Título
Colombia – 2022 Tax Reform Project

Background
On October 6, 2022, the Congress discussed in the first debate the new government's tax reform project presented on august 8. Consider that additional debates will be carried out in the Congress; hence further changes to the tax reform project may take place. Provided that the respective law is duly enacted by December 31, 2022, at the latest, the respective provision would take effect in 2023.

Summary

As follows some of the most relevant proposals included in the tax reform project applicable to legal entities.

1. Corporate Income Tax (CIT)

1.1. Rate

- **General CIT rate**: the currently applicable 35% CIT rate will be maintained.
- **CIT surcharge to Financial Institutions**: from 2023 to 2027 FY, the CIT surcharge increases to 5% (today 3%). Applicable to Financial Institutions (banks, insurance companies, stockbrokers, among others), to the extent that their taxable base is equal or greater than USD 1M (approx.). The resulting rate would be therefore 40%
- **CIT surcharge to natural resources exploitation sector:** a surcharge of 10% in FY23; 7.5% in FY25; and 5% as of FY25, for taxpayers in the natural resources exploitation sector, provided that the taxable base is equal or greater than USD 430K (approx.)
- **CIT surcharge to hydro energy generation sector**: a surcharge of 3% in years FY23 to FY26, for taxpayers with hydro energy generation activities, provided that the taxable base is equal or greater than USD 259K (approx.).
- **Hotel services, ecotourism theme parks, and/or agrotourism:** income arising from the provision of hotel services, ecotourism/agritourism parks would be subject to a15% (requirements are applicable).
- **Minimum tax**: the effective CIT Effective tax rate shall not be less than 15% (OECD Pillar 2 inspired).
- **Industrial users of Free Trade Zones:** the CIT rate would remain at 20%, to the extent local sales do not exceed certain thresholds: (i) 40% in FY24, (ii) 30% in FY25, and (iii) 20% as of FY26.

1.2. Deductions, benefits, tax credits

- Certain exempted income, special deductions and tax credits amount cannot exceed 5% of the annual taxable net income of the taxpayer (before including benefits).
- Election to use the industry and commerce tax either as a (i) CIT credit (i.e., a reduction from the tax liability) or (ii) as a deduction (i.e., a reduction from the tax base) will be eliminated. Taxpayer would only be entitled to option (ii).
- Mineral Royalties paid to the government in exchange for natural resources exploitation will not be deductible.

- Elimination of the mega-investments and economic and social development zones regime (ZESE), and the "CERT" tax refund certificate for oil, gas, and mining.

- Elimination of the 5-year straight-line amortization regime for the oil and mining industry.

- Elimination of exempt income of certain activities, among them (i) orange economy (ii) productivity benefits for the agricultural industry (iii) new forestry plantations (iv) river transportation services.

- Profits arising from the sale of shares listed in the Colombian stock exchange, that do not exceed 3% of the entity´s outstanding share would be exempt (current threshold 10%)

- The reacquisition of own shares by entities would subject to the 35% CIT rate, irrespective of the holding term of the respective shares (currently applicable rate 10% provided shares have been held for 2 year or more).

2. Capital Gains Tax (CGT)

- The CGT rate would be increased to 15% (today 10%).

3. Dividend tax

- The withholding tax rate applicable to nonresidents on the distribution of dividends out of previously taxed income would be increased to 20% (today 10%). Investment through tax treaty countries should continue to have reduced rates agreed in such treaties.

- The withholding tax rate applicable among national companies on the distribution of dividends out of previously taxed income would be increased to 10% (today 7.5%).

4. Exportation tax

- The initially proposed export tax on oil, coal, and gold was eliminated.

5. International matters

- **"Significant Economic Presence" (SEP):** targeted to tax cross border e-commerce 2 rules are proposes:

  - **Sale of goods:** provided (a) there is deliberate and systematic interaction in the Colombian market, this is presumed to exist when having 300K Colombian clients; or displaying prices/allowing payments in COP; and (b) Previous or current year´s gross income is equivalent or greater than USD 264K. Aggregated application in activities carried out by related parties to be considered.

  - **Services:** introduces a digital services tax applicable to: on-line adv., digital content (online/downloadable), streaming (tv, music, videos, etc.), any form of monetization of information and/or user data, intermediation platforms, digital subscriptions, data management (hosting, file exchange, etc.), search engine licensing or services, online education/training, provision of the right to use or exploit intangibles, any other service provided through a digital market, other digital / electronic services.

  - **CIT determination & compliance:**

    - **Option 1:** voluntary CIT return filing. ax base: gross income. Tax rate: 5%. No applicable WHT by payor
    - **Option 2:** WHT 10% applied by payor. WHT agents: credit / debit card issuers, payment processors & others. Tax authority to regulate WHT application.

  - **Treaty protection:** (i) under DTT income characterizable as business profit (i.e., not taxable); (ii) SEP provisions not aligned with OECD Pillar 1 will not have effects (when Pillar 1 treaty is enforceable).

- **Effective place of management**: adjustment to current wording to clarify that the effective place of management is triggered where the management/administrative decisions of the day-to-day business are taken.

6. **VAT**

- Elimination of the VAT-free days

- Transportation of valuables would be taxed with VAT.

- Elimination of VAT exclusion for postal traffic goods under USD 200.

7. **Wealth tax**

- Introduction of a permanent wealth tax.

- Taxable persons (among others): (i) individuals (resident / non-resident) and (ii) non-resident legal persons not required to file CIT returns, that own assets in Colombia other than shares in local entities, account receivables and/or portfolio investments that fulfills requirements of exchange control rules

8. **Individual taxation**

- Dividends received by resident individuals would be taxed at progressive rates up to 39%. A 19& tax credit should be provided to prevent impact on low dividend amount taxpayers.

- Reduction of the annual limit for claiming 25% of labor income as tax-exempt to USD 6K (approx.).

- The 40% limit for exempt income and deductions related to general income would be reduced to USD 11K (approx.)

- The annual exempt income limit for pensioners would be reduced to USD 15K (approx.).

- Introduction of special annual deduction of 1% or USD 2K (approx.) for e-payments supported by e-invoices, applicable to labor income as well.

9. **Environmental & Healthy Taxes**

- **Single-use plastic tax**: Triggering event: importation, sale, withdrawal for self-consumption of "single use plastics" to pack goods. Taxable persons: producer & importer (drafted regulations show inconsistencies in determination of taxable person). Tax rate: 0.00005 Units of Tax Value for each (1) gram of the container /package. Non-deductibility against income tax.

- **Ultra-processed beverages tax**: Fixed list of taxable drinks. Taxable base is the sugar content in grams. Tax rate ranges between COP $18 and $35 depending on the grams of added sugar of the drink and per each 100 ml, in FY23. Tax rate ranges between COP $28 and $55 depending on the grams of added sugar of the drink and per each 100 ml, in FY24. Tax rate ranges between COP $38 and $65 depending on the grams of added sugar of the drink and per each 100 ml, in FY25.
  Taxable person is the producer/importer.

- **Ultra-processed food products tax:** Fixed list of taxable products. Taxable base is the sales/importation price. Tax rate: 10% in FY23, 15% in FY24 and 20% in FY25. Taxable person is the producer/importer.

10. **Other relevant proposals**

- Default interest rate: interest rate applicable to outstanding tax and customs obligations that are fully paid by June 30, 2023, is reduced to 50%.

• National stamp tax: Tax reenacted to 1.5% (currently 0%) over immovable goods transactions in public deed that are protocolized with a Notary Public which value exceed USD 165K (approx.)

Continue the conversation

The Latin America Markets, Tax Group and KPMG in Colombia have developed planning opportunities and would welcome the opportunity to continue the conversation with you.

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