Title
Colombia – Law 2277 of 2022 Tax Reform

Background
On December 13 the Congress issued Law 2277 of 2022 enacting the Tax Reform proposed by the Government. As follows some of the most relevant matters introduced by said Law.

Summary

1. Corporate Income Tax (CIT)

- **General CIT rate**: the currently applicable 35% CIT rate is maintained.

- **CIT surcharge to Financial Institutions**: from FY23 to FY27, the CIT surcharge applicable to Financial Institutions (banks, insurance companies, stockbrokers, among others) is increased from 3% to 5%. The resulting rate would be therefore 40%. The surcharge is applicable provided that the taxpayer´s tax base is equal or greater than USD 1M (approx.); 100% of the surcharged is payable in advance.

- **CIT surcharge on natural resource extraction companies:** a surcharge between 5% and 15% is applicable to taxpayers of the natural resources extraction industries, provided that the average international price of the year exceeds certain thresholds and to the extent that the taxpayer´s tax base exceeds USD 440K (approx.)

- **CIT surcharge to energy generation companies**: from FY23 to FY26, a CIT surcharge of 3% is applicable to taxpayers whose main economic activity is the generation of energy from hydric sources. The resulting rate would be 38%. The surcharge is applicable provided that the taxpayer´s tax base exceeds USD 260K (approx.); 100% of the surcharge is payable in advance.

- **Hotel services, ecotourism theme parks, and/or agrotourism parks, books edition entities:** a differential CIT rate of 15%, applicable for a 10-year period (starting as of the initiation of the service) is applicable for the services provided in new hotels, theme park projects, new ecotourism and agrotourism park projects. Taxpayers whose exclusive business purpose is the edition of books are also eligible to this preferential rate.

- **Minimum tax**: in the case that the “depurated CIT” (i.e., CIT of the year with certain adjustments) is lower than 15% of the “depurated accounting profit” (i.e., accounting profit of the year before income tax with certain adjustments) then an additional tax should be calculated to meet a minimum 15% CIT effective rate. Some of the elements that can be used to adjust the accounting profit before income tax are non-taxable income, income originated from the equity participation method, capital gains, tax losses and/or presumptive income excesses.

- **Industrial users of Free Trade Zones:** a differential 20% CIT is appliable to income arising from exportation of goods and services. Income arising from other activities will be subject to the general 35% rate. The 20% will be applicable to taxpayers that subscribe an “internationalization plan” in FY23 or FY24, establishing a cap for income originated from operations carried out in “ordinary Colombian territory” and/or from operations other than the authorized activity. Annual agreements should be executed. To the extent that free trade zone user´s gross income shows a growth of 60% in 2022 in relation to 2019, the 20% rate will be applicable until FY25. Offshore free trade zones, providing docking services, or which business purposes is refining of petroleum-derived fuels or the refining of industrial biofuels, or that provide logistic services (as per defined in article 3, section 1 of Law 2004 of 2005).

1.1. Deductions, benefits, tax credits

- Certain exempted income, special deductions and tax credits cannot exceed 3% of the annual taxable net income of the taxpayer (before including the benefits). A formula for the calculation of the limitation is established.

- Profits arising from the sale of shares listed in the Colombian stock exchange, that (i) do not exceed 3% (10% in FY22) of the entity´s outstanding shares; and (ii) belong to the same beneficial owner, are exempt from CIT.

- 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) is eliminated. Taxpayer would only be entitled to option (ii).

- R&D tax credit is increased from 25% to 30% (of the value invested in the project). The associated deduction is eliminated. Note that prior to the enactment to the Law taxpayers had a “double benefit” (i) deducting from the taxable base the investments made during the year; and (ii) crediting against the tax liability of 25% of such investment.

- For FY23 a special deduction (i.e., a reduction from the tax base), of 150% of the employees’ salaries and social security contributions is applicable for companies in the tourism sector in San Andres, Providencia and Santa Catalina.

- Elimination of the mega-investments and economic and social development zones regime (ZESE).

- 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.

- Taxpayers in free trade zones that subscribed a legal stability contract (i) will keep the CIT rate agreed on the contract; however, such rate cannot concurrently be applied with the real productive fixed assets “bonus deduction” (i.e., the special deduction for investments in real productive assets); and (ii) will not be entitled to the exemption of the payroll taxes established in article 114-1 of the Tax Code.

2. Capital Gains Tax (CGT)

- The CGT rate is increased to 15% (10% in FY22).

3. Dividend tax

- The WHT rate applicable on dividends distributed out of previously taxed income (“PTI”) is increased to 20% (10% in FY22). Double Taxation Treaties special rates will continue to apply.

- The WHT rate applicable on PTI dividends distributed to Colombian resident entities is increased to 10% (7.5% in FY22).

- Dividends received by individuals would be taxed at progressive rates up to 20% - Although progressive rates go up to 39% a 19% credit is allowed.

4. International matters

a) Introduction of the Significant Economic Presence notion ("SEP"), targeted to tax cross border e-commerce. Non-resident persons with SEP, will be subject to Colombian CIT on income arising from the sale of goods and/or provision of services to clients and/or users located in the country. In the commercialization of goods and/or services, it will be understood that a non-resident has a SEP when:

(i) A deliberate and systematic interaction is maintained with the Colombian market, that is, with client(s) and/or user(s) located in the national territory; and

(ii) During the previous taxable year or in the current taxable year, income equivalent to 31,300 Units of Tax Value (i.e., approx. USD 275K in FY23) or more is obtained from transactions involving the sale of goods with client(s) and/or user(s) located in Colombia.

The Law also states that it will be presumed that there is a deliberate and systematic interaction in the Colombian market when:

(i) The non-resident maintains an interaction or marketing display with 300.000 or more clients and/or users located in Colombian territory during the previous taxable year or the current taxable year; or

(ii) The non-resident person keeps or establishes the possibility of viewing prices in Colombian pesos (COP) or allows payments in COP.

(iii) That there will be aggregated application in activities carried out by related parties.

Services covered by SEP

- On-line advertising.
- 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.
- Provision of the right to use or exploit intangibles.
- Any other service provided through a digital market.
- Other digital / electronic services.

CIT determination & compliance

The Law sets forth that (i) payment of goods/services to SEP taxpayers are subject to a 10% WHT on the total amount paid (i.e., gross income) – WHT agents: credit / debit card issuers, payment processors and others -; and (ii) that SEP taxpayers can elect to file a CIT return determining its liability at a 3% rate on the gross income, in this case the 10% WHT will not be applicable.

Treaty protection: (i) income characterizable as business profit under a DTT would not taxable; (ii) SEP provisions not aligned with OECD Pillar 1 will cease to have effects in taxable years beginning after the date on which the “Pillar 1 treaty” enters into force

Notes: (i) SEP provisions will be effective as of January 1, 2024; (ii) further development / guidance on SEP is expected during year 2023.

b) 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, instead of key decision and highly ranked management activities (as worded in the adjusted regulation).

5. VAT

- Elimination of the “VAT free days”.

- The VAT exclusion on importation of "postal traffic goods" with a value of less than USD 200 is adjusted to clarify that it is only applicable to the extent that the respective good has its origin in a country that has an enforceable free trade agreement that specifically establishes that no VAT is applicable.

6. Wealth tax

- Introduction of a permanent wealth tax which triggering event is owning assets in Colombia, valued in more than USD 650K (approx.)
- Taxable persons (among others): (i) individuals (resident / non-resident) and (ii) non-resident legal entities 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.

7. Environmental and healthy taxes

a) Single-use plastic products tax

- Triggering event: importation, sale, withdrawal for own consumption of single-use plastics used to pack / bottle goods.
- Responsible person: producers and importers.
- Rate 0.00005 Units of Tax Value ("UVT") per each (1) gram of the container, package, bottle.
- Not deductible for CIT determination purposes.

b) Ultra-processed beverages tax

- Triggering event: (i) in the production: sale, and in general acts that imply transfer of ownership, free of charge or for consideration, of ultra-processed beverages; (ii) the importation of ultra-processed beverages. A fixed list of taxable products is established.
- Responsible person: the producer and/or the importer.
- Rate: (i) year 2023 between COP $18 and COP $35; (ii) year 2024 between COP $28 and COP $55; and (iii) year 2025 between COP $38 and COP $65. In all cases associated with the added sugar content in grams of the beverage.
- Taxable base: content in grams of sugar per 100 ml of beverage, or its equivalent.

c) Ultra-processed food products tax

- Triggering event: (i) in the production: the sale, and in general acts that imply transfer of ownership, free of charge or for consideration, of ultra-processed foods; (ii) the importation of ultra-processed beverages. A fixed list of taxable products is established.
- Responsible person: the producer and/or the importer.
- Rate: (i) 10% in year 2023; (ii) 15% in year 2024; and (iii) 20% as of the year 2025.
- Tax base: sale price. In the case of donation or withdrawal of inventory, the taxable base is the commercial value.

d) National carbon tax

- National carbon tax levies equivalent carbon content (C02eq) of all fossil fuels, including all petroleum derivatives, fossil gas and solids that are used for combustion.
- Triggering event: sale in the country, withdrawal for own consumption or importation for own consumption or for sale of all fossil fuels. The tax is not applicable on coke coal.
- Taxpayer: the purchaser of fossil fuels and the producer/importer who self-consume them.
- Tax base and rate: specific rate considering the greenhouse gas (GHG) emission factor for each fuel, expressed in unit weight (kilogram of CO2eq) per energy unit (terajoules), according to the volume or weight of the fuel. The rate will correspond to COP 20,500 per ton of carbon equivalent (CO2eq). The values of the rate per unit of fuel will be:

Fossil fuel	Unit	Rate/unit

Coal	Ton	$52.215
Fuel oil	Gallon	$238
Diesel	Gallon	$191
Jet fuel	Gallon	$202
Kerosene	Gallon	$191
Gasoline	Gallon	$169
Petroleum liquid gas	Gallon	$134
Natural gas	Cubic meter	$36

Figures in COP

- The tax is not applicable on exportations.

8. Other relevant matters

a) National stamp tax

- Reintroduction of the national stamp tax on real estate transactions. The applicable rate varies between 1.5% and 3.5% depending on the amount of the operation.

b) Penalties & Interest reduction

- As of the Law´s promulgation date and until June 30, 2023, a transitory interest rate equivalent to 50% of the interest rate established in the Tax Code is applicable.

- Taxpayers that (i) as of December 31, 2022, have omitted to file the tax returns of taxes administered by the National Taxes and Customs Direction ("DIAN" for its acronym in Spanish) and file them before May 31, 2023, with the respective payment (or subscribing a payment facility); or (ii) amend inaccuracies reported in filed returns, will get a 60% reduction on the applicable penalty and a 60% reduction on the applicable interest rate.

- The penalties established in article 651 of the Tax Code are modified at the following rates, capped at USD 70K (approx.):
  - Failure to provide the information:1%
  - Providing information with errors: 0.7%
  - Late provision of information: 0.5%

- Criminal sanctions applicable due to the omission of reporting assets / inclusion of non-existent liabilities; tax fraud and tax evasion are increased in accordance with the value of the committed infraction. Additionally:
  - The respective applicable thresholds are lowered.
  - The possibility of discharging the criminal sanction by paying the owed amounts is limited to two times.
  - The penalties will be increased according to the value associated to the committed infraction.
  - The prescription of the criminal sanction will be suspended when subscribing payment facilities.

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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