency transfers of capital investments into companies or non-profit associations established in Colombia will be automatically registered upon the filing of the Exchange Form No. 4 when converting the funds into local currency (Colombian pesos).

Once the investment is registered, the registration holder is entitled to:

- Remit abroad proven net profits that the investment periodically generates.
- Reinvest profits or retain them as surplus undistributed profits.
- Capitalise amounts with remittance rights.
- Remit abroad income received from selling the investment in the country, from liquidating the company, from portfolio, or from reducing the company's equity.

The registration of foreign investments mentioned above is a procedural issue; nevertheless, failure to comply with this procedure could lead to penalties being imposed on investors or their representatives.

Investment in kind and trusts must be registered with the central bank within the term of twelve months.

Finally, a change in foreign investor, due to purchasing the investment or for other reasons, must also be reported to the central bank. Failure to do so means the new investor will lose the aforementioned registration rights.

5.1.2. Supplementary investment account of branches of foreign companies

The Colombian branches of foreign companies are entitled to receive the initial capital investment from its main office, which should be classified as assigned capital investment.

Additionally, they may receive foreign currency as supplementary investment. In both cases, the foreign currency must be wired through the exchange market by means of an exchange market intermediary (local bank) or a registered foreign currency bank account and be registered filing the Exchange Form No. 4 to convert the funds into local currency (Colombian pesos).This registration is automatic.

5.1.3. Foreign indebtedness

According to exchange regulations, Colombian residents are only authorised to obtain credits in foreign currency from local or foreign financial entities registered with the central bank.

For entities abroad to be included in the list of foreign financial institutions issued by the central bank, it is mandatory for them to be characterised as financial institutions certifying the adequacy of the institution and its shareholders or complying with the regulation of money laundering in the jurisdiction where it is established.

Before the disbursement of the foreign credit, a deposit in Colombian pesos or US dollars must be granted by a Colombian exchange intermediary that should file the documents with the Colombian central bank. The deposit does not accrue any interest in favour of the debtor.

If the deposit is withdrawn before six months, the central bank will discount a proportional amount according to the time of the deposit. It is possible to pay only a penalty when the withdrawal of the deposit is done on the same day it is made.

Currently, the deposit is 0%.

All foreign credits must to be registered with an exchange intermediary (commercial bank) using Form No. 6, which should also be used to report any changes in the credit after registration; if the disbursement is simultaneous with the registration, this form does not have to be filled in; otherwise, Exchange Form No. 3 must be used to report any disbursement. .

5.1.4. Imports and exports

Imports and exports of goods are subject to the exchange market regulations, thus all payments related to those operations must be wired through the exchange market by means of an exchange market intermediary (local bank) or through a registered foreign currency bank account.

Taking into account the aforementioned, it is not allowed to offset obligations derived from foreign trade transactions already mentioned. If these provisions are not complied with, the parties would breach the exchange regulations and could be subject to fines of up to 200% of the proved infringement.

Imports

Colombian residents must pay amounts due to their foreign suppliers through the foreign exchange regime, for which they must fill in the Exchange Form No. 1.

The financing of import operations does not require registration with the central bank if the freight bill was issued after 1 September 2010. The financier could be the foreign supplier, a foreign financial institution or an exchange market intermediary in Colombia.

Only the financing of import freight bills issued before 1 September 2010 is required to be reported to the central bank by filing Exchange Form No. 6, provided the export transactions exceed USD 10,000.

Finally, it is mandatory to open a deposit in Colombian pesos or US dollars before the disbursement of the money. Currently this deposit is 0%.

Exports

Colombian residents have to formalise through the foreign exchange market the payments received from export operations. The formalisation must be done filing Exchange Form No. 2.

Advance payments for export operations that are channelled with effect from 1 November 2010 will not require to file a debt report with the central bank in the event that the export does not take place within four months of receiving the advance payment. Advance payments received before this date must be reported to the central bank by filing Exchange Form No. 6. For the financing of export transactions with documents issued after 1 March 2010, no report is required to the central bank.

Only the finance operations of export documents issued before that date must be registered with the central bank by filing Exchange Form No. 7 provided that the export transactions exceed USD 10,000.

5.1.5. Special regime

There is a special exchange regime in Colombia that is applicable to branches of foreign companies that perform activities related to the exploration of oil, gas, coal or uranium or those that render services exclusively to the hydrocarbons sector.

This special regime allows these branches not to reimburse foreign currency coming from its sales (as the other companies must do) and they cannot purchase foreign currency in the Colombian exchange market (CEM). Likewise, they should reimburse to the CEM the foreign currency as necessary to cover the expenditures in Colombian pesos of these branches.

Regarding the foreign investment, the initial capital investment from the parent companies of this kind of branches should be wired through the CEM and registered with the central bank using Exchange Form No.4. On the other hand, the supplementary investment must be registered six months after the end of the financial year as at 31 December by filing Exchange Form No. 13. The foreign investment should be updated every year before 30 June, using the same Exchange Form No. 13.

6. Trade And Customs

6.1.1. Free-trade zones

For the purpose of promoting trade, investment, creation of employment in some areas of the country, as well as implementation of the standards and obligations imposed by the World Trade Organisation –WTO – the Colombian Congress approved Act 1004 enacted in December 2005.This Act established a legal framework for the free-trade zone regime in which the incentives on revenues are not only tied to export markets but also to the domestic market.

Additionally, the government has issued other regulations aiming to unify all matters related to the free-trade zone regime.

Some of the main tax and customs benefits are:

- Tax related:

Industrial users of goods or industrial users of services are allowed an income tax rate of 15%. This reduced tax rate does not apply to commercial users located in a free-trade zone.
Additionally, the 15% income tax rate given to industrial users of the free-trade zones cannot be applied simultaneously with the special deduction stated in the taxation code, i.e. the 30% deduction from the amount of the effective investment in fixed tangible productive assets acquired until up to 31 December 2011[30].

- Customs related:

Exemption from payments of customs duties and VAT upon the introduction of merchandise from overseas to the free-trade zone, as long as the merchandise remains within the free-trade zone. Thus, the importers can maintain inventories of merchandise in warehouses in the zone without paying duties and VAT until the items are brought into the national customs territory. Additionally, the sale of goods from the National Colombian Territory to an industrial user of services or goods established in a free-trade zone are not subject to VAT, provided those goods are necessary for the development of the business objective of these users.

6.1.1.1. Colombian free-trade zone users

The following is a description of each kind of user that can operate in a free-trade zone

[30] According to Act 1430 of 2010, regular companies can no longer apply this benefit for investment in fixed tangible operating assets acquired after 1 January 2011, except those companies that have signed a legal stability agreement.

- **Operators**

Legal entities authorised to direct, manage, supervise and develop one or several free-trade zones, as well as to qualify their users.

- **Industrial users**

These legal entities can be classified as follows:

a. Industrial users of goods

Legal entities installed exclusively in one or several free-trade zones, authorised to produce, transform or assemble goods by processing raw materials or semi-manufactured products.

b. Industrial users of services

Legal entities authorised to render services exclusively in one or several free-trade zones. The activities that can be carried out by an industrial user of services include:

i) Logistics, transportation, distribution, packaging, labelling, classification;
ii) Telecommunications; scientific and technological research;
iii) Medical, dental and general health assistance;
iv) Tourism.

- **Commercial users**

Legal entities authorised to carry out activities such as trading, marketing and storage or preservation of goods. In addition, the commercial users cannot hold both qualifications simultaneously (with industrial user of goods or services qualification).

6.1.1.2. Types of Colombian free-trade zones.

Colombia has several kinds of free-trade zones, being:

- **Permanent free-trade zone**

An area of at least twenty hectares that has a certain infrastructure, required to operate for industrial users of goods/services and commercial users.

- **Special permanent trade zone**

Areas created for special projects with high economic and social impact for Colombia and to stimulate new investment and employment projects that increase the competitiveness of the free-trade zone. The special free-trade zone allows companies that are physically located outside of a geographic free-trade zone area to operate as a free-trade zone user and enjoy the aforementioned benefits.

- **Transitory free-trade zone**

Locations where trade fairs, expositions, conferences and seminars that are considered important for Colombia's economy and international economy will take place.

6.1.2. Trading companies (comercializadoras internacionales)

The international trading company or "*sociedad comercializadora internacional*" (hereinafter: C.I., following its Spanish abbreviation) is a company that exclusively trades and sells Colombian products abroad that were purchased in the local market or manufactured by associated or non-associated local companies or partners of such companies.

The C.I. must be a legal entity incorporated under any type of Colombian company, regulated by the Commercial Code, and should include within their business scope the possibility to import raw materials to supply the local market or to manufacture finished goods to be subsequently exported.

In order to get the benefits explained below, a qualification as C.I. must be obtained before the Colombian Tax and Customs Authorities (DIAN), proving the fulfilment of specific requirements set forth in the law.

The benefits granted by the tax law in accordance with the C.I. qualification are the following:

- The purchase of merchandise made by the C.I. in the local market and set aside for export is VAT exempt.

- Payments done by C.I. to local market suppliers of goods to be be exported do not accrue income tax withholdings on purchase, for which the normal tax rate is 3.5%.

- The manufacturing services rendered to C.I. with respect to goods that will be exported are VAT exempt.

7. Corporation Tax

7.1. Income tax

Companies established in Colombia (hereinafter: Colombian companies) are subject to corporation income tax on their worldwide income. Foreign companies are subject to this tax only on their Colombian income.

A company is established in Colombia for tax purposes if it was incorporated under Colombian law and its registered seat is in Colombia.

As a general rule, companies must keep their accounting records and pay their taxes using the accrual method.

Taxable Income

Colombian companies should determine their final income tax liability at the 33% rate on its net taxable income. The taxable income will be the result of the following procedure:

Gross revenues
(-) Restitutions, mark-downs (rebates) and discounts
(-) Non-taxable revenues
= Net revenues
(-) Costs
= Gross income
(-) Deductions
= Net income
(-) Exempted income
= Taxable income

There is an alternative method for the computation of the taxable income based on deemed income calculated on the net equity of the taxpayer, but it only applies when the ordinary income is lower than this alternative method.

7.1.1. Gross revenue

The concept of revenue is broadly defined by the tax law in order to include all ordinary and extraordinary earnings derived from the taxable period that upon collection can produce a net increase in the taxpayer's net worth, unless specifically exempt. The Colombian financial year runs from 1 January to 31 December of the calendar year.

For income tax purposes, it is understood that revenues are realised when they are effectively received in money or in kind in a manner that can be considered a payment, or when the right to demand them is extinguished by any other means other than the payment as i.e. the offset of debts.

However, bear in mind the following exceptions to the previous rule:

- The income or revenue earned by the taxpayers with the accrual system of accounting and who have to declare the income accrued in the tax year or tax period, except for the cases of sales with terms. The income is accrued when the right to demand a payment has arisen, notwithstanding the fact that it has not been received yet.

- The income or revenue coming from dividends from corporations or profits due to participations in limited liability companies or assimilated companies is deemed as received by the respective partners, stakeholders, associates, etc. when it has been distributed and its payment can be demanded.

- The revenue received from the selling of real estate will be accrued on the date of the public deed through which the sale is formalised (this is mandatory in Colombia for real estate), except for those sales that include instalments.

7.1.2. Non-taxable revenues

An example of non-taxable income that must be showed on the income tax return without having any financial impact for the taxpayer is the premium on share placement (in the case of corporations), which is exempt from income and complementary taxes at the time of the capitalisation (however, this value will constitute a corporation's taxable income at the moment of its distribution), and the revenues received from the insurers corresponding to the indemnity of actual damages (does not include the revenues due to loss on profits).

7.1.2.1. Special cases of non-taxable revenues

a. Dividends

The income received from Colombian companies as dividends or participations will be non-taxable revenues if it corresponds to profit on which tax has already been paid at the level of the Colombian company distributing them.

If the dividends or participations correspond to profit on which tax has not yet been paid at the level of the Colombian company distributing them, these revenues will be taxed.

b. Sale of shares

According to Section 36-1 of the Tax Code, income from the sale of shares registered in the Colombian stock exchange is non-taxable, provided the shares sold in the tax year by the seller are less than 10% of the outstanding shares of the company.

If the above is not applicable, the positive difference between the shares' cost basis and shares' price will be taxed at the current rate of 33%. Retained non-taxable earnings will not be taxed.

7.1.3. Cost

Costs can be defined as those expenses that are used directly in the acquisition or production of a good or to render a service. The following are some examples of how the cost of certain goods should be determined:

7.1.3.1. Inventory cost – movable assets

Movable assets are defined as those assigned to be sold in the normal course of the business and are usually treated as the inventory of the company.

The cost of the inventory for those companies that must file its income tax return with the signature of an accountant of a statutory tax auditor should be determined through the inventory's permanent system using FIFO or LIFO, retail, average or the specific identification method.

A taxpayer wishing to use another system should file a request with the tax authority in order to obtain authorisation.

7.1.3.2. Fixed assets

The Tax Code provides specific rules regarding how the cost of the different kinds of fixed assets should be determined, for example:

- The tax cost of movable goods is the acquisition price plus all the improvements and tax readjustments made until 1991 and the inflation adjustments made until 31 December 2006, less depreciation.

- The cost of real estate may be the value that was included in the previous year's real estate tax return or in the previous year's income tax return.

7.1.4. Deductions

7.1.4.1. General aspects

Expenses are deductible to the extent that they are:

- Necessary for the production of income.
- The expenses have a causal relationship to the activity that generates the income.
- The expenses are proportional to the income according to a commercial criterion.

Deductible items include business expenses, depreciation, interest payments, wages, social security payments, industrial and commercial tax (gross receipts tax), real estate tax, 25% of financial movements tax (GMF in Spanish); in the case of taxes, the deduction concerns the amount effectively paid, etc.

7.1.4.2. Special deductions

a. Costs and expenses incurred abroad

Costs and expenses incurred abroad in order to obtain national source income may be deducted without exceeding 15% of the net income tax, calculated before having credited such deductions. However, this limit does not apply if:

- The expenses are capitalised according to accounting techniques.
- The withholding taxes are duly applied if the payment is taxed.
- Payments made to commission agents abroad for the acquisition or the selling of goods, raw materials or other types of goods, as long as these payments do not exceed a percentage over the value of the operations during the taxable year settled by the Ministry of Treasury and Public Credit.
- Other special payments as stated by the tax regulation.

b. Payments to the head office or other associated companies located abroad

Colombian companies are entitled to deduct from its income the payments made to its head offices due to management expenses or royalties, as long as they have applied the corresponding withholdings when such payments are taxable in Colombia. If these operations are not subject to withholdings, because they are not taxable in Colombia, but they were carried out in accordance with the transfer pricing regulation, their deductibility is subject to the 15% limitation mentioned before. Otherwise, such payments are not deductible at all.

c. Depreciation

The depreciation caused by the normal wear and tear of assets used in business operations must be computed at a maximum annual percentage that will be deductible from the company's income.
Depreciation should be calculated using the straight-line method, the decline-balance method or the diminish-balance method.

Other depreciation methods can be used; however, prior approval from the tax authority is required.

It is important to clarify that for depreciation purposes it is necessary to consider the useful life of the fixed assets, which is defined as the time along which an asset can be used and generate income for the taxpayer. Keep in mind that the fixed assets used by the taxpayers in their activities would wear out as a result of their use and some assets depending on their nature and destination have longer life than others. The general rule for depreciation purposes is that the useful life for vehicles and computers is five years, that for machinery and equipment 10 years and that for buildings and constructions 20 years. This useful life is applied for the depreciation of fixed assets in order to determinate the depreciation rate, especially for the straight-line method.

d. Amortisation

Pursuant to Sections 142 and 143 of Colombian Tax Code, the necessary investment, other than the one made in real estate or made in order to achieve the aims of the business or activity, should be amortised over a period of five years or longer and in this proportion will be deductible every year (if there are no other particular provisions regarding the specific investment).

However, the above-mentioned period could be shorter if the business nature or its duration requires so.

- **Amortisation of intangible assets**

The aforementioned articles apply to the cost of intangible assets.

- **Amortisation for oil and gas industry and other natural resources industries**

The amortisation of ordinary and necessary investment can be treated as a deduction in the calculation of the taxable income of the oil and gas industries. The amortisation must be claimed in a period of at least five years, unless a shorter period can be justified.

These kinds of investment may be amortised using either the straight-line method or the units-of-production method.

In the case of unsuccessful exploration, the investment can be amortised in the same year of the failure or within the following two years against the profits of other wells.

7.1.4.3. Special deductions – tax incentives

a. Agricultural investments[31]

The individuals or companies that invest directly in agricultural plantations dedicated to the cultivation of fruit, rubber and cacao, as well as in drills that benefit the agricultural products can deduct in their annual tax return the value of these investments. However, this deduction may not exceed 10% of the taxpayer's taxable income.

b. Environmental investments

The cost of new investments made towards environmental enhancements or controls is also deductible if such investments have been accredited with the environmental authority. The deduction cannot exceed 20% of the taxpayer's taxable income determined before having credited such deduction.

Investment in certain kinds of scientific research

Taxpayers are entitled to a 125% deduction of the amount that they invest directly or through technological entities or non-profit research entities doing research on development projects or activities duly recognised by the National Council of Science.

[31] Tax Code, article 157

This deduction may not exceed 20% of the taxpayer's taxable income determined before having credited such deduction.

c. Investing in fixed operating assets

Until 2010, an extra deduction of 30% was available on the cost of the acquired fixed assets. However, Section 1 of the 2010 Act 1430 includes a paragraph in Section 158-3 of the Colombian Tax Code stating that as from year 2011, no taxpayer could apply for this benefit. As a consequence, from the 2011 financial year, income taxpayers can no longer claim this benefit.

Notwithstanding the above, if taxpayers submitted a legal stability agreement prior to 1 November 2010, they may apply the deduction provided that the agreement has been signed[32]. For this purpose, taxpayers should have complied with the following requirements:

- Included this deduction in the contract
- The premium must be based on the total value of the investment subject to stability.

In this case, companies and branches that acquire real productive assets during a fiscal year can deduct 30% of the investment made.

However, pursuant to the tax regulation, the deduction only applies if the tangible fixed operating asset has not been part of any transaction between the tax payer and (i) the rest of the direct subsidiaries or (ii) share binding companies or (iii) companies with the same majority shareholder. Furthermore, the assets must be depreciated using the straight-line method.

Additionally, this benefit is transferred to the shareholders or partners of the company who applied for such special deduction of operating assets.

d. Donations

Pursuant to the Colombian Tax Code, taxpayers who are required to file an income tax return in Colombia will be able to take as deduction the donations made during the tax year without exceeding 30% of their net income tax, calculated before having credited such deductions, if the donations fulfil the following requirements:

- The donor must be a non-profit foundation whose main corporate purpose is the development of social programmes, and the activities carried out by the non-profit foundation should be of general interest.

- The donor must be recognised as a non-profit entity and must be under the supervision of a State Authority.

- In the year prior to the one in which the donation was made, the donor should have filed an income tax return.

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[32] The term of the legal stability of the special deduction could not exceed three (3) years.

- If the donation is currency, it should have been made by check, credit card or through an authorised financial entity.

- The donor should manage the donations received through an authorised financial entity.

- The donor should furnish the donor with a certificate stating the destination, type (whether currency or goods) and the amount of the donation and the fulfilment of all the requirements mentioned above. This certificate must be signed by the statutory auditor of the foundation.

This tax benefit does not apply if the donations are shares, quotas or securities.

7.1.5. Exempt income – Tax incentive

a. Agricultural investment

The income generated from fruit, rubber, palm oil and cacao cultivation considered of late yield will be exempt from income tax for a period of 10 years, as long as the company fulfils certain requirements.

b. Investing in hotels

For a period of 30 years, income received from hotel services rendered in new hotels built since Law 788 of 2002 will be exempt from income tax until 2017.

Besides the previous tax incentive for the tourism sector, there is another rule in the Tax Code that stipulates that for a period of 30 years, income received from hotel services rendered in renovated hotels whose renovation has been performed since that Law 788 of 2002 is in force until 2017, will be exempt from income tax in proportion to the amount invested in renovating or enlarging the hotel.

7.1.6. Tax losses

7.1.6.1. Ordinary losses

Section 147 of the Colombian Tax Code states that companies can carry forward their tax losses (tax readjusted) against the taxable income earned in the following tax periods with no limitation of time.

It is important to mention that the possibility of carrying forward the tax losses without a limit of time and amount was introduced by Law 1111 of December 2006, before which tax losses could be carried forward over a period of eight years, limited annually to 25% of the loss value.

Based on ruling C 508 of 2008 of the Constitutional Court, losses can be carried forward as follows:

Losses	Realised between 2003 and 31 December 2006.	Realised from 2007 onwards
Period of time	8 years	Without a time limit
Amount	25% of the loss per year	Without a time limit

In order to carry forward the losses, such tax losses should have been declared in the income tax returns of previous years. Additionally, the ordinary losses should comply with the economic and tax reality of the entity, which means that it should be the result of the difference between the operating income against costs and expenses related to the operation of the company.

No carry-back is allowed in Colombian tax regulation.

7.1.6.2. Capital gains losses

Capital losses incurred upon the transfer of fixed assets that were held by the company for more than two years are deductible only from capital gains that result from similar transactions. Capital gains arising from the transfer of fixed assets that were part of the company for less than two years are treated as net income, thus the aforementioned rule will be not applicable for these cases.

7.1.7. Presumptive income

A presumption of income (presumptive income) is calculated every year, at 3% of the taxpayer's net worth as at the end of the preceding tax year. Some assets may be excluded from the net worth for this purpose.

If the calculation of the presumptive income is higher than the taxable income determined in accordance with the 'ordinary procedure' that mentioned before, the taxpayer should pay income tax over the presumptive income.

In the latter case, the amount by which the taxpayer's deemed income exceeds his net income calculated according to the ordinary procedure may be deducted from his gross income in the following five years (the amount may be tax adjusted).

7.2. Income tax treatment of leasing agreements

Financial leasing agreements are legally defined as agreements through which a leasing company (the lessor) (which in Colombia can only be financing commercial companies or Compañías de Financiamiento Comercial) or an international lessor (that may be the provider), delivers to an individual or corporate entity (the lessee) the possession of an operating asset (capital goods) acquired to be leased, and selected by the lessee for its use and enjoyment. In exchange, the lessee makes a regular payment over an agreed period, at the end of which the lessee will be entitled to acquire the asset against payment of the purchase option. Periodic or monthly payments include a portion of the price of the goods and therefore the option price is the residual price.

For accounting and tax purposes, leasing agreements with purchase options concluded after 1 January 1996 are classified as either operating leases or financial leases.[33]

Operating lease treatment applies to leasing contracts for real estate, (except land) agreed for 60 months or more, lease contracts for machinery, equipment, furniture and fittings for 36 months or more, and lease contracts for operating vehicles and computer equipment for 24 months or more.

Leasing contracts for land, leaseback agreements, and leasing contracts for assets with shorter terms than those indicated above are treated as financial leases for accounting and tax purposes.
It is important to note that all leasing contracts signed after 1 January 2012 should be treated as financial leasing, regardless of the nature of the lessee.

7.2.1. Financial leasing

- Lessor

A financial lease is treated as an ordinary loan. The leasing company records a monetary asset in the account 'leased assets' for the net current value of the leasing payments and the purchase option. All leasing payments should be split between amortisation and financial cost; the amortisation should be recorded as a reduction of the leased asset and the financial cost as operating income.

When the lessee company exercises the purchase option, it should pay the outstanding balance on the leased asset. If the purchase option is not exercised, the leasing company transfers the outstanding balance of the leased asset to the account 'assets for placement under lease'.

- Lessee

The asset is recorded as a non-monetary asset subject to tax readjustment and depreciation and a matching liability is also recorded. The asset and liability must be the current value of the leasing payments plus the initially agreed price of the purchase option.

Leasing payments are split into amortisation and financial cost. Amortisation is recorded as a reduction of the liability and the financial cost as a tax-deductible expense.

When the purchase option is exercised, its agreed value is used to cancel the balance of the liability and any difference between the amount paid and the liability balance goes to the financial statements.

7.2.2. Operating lease

Operating lease agreements receive the same accounting treatment as ordinary rental agreements. The leasing company records the assets as non-monetary items subject to tax readjustments and depreciation, and the received payments as operating income.

[33] Pursuant to section 127-1 of Tax Code

The lessee records operating leases in the same way as an ordinary rental agreement. The asset does not appear on the balance sheet and payments are charged to expenses.

Only small and medium-sized companies may apply for the operating lease if the legal requirements are met. . The size of the company is measured in the equity of the previous year to the current one.

7.3. M&A taxation

7.3.1. Merger

Under Colombian law, a merger of companies is a complex legal transaction by which one or several companies are dissolved, but not liquidated, to be absorbed by another company or to create a new company.

The merger is achieved by means of an equity transfer representing all the assets and liabilities of the absorbed companies into another absorbing company, which may be newly formed or pre-existing.

In this situation, the absorbing company or the new company acquires the rights and obligations of the dissolved companies as they were at the time of the execution of the merger agreement.

Tax effect of mergers

In accordance with the provisions contained in Section 14-1 of the Tax Code , the merger of companies implies neither alienation nor a sale of assets between the merged companies. For this reason, this kind of transaction does not generate income tax effect for those companies participating in it, nor value added tax (VAT) nor income tax for the involved companies.

Tax regulations stipulate that the absorbing or new company originating from the merger is responsible for paying the taxes, advances, withholdings, sanctions, interests and other tax obligations existing in the merged or absorbed companies.

The absorbing or new company may compensate its own net taxable income against tax losses of the absorbed entities but limited to the percentage resulting from taking the absorbed company's net equity divided by the absorbing company's equity and the absorbing entity must have the same line of business of the absorbed company.

7.3.2. Spin-off or demerger

In accordance with the commercial regulation (Act 222, dated 20 December 1995), there are two kinds of spin-off companies:

- When a company, without being dissolved, transfers in a block one or several portions of its 'net worth or patrimony' to one or more existing companies, or uses such portion(s) to set up one or more new companies.

- When a company is dissolved, but not liquidated, and splits its 'net worth or patrimony' into two or more portions that are either transferred to several existing companies or used to set up new companies.

Tax effect of spin-off

Pursuant to Section 14-2 of Colombian Tax Code, the spin-off of companies does not imply alienation or a sale of assets between the spin-off companies. For this reason, this kind of transaction does not generate income tax effects for those companies participating on it, and nor will value-added tax (VAT) arise from this transaction.

However, tax regulations stipulate that the spin-off company and the new company originating from the demerger are jointly liable for those taxes, advances, withholdings, penalties, interests and any other tax obligations existing or due at the moment of the spin-off, as well as any other tax obligation that could arise after the spin-off process but related to the preceding financial periods.

7.3.3. Acquisition of shares

Any acquisition, in Colombia or abroad, of shares in a Colombian company by residents or non-residents generates a tax liability in Colombia for the seller.

The taxable income is the positive difference between the selling price and the tax cost of the shares sold. The sales price cannot differ more than 25% of the market price of the shares on the sale date. The tax cost is calculated as the acquisition cost, plus tax adjustments. If the transaction is made with associated parties, the transfer pricing rules are applicable.

The portion of retained earnings already taxed at the Colombian company level and corresponding to shares to be sold can be subtracted from the taxable income. However, the excess of retained profits that has not been taxed at the Colombian company level would be taxable, unless such profits are capitalised.

If the shares are acquired from a foreign investor, proper registration with the central bank is required (as explained in a previous point) and the seller must file an income tax return within the month following the sale, regardless of whether there a tax to pay or not (tax due).

On the other hand, if a share transfer to a new owner abroad is the result of a merger or demerger transaction, the transfer does not generate income tax effects in Colombia.

7.4. Transfer pricing regime

Colombian regulations regarding transfer pricing rules (TP rules) are consistent with the spirit of the Organisation for Economic Cooperation and Development (OECD) Guidelines and are seen as part of a large government effort to prevent tax avoidance. TP rules include specific issues such as financial transactions, application of the inter-quartile range and adjustments to the median, when the taxpayers' margins or prices fall out of the range and considerations of the industry and/or life business cycles. TP rules apply to income taxpayers' engaging in cross-border transactions with foreign associated parties.

The concepts of an associate economic party or associate party, upon which the TP rules are based, should be considered as synonyms and are basically defined by reference to other rules that include situations ranging from statutory to economic dependency and control of companies by individuals (Commercial Code, Sections 260, 261, 263 and 264; Section 28 of Law 222 of 1995 and Tax Code, Sections 450 and 452).

Regarding formal obligations, income taxpayers obliged to fulfil TP rules requirements are those who perform transactions with associated parties located abroad that exceed the established caps of gross equity higher than (100,000 UVT – COP 2,513,200.000, in financial year 2011, which is approximately USD 1,323,000)) or gross income higher than (61,000 UVT – COP 1,533,052,000, in financial year 2011 that is approximately USD 807,000).

For the enforcement of the transfer pricing obligations, taxpayers should report on the informative return all operations entered into with foreign associated parties.
However, for supporting documentation purposes, only those operations exceeding 10,000 UVT – 251,320,000 Colombian pesos in the 2011 financial year (approximately USD 132,000) should be subject to the transfer pricing analysis. The supporting documentation should be prepared and made available to the tax authorities no later than 30 June following the relevant financial year. When requested by the tax authorities, it must be filed within a period of no more than 15 days from the notification date.

Pursuant to Act 4349 of 2004, the transfer pricing return must contain, among other information, the following: form fully completed; taxpayer's financial identification; income tax ID and country of establishment of the associated parties involved in the controlled transactions; transfer pricing method used to determine the prices or profit margins; inter-quartile range obtained in the application of the transfer pricing methodology; assessment of sanctions, when necessary; electronic signature of the taxpayer or its legal representative, its agents or the special agents.

In the case of control or holdings, when the controller or headquarter or any of its subordinated entities must file the individual informative return, the controller or head office will have to file a consolidated informative return listing all operations, including those involving affiliates that are not required to file the individual informative return.

Following the spirit of the OECD guidelines, TP rules specify the methods for the transfer pricing analysis, as well as the comparability factors that should be taken into account when assessing controlled transactions to those performed by independent third parties in comparable transactions. Section 260-2 of the Colombian Tax Code specifies six transfer pricing methods.

Finally, it is worth mentioning that these rules only impact the income and complementary tax computation regarding ordinary and extraordinary income and expenses (costs and deductions) and for the determination of assets and liabilities between associated parties. Therefore, TP rules will not affect the determination of other taxes under such transactions, such as industry and trade tax (gross receipts tax), VAT, customs tariffs (customs duties), etc.

7.5. Withholding Tax

7.5.1. Income withholding tax

Pursuant to Section 367 of Colombian Tax Code, the purpose of the income withholding tax is to collect income tax in a gradual way and during the taxable year.

Therefore, withholding tax applies to gross payments made to domestic and foreign companies[34].

7.5.1.1. General rates and concepts

The withholding tax rates vary depending on the kind of payment, for example:

Taxable company	Concept	Rate
National Company (including branches)	Services	4%
	Purchase of goods (excluding cars and real estate)	3.5%
	Fees and commissions	11%
	Prizes from lottery, gambling and gaming	20%
Foreign companies	Interest, commissions, royalties, leases, general services and payments due to copyrights or know-how	33%
	International transportation	3%
	Other cases different from those specially mentioned	14%
	Turnkey contracts and civil works	1% over the gross amount of the total payments made.

As far as withholdings with respect to foreign companies are concerned, it is important to consider that if the Colombian source income received by these companies is not entirely subject to some withholdings stated by law, or are subject to the 14% withholding rate mentioned above, the foreign companies will have to determine its final income tax liability at a 33% rate on net taxable income and file an income tax return. In the latter case, the

[34] Foreign companies are taxed only on their Colombian source income

withholdings can be treated as an advance payment and used as a tax credit against the final tax liability.

7.5.1.2. Special cases

The following are some cases of income tax withholdings applicable to payments made to foreign companies that have special rates or taxable bases.

a. Dividends

The payment of dividends to foreign shareholders who do not reside or are not registered in Colombia in their capacity as partners or shareholders of a company incorporated in Colombia is subject to income withholding tax at the following rates:

- If the dividend corresponds to profits on which tax will not be triggered at the Colombian company's level at the moment of its distribution, no income withholding tax will be applied.

- If the dividend corresponds to profits on which tax has not yet been paid at the Colombian company's level that distributes such dividends, the applicable rate is 33%.

b. Software licence payments

Although the applicable rate to those payments due to the granting of software licences by a foreign company is subject to income withholding tax of 33%, the withholding should be applied only over the 80% of the gross payment.

c. Technical and technical assistance services and consulting services

As stated on the paragraph 2 of Section 408 of the Colombian Tax Code, the payments or accruals for consultancy, technical services and technical assistance, supplied by entities not residing or established in Colombia, will be subject to income tax withholding at the 10% rate. We highlight that this withholding will be applied whether or not the services are rendered in Colombia or from abroad.

d. Interest considered foreign source income

As a general rule, interest derived from loans in Colombia or economically binding to the country are considered Colombian source income and are therefore subject to income tax withholding, as it was mentioned in the previous table.

Bear in mind that interest derived from loans obtained abroad by Colombian, foreign or mixed companies organised or incorporated in the country or by trust funds managed by trust companies organised or incorporated in Colombia which activities were considered of interest for the economic and social development of Colombia, were considered foreign income until 2010[35]. Law 1430 of 2010 eliminated this special treatment with effect from

[35] Subsection 5 of Section 25 of Tax Code

2011[36] and these amounts are considered domestic income with effect from 1 January 2011.[37]

Therefore, payments related to revenues from loans obtained abroad for a period of time of one year or longer or interest or financial costs from leasing contracts executed with foreign companies will be subject to income withholding tax at the 14% rate. Loans obtained abroad for a period inferior to one year will be subject to income withholding tax at the 33%.

In addition, the payments generated from leasing contracts for aircrafts or helicopters, executed with foreign companies will be subject to income withholding tax at the 1%.

7.5.2. VAT withholding

When a foreign company performs services subject to VAT, the Colombian company that hired those services must self-assess the 100% of the VAT accrued and pay it to the Colombian Tax Authority by means of a withholding tax return.

Likewise, if the Colombian company that is making the payment is VAT liable, the VAT paid can constitute an input VAT, if related to VAT taxed operations.

The services subjected to VAT have a direct relationship with goods and services produced or rendered by the Colombian company and excluded from VAT, the VAT accrued due to the payment to the foreign company will constitute a higher cost of these goods or services.

This rule also applies to some cases between Colombian residents, but only regarding 50%[38] of the accrued VAT.

7.6. VAT

The Colombian value-added tax (VAT) is levied on (i) the sale of inventories corresponding to tangible goods, (ii) the importation into Colombia of taxed goods, (iii) the sale or running of gambling and gaming services (excluding the lottery) and (iv) the rendering of services inside Colombian territory.

VAT is computed in bimonthly periods using the subtraction method, which means crediting the VAT input generated due to the payment of said tax on the purchase of goods, the acquisition of services or the import of some goods against the tax liabilities arising from the levied activities performed by the taxpayers.

The table below includes a general description of the tax elements.

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[36] Sections 47 and 65 of Law 1430, 2010
[37] Section 67 of Law 1430, 2010
[38] Tax Code, Section 437-1

Taxable transaction	Taxable person	Taxable amount
The sale of inventories corresponding to tangible goods. Tax regulation considers as a sale any transaction that supposes the transfer of the property, with or without a sales price. Thus, it does not matter if the sale operation is for free.	Merchants regardless the stage of the production and distribution cycle in which they participate.	The amount of the transaction. Moreover, for cases of free sale of goods transactions, the regulation has established a minimum tax base which corresponds to the commercial value of the goods involved in the transaction.
The render of services (except from those specifically exempt)	Those who render taxable services.	The tax is calculated on the entire value of the transaction including the direct financial expenses, accessory expenses, transportation, installation, insurance, commission fees, guaranties and other complementary payments, even if such payments were invoiced or agreed separately, or are not subject to tax considered in a separately way.
The importation into Colombian territory of movable tangible goods	Importers, whether they act as such habitually or occasionally	The tax is computed on the CIF value of goods (Cost, Insurance and Freight value representing the landed value of goods at the first port of arrival), plus customs and import taxes.

Type of Rate	Concept	Rate
Standard rate	This is the general rate applicable to rendering services, as well as the sale of goods located in Colombia.	16%
Increased rate	These rates apply to certain cars and motorcycles. Mobile phone services are taxed at 20%.	20-25-35 %
Reduced rate	This rate applies to certain mass consumption goods and services.	10%

Reduced rate	This rate applies to cleaning and security services, temporary employment services and services rendered by cooperatives.	1.6%
Exemptions	For exportation of goods and services and certain domestic supplies. Certain transactions are subject to VAT at zero rate and concede the taxpayer the possibility of recovering the related input VAT previously paid in the purchases and importations.	0%

7.7. Financial movements tax (bank debit tax)

Financial movements tax is accrued by the performance of financial transactions through which a disposition of resources is made. The rate of the tax is four per thousand (4x1000).

The taxable base is the total value of the financial transaction and taxpayers are the users and clients of financials entities, controlled by the Finance Supervisor and the Supervisor of Solidarity Economy.

According to these provisions, Colombian corporations will be levied the financial movements tax whenever they dispose of their resources through financial transactions. However, the financial movements tax will be abolished in tax year 2018 by means of a gradual reduction of the tax rate, as follows:

2 x1000 for years 2014 and 2015
1 x 1000 for years 2016 and 2017
0 x 1000 starting from year 2018

Keep in mind that 25% of financial movements tax is deductible from income tax regardless of whether its payment has a relationship of cause with the activity that generates the income, as long as it is duly supported by the withholding agent. In addition, this deduction will be increased to 50% as from the 2013 financial year.

7.8. Net worth tax

This tax is established only for tax year 2011, taking as taxable event the net wealth owned on 1 January 2011, for taxpayers whose net equity is greater than COP 3,000,000,000 (USD 1,579,000 approximately).

The tax rate is 2.4% for net equity between COP 3,000,000,000 (USD 1,579,000) and COP 5,000,000,000 (USD 2,631,000) plus a surcharge of 25% for an effective rate of 3%. For net equity greater than COP 5,000,000,000, the tax rate will be 4.8% plus a surcharge of 25% for an effective rate of 6%. The tax to be paid can be divided into eight equal quotas payable during the years 2011, 2012, 2013 and 2014.

The net equity value of the shares held in Colombian entities and the first COP 319,215,000 (USD 168,000 approximately) of the value of the taxpayer's house for living are excluded from the taxable base.

Other exclusions are provided for compensation family funds, employee funds and associations; for immovable fixed assets acquired and assigned to environmental improvement and control, amongst other things.

It also indicates that non-profit corporations, foundations and associations, and other public entities are not subject to this tax, nor entities under liquidation, reorganisation or restructuring laws. The equity tax is not deductible for income tax purposes

Pursuant to Decree 4825, 2010[39], people who are income taxpayers and own net equity exceeding COP 1,000,000,000 and lower than COP 3,000,000,000 as at 1 January 2011 are liable to pay the net worth tax

The tax rate is 1% for net equity between COP 1,000,000.000 (USD 526,000 approximately) and COP 2,000,000,000 (USD 1,053,000). For net equity between COP 2,000,000,000 (USD 1,053,000) and COP 3,000,000,000 (USD 1,579,000), the tax rate will be 1.4%.

In this case the net equity value of the shares and stock shares held in Colombian entities and the first COP 319,215,000 (USD 168,000 approximately) of the value of the taxpayer's house for living are excluded from the taxable base.

7.9. Stamp duty

Stamp duty was gradually abolished. The rate upon taxed documents entered as from 1 January 2010 is zero.

7.10. Industry and commerce tax (gross receipts tax)

The industry and commerce tax is a municipal tax that is levied on industrial, commercial and services activities carried out, permanently or occasionally, with or without a business establishment, within a municipal territory of Colombia.

The tax rates vary depending on the kind of activity performed and the municipality; however, the rates applicable to municipalities other than Bogota City should be between 0.2% and 1%[40] and for Bogota between 0.414% and 1.04%.[41]

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[39] The Colombian Government issued Decree 4580, 2010, declaring the *Estate of Emergency,* as a result of the strong rains and floods during the second semester of 2010 that have affected more than 1,2 million people.
As a consequence, the Colombian government issued Decree 4825, 2010, in order to provide resources and face the emergency.

[40] Law 14 of 1983, article 33.

[41] Acuerdo 065 of 2002.

8. Individual Taxation

8.1. Income tax

8.1.1. Taxpayers

First of all, it is important to clarify that only for tax purposes, residence is defined as continuous presence in the country for more than six months of the year or taxable period, or that is completed within it, as well as the non-continuous presence for more than six months in the year or taxable period.

In addition to this, Colombian citizens whose family live in Colombia or whose main place of business is Colombia are considered Colombian residents, regardless of whether they remain in the country or not. This rule does not apply to foreign citizens.

Taking into account the aforementioned, individual taxpayers can be summarised as follows:

Taxable person	Income
Colombian residents	Subject to income tax in respect of their worldwide income.
Non-resident individuals	Subject to income tax only in respect of their Colombian source income.
Foreigners that are residents	During the first four years of their stay in Colombia they are subject to income tax only in respect of their Colombian source income. Thereafter they will be taxed on their worldwide income.

8.1.2. Taxable income

The taxable income of an individual is the sum of all of their ordinary and extraordinary revenues, unless specifically exempt, obtained during the taxable period that upon collection can produce a net increase in the taxpayer's net wealth.

In order to obtain the taxable income, the base is reduced by applicable deductions and allowances. There are also some types of income that are not taxed and will reduce the taxable income.

As a general rule, taxpayers should report their income and pay their taxes on a cash basis.

8.1.3. Rates

Individual income tax rates are progressive in accordance with the level of taxable income obtained, as follows:

Taxable income in UVT (tax value unity)	Tax rate
0 up to 1,090 UVT (COP 27,394,000 or USD 14,400 approximately)	0%
From 1,090 UVT up to 1,700 UVT (from COP 27,394,000 to COPP 42,724,000 or USD 14,400 to USD 22,400, approximately)	19%
From 1,700 UVT up to 4,100 UVT (COP 42,724,000 to COP 103,041,200 or USD 22,400 to USD 54,232)	28%
From 4,100 upward (COP 103,041,000 or USD 54,232)	33%

8.2. Income withholding tax

8.2.1. Income withholding tax for Colombian residents

Colombian source income coming from employment, investments and capital gains obtained by residents is usually subject to withholding income tax over the gross income.

If the taxpayer is not compelled to file an income tax return, the withholdings from his payments will be considered income tax. On the contrary, the withholdings of taxpayers that must file an income tax return (at the moment of filing it) can be treated as an advance payment and used as a tax credit against the final income tax liability.

8.2.2. Income withholding tax for non-residents

As previously explained, non-residents are subject to income tax only in respect of their Colombian source income, and the tax generated from this income is usually collected by means of the income tax withholding.

Therefore, most of the payments made by Colombian residents to non-residents are subject to income tax withholding over the gross income and only if the Colombian resident or established fails to withhold the applicable percentage of withholding tax to the gross income, the non-resident will have to determine the final income tax liability at 33% over the net taxable income. The amounts effectively withheld can be treated as an advance payment and used as a tax credit against the final tax liability.

The withholding rates applicable to non-residents are the same as for foreign companies.

9. Legal Stability Agreements

In order to promote new investments or to extend the existing ones, Law 963 of 2005 establishes the possibility of signing a legal stability agreement with the Colombian government.

Through the signing of this kind of agreement the Colombian state will guarantee that the regulation included in the agreement and pointed out as necessary, in order to make the investment, will be still applicable to that investment if any modification or revocation to such regulation is made by the Colombian Congress. In exchange the investor must pay a premium equivalent to 1% of the annual investment.

The investor could be a person or a legal entity, domestic or foreign, that should make an investment in Colombia at least of 7,500 minimum legal wages (approximately USD 2,008,500). The investment should be made in, among other things, tourism, industry, agriculture, mining, oil, telecommunications, forestry exports, or the building sector.

The agreement could last between three years to 20 years and is a good legal tool to assure that the rules in force at the moment of the investments will continue to be applied in the case of future modifications.

Bear in mind that the net worth tax established by Decree 4825, 2010, will not be included in this kind of agreements.[42].

[42] According to Section 8 of Decree 4825, 2010

10. International Taxation

10.1. Tax treaties

Colombia has signed four tax treaties to avoid double taxation, with Spain, Chile, Switzerland and the CAN (Andean Community). The CDIs with CAN, Spain and Chile are currently in force, the other one is not in force due to approval procedures that must take place in the signing countries.

The following chart summarises the main aspects of these treaties.

Treaty	Dividends	Capital gains	Royalties	Services
CAN (Andean Community) **Bolivia** **Ecuador** **Peru**	The dividends will be taxed only in the country where the Company distributing them is registered.	The treaty does not impact the taxation on capital gains as it merely defines which jurisdiction is entitled to levy it. The general rule is that capital gains will only be taxed in the country where the good (asset) is located.	The royalties regarding intangible assets will only be taxed in the country where the good is used or the copyrights are registered.	The payments due rendering services by employees, professionals, technicians or any other personal services, will only be taxed in the country where such services are rendered, excluding the salaries or remunerations received by: a) Government employees who render services to a country member of the treaty. The income received by these employees will only be taxed by the country which they are working for, despite the place where the services are rendered.

Treaty	Dividends	Capital gains	Royalties	Services
				b) The crew members of vessels, airplanes or any other transport means. Their incomes will be taxed by the country in which the employer resides. c) Income received from professional services, technical services, technical assistance and consultancy services companies will only be taxed in the treaty country where such services provide benefits. The treaty presumes that the services generate benefits in the place where the correspondent expense is booked.
Spain	Dividends distributed by a corporation, resident in one of the treaty countries, to a resident in the other	Capital gains realised by a resident of a contracting state, resulting from the sale of real estate located in the other contracting state, may be taxed in the other contracting state.	Royalties paid out from one contracting state to a resident of the other contracting state may be taxed in the other contracting state. Nevertheless, the	Salaries or any other payments due to a job received by a resident of a contracting state can only be taxed in the country where the person resides, unless

Treaty	Dividends	Capital gains	Royalties	Services
	treaty country may be subject to tax in the other country. However, such dividends can also be subject to tax in the country where the company that distributes the dividends is registered, according to the provisions of the national laws of this country, but in this case the tax must be limited as follows: • 5% • 0% if the recipient of the dividends is a corporation that owns 20% or more of the shares	The country of the investor grants a tax credit of the tax paid upon the equity. Capital gains resulting from the sale of movable goods that are part of the assets of a permanent establishment that an enterprise of one contracting state has in the other contracting state may be taxed in the other contracting state. Revenues arising from the alienation of vessels or aircrafts exploited in international traffic can only be taxed in the contracting state where the registered seat of the enterprise is located. The revenues arising from the alienation of goods other than the above-mentioned can only be taxed in the contracting state where the seller resides.	royalties may be taxed in the contracting state of the payer, according to its national regulation, but in this case the tax is limited to 10% of the gross amount of the royalty. The aforementioned does not apply if the receiver of the royalties performs in the other state industrial or commercial activities by means of a permanent establishment and the royalty is related to the activities performed in such establishment, because in such a case the rules related to business profits apply.	the work is performed in the other contracting state in which case this state can also tax the income. However, the income can only be taxed by the state where the employee resides in the following events: • The worker remains in the other contracting state for a period no longer than 183 days in any period of twelve months that begins or ends in the taxable year. • The employer paying the salary or any other amount of money is not a resident of the other contracting state. • The payments are not supported by a permanent establishment of the employer, located in the other

Treaty	Dividends	Capital gains	Royalties	Services
	of the corporation paying the dividends The abovementioned would only be applicable to dividends distributed from Spain to Colombia, given that the income tax at 7% is no longer in force in Colombia and therefore such reduction of taxes will not apply However, if dividends are distributed from profits that have not been subject to income tax at a corporate level, they would be subject in Colombia to a 33% income			contracting state.

Treaty	Dividends	Capital gains	Royalties	Services
	withholding tax (regarding the part that was not subject to income tax at corporate level) and such rate will be reduced to zero provided that they come from exempt income; the profits have been reinvested for a period not shorter than three years in the activity generating income and the Spanish investor has no less than the 20% participation in the shares of the Colombian entity			
Chile	Dividends paid by a company resident of one contracting state can be	Capital gains realised by a resident of a contracting state, resulting from the sale of real estate located in the	Royalties paid from one contracting state and to a resident of the other contracting state may be taxed in	Income earned by an individual who is resident in a contracting state, resulting from rendering professional

Treaty	Dividends	Capital gains	Royalties	Services
	subject to tax in the other contracting state. However, such dividends can be subject to tax in the contracting state where the entity resides that distributes the dividends, according to the regulation of such state. The 33% income tax rate applicable to dividends by a Colombian company when such dividends do not come from profits already taxed at the company's level can be reduced to 7% when distributed to a non-Colombian	other contracting state may be taxed in the other contracting state. Capital gains resulting from the sale of movable goods that are part of the assets of a permanent establishment that an enterprise of one contracting state has in the other contracting state may be taxed in the other contracting state. Capital gains resulting from the sale of ships and airplanes used in international operations, or from the sale of movable goods related with the use of such ships and airplanes, can be taxed only in the state where the seller is resident. Capital gains realised by a resident of a contracting state, resulting from the sale of shares in a company that is established in the	the other contracting state. However, these royalties may also be taxed in the state where they originated, but if the beneficiary of the royalties is a resident of the other contracting state, the respective income tax must not exceed 10% of the gross payment. Royalties include the operation of intangible assets; the use or the right to use industrial, commercial, and scientific equipment; and the rendering of technical assistance, technical services, and consultancy.	services or conducting any other independent activity, can only be taxed by that contracting state except in the following cases: • The individual has a fixed seat in the other contracting state through which the respective activities are regularly conducted; in this case, only the other contracting state could tax the income attributable to the fixed place. • The individual remains in the other contracting state for more than 183 days within a period of 12 months that begins or ends in a taxable year; in this case, only the other contracting state can tax

Treaty	Dividends	Capital gains	Royalties	Services
	resident if the dividends come from exempt profits and these have been reinvested for a period not less than three years in the activity generating income.	other contracting state, may be taxed by this state if: (1) the capital gains result from the sale of shares of which 50% of the value derives from real estate located in the other state; or (2) the beneficiary of the capital gains has owned more than 20% of the capital of the company for a period of 12 months. Any other capital gains realised by a resident of a contracting state, resulting from the sale of shares in a company that is a resident in the other state, may be taxed in the other contracting state but the tax rate should not exceed 17% of the capital gains. Capital gain resulting from the sale of any other good, different from those mentioned above, would only be		the income attributable to the activities carried out in that state. Salary income received by a resident of one contracting state can only be taxed in that state. Income obtained by a resident of one contracting state as an employee in the other contracting state can only be taxed in the former one if : a) The employee does not reside for a period exceeding 183 months within a 12 months period; b) The wages are paid by someone who is not a resident of the other contracting state; c) The wages do not come from a permanent establishment that the employer has in the other contracting state.

Treaty	Dividends	Capital gains	Royalties	Services
		taxed in the contracting state where the seller is resident.		
Switzerland	1. Dividends distributed by a resident company in one of the contracting states to a resident in the other contracting state may be subject to tax in the first contracting state. However, such dividends can also be subject to tax in the country where the company that distributes the dividends is registered according to its domestic regulation, but in this case, if the real beneficiary of such	• The capital gains gotten by a resident of one contracting state due to the transfer of real estate situated in the other contracting state or may be taxed in this last country. • The gains due to the transfer of movable goods which are part of the assets of a permanent establishment that a company from one contracting state has in the other contracting state may be taxed in this other contracting state. • The gains due to the transfer of vessels and aircrafts used in international	Royalties paid from a resident of one state to a beneficiary that resides in the other contracting state may be taxed in this other state. However, these royalties may also be taxed in the state where they originate from according to the national laws of such state; however, the respective income tax must not exceed 10% of the gross payment. The rules mentioned above do not apply if the beneficiary of the royalties performs industrial or commercial activities by means of a permanent establishment in the contracting state where the royalties came from and the rights or goods, regarding the	Salaries or any other payments due to a job received by a resident of a contracting state can only be taxed in the country where the person resides, unless the work is performed in the other contracting state, in which case this state can also tax the income. However, the income can only be taxed by the state where the employee resides in the following events: • The worker remains in the other contracting state for a period of time no more than 183 days in any period of twelve months that begins or ends in the taxable year. • The employer paying the

Treaty	Dividends	Capital gains	Royalties	Services
	dividends is a resident of the other country, the tax cannot exceed the following limits: • 0% of the gross amount of dividends if the recipient of the dividends is a company that owns at least 20% or more of the capital of the company that pays the dividends • 15% of the gross amount of dividends in all other cases. The afore-mentioned	traffic can only be taxed in the contracting state where the company has its headquarters. • The gains obtained by a resident of one of the contracting states derived from the transfer of shares or any other capital rights in a company established in the other contracting state can be subject to tax in this last state if such gains come from the transfer of shares whose value is directly or indirectly derived from more than 50% from real estate placed in that other state. • The gains derived from the transfer of any other goods different to	royalties that are being paid are related to such establishment. However, if the debtor has a permanent establishment located in one of the contracting states (regardless whether the debtor is a resident of these states) and the duty of paying the royalties is related to such establishment, the royalties are considered to come from the country where the permanent establishment Is located. This treaty established special rules regarding such cases in which the parties, due to their relationship, agree royalties higher than those that would have been paid to third parties.	salary or any other amount of money is not a resident of the other contracting state. The payments are not supported by a permanent establishment of the employer, located in the other contracting state.

Treaty	Dividends	Capital gains	Royalties	Services
	does not apply if the recipient of the dividends performs activities through a permanent establishment placed in the state where the company that pays the dividends is resident and such dividends are related with that permanent establishment.	those mentioned above will be subject to tax in the country where the seller resides.		

10.2. Tax credit

Colombia avoids international double taxation by granting a tax credit that consists of the possibility for a national or foreign individual with five years of residence, who are income taxpayers, to take as a tax credited the amount of foreign tax paid upon foreign source income taxed in Colombia, as long as the foreign tax does not exceed the Colombian tax that would be due on the income received from abroad. Recently this subject was modified by Law 1430, 2010, which introduced the following changes:

The tax credit will apply to the tax year in which the payment was made or in the following four taxable years, taking into account the limits that we mentioned before.

Regarding dividends or participations distributed by foreign companies, the receiver of such revenues will be entitled to apply the tax credit taking into account that the amount of the discount is the one resulting from multiplying the amount of such dividends by the income tax rate applicable to the profits of the foreign company that generates and distributes those dividends.

The taxpayer who receives dividends must have a direct participation in the capital of the company of at least 15% of the shares (excluding the shares without voting rights), in order to apply the tax credit.

When the company distributing the dividends taxed in Colombia received dividends from other companies, located in Colombia or abroad, the value of the discount will be the amount resulting from multiplying the dividends received by the citizen taxpayer at the income tax rate applicable to the profits that generated them.

It is important to emphasise that the domestic taxpayer who receives dividends must have an indirect participation in the capital of the subsidiary company at least 15% of the shares (excluding the shares without voting rights), in order to apply the tax credit.

Furthermore, when the dividends have been taxed in the country of origin, the tax credit will be increased by the amount of such burden.

According to Section 46 of Act 1430, 2010, the above-mentioned rules will apply with effect from 2011 for dividends that the taxpayers receive irrespective whether they are distributed from profits of other taxable years.

In all cases that we mentioned above the taxpayer is responsible to prove the payment made in each country where the companies are located; for this purpose it is necessary to use a tax certification issued by the tax authority or a document that demonstrates this situation.

Finally, it is not allowed to carry back the tax credit.

10.3. Law of first-time employment ('LFE') Tax credit

For the purpose of creating new employment and benefits for the youth and the vulnerable Colombian population and implementing different measures in order to reduce costs related to the creation of new companies, the Colombian Congress approved Act 1429 enacted in December 2010. Additionally, this Act established different incentives to the small companies in their early stages[43].

This Act defined as small companies those companies whose staff do not exceed than 50 employees and whose assets are not greater than 5,000 minimum legal wages (approximately US 1,410,000 enforceable in 2011). Additionally, for this purposes this Act defined the start of the activities by small companies, such as the date of the registration in the Chamber of Commerce.

Taking into account the above, we highlight the following benefits:

- Gradual income tax rate since the start of activities by the small companies, according to the following parameters:

  0 % of the income tax rate during the first and second tax year.
  25 % of the income tax rate during the third tax year
  50 % of the income tax rate during the fourth tax year
  75 % of the income tax rate during the fifth tax year
  100 % of the income tax rate during the sixth tax year

[43] Please see chapter 3.1.2

- No withholding tax and presumptive income for five years from the start of activities. In the first case the companies are liable to prove to the withholding agent the registration date by means of a certification from the Chamber of Commerce or registration in the unique tax registry (‘RUT’).

- A gradual payment of the payroll taxes from the start of activities by the small companies, according to the following parameters:

  0 % of the payroll taxes since the start of activities.
  25 % of the payroll taxes for the third year
  50 % of the payroll taxes for the fourth year
  75 % of the payroll taxes for the fifth year
  100 % of the payroll taxes during the sixth year

- Furthermore, all companies which hire people under 28 years old and women above 40 years old who have not been employed during the last year, people with disabilities, people who have been obliged to leave their hometowns because of the armed conflict and people who have left the illegal armed groups, may obtain as a tax credit in the income tax calculation the payments of the payroll taxes and other contributions of the payroll. For this purpose, the employers must increase the number of employees with respect to the previous year.

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