Doing business in Colombia

Catalina Reyes Cancino, Mónica Reyes Rodríguez, Mónica Alejandra Villamil Carrillo, Juan Camilo Riveira Gómez, Diego Luna de Aliaga and Andrea Vargas Ovalle
Reyes Abogados Asociados

OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Tax
The most remarkable legal development in Colombia is the Tax Bill, enacted on 27 December 2016 (Law 1819 of 2016) and in force from 1 January 2017. The reform purports to simplify the tax system, increase tax collection and align the Colombian legal system with the Organisation for Economic Cooperation and Development's base erosion and profit shifting action plan.

Income tax changes include:
- A new system to assess income tax.
- Taxation of dividends (see Question 20).
- Restriction of tax exemptions to a maximum of 40% of the total labour earnings, or 5040 tax units (about COP160 million for 2017).
- Restriction of tax exemptions for other types of income to 10% of total earnings.
- Elimination of the following special systems to assess income tax on earnings by individuals:
  - the national alternative minimum tax (IMAN); and
  - the minimum alternative simple tax (IMAS).

Corporate income tax changes include:
- A 34% tax rate for 2017, and a general rate of 33% applicable for the following taxable years.
- Taxation of dividends (see Question 20).
- Elimination of a parallel system to assess income tax (income tax for equality), in force from 2013.
- Elimination of incentives to the newly incorporated companies established in the Law of Formalisation and Employment Generation (Law 1429 of 2010) (First Employment Law).

Value Added Tax (VAT) was also modified in the following ways:
- The general rate increased from 16% to 19%.
- The scope of the definition of a VAT-taxable event was broadened.
- Taxable periods are set for every two months and every four months, eliminating the annual filing.

The following anti-avoidance measures were introduced:
- Qualification of the non-cooperative and low or no tax jurisdictions, and preferential tax regimes.
- Regulation of automatic information exchange.
- Obligation to identify the beneficial owners (effective beneficiaries) of companies.
- Incorporation of new controlled foreign corporations (CFC) rules.

International trade (customs)
In 2016 there was also a reform to the Customs Statute, enacted by Decree 390 of 2016. The reform aims to:
- Facilitate the movement of merchandise.
- Reduce commercialisation costs and smuggling.
- Harmonise domestic regulations with international standards and free trade agreements.

Peace agreement
A key political event expected to improve the conditions for doing business in Colombia is the approval of the peace agreement signed with the guerrilla group Fuerzas Armadas Revolucionarias de Colombia (FARC). The agreement is expected to put an end to the five-decade internal conflict, leading to major changes in regions historically controlled by the FARC guerrillas, and welcoming foreign and domestic investors with tax benefits (see Question 8).

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

The Colombian legal system is based on civil law. The interpretation and scope of written laws are often broadened or narrowed and defined by the Constitutional Court, the Supreme Court of Justice and the Council of State, in accordance with Colombia's constitution.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Typically there is no prior governmental authorisation needed to formalise foreign investment, except for the special regimes that cover the financial, hydrocarbons and mining sectors.

However, foreign investors are subject to certain obligations. The timely registration of any foreign investment with the Colombian Central Bank is mandatory, as well as providing information on any changes to the investment (including changes in the destination or cancellation of the investment).

The remittance of funds relating to foreign investment must be carried out through the foreign exchange market.
If a foreign investor omits the duty to register the investment, there will be penalties of up to 200 minimum monthly wages (about COP147 million), and the investor will lose any exchange control rights relating to the investment (for example, the right to send profits abroad or to reinvest them).

There are no restrictions on foreign shareholders, except for certain activities considered to be of special interest, including:

- Companies carrying out activities relating to national defence and security, private security, and processing and disposal of toxic, dangerous or radioactive waste (where foreign investment is prohibited).
- Telecommunications (where foreign investment cannot exceed 40%).

### 4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with certain countries. However, whenever doing business with countries included in the high-risk and non-cooperative jurisdictions listed by the Financial Action Task Force (FATF), a higher due diligence standard must be applied to prevent financing terrorism and money laundering (www.fatf-gafi.org/countries/#high-risk).

In addition, the tax reform introduced the non-cooperative and low or no tax jurisdictions regime. Under this, payments made to individuals or entities domiciled in the countries included in the regime cannot be considered as costs or deductions for tax purposes, unless income tax is withheld (when applicable) or the payments are due to financial obligations duly registered before the Central Bank.

Taxpayers who engage in transactions with entities domiciled in non-cooperative or low or no tax jurisdictions will be subject to the transfer pricing regime.

### 5. Are there any exchange control or currency regulations?

Colombia’s exchange control regulations operate in two different scenarios:

- **The foreign exchange market.** This comprises transactions that must be channelled through authorised foreign exchange intermediaries or compensation accounts, and which must be reported to the Central Bank. It includes transactions relating to the import and export of goods, foreign debt, international investments, collateral in foreign currency and derivative transactions.

- **The free or non-regulated market.** This includes transactions that are not regulated by the foreign exchange market.

### 6. What grants or incentives are available to investors?

**Promotion of young employment and entrepreneurship (Law 1780 of 2016)**

The benefits of this law include:

- Not having to pay a contribution to the family compensation fund during the first year of employment for people between 18 and 28 years old.

- An exemption for the mercantile registry and the first renovation for young entrepreneur companies, where at least 50% plus one of the outstanding shares or quotas are held by people younger than 35 years old.

**Free trade zones (FTZ)**

Free trade zones provide the following benefits:

- An income tax rate of 20% for industrial users.
- No custom duties on goods entering FTZs from abroad.
- A VAT exemption for raw materials, inputs and finished goods sold from the national customs territory to industrial users of FTZs.
- Exports from FTZs to foreign countries benefit from free trade agreements with Colombia.
- The possibility of performing partial processing outside the FTZ.

**Tax benefits to companies domiciled in the most affected by the armed conflict zones (ZOMAC)**

New companies domiciled and carrying out activities in ZOMAC are subject to the following income tax rate:

- For small and micro companies:
  - 0% for taxable years 2017 to 2021;
  - 25% of the general rate from 2022 to 2024; and
  - 50% of the general rate from 2025 to 2027.

- For medium and large-sized companies:
  - 50% of the general rate for years 2017 to 2021; and
  - 75% for taxable years 2022 to 2027.

From 2027, the general tax rate will apply to all the above businesses.

Also, companies that meet certain requirements can pay up to 50% of their applicable income tax by assigning it to direct investment projects in ZOMAC.

**Special import and export system (Plan Vallejo).**

Tax and customs incentives will apply to the importation of goods if the imported assets are used in the production of goods for export.

**Treaties with investment protection provisions**

Investors can benefit from over 30 bilateral investment treaties and treaties with investment provisions where Colombia is a party.

### BUSINESS VEHICLES

**7. What are the most common forms of business vehicle used in your jurisdiction?**

The main business vehicles used in Colombia are:

- **Private companies.** These include corporations and simplified stock corporations.

- **Public companies.** Corporations can be listed as public.

- **Partnerships.** These include limited liability companies.

- **Branches of foreign entities.** Whenever a foreign entity is carrying out permanent activities in Colombia they are required to either incorporate a subsidiary or open a branch, which is a commercial establishment owned by the foreign entity.

- **Joint ventures.** These allow investments in specific projects and contracts.

- **Trusts.** There are several types of trusts that can be used for specific purposes (for example, real estate projects, managing assets).
The most commonly used is the simplified stock corporation, which is very flexible and allows for tailor-made bye-laws and fewer corporate governance requirements.

Branches of foreign entities are also common, as they are taxed on Colombian source income.

Joint ventures and trusts are also used for specific projects, rather than to carry out permanent activities in Colombia.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

**Registration and formation**

A simplified stock corporation (SSC) is incorporated by registering its bye-laws with the chamber of commerce for the relevant domicile.

The chamber of commerce takes approximately three business days to register the company, once the following documents are filed:

- Powers of attorney granted by the shareholders, duly notarised, apostilled and translated into Spanish, if applicable.
- Notarised private document or public deed of incorporation, containing the bye-laws with the information required by law.
- Acceptance letters and a copy of identification documents for each person appointed in a position.
- Registration forms and preliminary tax registration.

Once the SSC is registered, the tax identification number is legalised by the tax authority. This process can take one additional day.

**Reporting requirements**

There is an annual obligation to renew the commercial register.

If the company is under surveillance by the Superintendence of Companies, or if required by the aforementioned Superintendence, it must file its financial information on 31 December for the previous year. Otherwise, it must deposit a copy of its financial statements before the chamber of commerce.

A company will be under surveillance if, as of December 31 of the previous year, its total income or assets exceed 30,000 minimum monthly wages (approximately COP22,131,510,000 (about US$7.4 million)), or if it is under certain abnormalities established by law.

If control over a company is exercised or if a conglomerate arises, this must be registered with the chamber of commerce.

Any company receiving foreign investment must file Form 15 with the Central Bank, unless it is required to send its financial information to the Superintendence of Companies.

Companies handling personal data must register their databases with the Superintendence of Industry and Commerce and annually update this information, as well as report any extraordinary changes.

**Share capital**

There are no minimum or maximum share capital requirements.

**Non-cash consideration**

Companies can issue shares for non-cash consideration.

**Rights attaching to shares**

Restrictions on rights attaching to shares. These can be included in the bye-laws or agreed by the shareholders when new shares are issued.

Automatic rights attaching to shares. In general, each shareholder is entitled to receive dividends according to its participation percentage in the outstanding capital, as well as to participate and vote in the meetings of the shareholders' general assembly, unless otherwise stated in the bye-laws, for a specific kind of shares. For example, a SSC may issue shares with preferential dividends and no voting rights, shares with multiple voting rights, or shares with a fixed dividend, among others.

Shareholders are also entitled to subscribe for new shares when they are issued in accordance with their participation percentage.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

**Management structure**

The bye-laws of a simplified stock corporation (SSC) can be tailor-made. An SSC requires a shareholders' general assembly and the appointment of a legal representative to operate, but the bye-laws can also establish alternative legal representatives, a board of directors and any other corporate body.

**Management restrictions**

There are no restrictions on the nationality or domicile of managers. An individual or a legal entity can be appointed manager of an SSC.

**Directors’ and officers’ liability**

Directors and officers are jointly and severally liable for any damages caused to the company, its shareholders or to any third parties due to their wilful or negligent conduct. It is not possible to limit their liability in the bye-laws of the SSC.

Joint and several liability for wilful or negligent conduct will be extended to any individuals or entities that participate in the management of the SSC, regardless if they are appointed as directors or officers of the SSC.

**Parent company liability**

Parent companies are liable up to the amount of their capital contribution, except in cases of fraud. In an SSC, shareholders will also be liable for any abusive use of their voting rights (when they vote to harm the company or other shareholders, or to obtain an unfair advantage for themselves or others).

**EMPLOYMENT**

**Laws, contracts and permits**

10. What are the main laws regulating employment relationships?

Employment relationships are mainly regulated by the:


If an employment contract is executed in Colombia, the contract will be governed by Colombian law, regardless of any choice of law in the contract.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms
No written contract is required to create an employment relationship. If the following requirements are met, an employment contract will exist, regardless of what the parties call it:

- A personal service is rendered by an individual.
- There is continuous subordination or dependence on the employer, by virtue of which the employer can enforce orders and determine the time and quantity of work.
- The payment of a salary as compensation for the work rendered.

The principles of labour law, contained in both the Labour Code and the constitution, apply to the contract regardless of any contrary provisions contained in the contract. All employees are subject to internal work regulations, a set of rules established by companies to regulate labour relationships.

Collective agreements will extend to all employees whenever the union represents more than one-third of them. Otherwise, the agreements will only be applicable to the employees who accept them. Likewise, non-unionised employees can negotiate collective agreements that will only apply to those employees who accept them.

12. Do foreign employees require work permits and/or residency permits?

Foreign employees require work visas. The Ministry of Foreign Affairs examine visa requests within approximately five business days.

Business visas (NE visas) are granted to foreigners who want to carry out commercial and business endeavours or invest in Colombia. They cost between USD276 and USD430.

Temporary worker visas (TP4 visas) are issued to foreigners hired to render personal services to local companies. They cost USD304 and are granted for up to three years.

Other visas are available, such as:

- Visas for internships (free).
- Visas for citizens of countries who are members of the Mercosur Trade Bloc, which cost USD263.
- Visas to provide specialised technical assistance, granted for a maximum period of 180 days at a cost of USD159.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation, but they may be entitled to representation on certain committees (such as the committee for labour co-existence and the committee for workplace health).

There is no need to consult employees about corporate transactions unless required to by collective agreements or internal work regulations.

14. How is the termination of individual employment contracts regulated?

As a general rule, either party can terminate any type of employment contract without prior notice or justification. However, where there is no justified cause for unilateral termination by an employer, the employee will be entitled to a severance payment depending on the type of contract and the employee’s period of service.

Some employees are further protected by law, such as pregnant or breastfeeding women, employees under medical treatment or unionised employees, whose termination may require prior authorisation from the Ministry of Labour.

Fixed term contracts will be deemed to be renewed for an equal term unless there is prior written notice 30 days in advance.

Justified dismissal

Justified dismissals are set out in Article 62 of the Labour Code. Some of the just causes listed include:

- Misrepresentation by the employee in an attempt to be hired or obtain unfair benefits.
- Violent acts committed against the employer, other employees or the directors.
- Wilful damage of property.
- Commission of immoral acts or crimes in the workplace or when working.
- Disclosure of corporate secrets.
- Poor performance of the employee.

Other just causes for dismissals can be included in the employment contract or in the internal work regulations.

Whenever there is a basis for a justified dismissal, the employee’s rights of defence and due process must be guaranteed.

Unjustified dismissal

Unjustified dismissal entitles the employee to a severance payment that will vary depending on the type of contract:

- Indefinite term contracts. The severance payment will depend on the years of personal service rendered to the employer and the employee’s salary.
- Fixed term contracts or contracts for certain projects. The severance payment will be assessed according to the time remaining until expiration of the contract or termination of the project.

15. Are redundancies and mass layoffs regulated?

Redundancies and mass layoffs are regulated under Article 67 of Law 50 of 1990, which establishes that redundancies and mass layoffs occur when a percentage of the workforce is dismissed in a period of six months, according to the total number of employees of the company.

Before carrying out mass layoffs, the employer must request authorisation from the Ministry of Labour and must explain the motives and justifications for the redundancies. If authorisation is not requested the dismissals will not be effective.
16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Income derived from services rendered under a labour agreement within the Colombian territory is deemed to be Colombian-sourced income.

The taxation of an individual in Colombia depends on:
- Their source of income.
- Their nationality.
- Whether they are considered a Colombian tax resident.

A person will be tax resident if they are physically present in Colombia for more than 183 days continuously, or non-continuously over a period of 365 consecutive days.

Colombian and foreign individuals not considered fiscal residents in Colombia will be subject to income tax on their local source income. Once considered a Colombian tax resident, they will be taxed on both their local and foreign source income.

Colombian nationals will be considered to be tax residents in any taxable year regardless of whether they are physically present in the country if one of the following criteria are met:
- Their spouse or permanent partner or dependent minors qualify as Colombian tax residents.
- 50% or more of their yearly income is derived from national sources.
- 50% or more of their assets are administrated within Colombia.
- 50% or more of their assets are located within Colombia.
- If the individual is considered a tax resident of a country declared by the Colombia tax authorities to be a non-cooperative jurisdiction or a low or no tax jurisdiction.
- If the individual has been summoned by the Colombian tax authorities and has not been able to prove their status of resident abroad for tax purposes.

Where a national individual meets any of the conditions mentioned above, he/she will not be considered a Colombian tax resident if one of the following conditions is met:
- 50% or more of their income is generated in the jurisdiction where the individual has become tax resident.
- 50% or more of their assets are located in the jurisdiction where the individual has tax residence.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Both residents and non-residents must file their income tax returns between August and October of each year.

Tax resident employees

Income tax rates are progressive. The computation of an individual’s income tax is determined by the following:
- Salaries and other employment income.
- Non-employment income.
- Capital gains.
- Pensions.
- Dividends and shares.

The following are the tax rates according to ranges in US dollars:
- From 0 to US$11,575: 0%.
- From US$11,575 to US$18,053: 19%.
- From US$18,053 to US$43,540: 28%.
- Over US$43,540: 33%.

The following withholding tax rates apply to salary payments (in US dollars):
- From 0 to US$1,008: 0%.
- From US$1,008 to US$1,592: 19%.
- From US$1,592 to US$3,823: 28%.
- Over US$3,823: 33%.

Employees’ contributions to the health and pensions system equal 4% of the base salary paid to the employee.

Additionally, any employees who earn more than four minimum monthly salaries (COP2.9 million), must pay between 1% to 2% of their salary as a contribution to the pensions’ solidarity fund.

Non-tax resident employees

Employees who are not Colombian tax residents are subject to an income tax rate of 35% on any taxable earnings generated within Colombia. However, individuals will not be required to file an income tax return if their total Colombian source income has been subject to the corresponding withholding taxes.

A withholding tax for non-residents on payments for compensation of personal services, technical services or technical assistance applies at a rate of 15% on the total payment.

Foreign employees will be subject to the same 4% health contributions as tax residents, as well as to the pension solidarity fund contributions except where they are already covered by a pension system abroad.

Employers

Payroll tax. Employers must contribute 9% of the monthly payroll as follows:
- 3% goes to the Colombian institute for family welfare.
- 2% goes to the national apprenticeship services.
- 4% goes to the family compensation fund.

Payroll taxes are not payable on salaries equalling, or less than, ten minimum monthly wages (COP7.3 million).

Social security: An employer’s contribution to the health system equals 8.5% of the payroll (excluding salaries of less than ten minimum monthly wages). Contributions to the general pension plan equal 12% and contributions to the labour risk system, apply at different rates according to the different types of jobs.

Employers must withhold and pay the employee’s share of social security contributions on a monthly basis.

Income tax: An employer must withhold income tax from an employee’s salary. The withholding percentage varies depending on the salary and the classification of the employees as fiscal residents or non-residents.
Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business
A business vehicle is considered a fiscal resident if it meets one of the following criteria:
• It is incorporated under the laws of Colombia.
• Its principal domicile is in Colombia.
• It is effectively managed in Colombia.

Non-tax resident business
A non-tax resident business will be subject to tax on its Colombian source income, either directly, or through its Colombian branch or permanent establishment.

As a general rule, Colombian-source income includes:
• Profits from Colombian entities.
• Income resulting from the trade and exploitation in Colombia of tangible or intangible goods.
• Income resulting from the provision of services in Colombia.
• Income derived from the provision of technical assistance and consulting services whose benefit will be perceived in Colombia, regardless of whether it is in Colombia.
• Income arising from any property located in Colombia.
• Interest on credits owned in Colombia.
• Reinsurance premiums assigned by a Colombian entity to foreign entities.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Colombian tax resident businesses are subject to income tax on their worldwide income, while non-tax resident businesses are subject to income tax only on their Colombian source income.

Income tax
For 2017 the applicable tax rate is 34% and subsequently the general tax rate will be 33%.

A surcharge of 6% and 4% for the years 2017 and 2018 respectively is applied to companies with income exceeding COP800 million.

An alternative presumptive income system requires that the minimum taxable income equals at least 3.5% of the company’s equity at 31 December for the prior fiscal year. Income tax will apply on the higher of the net income or the presumptive income in each year.

High income taxpayers must file their income tax return by a specific date determined by the tax administration. All other companies must file their income tax return between April and May of each year.

Capital gains tax
Gains that are not derived from execution of the corporate purpose (such as profits from the liquidation of companies, gifts, donations and inheritances or the sale of fixed assets held for more than two years) are taxed at 10%.

Value added tax
VAT is charged on:
• The sale of tangible goods that have not been expressly excluded by law.
• The sale of intangible goods characterised as industrial profit.
• The provision of services in the national territory or from abroad, unless expressly excluded by law.
• The import of tangible property that has not been expressly excluded.
• The sale and operation of games of chance, excluding those that are exclusively operated online.

The general VAT rate is 19%. Special VAT rates of 5% or 0% also apply. Merchants, service providers and importers are required to collect and pay VAT.

National consumption tax
The following services and goods are subject to national consumption tax:
• Mobile phone services: 4%.
• The sale of some movable goods: 8%.
• Restaurant services: 8%.

Industry and trade tax
This tax applies to the operational income of entities performing commercial, industrial, and services activities within any municipality. The tax is levied on gross earnings and the tax rates range from 0.2% to 3%, depending on the municipality.

Property tax
Municipal and district taxes apply on the ownership of any real estate located in urban, suburban or rural areas. The tax rate applies on the official appraisal value of the real estate property. Tax rates range from 1% to 1.6%. Land suitable for development that has not yet been urbanised has a maximum tax rate of 3.3%.

Registration tax
Registration tax is levied on the registration of certain acts, contracts or any other legal instruments that require registration before an office of registration of private and public instruments or a chamber of commerce in Colombia. The rates range from 0.1% to 1%.

Dividends, interest and IP royalties

20. How are the following taxed:
• Dividends paid to foreign corporate shareholders?
• Dividends received from foreign companies?
• Interest paid to foreign corporate shareholders?
• Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid
Dividends paid to a foreign corporate shareholder will be subject to Colombian tax withholding applying at a 5% rate, as long as the local company distributing the profits has paid taxes on those profits. The withholding tax may be reduced by tax treaties.

In the event that the dividends correspond to profits that were distributed without paying taxes at a corporate level, the withholding tax rate applies at 35% on the gross value of the
distribution and at 5% on the balance net of income tax, for an effective tax rate of 38.25%.

Dividends received

Dividends received from a foreign corporation by local companies and resident individuals are taxed respectively at 34% and 33% on the gross value of the dividend.

Tax credit rules provide that taxes paid in another jurisdiction by a fiscal resident on income from a foreign source can be credited against taxes accruing in Colombia, up to the value of the tax applying in Colombia on that income.

Interest paid

Interest paid to foreign corporate shareholders on loans granted to Colombian companies is taxable at 35%.

The Tax Code establishes a withholding tax of 15% on interest payments to individuals or corporations without fiscal residence in Colombia.

Interest paid on loans exceeding eight years, destined to invest in public-private partnerships infrastructure projects, are subject to a withholding tax of 5%.

Loans from companies to shareholders or from shareholders to companies are deemed to generate interest at a minimum rate that is fixed by the government every year, notwithstanding that the loan does not effectively generate any cost for the borrower.

IP royalties paid

Generally, royalties paid to a foreign shareholder will be subject to withholding taxes of 15% on the total payment. Royalties that derive from the licences of software will be subject to a 26.4% withholding tax. Licence agreements that involve royalties paid abroad must be registered with the authorities within six months.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Under the thin capitalisation rules, for interest to be deductible in Colombia, the taxpayer must comply with a 3:1 debt-to-equity ratio. The rules apply to foreign loans, irrespective of whether the loan is granted by a related or an unrelated party.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Law 1819 of 2016 introduced a new regime of controlled foreign corporation (CFC) to tax any passive income earnings by foreign entities that:

- Are controlled by one or more Colombian tax residents.
- Do not qualify as Colombian tax residents.

If a tax resident directly or indirectly owns more than 10% of a foreign subsidiary that is not being effectively managed locally, the passive income generated by the CFC will be imputed to the Colombian tax resident in proportion to its participation in the entity.

If the subsidiary is effectively managed from Colombia, it will be subject to taxation as a national company.

23. Are there any transfer pricing rules?

Transfer pricing rules apply to transactions between a Colombian taxpayer and related entities abroad. These transactions must be valued on an arm's length basis, that is, according to the prices and profit margins that would have been used in a comparable transaction between independent parties.

Customs duties

24. How are imports and exports taxed?

The importation of goods is typically subject to customs duties ranging from 5% to 35% of the cost, insurance and freight (CIF) value of the goods, and to VAT at 19% of the CIF value of the import plus custom duties.

Most exports from Colombia are not taxed.

Double tax treaties

25. Is there a wide network of double tax treaties?

Colombia has double tax treaties in force with the following countries: Chile, Spain, India, Switzerland, Canada, Mexico, Portugal, South Korea and Czech Republic.

It has also signed treaties with France and the United Kingdom.

There is also a tax treaty in force with the members of the Andean Community of Nations: Ecuador, Peru and Bolivia, to avoid tax evasion and to prevent double taxation.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Restrictive agreements and unilateral conduct is regulated by the Colombian anti-trust and competition regime. Legislation containing provisions in this regard include:

- Regulation on restrictive practices (Law 155 of 1959).
- Unfair competition regulation (Law 256 of 1996).
- Regulation on the protection of fair competition (Law 1340 of 2009).

The regime purports to control agreements, acts and practices that distort free competition. It applies to anyone carrying out activities that may have an effect on the Colombian market.

Competition authority

The Superintendence of Industry and Commerce is the authority entitled to investigate and penalise any conduct violating the anti-trust and competition regime. Its website contains regulations and judicial decisions on the subject (www.sic.gov.co).

Restrictive agreements and practices

The Colombian legal system provides a list of practices that can be used by two or more companies to prevent, restrict or distort competition. Examples include:

- Fixing prices of goods and services.
• Allocating production quotas among manufacturers or distributors.
• Bid rigging.

**Anti-competitive unilateral conduct**

Decree 2153 of 1992 sets out the following conduct as anti-competitive:
• Violation of the rules on advertising established in the consumer protection law.
• Influencing a company to increase its prices or to desist from its intention to lower them.
• Refusing to sell or provide services to a company as retaliation for its pricing policy.

**Abusive unilateral conduct**

Colombia’s regime prohibits any abusive conduct by companies with a dominant position in the market. The following conduct is prohibited:
• Dumping and predatory pricing.
• Applying discriminatory contractual conditions to equivalent operations.
• Making the supply of a product conditional on acceptance of additional obligations outside of the purpose of the business.
• Obstructing or preventing third parties from accessing markets or marketing channels.
• Selling or providing services at different prices to different customers or in different regions of Colombia, to reduce or eliminate competition in the market or in that part of the country.

Infringements of some of these restrictions may also result in criminal conduct (such as executing agreements that restrict competition, which is included in Article 410-A of the Criminal Code).

**27. Are mergers and acquisitions subject to merger control?**

M&A transactions are subject to economic integration control by the Superintendency of Industry and Commerce (SIC). Control applies to companies that carry out activities in Colombia, regardless of the structure of the transaction and the nationality of the parties involved, so it can even apply to foreign-to-foreign acquisitions.

Companies engaged in the same economic activity, or participating in the same chain of value, require prior authorisation from the SIC for any planned integration if they (individually or jointly) have (at 31 December of the previous year), operational income or total assets exceeding a threshold defined by the SIC on a yearly basis. When calculating the income and the assets, related companies in Colombia or abroad must be included.

For 2017 the applicable amount is 60,000 monthly minimum wages (COP44,263,020,000) (about US$14 million).

Nevertheless, if the parties’ combined market share is below 20% of the relevant market, the operation is deemed to be authorised and the parties need only notify the SIC of the merger.

**INTELLECTUAL PROPERTY**

**28. Outline the main IP rights in your jurisdiction.**

**Patents**

**Definition and legal requirements.** Patents are a temporary right to exclusively exploit an invention and prevent third parties from manufacturing, distributing or using it, unless authorised by the holder of the patent. They are granted in recognition of the investment and effort taken to develop the invention.

Under Decision 486 of 2000 of the Andean Community of Nations, a patent can be granted to protect goods or processes that are new, involve an inventive step and are industrially applicable.

**Registration.** The Superintendency of Industry and Commerce (SIC) is the competent authority to register patents. Its website provides guidance on the application procedure, requirements and costs (www.sic.gov.co/patentes).

**Enforcement and remedies.** Civil and criminal judges will enforce a patent holder’s rights through a judicial procedure. The rights holder is entitled to injunctions and compensation for damages.

Unfair competition procedures can also be instituted before the SIC.

**Length of protection.** Protection is granted for 20 years.

**Trade marks**

**Definition and legal requirements.** Trade marks are distinctive signs, sounds or smells that distinguish goods or services and are capable of graphic representation.

**Protection.** The SIC is the authority in charge of registering trade marks. Its website provides information regarding the application procedure (www.sic.gov.co/marcas).

Unregistered trade marks are not granted protection unless they are well known distinctive signs.

**Enforcement and remedies.** Rights holders can file civil or criminal claims before domestic courts to enforce trade marks and obtain compensation for damages.

The SIC is competent to determine the infringement of trade mark rights relating to anti-competitive conduct.

**Length of protection and renewability.** Protection is granted for a period of ten years, and indefinitely renewable for subsequent ten year terms.

**Registered designs**

**Definition.** Industrial designs are defined as the particular appearance of a product resulting from any arrangement of lines or combination of colours, or any two-dimensional or three-dimensional external shape, line, outline, configuration, texture or material, that does not alter the purpose of the product. When designs are new, they can be registered.

**Registration.** The SIC is the authority in charge of registering industrial designs. Its website provides information about the application procedure (www.sic.gov.co/diseos-industriales).

**Enforcement and remedies.** Rights holders can file civil or criminal claims before domestic courts or the SIC to enforce their rights and obtain compensation for damages.

**Length of protection and renewability.** Protection is granted for ten years and cannot be renewed.

**Unregistered designs**

**Definition and legal requirements.** Unregistered designs are not protected or defined under Colombian law.
Copyright

Definition and legal requirements. Copyright regulations are established in Decision 351 of 1993 of the Andean Community of Nations (Common Regime on Copyright and Related Rights) and in the Law on Copyright (Law 23 of 1982). Provided they can be reproduced by any means, copyright protects original literary, scientific and artistic creations, including software, as well as translations, adaptations and transformations of other creations. Authors are entitled to moral and economic rights. Moral rights grant the author perpetual, irrevocable, non-transferable rights to claim the authorship of the creation and to prevent the transformation and deformation of its work. Economic rights grant an exclusive right to exploit or authorise the exploitation of the creation.

Protection. Copyrights are not subject to compliance with any formality since they come into being at the moment of creation. Omitting to register copyright or complete any other formality does not prevent the exercise of copyright. However, copyright can be registered with the National Copyright Administration.

Enforcement and remedies. Domestic courts enforce copyright by civil and/or criminal procedures allowing rights holders to obtain injunctions and compensation for damages.

Length of protection and renewability. The protection of economic rights is effective on the creation of the work and endures throughout the author's life plus 80 additional years if the rights holder is an individual.

If the rights holder is a legal entity, protection is granted for 70 years following the end of the calendar year in which the work was published, or from the creation if the work is not published within 50 years.

Trade secrets

Definition and legal requirements. Trade secrets include any non-disclosed information that an individual or a legal entity owns, that can be used in a productive, industrial or commercial activity. To classify as a trade secret, information must:
- Be secret.
- Have a commercial value.
- Be subject to reasonable measures intended to maintain its privileged character.

Trade secrets can refer to:
- The nature, characteristics or purposes of goods.
- Methods or production processes.
- The means of distribution or commercialisation of products or services.

Protection. Trade secrets are protected against disclosure, acquisition or use in a manner contrary to the loyal practices of commerce. Violations of trade secrets are considered unfair competition.

Enforcement and remedies. Trade secrets can be enforced through domestic courts or by the Superintendency of Industry and Commerce. Rights holders can ask for injunctions and compensation for damages.

Divulging trade secrets is also a criminal offence.

Length of protection. Protection is effective as long as the information remains a trade secret (that is, a secret with commercial value and subject to measures to remain secret).

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

Commercial agency agreements are regulated in the Commercial Code as a type of mandate contract. In an agency agreement, an agent agrees to promote in Colombia, in a stable and independent manner, the products and services of another person or entity. It is essential that the agent represents the principal. Registration at the chamber of commerce is required for the contract to be enforceable against any third parties.

Unless otherwise agreed, a principal cannot have more than one agent in the same area, for the same products. By contrast, an agent will not be exclusive unless expressly agreed by the parties.

When the contract is terminated on any grounds (including expiration of the agreed term) the agent is entitled to a severance payment equivalent to one-twelfth of the average commission earned by the agent in the last three years, multiplied by each year of duration of the agreement.

Additionally, if the principal terminates the agreement with no just cause, the agent will be entitled to equitable compensation established by an expert.

The compensation provisions under the US/Colombia Free Trade Agreement are due to be removed, but they are currently still in force.

Distribution

Distribution agreements are not regulated under any written laws and have only been developed through case law.

According to the Supreme Court of Justice, in a distribution agreement a producer or manufacturer (principal) agrees to sell to the distributor. The distributor agrees to buy the principal's products, on its own account and at its own risk, for subsequent sale. The difference between this and a supply contract is the intention of the parties to have a long-term periodic supply.

Under a distribution agreement, there will be no compensation or indemnification on termination for any cause. However, the principle of good faith requires that reasonable notice of termination is given according to commercial custom. For example, in Bogotá, it is a certified commercial custom to terminate a supply contract with at least one week's notice in advance, and this term can be applied by analogy to distribution agreements.

Franchising

Franchising is not regulated under any written laws. Nevertheless, franchising agreements are enforceable and governed by different areas of law depending on the relevant subject.

Applying Regulation (EEC) 4087/88 on the application of Article 85(3) of the Treaty to categories of franchise agreements (Franchise Agreements Regulation), a franchise can be defined as a “package of industrial or intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyrights, know-how or patents, to be exploited for the resale of goods or the provision of services to end users”. Therefore, a franchise agreement will be a contract under which the franchisor grants the franchisee the right to exploit a franchise, for consideration.

Matters relating to the supply of products will be governed by the Commercial Code provisions on supply agreements. Use of trade marks, logos and know-how will be governed by the relevant intellectual property laws.
E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

E-commerce and electronic signatures are regulated by the Law on Electronic Commerce (Law 527 of 1999) and the Regulation on Electronic Signatures (Decree 2364 of 2012).

E-commerce is defined as all issues arising from a commercial relationship, whether contractual or not, originating from the use of one or more data messages or other similar media.

Commercial relationships encompass the following transactions:
- Supply or exchange of goods or services.
- Distribution agreements.
- Agency or mandate agreements.
- All types of financial, securities and insurance operations.
- Infrastructure and construction agreements.
- Consulting services agreements.
- Licensing.

E-commerce agreements are enforceable and binding on all parties.

Distance selling is also regulated in the Consumer Protection Law (Law 1480 of 2011). This Law sets out special obligations on the seller, such as:
- Ensuring that the delivery of goods is effectively made to the address indicated by the consumer.
- Allowing any claims and returns by the consumer.
- Keeping proper records of the transaction.
- Providing information before purchase about the product’s availability, exercising the right of withdrawal and the time of delivery.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

Advertising is regulated in the Consumer Protection Law (Law 1480 of 2011) and Decree 3466 of 1982. The Law purports to protect consumers from misleading advertisements by prohibiting statements that:
- Do not correspond to reality.
- Cause error, deception or confusion to consumers.

Advertisers must provide clear, truthful, sufficient, timely, verifiable, comprehensible, accurate and suitable information on the products they offer, including information on any harmful effects. Any advertising is binding on the advertiser.

When the law is infringed, consumers can initiate civil proceedings against the advertiser and obtain compensation for any damages. In addition, the Superintendence of Industry and Commerce can initiate administrative procedures to impose sanctions ex officio or at the request of consumers.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Data protection is regulated by the:
- Data Protection Law (Law 1581 of 2012).
- Regulatory Decree of the Data Protection Law (Decree 1377 of 2013).

These rules oblige anyone handling personal information to obtain prior explicit authorisation from the rights holder for specific use, and to allow the rights holders to access, rectify and update the information, as well as to revoke the authorisation granted.

A national registry of databases was created to verify the observation of data protection policies.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Product liability and product safety are regulated by the Consumer Protection Law (Law 1480 of 2011). The Law purports to guarantee to consumers the quality, suitability and satisfactory performance of any goods and services acquired.

Regulations include implied guarantees that apply, unless otherwise agreed, to the following goods:
- New durable goods: one year.
- Perishable goods: until the expiration date.
- Used or repaired goods: three months.

Manufacturers and distributors are jointly and severally liable before consumers for these guarantees, as well as for any damages caused by defective products.

For manufacturers or distributors to be liable for the guarantees, consumers must prove that the product is defective. To seek damages, consumers must also prove the damage and the causal link between them.

Manufacturers and distributors will not be liable for the guarantees if they can demonstrate:
- Force majeure or an act of God.
- That a third party was responsible for the damage.
- Inadequate installation, use or maintenance by the consumer.

Manufacturers and distributors will not be liable for damages if, in addition to proving the above, they can also show that:
- The problem was exclusively the victim’s fault.
- The product had not been introduced into the market.
- The defect is a direct consequence of the elaboration, labelling or packaging of the product in accordance with existing mandatory standards, and the defect could not have been avoided by the producer without violating these standards.
- At the time of distribution, the state of scientific and technical knowledge did not allow for the discovery of the existence of the defect.
MAIN BUSINESS ORGANISATIONS

National Tax and Customs Administration (Dirección de Impuestos y Aduanas Nacionales) (DIAN)
W www.dian.gov.co

Main activities. The DIAN exercises the administration and control of tax, customs and exchange control obligations, as well as facilitating foreign trade transactions. The DIAN's main role is to ensure tax collection and manage customs duties.

Superintendence of Companies (Superintendencia de Sociedades)
W www.supersociedades.gov.co

Main activities. The Superintendence of Companies is responsible for the inspection, surveillance and control of commercial companies, branches of foreign companies and other vehicles determined by law. It can order corrective measures to remedy critical legal, accounting, economic and administrative problems of companies. It can also impose sanctions on companies and directors for failures in corporate compliance and exchange control violations regarding international investment and international indebtedness. It also has an arbitration and conciliation centre specialising in the resolution of corporate and commercial conflicts. Conciliation services are offered for free.

Central Bank (Banco de la República de Colombia)
W www.banrep.gov.co

Main activities. The Central Bank formulates the monetary, exchange control and credit policies of Colombia and preserves the purchasing power of the currency. The bank adopts the measures necessary to regulate the liquidity of the economy and facilitate the normal operation of the payment system, ensuring the stability of the inflation rate.

Superintendence of Finance (Superintendencia Financiera de Colombia)
W www.superfinanciera.gov.co

Main activities. The Superintendence of Finance oversees the Colombian financial system to preserve its stability, solvency and confidence, as well as promoting, organising and developing the Colombian securities market. It exercises surveillance over financial entities and protects financial consumers.

Superintendence of Industry and Commerce (Superintendencia de Industria y Comercio) (SIC)
W www.sic.gov.co

Main activities. The SIC's purposes include:

- Ensuring compliance with the anti-trust and competition regime.
- Protecting consumer rights.
- Acting as an authority in industrial property procedures.
- Protecting individuals' personal data.
- Exercising surveillance and inspection of the above and imposing sanctions for any violations of them.

ONLINE RESOURCES

Congress Secretary
W www.secretariasenado.gov.co

Description. An official website where the Congress publishes the constitution, codes and statutes, laws, and any relevant legislation. It also includes relevant notes on any amendments, derogations, as well as some relevant judicial precedents and editor's notes for the interpretation. The website is up-to-date and is in Spanish.

WIPO LEX
W www.wipo.int/wipolex/en/

Description. Provides access in Spanish and English (for guidance purposes) to some national laws and treaties on intellectual property, from some countries that are WIPO, WTO or UN Members, including Colombia. The website may not be up-to-date.
**Practical Law Contributor Profiles**

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**Catalina Reyes Cancino, Partner**
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E creyes@reyesaa.com
W www.reyesaa.com

**Professional qualifications.** Admitted to practice in Colombia

**Areas of practice.** Corporate; M&A and spin-off transactions; commercial; contracts; exchange control and foreign investment regulations.

**Non-professional qualifications.** LLM in Corporate Governance and Practice, Stanford Law School, 2016; Law Degree (JD equivalent), Universidad de Los Andes (Bogota, Colombia), 2009; Certificate in Colombian Tax Regime, Pontificia Universidad Javeriana, in alliance with PwC (Bogota, Colombia), 2014; BSc in Philosophy, Universidad de Los Andes (Bogota, Colombia), 2011

**Languages.** Spanish, English

**Professional associations/memberships.** International Bar Association (IBA).

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**Mónica Reyes Rodríguez, Founding Partner**
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E mreyes@reyesaa.com
W www.reyesaa.com

**Professional qualifications.** Admitted to practice in Colombia

**Areas of practice.** Tax; tax and estate planning; customs law and international commerce; exchange control regulations; litigation.

**Non-professional qualifications.** Candidate to a Master of Laws (LLM) in Economic Law, London School of Economics, 1983; Diploma in International Tax Law, Robert Kennedy University (Switzerland), 1983; Specialisation Diploma in Tax Law, Universidad del Rosario (Bogotá, Colombia), 1981; Law Degree (JD equivalent), Universidad del Rosario (Bogotá, Colombia), 1980.

**Publications**
- Getting the Deal Through – the Acquisition (from the buyer's perspective), Tax on Inbound Investment, 2008.

**Languages.** Spanish, English

**Professional associations/memberships.** International Fiscal Association, Colombian chapter (IFA), Tax Committee, International Bar Association (IBA), Colombian Tax Law Institute (ICDT).

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global.practicallaw.com/dbi-guide
Andrea Vargas Ovalle, Associate
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E avargas@reyessa.com
W www.reyessa.com

Professional qualifications. Admitted to practice in Colombia
Areas of practice. Corporate; commercial; contracts.
Non-professional qualifications. Candidate to a Master’s Degree in International Law, Universidad de La Sabana (Chia, Colombia), expected 2018; law degree (JD equivalent), Universidad de La Sabana (Chia, Colombia), 2016.
Languages. Spanish, English

Juan Camilo Riveira Gómez, Associate
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E jriveira@reyessa.com
W www.reyessa.com

Professional qualifications. Admitted to practice in Colombia
Areas of practice. Tax; tax and estate planning; international taxation; customs law and international commerce; commercial law and contracts.
Non-professional qualifications. LLM in International Taxation, University of Florida, Levin College of Law, 2015; Specialisation Diploma in Contract Law, Universidad del Rosario (Bogota, Colombia), 2014; Law Degree (JD equivalent), Universidad del Norte (Barranquilla, Colombia), 2011.
Languages. Spanish, English

Mónica Alejandra Villamil Carrillo, Associate
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E avillamil@reyessa.com
W www.reyessa.com

Professional qualifications. Admitted to practice in Colombia
Areas of practice. Tax; tax and estate planning; exchange control and foreign investment regulations.
Non-professional qualifications. Specialisation Diploma in Tax Law, Universidad del Rosario (Bogota, Colombia), 2014; Law Degree (JD equivalent), Universidad de Los Andes (Bogota, Colombia), 2010.
Languages. Spanish, English

Diego Luna de Aliaga, Senior Associate
Reyes Abogados Asociados
T (+57) 620 7870
F (+57) 637 8250
E dluna@reyessa.com
W www.reyessa.com

Professional qualifications. Admitted to practice in Colombia
Areas of practice. Corporate; commercial law and contracts; litigation, arbitration and conflict resolution; competition.
Non-professional qualifications. Candidate to a Master’s Degree in Corporate and Business Law, Universidad de La Sabana (Chia, Colombia), expected 2017; Law Degree (JD equivalent), Universidad de La Sabana (Chia, Colombia), 2012.
Languages. Spanish, English

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