

IV. Tax Regime

The Colombian tax regime basically has three kinds of taxes: national, departmental and municipal ones.

A. National taxes

We present, as follows, the main national taxes applicable to companies and natural persons in Colombia, along with their legal origin, the authority responsible for administering them and the applicable rates.

1. Income tax

a. Concept of income tax and tax on occasional earnings

The income tax and its complementary ones tax the earnings or profits obtained by taxpayers which cause increases in their assets and derive from their ordinary activities. For its part, the tax on occasional earnings is a levy on other kinds of income which are not regarded as ordinary ones for taxpayers¹.

b. Taxpayers

The payers of income tax may be natural persons or legal entities. In either case, they are taxed on income which derives from Colombian or foreign sources.

Colombian companies and Colombian natural persons resident in Colombia are taxed on their incomes (income and occasional earnings) from Colombian and foreign sources, and foreign companies are only assessed on their incomes (income and occasional earnings) from a Colombian source. For their part, the branches of foreign companies located in Colombia are only assessed on their incomes and occasional earnings from Colombian sources

Double taxation does not exist in Colombia; therefore, once the company has paid the corresponding income tax, the partners do not have to pay income tax on the distribution of profits.

¹ Among the incomes which make up occasional earnings are the profit from the alienation of fixed assets held for more than two years; earnings from inheritances, legacies and donations; and earnings from lotteries, prizes and bets, among others

c. Income from a Colombian source

The incomes which are considered to be from a Colombian source are:

- Those deriving from the exploitation of material and intangible goods within the country.
- The provision of services within Colombian territory, and even the provision of technical or consultancy services abroad.
- Those deriving from the alienation of material goods or intangible goods found in the country when they are alienated.

d. Incomes which are not regarded as having a Colombian source

The incomes which are not regarded as having a Colombian source, and are thus not subject to income tax, are:

- Incomes obtained under the heading of foreign indebtedness and the interests which this foreign indebtedness generate.
- Incomes derived from international leasing contracts to finance investments in machinery or equipment associated with export processes or activities regarded as of interest to the country's social and economic development.
- Incomes derived from technical services for the repair and maintenance of equipment provided abroad.

e. Frequency and rate of income tax

Income tax and the tax on occasional earnings are paid on an annual basis and the rate is 33% of the taxpayer's ordinary and extraordinary income, respectively.

However, there is a system of "advance payment" through withholding taxes which are then discounted from the annual tax which has to be paid. This should be taken into account by investors, both for their expectations of income and when the time comes to undertake payments to third parties and suppliers.

f. Basis of assessment of income tax

The basis of assessment for determining the tax is governed by two schemes (i) the ordinary system and (ii) the system of presumptive income.

i. Ordinary system

In the ordinary system, the basis of assessment is made up of the assessed liquid income ("renta líquida gravable"), which is determined in the following way: from the sum total of all the ordinary and extraordinary incomes, received in the

year or tax year, which are likely to produce an increase in net assets when they are received and which have not been expressly excepted from taxation. Devolutions, deductions and discounts are subtracted from this sum to obtain the net incomes.

In turn, when applicable, costs pertaining to such income are subtracted to obtain the gross income. The relevant deductions are subtracted from the gross income to obtain the liquid income. In this way, one arrives at the liquid income to which the rates laid down in the law are applied.

ii. Presumptive income system

For the purposes of income tax, the presumptive income comes into effect, given that the tax norms assume that the assets of the taxpayers have had a minimum profitability.

In Colombia, the presumptive income applicable from the second year of a company's existence in Colombia onwards, is 3% of the net assets of the taxpayer, counted from the last day of the immediately preceding tax year.

In general terms, to determine the tax a taxpayer is responsible for, the assessable liquid income should be regarded as the largest of the following two amounts: ordinary income (the company's gross incomes, less costs and allowable deductions), and the presumptive income.

g. Incomes which are not liable to the tax on income or occasional earnings

For the purposes of determining the assessable liquid income, there are a number of incomes which, by law, are not considered income or occasional earnings, among which are to be found: profits from the alienation of shares, capitalizations for which shareholders are not taxed, shares and dividends, insurance indemnifications for damages, employee contributions to pension and severance funds, among others.

Deductions and exemptions from income tax are found in chapter VI.

h. Treaties to avoid double taxation

Colombia has been negotiating international treaties aimed at avoiding double taxation and preventing tax evasion by those who pay tax on income and patrimony, particularly in cross-border operations.

At the current time there are treaties signed with Spain, Canada, Chile, the Czech Republic, Korea and Switzerland, and among the countries which are interested in

negotiating agreements on double taxation one finds Mexico, the United Kingdom, the Netherlands, France, Japan, Italy and China, among others.

2. Tax on Net Assets

a. Concept

This tax assesses the net assets of legal entities, natural persons and de facto companies, taxpayers and those who declare income tax who meet a number of requisites, explained as follows.

This tax may not be deducted or discounted from income tax nor compensated for with other taxes.

b. Those who are subject to this tax

Those subject to the tax on wealth are legal entities, natural persons and de facto companies which: (i) are taxpayers which declare income tax, and (ii) as of January 1, 2011 possess net assets equal to or higher than COP\$ 3 billion (US\$ 1, 500,000).

c. Basis of assessment and rate

The basis of assessment is made up of the value of the net assets possessed as of January 1, 2011, excluding the first COP\$319.215.000 of the value of the house the taxpayer lives in (US\$ 159,607.50), contributions made to cooperatives and the net value of shares owned in Colombian companies.

For net assets which are equal to or higher than COP \$ 3 billion (US\$ 1,500,000) but do not exceed COP\$ 5 billion (US\$ 2,500,000) the rate is 0.6%. For net assets equal to or higher than COP\$ 5 billion (US\$ 2,500,000) the rate is 1.2%.

3. Value Added Tax (“IVA”)

a. Concept

VAT must be paid in the case of the following transactions or events:

- The sale of movable goods which are not expressly excluded from the tax
- The provision of services in Colombia

- The import of movable goods which have not been expressly excluded from the tax.

b. Frequency and rate

The general rate is 16%, nevertheless, there are some differential rates for certain articles which vary between 1.6% and 35% according to the product. Some examples of this are beer, some foodstuffs defined by law, medical, hotel and mobile telephone services, and automobiles, among others.

c. Those liable to VAT

Those who are liable to the tax authority in Colombia for collecting and paying the tax are those who undertake any of the activities which give rise to it, even when it is the final consumer who actually pays it. In line with this arrangement, those who are responsible for the tax are store owners, the providers of services which are not excluded from the tax and a number of importers.

Exemption from the sales tax is given to, among others, personal movable goods which are exported, export services (falling within the parameters established by the regulations) and the sale of certain machinery and equipment specified in the current norms in force.

d. Discountable taxes

Discountable taxes form an integral part of VAT, since, at each stage of production or commercialization, it is possible to discount the tax already paid in the previous one.

4. Levy on financial movements (“Gravamen a los movimientos financieros” or “GMF”)

a. Concept

The “GMF” is assessed on financial transactions which make use of resources deposited in current or savings accounts in any financial entity established in Colombia, as well as in any deposit account of the Banco de la República and giros of cashier’s checks.

Transferences between the current accounts of a single account holder and which are found in the same credit establishment, as well as certain operations in the stock market, are exempt from this levy. 25% of this tax is deductible from the declaration of income tax.

b. Frequency and rate

The rate of this tax is COP\$ 4 per each \$1,000.

This tax is collected through a withholding tax which is the responsibility of the Banco de la República and other entities, overseen by the Financial Superintendency or the Superintendencia de la Economía Solidaria (Superintendency of Cooperatives), where the respective current, savings or deposit account or collective portfolio is found, or where accountable movements are undertaken which represent the transference or disposal of resources.

5. Stamp tax

a. Concept

This tax is levied on public deeds or private documents in which a public entity, a legal entity or that with a similar status, or a natural person, acts as grantor, acceptant or subscriber, and it applies when the following circumstances occur²:

- i. They are issued or accepted within the country and even abroad
- ii. They are executed or create obligations in Colombian territory.
- iii. They testify to the establishment, existence, modification or extinction of obligations, and likewise their extension or cession.
- iv. They correspond to an amount greater than 6,000 tax value units (“UVT”), equivalent to COP\$ 150.972.000, that is, US\$ 75,396

b. Those subject to the tax

Public entities which are not expressly excluded, natural persons and legal entities or those with a similar status.

c. Frequency and rate

Article 72 of Law 1111, of 2006, established a gradual reduction of the tax stamp until it reaches a rate of 0% in the year 2010, though this reduction did not apply to all the occurrences which give rise to the tax.

² The natural persons on whom the tax is levied are those who have the status of businessmen and in the immediately preceding year had gross incomes of 30,000 UVT (tax units), corresponding to COP\$ 753.960.000 or US\$ 376,980.

In previous years the rate was 0.5% and in 2010 the rate was 0%, except in certain circumstances, among which are checks which must be paid in Colombia, registered and bearer bonds, and certificates of deposit, among others.

B. Departmental taxes

The main departmental taxes are explained in a general manner, as follows:

1. Registry tax

The registry tax is levied on the inscription of documents which contain acts, resolutions, contracts or juridical transactions in which private persons are parties or beneficiaries and which, by law, must be registered at the chambers of commerce or the offices for the registry of public deeds. The documents liable to the registry tax are not subject to the stamp tax.

The rate varies between 0.3% and 1% of the incorporated value of the document when the act or document has a specified amount. All acts, contracts or juridical transactions without a specified amount are subject to rates of between two (2) to four (4) minimum daily legal wages (the minimum legal monthly wage in 2011 is the equivalent of US\$ 267.8).

2. Tax on lottery winners

This tax applies to lottery prizes and is known as the winners' tax.

The tax has a rate of 17% of the lottery prizes and the value of the tax is directly withheld by the lotteries and paid to the competent departmental entities.

3. Tax on the consumption of alcoholic beverages

This tax is levied on the consumption of liquors, wines, aperitifs and similar drinks, tap and bottled beers and shandies in the jurisdiction of the departments.

The basis of assessment is the number of alcoholmetric degrees or cubic centimetres which the product contains, in accordance with the norms, and those responsible for paying it are the producers and importers in collaboration with the distributors.

4. Gasoline tax

This tax has a rate of two per thousand pesos of the sale price to the public.

C. Municipal taxes

The municipal or district taxes applicable to companies and natural persons in Bogota, and their legal source, concept and applicable rates are described, as follows.

1. Industry, commerce and advertising tax (“ICA”)

a. Concept

The “ICA” is a tax of a municipal nature which is levied on every (i) industrial, (ii) commercial or (iii) services activity undertaken in the jurisdiction of the Capital District of Bogota. These are activities which may be undertaken, directly or indirectly, by natural persons, legal entities or de facto companies.

This tax arises from the direct or indirect exercise or realization of any industrial, commercial or services activity, whether done in a permanent or occasional way, and on a given property with or without a commercial establishment.

b. Basis of assessment, rate and frequency

The industry and commerce tax is liquidated on the basis of the net bimonthly income the taxpayer obtains. The tax is paid annually.

In Bogota the rates vary between 0.3% and 1.4%, depending on the activity.

100% of the paid value of this tax is deductible on the company’s income tax declaration, always providing it is related to its economic activity.

2. Unified property tax

a. Concept

The unified property tax is levied on real estate located in the Capital District of Bogota.

b. Basis of assessment and those liable for the tax

The basis of assessment for this tax is made up of the current property valuation, adjusted by the consumer price index, for properties or real estate located in urban, suburban or rural areas, with or without buildings on them.

The owners, possessors or usufructories of properties are liable to the tax. Thus, in contrast to other countries, the real estate tax is not transferred to the tenant of the property.

c. Rate and frequency

The rate of the property tax in Bogota is between 0.2% and 1.5% and is paid annually.

100% of the paid value of this tax is deductible from the company's declaration of income tax, always providing that it is related to the company's economic activity.

3. Tax on automotive vehicles

a. Concept

The tax on automotive vehicles is levied on the ownership or possession of vehicles which are licensed in the Capital District of Bogota.

b. Basis of assessment and frequency

The basis for liquidating the tax is the amount of the commercial evaluation which the Ministry of Transport annually establishes through a resolution. In Bogota the applicable rates vary between 1.5% and 3.5% of the commercial value of the vehicle.

The tax is paid annually.

c. Those liable to the tax

The owner or possessor of the assessed vehicles licensed in the Capital District of Bogota, including public transport vehicles.

4. Urban demarcation tax

a. Concept

The urban demarcation tax is levied on the execution of civil works or buildings which have been granted and notified of a construction license for any of the following modalities: a new work; an enlargement, adjustment, modification,

restoration, structural reinforcement or demolition of an existing structure; and enclosings of new buildings

b. Frequency and rate

The basis of assessment for the liquidation of the urban demarcation tax in the Capital District is the total amount of the budget of the work or construction.

To pay the urban demarcation tax two forms must be presented: the first (the initial declaration) is presented before beginning the work, and the applicable rate is 2.6% of the value of the budget of the work or construction; the second (the final declaration) is presented when the work is finished, and the rate is 3% of the executed value of the work or construction. The paid-up value of the initial declaration is regarded as an advance on the tax and is discounted from the value of the tax to be paid on the final declaration.

5. Surplus value tax

a. Concept

The purpose of surplus value is that public entities, through the surplus value tax, benefit from increases in land values (real estate valuation).

Among the occurrences which give rise to the surplus value caused by urban development in the Capital District, Bogota, specific authorizations are required for giving a property a more profitable use, such as increasing the exploitation of land to allow for more building on it, in accordance with the formal stipulation of the Territorial Ordering Plan (Plan de Ordenamiento Territorial –“POT”) or in the acts which derive from it, as in the following cases:

- The incorporation of rural land into land used for urban expansion
- The establishment or modification of the regime or zoning regulations for land use.
- The authorization of an increased exploitation of land that is built on with regard to density (“índice de ocupación” and “índice de construcción”)
- When public works are executed which are considered to be “infrastructure macro-projects”, as defined by the Territorial Ordering Plan and/or the acts which derive from it, and the “valorización” tax has not been used to finance them.

b. Frequency and rate

The rate of the surplus value tax varies between 30% and 50% of the higher per square meter value of the property or building to which it is subject.

D. Related entities

The entities responsible for tax administration are presented in accordance with the kind of tax in question, as follows, along with the website where one may find further information.

National Taxes

- Directorate of National Taxes and Customs (“DIAN”). Procedure for inscribing in the single tax registry

Website: muisca.dian.gov.co.

- Tax calendars
http://www.actualicese.com/calendario/index_calendarios.php

Departmental and municipal taxes

- Secretaría de Hacienda de Bogota (Bogota Secretary of Finance: tax procedures and services). Website:
www.shd.gov.co/portal/page/portal/portal_internet_sdh
- Guide to procedures and services in Bogota. Website:
www.bogota.gov.co/portel/libreria/php/x_frame_detalle_scv.php?h_id=23168
- Gobernación de Cundinamarca (Office of the Governor of Cundinamarca). Website:
www.cundinamarca.gov.co.

Warning

The information outlined in this chapter has been prepared on the basis of the current regulation in force, which may come to be modified by subsequent norms. This information is not a substitute for the advice of accounting and tax experts, which will allow you to make suitable decisions for the development and operation of your businesses.

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