

Information Bulletin

Tax Reform - Law 1819 of 2016

On December 29, 2016, Congress approved Law 1819 of 2016, by which a structural tax reform is adopted, the mechanisms to combat tax evasion and tax avoidance are strengthened and, in general, provisions are issued which modify the tax system for individuals and legal entities, businesses and contracts, and foreign investors.

Below is a summary of the major modifications introduced by the mentioned Law:

I. Individuals.

Elimination of the Alternative Minimum Tax- IMAN and the Simple Alternative Minimum Tax- IMAS and creation of a schedular income tax system.

The schedular income tax system is designed to determine the tax independently for each type of revenue, in order to ensure that items of revenue not constituting income, costs and deductions apply only with respect to those revenues with which they have a causal relationship.

- Tax benefits may only be deducted in schedules with revenues.
- The same exempt income or deduction may not be assigned to more than one schedule.

The net income shall be determined independently for the following types of revenues:

- **Dividends and Participating Interests.** The revenues in this schedule are those received by way of dividends and participating interests in distributions obtained from domestic and foreign companies.
- **Capital Gains.** Those corresponding to interest, financial yields, rent, royalties and working of intellectual property. In order to establish the net schedular income, all revenues not constituting income, costs and expenses attributable to this schedule will first be subtracted; then, exempt income and

deductions will be subtracted, provided they do not exceed 10% of the previous balance or of a sum equivalent to 1000 Tax Value Units (hereinafter "UVTs") (Today: COP \$31,859,000).

- **Earned Income.** In order to establish the net schedular income in earned income, revenues not constituting income attributable to earned revenues will be subtracted. Any exempt earned income and deductions, not exceeding 40% of the revenues received or 5040 UVTs (today COP \$160,569,360), may be subtracted from the balance.
- **Pensions.** The exemption for retirement, disability, old age, survivors and occupational risk pensions, not exceeding 1000 UVTs (today COP \$31,859,000) per month, is maintained. Pension Substitution Indemnifications or refunds of pension savings balances will be subject to the same treatment.
- **Unearned Income.** Revenues from unearned income are considered to include all those that cannot be classified under any of the preceding schedules, except for fees received by individuals providing services and who contract or hire two or more workers associated with the activity. In this case, the fees are not part of the earned income.

In order to establish the net schedular income, any revenues not constituting income, costs and expenses attributable to this schedule will first be subtracted; then, exempt income and deductions will be subtracted, provided they do not exceed 10% of the previous balance or of the sum equivalent to 1000 UVTs (today COP \$31,859,000).

This article of the Tax Reform is pending clarification as to whether only deductions that do not correspond to expenses attributable to the income-producing activity are subject to the 10% limitation.

Income tax rate.

- A.** The Tax rate for resident individuals or successions of decedents residing in the country shall apply in accordance with the corresponding schedule, as follows:
1. For net earned and pension income, the rates that applied to individuals are maintained.

UVT Ranges ¹		Marginal Rate
From	To	
0	1090	0%
1090	1700	19%
1700	4100	28%
4100	And above	33%

2. For net unearned income and capital gains, new intermediate rates are created: 10%, 20% and 30%; in addition, the maximum tax rate is increased to 35%.

UVT Ranges		Marginal Rate
From	To	
0	600	0%
600	1000	10%
1000	2000	20%
2000	3000	30%
3000	4000	33%
4000	And above	35%

- B.** For individuals and successions of decedents **without a fiscal residence** in the country, the income tax rate shall be 35%.

¹ Tax Value Unit (*Unidad de Valor Tributario*) – UVT for 2016 is COP \$31,859 approximately USD 10.00.

Tax Treatment of Payroll Taxes.

- A.** As of the year 2017, mandatory health and pension contributions made by employees will be considered Revenues Not Constituting Income.
- B.** Voluntary contributions to pensions and AFC accounts will retain the exempt income treatment. Funds in AFC accounts may also be used towards housing lease agreements.

II Dividends.

Below, are the rates that will apply for dividends:

Taxpayer	Dividends distributed charging profits taxed on the domestic company	Dividends distributed charging profits NOT taxed on domestic companies	Dividends obtained from foreign companies. (Will be subject to deduction for taxes paid abroad, as applicable)
Resident Individuals	Dividend Rate Range	Effective rate from 35% to 41.5%	Effective rate from 35% to 41.5%
	0-19 <i>million</i> 0%		
	19-31 <i>million</i> 5%		
	>19-31 <i>million</i> 10%		
NON-Resident Individuals / Foreign entities and companies	5%	Effective Rate 38.25%	Not applicable
Legal Entities domiciled in Colombia	Revenues NOT constituting income or capital gains.	General rate 33% ²	General rate 33% ³
Permanent establishments of foreign companies	5%	Effective Rate 38.25%	Not applicable

The above rates will be applicable only to dividends reported charging profits generated as of the tax year 2017.

² See section on rates for legal entities.

³ See section on rates for legal entities.

III. Legal Entities.

In order to promote the stability of companies, the Tax Reform reduced the income tax rates for legal entities in Colombia. To such end, the Income and Equality - CREE Taxes were again unified.

In accordance with the above, Law 1819 of 2016 fixed a 34% rate as a transitory income tax rate for 2017, and a general 33% rate for the following years. Likewise, the surcharge for legal entities generating a net taxable income above \$800 million pesos was maintained. The surcharge will be 6% for 2017 and 4% for 2018. The income tax rate shall be as follows:

Income Tax and Surcharge Rate		
Tax Year	Income Tax Rate	Surcharge Rate
2017	34%	6%
2018	33%	4%
After 2018	33%	N/A

An advance must be calculated for the surcharge corresponding to tax periods 2017 and 2018 on the income and complementary tax base for the immediately preceding year.

- **Rate for Free-Trade Zones.** The income tax rate in force to date for industrial and commercial users in free-trade zones is increased as of January 1, 2017. A flat 20% rate was established for industrial users and the general income tax rate, that is, a transitory 34% rate in 2017 and 33% in the following years, will apply for commercial uses.

Excepted from the general 20% rate are users of the new free-trade zones created in the Municipality of Cúcuta, during the period from January 2017 to December 2019, to which the current 15% rate will continue to be applied, provided they meet the following characteristics:

- The area of the new free-trade zones must be more than 80 hectares.
- It must be guaranteed that the new free trade zone will have more than 40 users, including both domestic or foreign companies.

Finally, Free Trade Zone users that signed a Legal Stability Agreement will maintain the rate established in said agreement, but may not apply the special deduction for fixed assets nor the exoneration from social security contributions.

- **The benefits of Law 1429 of 2010 are eliminated.** The progressiveness benefits in the payment of income taxes are revoked as of January 1, 2017.

However, companies that have made use of the benefits before the mentioned date must determine and pay the income tax applying the following table, in accordance with the number of years elapsed from their date of incorporation:

Year	Rate for 2017	Rate for the following years
1	9%	9%
2	9%	9%
3	15.25%	15%
4	21.5%	21%
5	27.75%	27%

The mentioned income tax rate applies only for companies that have not exhausted the progressiveness term established in Law 1429 of 2010.

Any change in the stock composition of these companies, after the entry into force of Law 1819 of 2016, would imply the loss of the preferential treatment and, consequently, the company would be subject to the general income tax rate (34% or 33%).

- **A large portion of exempt income is eliminated.** Hotel income and publishing house income, which meets the requirements established by the Law, will be subject to a 9% rate for the term of the initial exemption.
- **Goodwill.** The possibility of amortizing Goodwill generated as of the year 2017 is no longer available. Goodwill balances originated before the entry into force of Law 1819 of 2016 will be subject to a transition system under which Goodwill may be amortized within the next five tax periods, after January 1, 2017.
- **Deduction on acquisition or import of Capital Goods.** As of tax year 2017, taxpayers will be allowed to deduct 100% of the amount paid as VAT on the acquisition or import of Capital Goods.
- **Increase in the Presumptive Income tax rate.** The presumptive income tax rate was modified and is now 3.5% of the net worth. On the other hand, the reform, which included social and sports clubs within the general taxation system, determined that these may deduct from the determination of presumptive income, the cost of assets allocated to sports activities.
- **Set-off of fiscal losses.** Under Law 1819 of the 2016, companies may set off their fiscal losses against the ordinary net income they obtain during the next 12 tax periods. However, losses accrued until December 31, 2016, may be set off without any limitations or percentages
- **Exchange rate differential.** Income, costs, deductions, assets and liabilities in foreign currency will be appraised at the time of their initial recognition at the market reference exchange rate.

The reform provides that the fluctuations in assets and liabilities denominated in foreign currency will have no fiscal effects until the time of disposal of the assets or payment of the liabilities.

In keeping with the above, revenues generated by the difference between the market reference exchange rate in force on the date of the initial recognition and the market reference exchange rate at the time of the payment on account or in full, shall be taxed only then.

- **Application of the International Financial Reporting Standards-IFRS when determining the accounting and tax bases, except in the cases established by Law.** As of the effectiveness of Law 1819 of 2016, as a general rule, in order to determine the income tax, the value of the assets, liabilities, net worth, revenues, costs and expenses of taxpayers required to keep accounts shall be determined in accordance with the prevailing accounting technical frameworks, in other words, in accordance with the IFRS.

IV. Transfer Pricing.

- The supporting documentation that must be prepared by taxpayers subject to the Transfer Pricing System when performing transactions with foreign related parties must include a **master report** with relevant global information on the multinational company and a **local report** with information related to each type of transaction performed by the taxpayer. In addition, taxpayers falling within the premises of the Law, shall be required to submit a **country by country report**, containing information regarding the global assignment of revenues and taxes paid by the multinational group and other indicators related to its economic activity
- The Comparable Uncontrolled Price will be the most appropriate method for transactions on raw materials and commodities.
- The penalty system and the procedure to formalize Advance Transfer Pricing Agreements is modified.

V. Monotributo System

Monotributo is an alternative system to the income tax, which is optional for individuals belonging to the informal sectors of the Colombian economy.

Taxpayers. Taxpayers under the Monotributo system are individuals who meet the following conditions: (i) Who obtained, during the tax year, ordinary or extraordinary gross revenues between 1400 UVTs (today COP \$44,602,600) and 3500 UVTs (today COP \$111,506,500); (ii) Who conduct their economic activity in an establishment with an area of 50 square meters or less; (iii) Who are eligible to belong to the Complementary Social Service of Periodic Economic Benefits, BEPS, in accordance with the verification made for such purpose by the administrator of said complementary social service. Colombian citizens over the age of 18 belonging to levels I, II or III of the Social Program Beneficiaries Selection System - SISBÉN and indigenous peoples residing in reservations, evidencing a census listing, are eligible to belong to the BEPS; and, (iv) Whose economic activity is retail trade or hairdressing and other beauty treatment activities under the economic activity classification – UIIC adopted by the National Tax and Customs Authority – DIAN.

Likewise, individuals who, without fulfilling the third requirement mentioned in the preceding paragraph have made contributions to the pension and health system for at least 8 continuous or discontinuous months during the previous tax year may also be taxpayers under this system.

Monotributo tax system is not available to: (i) Legal entities; (ii) Individuals obtaining earned income; (iii) Individuals obtaining from the sum of investment income and dividends, more than 5% of their total gross income; (iv) Individuals who simultaneously perform one of the activities listed in the previous article and a different activity.

- The amount paid under the Monotributo system has two components; a national tax and a contribution to the BEPS Complementary Social Service.

The Monotributo return must be filed annually, with the following assessment:

Category	Gross Annual Revenues	Monotributo Amount	Tax Component	BEPS Component
A	\$ 44,602,600 - \$ 66,903,900	\$509,744	\$382,308	\$127,436
B	\$ 66,903,900 - \$ 89,205,200	\$764,616	\$605,321	\$159,295
C	\$ 89,205,200 - \$ 111,506,500	\$1,019,488	\$828,334	\$191,154

(*) The preceding amounts are expressed in accordance with the UVT corresponding to the year 2017.

Any taxpayer may opt to contribute in a higher category than that which may be applicable under the previous table.

- **The registration in the Single Tax Register (RUT)** as Monotributo taxpayers must be made before March 31 of the respective tax period.

The registration will automatically generate the inclusion of the taxpayer in the BEPS.

- The individuals registered under the Monotributo system will additionally have the right of affiliation to an Occupational Risks Manager (ARL) and to obtain Family Subsidy Fund benefits, among others.
- Monotributo taxpayers will be subject to withholding taxes unless the corresponding payments are made through credit and/or debit card systems and other mechanisms not subject to withholding.

Exclusion from Monotributo Tax System. A taxpayer may be excluded when:

- The Tax Authority determines that the taxpayer does not meet the requirements to belong to the system.
- He or she defaults in the payment of the Monotributo tax system. Once excluded, a taxpayer may not opt for this scheme during the next three (3) years.

VI. Controlled Foreign Corporations

Law 1819 of 2016 introduces the Controlled Foreign Corporation (hereinafter "CFC") system. The purpose of the mentioned system is to tax on a Colombian fiscal resident the passive income received by foreign entities controlled abroad by the local taxpayer.

The mentioned system provides that domestic companies and individuals who are fiscal residents in Colombia which have, either directly or indirectly, an ownership interest equal to or greater than 10% of the composition of the CFC or in its profits, must recognize in their income tax return the passive income obtained by the CFC in proportion to their ownership interest in said company.

The main aspects to be taken into account are:

- **Controlled Foreign Corporations.** Are foreign controlled entities without a fiscal residence in Colombia that meet all of the following requirements:
- That the entity is controlled by one or more Colombian fiscal residents, in the terms established for subordinates or economically associated parties. It shall be understood that there is subordination or economic association when one or more Colombian fiscal residents meet one of the following requirements: hold more than 50% of the capital, are entitled to receive 50% of the profits, have the right to cast the necessary votes to form the minimum decision-making majority of the entity or have the capacity to control the company's decisions.
- That the controlled entity does not have a fiscal residence in Colombia.

- **Realization of Income:** The passive income obtained by an CFC is understood as realized by the Colombian fiscal residents, subject to income tax, which directly or indirectly control the CFC, in the tax year or period in which the CFC realizes them and in proportion to their ownership interest in the entity. The passive income attributable to the Colombian fiscal resident is the amount resulting from taking the passive income and subtracting from it the costs and deductions associated with said income.
- **Passive income:** The following are passive income received by the CFC: (i) dividends, (ii) interest, (iii) royalties, (iv) revenues obtained from the sale or assignment of rights on assets generating passive income, (v) revenues obtained from the disposal or lease of real property, and (vi) certain revenues from the provision of services to related parties.

Included under the notion of CFCs are investment vehicles such as companies, freestanding trust funds (*patrimonios autónomos*), trusts, collective investment funds, other trust businesses and private interest foundations, organized or domiciled abroad, whether or not these are entities with legal personality, and whether or not they are transparent in fiscal matters.

It is presumed that Colombian fiscal residents have control over CFCs that are domiciled, organized or in operation in a non-cooperating or of low or nil taxation jurisdiction, regardless of the ownership interest of the entities.

On the other hand, if the passive income of the CFC represent 80% or more of the total revenues, it shall be presumed as a matter of law that all revenues, costs and deductions of the CFC shall give rise to taxed passive income for the controlling parties.

VII. Special Tax System.

Associations, foundations and corporations organized as non-profit entities may request the Tax Authority to classify them as taxpayers under the Special Tax System (hereinafter "RTE"), provided they comply with the following requirements and those listed in the Regulatory Decree:

- Be legally organized.
- That their corporate purpose be of general interest, and that the community has access to their activities.
- That either their contributions nor their surpluses be either directly or indirectly distributed during their existence, or at the time of their dissolution or liquidation.

The RTE will be subject to the following regulations:

- **Contributions to the ESAL** do not generate rights and will not be reimbursable.
- **The net or excess profit shall be deemed EXEMPT** when it is directly or indirectly allocated, in the year following that in which it was obtained, to programs that pursue the corporate purpose and the commendable activity of the entity.
- Payments for services, fees, rent, commissions, special bonuses or other items to the **Legal Representatives and Administrators** must be made at average market prices and the contracts originating such payments must be registered with the Colombia Tax Authorities- DIAN, in order for this entity to determine whether they represent an indirect distribution of surpluses.

The foregoing payments may be made below the average market prices, provided the transactions are intended to fulfill and perform the commendable activities of the entity.

When the entity has gross annual income in excess of 3500 UVTs (today COP \$111,506,500), the budget allocated to remunerate, compensate or finance any expenditure, through payroll, contracting or commission, to individuals holding directive

and managerial positions, may not exceed 30% of the total annual expenditure of the respective entity. Payments will be admitted by demonstrating the payment of payroll taxes and other obligations.

- Entities with annual revenues in excess of 160,000 UVTs (today COP \$5,097,440,000) must file an **Economic Report** with the Tax Audit Division, including management, a statement by the legal representative and statutory auditor regarding compliance with the RTE requirements, a copy of the income tax return and the update of the information on the transparency platform.
- The **Income Tax Rate** on the net or excess profit shall be 20%.
- Taxpayers of the RTE will be subject to the **income by comparison of net worths** system.
- Each year the taxpayers belonging to the RTE **will update their rating**, with the simple filing of their Income Tax Return.
- The RTE entities will be registered in a web application so that the rating process of the entity is public.
- **Exclusion from the RTE.** Entities that do not comply with the RTE regulations will be classified as commercial companies and will be subject to income tax as of the year when they fail to meet the conditions. The entity may request its readmission to the RTE after 3 years from its exclusion.
- **Transition System:** ESALs which, as of December 31, 2016, are classified in the RTE shall continue in this system, and in order to remain in it must comply with the provisions of this Law.
- Entities which, as of December 31, 2016, are organized and determined as non-taxpayers, but which as of January 1, 2017 are determined as belonging to the Ordinary

Tax System but may request admission to the RTE, shall be understood as automatically admitted and classified in the latter.

- **General clause to prevent tax avoidance.** RTE entities, non-taxpayer entities both required and not required to file returns, which abusing their legal status defraud the tax regulations or which, through simulated pacts cover up a different business from that which they wish to carry out, shall be excluded from the RTE. The DIAN may regularize the situation through an official assessment.
- In addition, Law 1819 of 2016 lists the acts and circumstances constituting abuse of the RTE.
- **Donations to entities not belonging to the RTE.** Donations will not be deductible and shall be taxable revenues for the receiving entities.

VIII. Value-Added Tax - VAT

Law 1819 of 2016 introduced changes to the Value-Added Tax (VAT) system, the most significant measure being the increase of the general rate to 19%, taking us near the VAT level of countries such as Chile and Argentina, in the latter of which the rate is 21%.

In addition to the increase in the general rate of the Tax, the Law generated the following changes:

- **The events subject to VAT are broadened.** The Law provides that events associated with real estate property and intangibles will now be considered sales.

On the other hand, the following will not be considered sales for purposes of this Tax, and therefore are not subject to it: (i) donations made by state entities of goods captured or seized in favor of the Nation; (ii) allocation of said goods by state entities, provided they are required for the performance of their duties; and (iii) the delivery of said goods by state entities to extinguish their debts.

- **Location of the taxable event for technological services.** The tax reform includes intangibles among the taxed goods and services.

In order to determine the territory of the Tax in the case of intangibles or provision of services from abroad, the Law stipulates that any provision of services or acquisition of intangibles shall be understood as performed in Colombia when the direct user or recipient has its fiscal residence, domicile, permanent establishment or headquarters of its economic activity in Colombia.

The foregoing, in compliance with the recommendation of the Organization for Economic Co-operation and Development (OECD), which seeks to capture payments for services which are not easy to locate, such as, for example, the provision of web pages, hosting, cloud storage, supply of software, supply of payment platforms, among others.

- **Goods not subject to VAT.** The following are the goods which the Law classified as excluded from VAT:

- a) Nutritional support products that are to be administered through catheters in patients with specialized treatment needs.
- b) Tablets and intelligent mobile phones provided their price is less than 22 UVTs (today COP\$ 700,898), and computers provided their price does not exceed 50 UVTs (today COP\$ 1,592,950).
- c) Sale of real estate properties, except for the first sale of new housing the price of which exceeds 26,800 UVT (today COP \$853,821,200), which will be taxed at the rate of 5%.
- d) Products purchased or brought into the department of Amazonas under the framework of the Colombia-Peru Agreement and the Agreement with Brazil.
- e) Crude oil received by the National Hydrocarbon Agency (*Agencia Nacional de Hidrocarburos*) as royalty payment for its respective conversion into cash.

f) Purchase and sale of machinery and equipment intended for greenhouse gas emission reduction activities.

- **Withholding tax.** For transactions related to the digital economy, the Sales Tax withholding agents will be the issuer entities of credit and debit cards, the vendors of prepaid cards and the collectors of cash on behalf of third parties, at the time of the payment or payment on account to service providers from abroad for services related to web pages, hosting, cloud computing, remote maintenance of programs and equipment, electronic supply of images, text and access to digital databases, provision of audiovisual services, supply of remote teaching or training, provision of online services, and any others which the DIAN determines by Resolution.

The applicable withholding shall be 100% of the tax payable.

- **Products taxed at the rate of 5%.** This includes the following goods and services:
 - Elements and parts for conversion to the vehicle gas system, so that its treatment is equated to that of electric vehicle bodies and parts.
 - The first sale of housing units whose price exceeds 26,800 UVTs (today COP\$ 853,821,200)

A transitory paragraph is added to article 468-1 of the Tax Code stipulating that the sale of new housing units whose price exceeds 26,800 UVTs (today COP\$ 853,821,200) shall be exempt from VAT provided a promise of purchase-sale, pre-sale agreement, purchase deed or similar document has been signed before December 31, 2017, as certified by a Notary Public.

Likewise, the text of the Law clarifies that the first sale of social interest housing units (VIS), both urban and rural, and of priority interest housing (VIP), both urban and rural, will not be subject to VAT.

- Sanitary napkins, bicycles and electric cars.

- **Tax exempt goods.** Weapons, ammunition and war material pertaining to the Military Forces and National Police are among the tax-exempt goods entitled to setoff and refund.
- **Tax Period.** The tax reform reduced the various VAT tax periods to two, bimonthly and four-monthly. The annual return disappears.
 - Bimonthly return and payment, for taxpayers whose revenues exceeded 92,000 UVTs (Today COP\$ 2,931,028,000) in the immediately preceding year, as well as producers of exempt goods or services entitled to refund.
 - Four-monthly return and payment, for taxpayers whose revenues in the immediately preceding year did not exceed 92,000 UVTs (Today COP\$ 2,931,028,000).

In addition, commercial establishments with direct sale to the public of pre-marked goods, either directly or in gondolas, or existing in counters, will have a transition period, until February 1, 2017, for any goods or services offered to the public, to reflect the changes in the VAT rates.

- **Timing of deductions.** Taxpayers filing bimonthly returns may include deductions and deductible taxes in the fiscal period of their accrual or in one of the next three bimonthly periods; however, the request must be made in the return corresponding to the period when they were included.

On their part, taxpayers who must file four-monthly returns may include deductions and deductible taxes in the fiscal period of their accrual or in the following period, and these may be requested in the return corresponding to the period when they have been included.

For the construction sector, deductions and deductible taxes may only be included in the fiscal period when the sale of the first property is made or in any of the two immediately following periods, and they may be requested in the fiscal period of registration of the deed for each real estate unit.

- **Simplified VAT system.** Finally, Law 1819 of 2016 modified the conditions to belong to this system, as follows:

- Having obtained gross revenues under 3,500 UVTs (today COP\$ 111,506,500) from the activity during the previous year.
- Not having entered, in the previous year or in the current year, into agreements for the sale of goods or provision of services in an amount equal to or greater than 3,500 UVTs (today COP\$ 111,506,500) each.
- The amount of their bank deposits, other deposits and financial investments during the previous year or current year must not exceed the sum of 3,500 UVTs (today COP\$ 111,506,500).

IX. National Consumption Tax.

The following are the modifications introduced by the Law:

- **Web Browsing.** Mobile internet services, provided they exceed COP\$ 45,000 pesos per month, will be subject to a 4% rate.
- **Franchises.** Restaurant franchises will be subject to an 8% consumption tax, instead of 19% VAT. This modification unifies the treatment with other restaurants and favors consumers.
- **Tax on Plastic Bag Consumption.** With the tax reform, plastic bags whose purpose is to carry products purchased in commercial establishments will also be subject to Consumption Tax. The mentioned Tax rates will be the following:

Year	Rate in pesos per Bag
2017	COP \$20
2018	COP \$30
2019	COP \$40
2020	COP \$50

The taxpayer is the person who opts to receive plastic bags to carry the products purchased in commercial establishments, including delivery orders. Individuals or legal entities belonging to the VAT common taxation system will be subject to this tax.

The delivery of plastic bags whose purpose is not to carry products purchased in the establishment delivering them, those used as packaging material for pre-marked products, biodegradable bags certified by the Ministry of the Environment and Sustainable Development and reusable bags that can be used several times without requiring transformation processes will not be subject to the Tax.

- **National Tax on Consumption of Medicinal Cannabis.** Sales of products transformed from psychoactive or non-psychoactive cannabis will be subject to the cannabis Consumption Tax.

The tax base will be the total price of the final product, excluding the applicable VAT.

The rate for the mentioned tax will be 16%.

In addition, the conditions for belonging to the simplified Consumption Tax system are legally defined for individuals who, during the previous year, obtained total gross income from their activity under 3,500 UVTs (today COP\$ 111,506,500) and who have a maximum of one commercial establishment, location, or shop where they carry on their activity.

Individuals belonging to the simplified Consumption Tax system must fulfill the same obligations as taxpayers belonging to the simplified VAT system.

X. Tax on Financial Transactions.

- The 4 x 1000 rate is maintained for the Tax on Financial Transactions (GMF).
- Foreign currency purchase transactions whose sole purpose is the repatriation of portfolio investments will be exempt from the GMF.

XI. Cash Payments.

Cash payments made by legal entities and individuals receiving unearned income, may be fiscally recognized as costs, deductions, liabilities or deductible taxes, provided they do not exceed 100 UVTs (today COP \$3,185,900).

In addition, limits will be applied to the fiscal recognition of cash payments as of the year 2018, until they are restricted in 2021 to the lesser value between 35% of the costs and deductions and 40% of the amount paid, which may not in any event exceed 40,000 UVTs (today COP \$1,274,360,000).

XII. Green Taxes.

Law 1819 of 2016 created the national carbon tax, imposed on the carbon content of all fossil fuels provided they are used for combustion.

- The tax is imposed on the sale, withdrawal, import for own consumption or import for sale of fossil fuels and accrues in a single stage with respect to the taxable event that occurs first.
- The taxpayer shall be whoever acquires the fossil fuels from the producer or the importer; likewise, the producer and importer will be subject to this tax when they make withdrawals for their own consumption.
- The tax rate will depend on the carbon dioxide emission factor for each type of fuel.

XIII. Post Conflict Incentives.

- A. For micro and small enterprises established in the Zones Most Affected by the Conflict (hereinafter "ZOMAC") and which meet the minimum amounts of investment and job

creation, the income tax rate shall be 0% for the years 2017 to 2021; 25% for the years 2022 to 2024 and 50% of the general rate for the years 2025 a 2027.

Medium-sized and large companies will calculate the income tax at 50% of the general rate for the years 2017 to 2021 and 75% for the years 2022 to 2027.

- B. Legal entities with gross income exceeding 33,610 UVTs (today COP \$1,070,780,990) may pay 50% of the assessed income tax, through the allocation of said amount for direct investment in the execution of enabled priority projects of social significance in the ZOMAC, which have been previously approved by the Agency for Renewal of the Territory.

In the event of a default in the method of payment, the taxpayer shall pay the outstanding obligation, plus penalties and interest.

XIII. Penalty for Failing to Declare the Wealth Tax.

The penalty for not filing the return shall be 160% of the assessed tax, based on the net worth declared the last return filed or that determined by the Tax Authority for the period of the return not filed, whichever is higher.

XIV. Annual Declaration of Assets held abroad.

Penalty for not filing a Declaration. The penalty for failing to file the Annual Declaration of Assets held Abroad will be 5% of the gross assets appearing in the last income tax return, or 5% of the gross assets determined by the Tax Authority for the period of the return not filed, whichever is higher.

Late filing of the Declaration: The penalty for each calendar month or fraction thereof of delay will be equivalent to 1.5% of the value of the assets held abroad if the declaration is filed before the Authority issues the prior notice for failing to declare, or to 3% of the value of the assets held abroad if filed after the mentioned notice and

before the issuance of the penalty resolution for failing to declare. In any event, the amount of the penalty may not exceed 25% of the amount of the assets held abroad.

XV. Industry and Commerce Tax (ICA).

The modifications to this tax are the following:

- Revenues by way of financial yields are included in the tax base of the ICA.
- The criteria to define the territoriality of the tax were delimited:
 - In the case of domestic holding companies, the revenues received as profits shall be understood as taxed in the municipality where the company receiving the investment is located.
 - For transportation activities, the revenues shall be understood as received in the municipality from which the asset, goods or person are dispatched.
 - For internet by subscription and fixed telephony services, the revenues are understood as received in the municipality where the subscriber is located.
- The ICA form was unified nationally, as was the possibility of paying the tax in any national bank.

XVI. Tax Procedure.

Correction of Returns. The request for approval of the draft correction by the DIAN was eliminated for corrections of tax returns in order to decrease the tax payable or increase the credit balance. Therefore, the procedure to be used will consist of the taxpayer filing the return by the means applicable to it and within the year following the expiration of the term to file the return.

Finality of Tax Returns.

- The term for income tax returns to become final is increased from two to three years. Tax returns shall become final if, within three years following the date of expiration of the term to declare, no special requisition has been notified.

- When the initial return has been filed after its deadline, the three (3) years shall be counted from the filing date.
- The term for finality of a tax return in which fiscal losses are claimed shall be 12 years; if the fiscal loss is offset in one of the last two years available to the taxpayer, the term for finality of the return shall be extended three more years from the date of said offset.
- The term for finality of the tax return in which fiscal losses are offset shall be six years from the date of its filing.
- For taxpayers subject to the Transfer Price System, the term for finality of the return shall be six years from the expiration of the term to declare. If the return was filed late, this term shall be counted from the filing date thereof.

Amnesty for Ineffective VAT and Withholding Tax Returns. Taxpayers subject to VAT which, within 4 months following the entry into force of the Law, file VAT returns which as of November 30, 2016 were considered ineffective, will not be required to include the sanction for late filing or default interest.

The foregoing shall also be applicable to withholding tax returns considered ineffective because they were filed in a different period from that required.

XVII. Crimes against the Tax Administration.

- A. **The omission of assets or the inclusion of nonexistent liabilities** is typified as a crime. Therefore, a taxpayer who fraudulently omits assets or files inaccurate information in relation to these, or includes nonexistent liabilities in an amount exceeding 7,250 S.M.M.L.V. (today COP \$ 5,348,448,250), thereby affecting its income and complementary taxes or the credit balance in any of such taxes, will be subject to 48 to 108 months (4 to 9 years) of prison and a fine equivalent to 20% of the amount of the omitted assets, the value of the inaccurately declared assets or of the nonexistent amount.

In any event, the filing or correction of the corresponding return or returns, accompanied by the respective payment, if any, is included as a mechanism to extinguish the criminal action.

- B. With respect to the crime of **Omission by the Withholding or Collection Agent**, these were the changes:

The prison sentence was increased to 48 to 108 months (4 to 9 years) and the fine shall be twice the amount not deposited, without exceeding 1,020,000 UVTs (today COP \$ 32,496,180,000).

The withholding agent or the agent responsible for the sales tax or excise tax that omits the obligation to charge and collect these taxes, when being required to do so, shall incur the same penalty.

RAA will keep you informed about the decrees regulating the Tax Reform and is at your disposal to provide support in this regard.

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