

04



TAX REGIME

* The information contained in this chapter is based on the regulatory framework of Law 1943 of 2018, the Tax Code and the National Development Plan 2019-2022. It is advisable to revise the online version of the guide to confirm the validity of this information.



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Which taxes should be taken into account in a business model?

Taxes in Colombia are applied at three main levels: national, departmental, and municipal.

Which are the main national taxes?

The income tax, the VAT, the national excise tax, the equity tax, the debit tax (GMF for its Spanish acronym), the fuel tax, the carbon tax, and the stamp tax.

How does the income tax work?

It taxes profits generated by tax-payers' ordinary activities that increase their net worth. Profits not related to ordinary activities are in general subject to the supplementary capital gains tax.

There are revenues that, according to the legal rules and subject to certain requirements, are considered nontaxable income or capital gains, such as profits from the sale of shares listed in the Colombian stock exchange, certain capitalizations, some indemnifications for damages, among others.

Net operational losses (NOLs) may be used to offset the ordinary net income generated during the 12 years following the loss. There are no time limita-

tions for NOLs generated up to 2016. Five years are allowed for excess of presumptive income.

What are the income tax rates?



Free trade zones industrial and services users are generally subject to 20%

How does the Colombian holding companies' regime operate (CHC)?

It applies to Colombian entities and allows for the dividends distributed by foreign companies to a Colombian holding company (CHC) to be tax exempt. Profits from the sale of foreign company shares by a CHC are also tax exempt. The non-resident shareholders of a CHC should not be taxed on: dividends which are paid out of dividends previously received by the CHC from foreign entities, and transfers of CHC's shares on the portion of the value attributable to activities carried out outside Colombia.

To qualify as a CHC, the following requirements should be met:

- Having security holdings, investment or holding of shares or company participations, and/or the administration of such investments as one of its main activities in the bylaws.
- Having at least 10% of the capital of two or more Colombian and/or foreign entities during at least 12 months.
- Having three or more employees and the human and physical resources in Colombia required for its activities.
- Filing an application before the tax authorities.

How does the foreign controlled companies' regime work (ECE)?

This system applies to Colombian residents (individual and companies) directly or indirectly having an interest equal to or greater than 10% on the capital or the profits of a foreign company controlled by Colombians (ECE). In this case, certain revenues obtained by the ECE and which are considered passive income will be immediately taxed at the level of the Colombian resident shareholders, without having to wait for the ECE to distribute their profits in the form of dividends.

How income tax withholdings work?

This is a tax collection mechanism (in some cases such withholding being the final tax) according to which certain persons must withhold some amount from the payments made and remit such amount to the government. The withholding rate depends on the nature of the payment.

- In Colombia, the rate is in general 11% for payment of fees or specialized technical services to entities located in Colombia, 4% for general services, and 2.5% for purchases.
- Certain rates apply to payments made to non-residents: 20% for technical assistance, technical services, and consultancy services, 33% for management and direction, 0%, 5%, 15%, or 20% for interests, and 10% for dividends, among others.

How does the transfer pricing regime works?

Taxpayers (including permanent establishments of non-residents) carrying out operations with foreign related parties, related parties located in Colombian free trade zones, or with persons, companies, or entities located in non-cooperating jurisdictions, with low or no taxes, or with preferential tax systems, will be subject to the transfer pricing regime. For income tax purposes, the taxpayers should establish their ordinary and extraordinary revenues, costs and deductions, as well as their assets and liabilities, taking into account the arm's length principle (i.e. the conditions and compensation should be established according to what would have been agreed with or between independent third parties). The Colombian regulations provide that the taxpayers may use any of the following mechanisms to

establish the price or the profit margin of operations executed between related parties:

- Comparable uncontrolled price
- Resale price
- Cost plus
- Transaction net margin
- Profits split

In order to establish the assets, liabilities, equity, revenues, costs, and expenses of a permanent establishment (including branches of non-residents) during a given taxable year, an attribution study should be prepared according to the arm's length principle, taking into account activities carried out, assets used, risks assumed, and personnel hired by the company through the permanent establishment.

How does the VAT work?

The general VAT rate is 19%. However, there are some differential rates of 0% and 5% for certain products or services. There are some VAT-excluded goods and services.

How does the national excise tax work?

This tax applies on the provision or sale to the end user, or in the import of some goods and services. Such goods and services are in general not subject to the VAT. Rates are between 4% to 16%.



How does the debit tax (GMF) work?

It taxes the withdrawal of resources from checking or savings accounts in any Colombian financial entity, as well as in any Central Bank deposit account. Transfers between checking accounts of the same holder and in the same financial entity, as well as some other financial transactions and certain security market operations, are exempted from this tax.

The GMF rate is 0.4%.

How does the national gasoline and fuel oil tax work?

It applies to the sale, withdrawal, import for own use or for the sale of gasoline and fuel oil on the date of issuance of the respective invoice; on the day of the product's withdrawal in the case of withdrawals made by the producers for their own use, and on the day the imported gasoline or fuel oil clears customs.

The following are the general gasoline and fuel oil tax rates for 2019 (for 2020 the updated amounts have not been issued):

- **Regular gasoline:** \$526.26/gallon
 - **High test gasoline:** \$998.82/gallon
 - **Fuel oil:** \$503.71/gallon
- These rates are adjusted every



year based on the previous year's inflation, with a resolution issued by the DIAN.

How does the national carbon tax work?

It tax the carbon contents of all fossil fuels, including petroleum derivatives and all types of fossil gases used for energy applications, provided they are used for combustion purposes. This tax applies to the sale of fuels within the national territory, withdrawal, imports for its own consumption or for sale.



There is a special rate that considers the CO2 emission factor for each specific fuel, expressed in volume units (kilograms of CO2) per energy unit (terajoules), according to the fuel volume or weight. Following are the rates per unit of fuel for 2019 (for 2020 the updated amounts are pending):

 Fossil fuel	 Rate/unit
Natural gas	COP 32 / cubic meter
Liquefied petroleum gas	COP 104 / gallon
Gasoline	COP 148 / gallon
Kerosene and jet fuel	COP 162 / gallon
Acpm	COP 166 / gallon
Fuel oil	COP 194 / gallon

How does the stamp tax work?

Article 72 of Law 1111 of 2006 determined, as of 2010, the general stamp tax will be 0%. Consequently, this tax currently only applies in very specific cases.

Which are the main departmental taxes?

The main departmental taxes are the registration tax; the excise tax on cigarettes, beer and alcoholics beverages; and the motor vehicles tax.

How does the registration tax work?

Subject to this tax are registrations of documents containing acts, decisions, contracts, or legal deals in which private persons participate or are the beneficiaries of, and which according to the law have to be registered before the respective chambers of commerce or the public instruments registration offices. Rates are up to 1%.

How does the cigarette, beer, and alcoholic beverages excise tax work?

The cigarettes excise tax consists of a 10% ad valorem tax on the sale price (certified by DANE) and a specific component consisting of a fixed value for each 20-unit pack of cigarettes (or proportionally).

The beer excise tax is 48% (20% applies to beer and soda pop mixes). The tax base is the



The tax base is the commercial appraisal annually made by the Ministry of Transportation through a resolution. In Bogota, the rate is between 1.5% and 3.5% of the vehicle commercial value.

Which are the main municipal taxes?

At a municipal level, the main taxes are the industry and commerce tax (ICA), the property tax, the urban delineation tax, and the "plusvalia" tax.

How does the industry and commerce tax work?

This is a municipal tax that applies to all industrial, commercial, or service activities carried out in the jurisdiction of a municipality or district. Such activities may be carried out directly or indirectly by individuals or companies, either permanently or occasionally, in a specific property with a commercial establishment or not.

The tax is calculated based on the taxpayer's revenues in the respective municipal or district jurisdiction. In Bogota, in general they have to be paid every two months, the rates ranging between 0.414% and 0.138% depending on the activity. In the other jurisdictions, the rates range between 0.2% and 1%.

How does the unified land property tax work?

This tax applies to immovable properties. The tax base is usually the cadastral appraisal of the property.

The tax rate in Bogota ranges between 0.2% and 3.3%, applied annually.

How does the urban delineation tax work?

This tax applies to constructions or works for which a construction license has been issued and notified. The rate is in general 3%, over the work or construction's budget.

How does the "plusvalia" tax work?

This is a tax paid by the owners of real estate properties which value has increased due to a decision of the government (e.g., new zoning rules). It ranges between 30% and 50% of the increased value.

retail sale price. In the case of imported beer, the retail sale price is established as the customs value, plus the customs taxes, in addition to a 30% sales margin.

The alcoholic beverages excise tax consists of a 25% ad valorem component for liquors and 20% for wines on the sale price to the public (before taxes and participation, certified by DANE), and a specific component that varies depending on the alcohol contents of each liquor or wine.

How does the motor vehicles tax work?

The vehicles tax applies to the ownership or possession of motor vehicles. It is a departmental tax; however, in Bogota the tax should be paid to the city of Bogota.





More information
on this topic