IV. Tax Regime

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

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 that 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 that are not regarded as ordinary ones for taxpayers.5

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 companies6 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.

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5Among 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.

6For fiscal purposes, the definition of national pertains to those companies and institutions which, during the corresponding fiscal year or period, have had their effective administration site within the national territory. Also considered as national, for fiscal purposes, are those companies and institutions that comply with any of the following conditions: 1. having their main place of business in the territory of Colombia; or 2. Have been established in Colombia, in accordance with the laws in effect in the country.
c. Income from a Colombian source

The incomes that 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 that 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 that this foreign indebtedness generates.
• 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

The income tax and the tax on occasional earnings have an annual frequency and the rate is 25% and 10% of the ordinary or extraordinary income of the taxpayer, respectively.

However, there is a system of “advance payment” through withholding taxes that are then discounted from the annual tax that 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 the 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. Income Tax for Equity (CREE)

It was created as of January 1st, 2013. The Income Tax for Equity (CREE) and it is a contribution made by national and foreign companies (through branch offices and permanent establishments) and legal parties and the like, which are responsible for the payment of income tax, to the benefit of employees, job generation and social investment. The rate will be eight percent (8%). However, for the years 2013, 2014 and 2015, the CREE rate shall be nine percent (9%).
(i) Double Taxation Agreements

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.

Presently general scope, double taxation agreements have been signed with Spain, Canada, Chile, and Switzerland. Furthermore, for certain activities related to air and sea transport, agreements are in place with Argentina, Brazil, Venezuela, Italy, the United States and France. Also, on account of Decision 578 from 2004 by the Andean Community, a regime was implemented to avoid double taxation and prevent fiscal evasion among member countries.

On the other hand, agreements have been signed, but their entry into effect is still pending, with Mexico and Portugal. Also, Great Britain, the Netherlands, France, Japan, Italy, China, Germany, the Czech Republic, the United States, Israel, South Korea, United Arab Emirates, and India are among those countries that Colombia is interested in negotiating double-taxation agreements with.

2. Tax on Net Assets

a. Concept

In 2009 a new net assets tax was created. This tax applies to the net assets to January 1st of 2011 of legal entities, individuals and facto companies, taxpayers and those who pay income tax according the next requisites.

This tax cannot 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 who declare income tax, and (ii) as of January 1, 2011 have net assets equal to or higher than COP$ 1 billion.

c. Tax Base and Rate

The basis of assessment is made up of the value of the net assets owned as of January 1, 2011, excluding the first COP$319,215,000 of the value of the house the taxpayer lives in (US$ 170,804), and the net equity value of stock owned in national companies, as well as social benefits paid to cooperatives by their affiliates, in accordance with Law 1370 of 2009.
Under Decree 4825 of 2010, for net assets between COP $1 billion and $2 billion, the applicable rate shall be 1%; for net assets of between $2 billion and $3 billion, the rate shall be 1.4%, for net assets between $3 billion (US$1,605,222) and $5 billion (US$ 2.6 million), the rate shall be 2.4%. For net assets equal to or greater than $5 billion (US$ 2.6 million), the rate shall be 4.8%.

On the other hand, Decree 4825 of 2010, created a 25% surcharge on the equity tax for individuals covered under Law 1370, that is, those whose net assets are equal to or greater than $3 billion pesos; with rates being as follows:

<table>
<thead>
<tr>
<th>Tax Base</th>
<th>Rate</th>
<th>Surcharge</th>
<th>Total Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>= a $1,000,000,000</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>&gt; a $2,000,000,000</td>
<td>1.4%</td>
<td>0%</td>
<td>1.4%</td>
</tr>
<tr>
<td>= a $3,000,000,000</td>
<td>2.4%</td>
<td>0.6%</td>
<td>3%</td>
</tr>
<tr>
<td>= a $5,000,000,000</td>
<td>4.8%</td>
<td>1.2%</td>
<td>6%</td>
</tr>
</tbody>
</table>

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 that have not been expressly excluded from the tax.
- The circulation, sale or operation of betting or gambling games.

b. Frequency and Rate

The general rate is 16%, nevertheless, there are some differential rates for certain articles that vary between 5% and 10% according to the product. Some examples of this are beer, some foodstuffs defined by law, medical, hotel and mobile telephony services, and some 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 storeowners, the providers of services that are not excluded from the tax and a number of importers.
Exemption from the sales tax is given to, among others, personal movable goods that 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. National Consumption Tax

a. Concept

It was created as of January 1st, 2013, and shall be charged on the provision or sale of the following services or goods, to end consumers, or on their import by end-consumers:

• The provision of mobile telephony services.
• The sale of some non-real-estate assets, either imported or produced domestically.
• The sale of foods and beverages prepared in restaurants, cafeterias, self-service restaurants, ice cream parlors, fruit stores, pastry shops and bakeries.

This tax will be caused at the time of nationalizing the good imported by the end-consumer, upon the material delivery of the asset, the provision of the service or the issuance of the bill, sales ticket, invoice or equivalent document by the responsible party to the end consumer.

Said tax shall not cause a sales (value added) tax (VAT).

b. Responsible Parties

The stakeholders responsible for the payment of the consumption tax shall be the provider of the mobile telephony services, the sale of foods and beverages, the importer as end-user, the seller of assets subject to consumption tax, and the professional broker in the sale of used vehicles.

c. Discountable Taxes

The national tax on consumption constitutes a deductible cost for the buyer, from the income tax as a greater value of the sale of the asset or service that is acquired. However, it does not cause a discount on the sales tax (VAT).
d. Rate

- The mobile telephony service shall be taxed at a rate of 4% over the full service amount.
- Goods such as the sale of automobiles, pick-up trucks, certain motorcycles, yachts and other boats shall be taxed at a rate between 8% and 16%.
- Restaurants, bars, taverns, discos and establishments providing restaurant and bar services are taxed at a rate of 8% over any consumption.

5. 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 cashier’s checks.

Transfers 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. In accordance with Article 45 of Law 1430 of 2010, as of fiscal year 2013, fifty percent (50%) of the levy on financial movements that is effectively paid by taxpayers during the corresponding fiscal year, will be deductible from the income tax.

b. Frequency and rate

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

However, in accordance with Article 872 of the Fiscal Statutes, this tax will be gradually removed, with rates being as follows:

- Down to two per thousand (2 x 1.000) in years 2014 and 2015.
- Down to one per thousand (1 x 1.000) in years 2016 and 2017.
- Down to zero per thousand (0 x 1.000) in years 2018 and onwards.

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 Superintendence or the Superintendencia de la Economía Solidaria (Superintendence 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.
6. National Tax on Gasoline and Diesel

a. Concept

The national tax on gasoline and diesel is caused on the sale, withdrawal, import for own consumption or import for sale.

b. Responsible Parties

The taxpayer subject to this tax shall be the purchaser of gasoline or diesel from the producer, or the importer; the producer, when withdrawals are made for their own consumption; and the importer when, upon prior nationalization, it makes withdrawals for their own consumption.

c. Rate

- The national tax on regular gasoline shall be calculated as of 1,050 pesos per gallon.
- Tax on Premium Gasoline shall be 1,555 pesos per gallon.
- Tax on Diesel will be 1,050 pesos per gallon.

The amount of this tax will be adjusted on February 1st, each year, in accordance with the inflation from the previous year.

7. 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 occur:

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$ 164,910,000, that is, US$ 88,239.

7The 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$ 824,550,000 or US$ 441,195.
b. Those Subject to the Tax

Public entities that 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.

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

B. Departmental Taxes

Following is a general description of the main departmental taxes.

1. Registry Tax

a. Concept

This tax covers the registration of documents containing actions, rulings, contracts or legal business where individuals are parties to or beneficiaries from, and which by law should be registered before the chambers of commerce or at the Public Documents Registry. Documents are subject to registry tax are not subject to stamp tax.

b. Rates

- The actions, contracts or legal business with amounts subject to registry at the Public Documents Registry shall be covered at a rate between 0.5% and 1% of the amount of the action.
- The actions, contracts or legal business with amounts subject to registry before the Chambers of Commerce, others than those involving the establishment with, and/or the increase in the premium for the issuance of stock or shares in companies, shall be covered at a rate of between 0.3% and 0.7%.
- The actions, contracts or legal business with amounts subject to registry before the Chambers of Commerce, involving the establishment with, and/or the increase in the premium for the issuance of stock or shares in companies, shall be covered at a rate of between 0.1% and 0.3%.
- The actions, contracts or legal business without amounts subject to registry at the Public Documents Registrar shall be covered at a rate between 0.5% and 1% of the amount of the action between two (2) and four (4) daily legal minimum wages (one monthly legal minimum wage is equivalent to US$ 329.6, in 2014).
2. **Tax to Lottery Winners**

This tax is applicable to lottery winnings and is known as the winner’s tax.

This tax is equivalent to 17% of lottery winnings, and said amount shall be withheld directly by the lotteries and paid to the corresponding departmental institutions.

3. **Tax on Alcoholic Beverages**

The event that triggers this tax is the consumption of liquor, wines, appetizers, beers, and beer-based drinks, in the departments’ jurisdiction.

The fiscal base is defined by the level of alcohol percentage or cubic centimeters in said product, as set forth by the regulations, and the taxpayers responsible for them shall be the producers, importers and, jointly, the distributors.

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”)**

   
   (i). **Concept**

   The “ICA” is a tax of a municipal nature that 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 that 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.

   (ii). **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 4.14 per thousand and 13.8 per thousand, depending on the activity, as per Decree 352 of 2002.

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

(i). Concept

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

(ii). Basis of Assessment and Those Liable for the Tax

The basis of assessment for this tax is made up of the cadastral valuation that is current at the time the tax is caused, 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 exploiters 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.

(iii). Rate and Frequency

The rate of the property tax in Bogota is between 2 per thousand and 33 per thousand and is paid annually. Rates applicable to non-urbanized urbanizable lots, and to non-built urbanized lots shall not exceed 33 per thousand.

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

(i). Concept

The tax on automotive vehicles is levied on the ownership or possession of vehicles that are licensed in the Capital District of Bogota.
(ii). Basis of Assessment and Frequency

The basis for liquidating the tax is the amount of the commercial evaluation that 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 generated annually, on the first of January of each year; in the case of new vehicles, the tax is generated on the date on which the request is made to register the vehicle, which shall be equal to the date of the bill of sale or the date on the registration request.

(iii). 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

(i). 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 enclosing of new buildings.

(ii). 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

(i). 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 that derive from it, and the “valorización” tax has not been used to finance them.

(ii). 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 www.actualicese.com/modelos-y-formatos/calendario-tributario-2012-2013

To learn more about Double Taxation Agreements, visit:

- www.ifacolombia.co/pruebas/index.php/informacion/convenios
- www.dian.gov.co/dian/15servicios.nsf/d7f3eee255a0ca1e05256ef6008028eb/f06a01dc14b8e9810525798f004ea2ef?OpenDocument
- www.cancilleria.gov.co/footer/juridicainternacional/tratados/doble

To learn more about Departmental and Municipal Taxes visit:
• Secretaría de Hacienda de Bogota (Bogota Secretary of Finance: tax procedures and services). Website: www.shd.gov.co
• Guide to procedures and services in Bogota. Website: www.bogota.gov.co/portel/libreria/php/x_frame_detallescv.php?h_id=23168
• Gobernación de Cundinamarca (Office of the Governor of Cundinamarca). Website: www.cundinamarca.gov.co.

Warning

The information listed hereunder has been prepared based on current regulations and on a sampling of the internal policies from different banks and financial institutions. The above notwithstanding, each bank or financial institution is free to establish additional requirements in accordance with the autonomy of its corporate policies and with how familiar they are with handling international transactions. Therefore, it is advisable to previously assess the conditions and service portfolio offered by each institution in the Colombian financial market, as this allows for a better choosing of the institution and the products that adhere to the needs of the interested party and as they may have correspondent relationships with the investor’s banking institutions abroad.