



## Colombia

### Introduction

In Colombia, a foreign individual is generally liable for tax on income and property sourced or situated in Colombia, before the fifth year of residence in the country. For foreign taxpayers who are resident for fiscal matters, tax is levied on net income and applied at progressive rates. For foreign nonresident taxpayers whose home country has not signed the New York Convention for the Protection of Migrant Workers, income tax is levied on net income at a flat rate of 33 percent. Net income is calculated by subtracting allowable deductions from total assessable income.

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### Key messages

Extended business travelers are likely to be taxed on employment income earned during their time working in Colombia.

# Income tax

## Liability for income tax

A person's liability to Colombian tax is determined by the source of income and the situation of the person's property. The tax rates are dependent on whether a person is a resident for fiscal matters of Colombia or a nonresident.

### Resident

Colombian law sets out that a person is considered resident for fiscal matters in Colombia if the individual remains in the country, whether or not the stay is continuous, for a period of more than six months during a fiscal year (i.e., January 1 to December 31) or if, within the fiscal year, the six months of continuous stay are completed.

A resident also includes a Colombian national whose family or business remains in the country even though the Colombian national resides in a foreign country.

### Nonresident

A person who does not meet the criteria of a resident is considered to be nonresident for fiscal matters.

A person who spends less than six months in Colombia during a fiscal year is therefore nonresident for fiscal matters.

Generally, a Colombian national who is resident for fiscal matters in the country is liable for tax in Colombia on worldwide income.

Colombian nationals, who are considered nonresident for fiscal matters, and foreign taxpayers, before their fifth year of residence in Colombia, are generally liable for tax in Colombia only on income derived directly or indirectly from a Colombian source.

### Definition of source

Employment income is generally treated as Colombian-sourced compensation where the individual performs the services while physically located in Colombia.

### Tax trigger points

There is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Colombia.

To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there may be no tax liability.

For 2011, residents are not taxable on the first 27,393,880 Colombian pesos (COP) of taxable income.

### Types of taxable income

All remuneration, fees, and allowances paid under an employment contract or as an independent worker are treated as taxable income to the extent they are received in return for services provided in Colombia. For this reason, all payments received in cash or in kind by an employee are taxable, regardless of where the compensation is paid.

	Taxable income	Issues to take into account
Colombian national nonresident for fiscal matters	Rents and occasional gains from a national source are taxable. In the case of residents, taxable income also includes rents and occasional gains from a foreign source.	Wages paid in Colombia for work performed outside the country are not considered to be income of national source. Therefore, nonresidents would not be taxed on this income, nor would this income be subject to withholding tax.
Foreign nationals on assignment in Colombia	Foreign expatriates working in Colombia are only liable for tax on income received from a Colombian source during the first four years of residency in the country. From the fifth year of residency, the expatriate is liable for tax on worldwide income.	Where an individual is paid overseas for services performed in Colombia, the amount of income that is taxable in Colombia is calculated based on the number of days the expatriate provides the service in Colombia.  If an activity is carried out in Colombia under a labor contract for a minimum period of six months, the authorities may apply the progressive rates of withholding tax. Otherwise, any income will be subject to withholding tax at 33 percent.  Regardless of where payment is made for services provided in Colombia, the income will be taxable.

Source: KPMG in Colombia, March 2011

## Tax rates

The net income of a person resident in Colombia is liable for tax at progressive rates from 0 percent to 33 percent. Nonresidents are liable for income tax at a flat rate of 33 percent. This is currently the maximum tax rate for residents and is applied on income earned over COP103,041,200 for the 2011 tax year.

## Social security

### Social security liability

#### Employer and employee

Any person employed in Colombia must make contributions to the social security system. The system consists of a general contribution scheme and a special contribution scheme. Social security contributions are calculated based on an employee's earnings.

A voluntary regime is also available to self-employed and unemployed individuals. Participants in this regime are subject to a special quota.

Type of insurance	Paid by		Total percent
	Employer percent	Employee percent	
Pension plan	12.0	4.0	16.0
Medical plan	8.5	4.0	12.5
Family welfare fund	9.0	0.0	9.0
Total percent	29.5	8.0	37.5

Source: KPMG in Colombia, June 2010

The social security system provides benefits to the participant or the participant's dependants for events such as occupational accidents, sickness, retirement, pension, and death.

The employer must make the following social security contributions for 2010:

- Pension plan: 12 percent x monthly payroll
- Medical plan: 8.5 percent x monthly payroll
- Family welfare fund: 9 percent x monthly payroll

It is important to consider whether the employee is contributing to a pension fund or health plan in the employee's own country that covers the contingencies the employee could suffer during the employee's stay in Colombia, in which case, participation in the pension scheme in Colombia is voluntary. If the employee has a labor agreement with a Colombian company, however, participation in the health plan is obligatory.

When an employee earns a salary between 4 and 15 times the minimum legal monthly salary (SMLM), the employee must contribute an additional 1 percent to the pension fund. Likewise, employees earning 16 SMLMs or more must make additional contributions as follows:

SMLM	Additional percentage	Total contribution percentage
16–17	0.2	17.2
17–18	0.2	17.4
18–19	0.2	17.6
19–20	0.2	17.8
20 or more	0.2	18.0

These payments should be assumed by the employee.

Colombia has entered into social security totalization agreements with 20 other Iberoamerican Organization countries in order to prevent double taxation and allow cooperation when enforcing their respective tax laws.

## Compliance obligations

### Employee compliance obligations

The filing date for tax returns is generally between August and September, after the end of the tax year (December 31). The tax authorities publish a schedule each year setting out the filing dates. The filing date for an individual is based on the last two digits of the individual's tax identification number (NIT). Foreign nationals are required to obtain an NIT to be used in all their tax affairs.

In general, individuals who have received income and/or own property after December 31 in any tax year must submit a tax return if the income/value of their property is above a certain amount. Failure to do so will result in a monthly penalty, payable in arrears, equal to 5 percent of the outstanding tax, capped at 100 percent of the amount payable.

The taxpayers who fulfill all the following conditions are exempt from the requirement to submit a tax return for 2010:

- Employees whose gross equity does not exceed COP110,498,000 for the year 2010 or the equivalent in U.S. dollars (approximately USD58,800)
- Employees who are not required to account for sales tax on a nonsalaried activity
- Employees whose earnings are less than COP100,013,000 for the year 2010 or the equivalent in U.S. dollars (approximately USD53,250)

- Independent workers whose earnings were received net of withholding tax, providing the worker's gross equity does not exceed COP110,498,000 for the year 2010 or the equivalent in U.S. dollars (approximately USD58,800) and that the individual's earnings do not exceed COP81,032,000 for the year 2010 or the equivalent in U.S. dollars (approximately USD43,200)
- Nonresident foreign nationals whose income is derived from dividends, partnership profits, interest, commissions, fees, royalties, rents, compensation for personal services or technical assistance, benefits, or royalties from copyrights or artistic or scientific property that have been subjected to withholding tax at 33 percent.

Regardless of the above exemptions, an income tax return must be filed for 2010 if an individual has exceeded the following:

- Credit card purchases in excess of COP68,754,000 (approximately USD36,600)
- Purchases in excess of COP68,754,000 (approximately USD36,600)
- Accumulated bank savings, deposits, or financial investments in excess of COP110,498,000 (approximately USD58,800)

Any outstanding tax must be paid at the time of filing the return. Failure to pay tax when due will result in a penalty, and interest will accrue daily on any unpaid taxes at a rate of approximately 23.42 percent per annum (until March 31, 2011). On April 1, the government will announce the applicable rate for the next quarter.

#### **Employer reporting and withholding requirements**

Employers are obliged to withhold tax from expatriates' earnings every month as follows:

- If the expatriate is a nonresident, 33 percent of total monthly compensation should be withheld
- If the expatriate is a resident and is carrying out an activity in Colombia under a work contract for more than six months, the expatriate will be liable for tax at the progressive rates from 0 percent to 33 percent in accordance with the table determined by law.

Income that is contributed to a voluntary pension fund in Colombia or to a savings account destined to acquire real estate (AFC) is considered to be nontaxable income and is excluded from the withholding tax base, providing the total of these contributions and the obligatory contributions do not exceed 30 percent of income.

Those contributions that are withdrawn before a minimum term of five years will be included, however, as income in the year of withdrawal, with the exception of withdrawals made to acquire real estate.

Any tax withheld will be taken into account in the calculation of the final tax liability.

In addition, a deduction from salary is available for interest paid on loans taken out for the home. This, therefore, reduces the income tax and withholding tax bases. It is also important to take into account that 25 percent of labor payments are exempt from income tax, up to a monthly maximum of COP6,032,000 (approximately USD3,211) for the year 2011 and COP5,893,000 (approximately USD3,137) for the year 2011.

## **Other**

### **Work permit/visa requirements**

A visa must be obtained before the individual can enter Colombia. The type of visa required will depend on the purpose of the individual's entry into Colombia.

### **Double taxation treaties**

In addition to Colombia's domestic tax regulation, which provides relief for double taxation by giving a tax credit for taxes paid abroad for foreign source income within the limits stated by the law, Colombia has entered into tax treaties to prevent double taxation with Spain and the countries of the Andean community (Peru, Bolivia, and Ecuador). A treaty to avoid double taxation with Chile, Mexico, and Switzerland are about to come into force, and Colombia is negotiating treaties with Canada, Europe, Korea, and Turkey, among others.

### **Permanent establishment implications**

Although the institution of the permanent establishment (PE) is not provided by internal regulation, it will be applicable by virtue of a double taxation treaty as in the case with Spain, which states several events trigger a PE, such as the incorporation of a branch. In addition, unless specific relief is provided for in an income tax treaty between Colombia and the home country, Colombia will tax domestic income.

### **Indirect taxes**

The standard rate of value-added tax (VAT) is 16 percent.

VAT is due on the sale of moveable goods and the provision of services within Colombian territory, except those expressly excluded. The importation of moveable goods is also subject to VAT, except where expressly excluded. VAT is not applicable, however, to the sale of fixed assets.

Generally, services are assumed to be provided where the head office is situated, except in the following circumstances:

- Telecommunication services are assumed to be provided where the beneficiary's head office is located.
- Building services are assumed to be provided where the building is located.
- Services of a cultural and artistic nature, loading, unloading, trans-shipment, and storage services are assumed to be provided in the place where the service is materially carried out.
- Where services are executed abroad but the users or consignees are located in Colombia, the services are assumed to be provided in Colombia. Consequently, the services are subject to VAT (i.e., licenses and authorizations for the use and exploitation of incorporeal or intangible assets; professional consulting, advisory, and audit services; rental of corporate movable assets; translation, correction, or text composition services; insurance, reinsurance, and coinsurance services; services carried out in respect of moveable corporate assets; satellite connection or access services; and satellite television service received in Colombia).

VAT is also applicable to the circulation, sale, and operation of games of chance (i.e., gambling) with the exception of lottery games.

Some transactions are deemed to constitute a sale, such as gifts of property and private use of business assets.

There are two VAT regimes in Colombia, a common regime and a simplified regime. Individuals and businesses that make VAT taxable transactions must register in the correct regime in accordance with the requirements stated below:

The simplified regime is relevant to individuals who are merchants or service providers as long as they comply with the following requirements for tax year 2011:

- Gross income for the previous year must be less than COP98,220,000.
- They must not have more than one establishment, office, bureau, shop, or stand in which the activity is carried out.

- The activities in the establishment, office, bureau, shop, or stand must not include a franchise, concessions, royalties, or any kind of exploitation of intangible assets.
- They must not be users of customs.
- Agreements for the sale of goods or for the provision of services should not exceed COP81,032,000 for the previous year nor COP82,936,000 for the current year.
- Amounts deposited in banks or financial investments during the previous year should not exceed COP110,498,000 and COP113,094,000 for the current year.

The common regime is relevant to companies and individuals who do not fulfill the requirements for the simplified regime.

As an exception, overseas companies providing services that are subject to VAT in Colombia are not required to register for VAT. In these situations, 100 percent of the VAT applicable to the specific activity should be withheld by the Colombian party.

### Transfer pricing

Colombia has a transfer pricing regime based upon the OECD transfer pricing guidelines. A transfer pricing issue may arise where an employee is being paid by an entity in one jurisdiction but performing services for the benefit of an entity in another jurisdiction, in other words, a cross-border benefit is being provided. The issue would also depend on the nature and complexity of the services being performed.

Decree 4349 of 2004 provides specific guidelines on the transfer pricing rules in Colombia. In some situations, it may be possible to negotiate advance pricing agreements with the local tax authority.

Management fees are deductible in Colombia, and withholding tax is applicable to the extent the services were performed in Colombia.

### Exchange control

The flow of currency into and out of Colombia may be subject to the required use of authorized exchange markets.

### Nondeductible costs for assignees

Nondeductible costs for assignees include contributions made by an employer to non-Colombian pension funds.

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