

**International Bar Association Annual Conference  
2020**

**Recent Developments in International Taxation  
Colombia**

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## **Summary**

In October 2019, the Colombian Constitutional Court ruled that Law 1943 of 2018 (the ‘Financing Law’) was unconstitutional due to procedural errors during the discussions that led to its approval by the Colombian Congress. To fill the gap left by the unconstitutionality of the Financing Law, the Colombian Congress enacted Law 2010 of 2019 (the ‘Economic Growth Law’), which maintained most changes and additions introduced by the Financing Law.

This report analyses the most significant tax developments proposed by the Economic Growth Law and other important tax developments in Colombia for the years 2019–2020.

### **Unconstitutionality of the Financing Law**

By means of judgment C-481 of 2019, the Colombian Constitutional Court ruled that the text of the proposition for the final debate on the Financing Law did not comply with the publicity and consecutiveness required to approve a law with tax content.

According to the Colombian Constitutional Court, the defects in the legislative process of the Financing Law were irremediable because the substantive requirements of the legislative process were not fulfilled. Therefore, the Colombian Constitutional Court declared the Financing Law unconstitutional.

The effects of the judgment were deferred to 1 January 2020. This meant that the entire Financing Law remained in force for 2019. The Colombian Constitutional Court stated that this measure aimed at avoiding a regulatory gap in the tax system that would have affected the stability of the legal framework as well as public budgeting and finance in 2019. Additionally, the Colombian Constitutional Court ruled that the effects of the judgment would only operate towards the future and, consequently, the consolidated situations before the judgment would not be affected.

Within this context, the Colombian Congress enacted the Economic Growth Law, which maintained most changes and additions introduced by the Financing Law.

### **Income tax**

According to Economic Growth Law, income tax for corporations and similar entities, including foreign corporations obtaining income through Colombian branches or permanent establishments, is levied at the rate of 32 per cent for fiscal year 2020; 31 per cent for fiscal year 2021; and 30 per cent for fiscal year 2022 and onwards.

In the case of a corporation (or an individual not qualifying as an employee), the total taxable income may not be less than an amount of presumed taxable income based on the taxpayer's net worth (presumptive income). For presumptive income purposes, a taxpayer's net income may not

be less than 0.5 per cent of the taxpayer's net equity as of 31 December of the previous tax year. Nevertheless, according to the Economic Growth Law, from taxable year 2021, the presumptive income rate will be zero per cent.

On the other hand, an income tax surcharge for financial entities that obtain a taxable income equal to or greater than COP 4,272,840,000 (approximately \$1,150,000) was introduced by the Economic Growth Law at the rate of four per cent for fiscal year 2020, three per cent for fiscal year 2021 and three per cent for fiscal year 2022.

### Equity tax

The Financing Law introduced an equity tax for fiscal years 2019, 2020 and 2021. Although the Financing Law was declared unconstitutional, it produced effects in fiscal year 2019. This tax was reintroduced by the Economic Growth Law for fiscal years 2020 and 2021.

Individuals, and foreign entities not subject to income tax, with respect to assets held directly in Colombia that on 1 January 2019 had a net worth equal to or greater than COP 5,000m (approximately \$1,345,000), are subject to equity tax. The taxable base is the taxpayer's net worth (gross worth less liabilities) assessed on 1 January 2020 and 2021, and the tax is levied at a rate of one per cent on a taxpayer's net worth determined for each year (2020 and 2021).

Equity tax is not deductible or creditable against income tax, and taxpayers who are not subject to equity tax may file and pay the tax voluntarily.

### Dividend tax

#### *Tax on dividends distributed to Colombian tax resident individuals*

By means of the Economic Growth Law, the marginal dividend tax rate for Colombian tax resident individuals, distributed out of profits that were subject to income tax at the level of the Colombian distributing company, was reduced from 15 per cent to ten per cent.

Tax rate		
	Range in Unidad de Valor Tributario (UVT)	Marginal rate (%)
From	To	
> 0	300 (approximately \$2,900 in 2020)	0
> 300	Onwards	10

Dividends distributed out of profits that were not subject to income tax at the level of the Colombian distributing company are first taxed at the corporate income tax rate. The ten per cent withholding tax rate (if applicable) will be imposed on the balance of the distribution, as reduced by the basic income tax rate.

Taxable year	Effective tax rate (%)
2020	38.8
2021	37.9
2022 and onwards	37

*Tax on dividends distributed to companies or foreign individuals*

Dividends distributed out of profits that were not subject to income tax at the level of the Colombian distributing company are first subject to a withholding tax at the corporate income tax rate.

By means of the Economic Growth Law, the marginal dividend tax rate for companies or foreign individuals distributed out of profits that were subject to income tax at the level of the Colombian distributing company increased from 7.5 per cent to ten per cent. The ten per cent withholding tax rate will be imposed on the balance of the distribution, as reduced by the corporate income tax rate.

In the case of dividends distributed to Colombian companies, a withholding (7.5 per cent) will only be applied to the national company that receives the dividends for the first time, and the credit will be transferable to the effective beneficiary as a resident individual or resident investor in a foreign country.

Taxable year	Dividends distributed out of profits that were subject to income tax at the level of the Colombian distributing company	Dividends distributed out of profits that were not subject to income tax at the level of the Colombian distributing company (effective tax rate) (%)
2020	Withholding of 10%	38.8
2021		37.9
2022 and onwards		37

## **Simple Tax Regime**

The Economic Growth Law introduced the Simple Tax Regime. The purpose of this simplified regime is to reduce the formal and substantive duties of taxpayers. This regime is optional and requires the filing of an annual tax return and the payment of bimonthly advances. The payable tax under this alternative regime integrates income tax, consumption tax and turnover tax.

## **Tax abuse**

### *Effective beneficiary definition*

The Economic Growth Law unified the definition of effective, actual and final beneficiary (effective beneficiary) as the natural person who ultimately owns, controls or benefits directly or indirectly from a legal entity, and set the conditions that a natural person must meet in order to be considered as an effective beneficiary. In the Colombian tax system, the definition of effective beneficiary is relevant for the purpose of information reporting duties before the Colombian Tax Authority, and the anti-tax abuse regulations, among others.

### *Regularisation tax*

The Financing Law introduced a regularisation tax. As mentioned previously, although the Financing Law was declared unconstitutional, it produced effects in fiscal year 2019. The Economic Growth Law reintroduced regularisation tax, which complements equity tax and income tax.

Taxpayers subject to equity tax, as well as those who choose to pay it voluntarily, are liable for regularisation tax if they own unreported assets and/or non-existent liabilities recorded as of 1 January 2020. Law 2010 defines unreported assets as those assets that have not been declared on tax returns, despite being required to be so declared, and non-existent liabilities are defined as liabilities that have been declared on tax returns for the purpose of decreasing the tax burden of the taxpayer.

The taxable base will be the value of the unreported assets and/or non-existent liabilities. Some reductions may apply to the taxable base. Regularisation tax is levied at a rate of 15 per cent.

## **Indirect taxes**

### *VAT credit on the acquisition, import, construction or formation of real productive fixed assets*

Those responsible for VAT may offset the VAT paid on the acquisition, import, construction or formation of fixed assets against income tax. In the case of self-created real productive fixed assets, taxpayers can offset VAT in the year in which the asset is activated and subject to

depreciation or amortisation, or in any of the following taxable periods. The VAT paid cannot be taken as a cost or expense for income tax purposes, nor credited against VAT returns.

#### *VAT reimbursement for the poorest households*

As an economic support measure for the poorest households, Colombia implemented a VAT refund programme. By means of this programme, lower-income families will receive a payment, which will be set by the government considering the average VAT that lower-income households pay. This value will be transferred to eligible poor households every two months.

#### Consumption Tax for Real Estate

In December 2019, the Colombian Constitutional Court ruled that the consumption tax for real estate (which was levied at a rate of two per cent when the value of real estate transferred was greater than COP 918,436m – approximately \$247,000) was unconstitutional. This tax was not reintroduced by the Economic Growth Law.

#### **Tax treaties and multilateral conventions**

##### *Organisation for Economic Co-operation and Development membership*

On 28 April 2020, Colombia formally became a member of the Organisation for Economic Co-operation and Development (OECD). On this date, Colombia completed the internal procedures for ratification of the OECD Convention and deposited its instrument of membership.

##### *Double taxation agreement with the United Kingdom*

In 2019, the double taxation agreement (DTA) between Colombia and the UK entered into force.

#### **Covid-19 tax measures**

##### *Special VAT exemption*

In order to reactivate the economy and stimulate demand, the Colombian Government issued Legislative Decree 682 of 2020, which establishes a special VAT exemption for certain movable tangible goods alienated in the national territory during 19 June, 3 July and 19 July 2020.

Goods covered by the special VAT exemption include the following categories, which must have a sales price per unit equal to or less than the indicated value without VAT: household appliances, sport elements, and goods and supplies for the agricultural sector, COP 2.8m (approximately \$750); clothing and clothing accessories, COP 712,140 (approximately \$190); toys and games, COP 356,070 (approximately \$95); and school supplies, COP 178,035 (approximately \$48).

Those responsible for VAT who alienate goods covered by the special VAT exemption are entitled to apply for creditable taxes, provided that the requirements set out in the Colombian Tax Code are met. However, there is no right to request a reimbursement and/or compensation, so the tax credit generated must be charged against the VAT return for the following period.

*Shortened procedure for requesting tax credit reimbursement and/or compensation*

The Colombian Government issued Legislative Decree 535 of 2020 to set forth tax measures that speed up the procedure for the reimbursement of income tax and VAT credits so that taxpayers may have economic resources that allow them to face the adverse effects generated by Covid-19.

Decree 535 of 2020 established that income taxpayers and those responsible for VAT who are not classified as high-risk taxpayers are granted a reimbursement and/or compensation of tax credits by the Colombian Tax Authority through a shortened procedure, within 15 days from the date of filing of the reimbursement and/or compensation request in due form. This benefit was effective for requests filed until 19 June 2020.

*Reduced and transitory interest rate*

The Colombian Government issued Legislative Decree 688 of 2020 to set a reduced and transitory interest rate to alleviate the economic impact caused by the health crisis resulting from Covid-19. Decree 688 of 2020 fixes, on a transitory basis, that the delay interest rate that shall be in force until 30 November 2020 for the payment of obligations managed by the Colombian Tax Authority and obligations related to the Colombian Social Security System, which are subject to verification by the Special Administrative Unit of Pension and Parafiscal Management (Unidad de Gestión Pensional y Parafiscales or UGPP), shall correspond to the current bank interest rate for consumer loans certified by the Financial Superintendence (effective annual rate of 18.12 per cent for July 2020). Ordinarily, the interest rate for the payment of tax obligations and obligations related to the Colombian Social Security System corresponds to the usury rate for consumption credits, as fixed by the Finance Superintendence, minus two percentage points (effective annual rate of 26.98 per cent for July 2020).