

Tax & Legal Times Mining and Oil & Gas

**Colombia - How the recently released
set of tax proposals may impact the
Mining and Oil & Gas Industries**

Marzo

After over 10 months of work, the Work Group for tax changes delivered on its mandate: a set of proposals for an in-depth reform to the Colombian tax system, which the Government will consider as it prepares the tax bill to present to Congress in the second half of 2016. This document highlights some of these proposals and how they may be of relevancy for the extractive industry in Colombia.

1. Direct taxation

1.1. A new form of direct tax known as Entrepreneurial Profits Tax ("EPT") is to replace income tax, CREE and net wealth tax. EPT rates suggested to range from 30% to 35%. Potential uncertainty around the 15% income tax rate for offshore free trade zones for exploration and production companies.

1.3. Book profit under IFRS to drive EPT taxable base calculation with certain adjustments being required (IFRS not currently being fully the basis for tax)

1.4. Presumptive taxable income, the alternative basis for taxation, to be measured at 4% (currently 3%) of last year's net equity. While the overall exemption for assets in exploration is to remain, the specific exemption for mining in exploration and production is to disappear.

1.5. Donations, widely spread in the industry due to primarily contractual social commitments, to be credited against EPT liability up to 30%. A tax credit system may also be more beneficial particularly in downturn times where loss-making miners and oil & gas companies are unable to deduct donations (deduction requires taxable income to exist).

1.6. Dividend tax to re-introduce at 15% for non-resident shareholders. Dividend income to be taxable for residents with a credit against EPT for up to 20% of such income.



2. Cash taxes

2.1. Withholding taxes to be computed and remitted based on the taxpayer's liability for the previous year. This is an effort to mitigate the impact taxes have on cash flow while at the same time reducing refund applications processing and auditing by the Tax Office.

2.2. VAT self-charge requirement on taxable purchases from resident individuals to disappear.

3. Indirect Taxation

3.1. VAT

3.1.1. VAT standard rate to escalate to 19% (up from 16%).

3.1.2. Sale of intangibles to be in-scope for. This will subject to VAT the transfer of interests, rights and the like in concession, exploration and production contracts, etc.

3.1.3. Coal, crude oil and derivatives other than gasoline and ACPM to be taxed at 19%. Natural gas, coque, to be taxed at 5%.

3.1.4. VAT paid on certain capex (capital goods) to be creditable against output VAT over three years or the asset's life.

3.2 GMF (financial transaction tax)

3.2.1. GMF to remain indefinitely (currently scheduled to phase out fully beginning 2022).

3.2.2. 100% of GMF to be deductible for EPT purposes

3.3. Gasoline and ACPM
Rates to increase by 30%.

3.4. Royalties

3.4.1. It is acknowledged that the



current system (the basis of which is value of production at mouth well) is obsolete, very intense when it comes to low prices and moderate for high prices. Call for either a progressive system to be introduced like in Chile and Peru, or a resource tax with royalties being deductible, both of which would be limited to new projects.

3.4.2. Either system is suggested for introduction in an effort to encourage exploration, instead of creating industry-specific incentives.



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