# PwC Tax & Legal Times

**_Colombian Tax Reform Signed into Law 2277 of December 13th, 2022 - Executive Summary_**

## 1. CORPORATE INCOME TAX "CIT"

| Taxpayer | Rate |
|---|---|
| **1.1. General Corporate Income Tax rate** remains unchanged. | 35% |
| **1.2**. Drawing from OCDE- propelled Pillar II, but certainly broader in scope and goals, **a Minimum Effective Tax Rate ("METR")** of 15% is introduced **beginning 2023** for resident corporations (a few industries are exempted).<br><br>Subject to a formulaic system, in scope taxpayers will be required to true-up the METR to 15%. | METR to start by dividing the due tax (+/- certain adjustments) over the book profit (+/- certain adjustments). |
| **1.3.** 90% State-owned enterprises and departamental, municipal, and district companies that participate in the gambling and liquor monopolies will benefit from a **reduced income tax rate**. | 9% (exempted from METR) |
| **1.4.The surcharge for the financial industry is** broadened to apply from 2023 thru 2027 and include Insurance & Reinsurance companies as well as stock & commodities brokers & infrastructure suppliers to the stock and securities markets, with taxable income equal to or greater than over USD 1.1 m. | 5% (aggregate rate of 40%) |
| **1.5.** Hotel services, Ecotourism & agrotourism themed parks *(certain conditions must be met).* | 15% (for 10 years) |
| 1.6. International maritime transportation services carried out by ships or naval artifacts registered in the Colombian registry | 2% (repealed) |
| 1.7. Locally registered Editorial companies | 15% (exempted from METR) |
| **1.8. A permanent surcharge** is introduced for crude oil and coal extraction and production industry players with taxable income equal to or greater than over USD471k. | 5% or up to 10% (15% for oil extraction) subject to current year averaged market prices being at or over 65% of averaged prices over preceding 120 months. |
| **1.9. A temporary surcharge** is introduced for hydro-electric power companies with taxable income equal to or greater than over USD282K approx, for years 2023 thru 2026. | 3% (aggregate rate of 38%) |
| **1.10.**<br>a) Free Trade Zone Qualified Companies:<br>• Off-shore (E&P)<br>• Qualified companies operating at onshore FTZ (port services, permanent FTZ dedicated to the refining of fuels derived from petroleum or the refining of industrial biofuels).<br>• Qualified FTZ companies providing logistic services to FTZ management entities. | 20% (exports)<br>35% (local sales) |
| b) The preferential 20% rate for other qualified FTZ companies will only survive subject to an export-oriented plan to be submitted for approval by the Government in 2023 or 2024.<br><br>Grandfathering provisions to apply to qualified FTZ companies demonstrating revenue growth of 60% in 2022 vs that of 2019. | 20% (thru 2025) |

- ✓ Certain non taxable income items, special deductions, exempt income and tax credits **to be capped at 3%** of the taxpayer's net income before their subtraction.
- ✓ **Capital Gains Tax** raises from 10% to 15% for residents & non-residents.
- ✓ **Industry and Trade Tax (ICA)** will remain as 100% CIT deductible. However, it will no longer be allowed as 50% tax credit against CIT.
- ✓ The **Mega Investments Regime** is repealed.
- ✓ **Deductibility of royalties** in the Oil, Gas and Mining Industries is not permitted.
- ✓ The **5-year straight-line amortization regime** for E&P expenditures from 2017 - 2027 is removed.
- ✓ The **Tax Reimbursement Certificate -CERT-** to reimburse the value of expenditures in E&P is removed.
- ✓ Profits from the sale of stock listed on the Colombian Stock Exchange, if owned by the same owner, and provided it is not more than 3% (down from 10%) of the total outstanding shares of the listed company in the taxable year, will continue to be treated as non-taxable income.

## 2. DIVIDEND TAX

| *Resident Individuals* | ***Non-Residents*** | ***Resident Entities*** |
|---|---|---|
| ✓ Dividend income to be pooled into employment income for taxation up to 39% subject to tax brackets.<br><br>✓ A 15% dividend tax to apply to dividends exceeding over USD9k.<br><br>✓ A 19% marginal tax credit is available against dividend tax. | ✓ Dividend tax to rise to 20% (up from 10%).<br><br>✓ Dividends paid out of untaxed profits to be taxed at 35% and 20% to be imposed on the net (ETR of 48%)<br><br>✓ Double Tax Treaty relief may be applicable. | Dividend tax to rise to 10% (up from 7.5%). |

✓ In-kind distributions of dividends in the form of shares will start being considered as taxable income for the beneficiary.

## 3. CORRECTIVE TAXES

a. Carbon Tax : The scope of this existing tax is broadened to include the sale, self-consumption and importation of coal (certain exemptions apply including coal for export). Rates will rise while continuing to be specific values per ton, gallon or cubic square. A phased approach is introduced for rates for coal from 2023 thru 2027. Carbon tax will be deductible for income tax purposes.

b. Tax on Single-use Plastics Used for Packing and Wrapping : This excise tax will be imposed on the sale, withdrawal or import for self-consumption of single-use plastic products for packing and wrapping goods (certain exemptions apply). The manufacturer or importer to be the taxpayer of record. A rate for specific value per gram to be applied. This tax will not be deductible for income tax purposes.

c. Tax on Sugar Rich Ultra Processed Drinks: A newly introduced excise tax will apply beginning November 2023, on the sale by producers, import of self-consumption of select sugar rick beverages (Certain exemptions apply including sales for exports), subject to rate based on specific value of millilitres, and will be deductible for income tax purposes.

d. Tax on Sugar, Sodium Rich Ultra Processed Food: A 10% (15% in 2024 and 20% from 2025) excise tax will be imposed beginning November 2023 on the production, import and self-consumption of sugar and sodium rich ultra-processed food products. In scope items will include, among other, those under tariff classification 04.04.90.00.00, 16.01, 16.02, 17.04. Individuals that are small sized producers (revenue not in excess of over USD87k) will be out of scope, as well as in scope items for export.

## 4. INTERNATIONAL TAXATION

✓ Effective Place of Management ("EPOM") rules are broadened and will operate around less subjective tests to include scrutiny over the place where day-to-day activities are carried out, as well as the place where management usually exercises authority and responsibility over the entity's affairs.

✓ A Significant Economic Presence (SEP) rule is unilaterally introduced whereby the sale of goods or provision of digital services into Colombia will attract withholding tax at 10% or, at the election of the provider, a 3% (over gross revenues) will apply subject to registration and an annual income tax filing. Exceeding a revenue cap of over USD275k per year as well as a 300,000 customer/user threshold opens the door to eligibility for SEP. These rules will apply beginning 2024

## 5. VAT

✓ As of January 01, 2023 VAT-free days will be repealed.
✓ Security transportation services exemption to be removed.
✓ The importation of goods subject to postal traffic, express shipments or express delivery shipments not in excess of over USD200 will be exempted, in accordance with Free Trade Agreements expressly untaxing these.

## 6. WEALTH TAX

✓ Wealth tax to be re-introduced permanently for net wealth above USD636K approx on January 1st, of every year beginning 2023. Taxpayer of record to include individuals as well as non-resident entities holding wealth in Colombia other than shares, leases assets, receivables and provided they are not income tax filers. Progressive rates vary according to net worth from 0.5% to 1.5%. Tax brackets to apply as follows (USD)

| From (approx. USD) | To (approx. USD) | Rate* |
|---|---|---|
| 0 | 636,000 | 0% |
| 636,001 | 1,078,000 | 0,5% |
| 1,078,001 | 2,112,000 | 1% |
| 2,112,001 | And up | 1,5%** |

*Progressive rates
** to apply temporarily through 2026

## 7. INDIVIDUAL TAXATION

- Income Tax baskets must be added together in order to determine the individual's tax rate, which can go from 0% to 39% (top marginal tax remain unchanged). Capital Gains are not added to this calculation.
- The threshold of 25% of exempt labor income is lowered from over USD2,120 (approx.) per month (USD 25,446 annual) to over USD 7K per year.
- The limit of exempt income and deductions applicable to the general basket is reduced. It may not exceed 40% or over USD11,840 (approx.) per year. However, the taxpayer may additionally deduct over USD636 per dependent up to 4 dependents.
- Itemized deduction of over USD 1,600 for purchases supported by e- invoices (other requirements apply).
- For purposes of labour withholding tax, dependents will be considered, amongst others, the sons of the taxpayer that depend on him on the basis of psychological or fiscal conditions who are 18 years or older (as opposed to 23).
- DIAN may estimate maximum deductible costs and expenses (60% of gross income) for the general tax return. If the taxpayer exceeds this limit, he must inform it in his tax return. (only for informative purposes)|

## 8. SIMPLE TAX REGIME

- Rates and advance payments will be reduced for all business activities.
- A category of “education and activities related to human health” is created with rates from 3,7% to 5,9%.
- Individuals that provide consulting services or any other type of services in which the intellectual factor prevails, may only opt for the SIMPLE regime as long as their gross income is less than over USD105K.

## 9. MISCELLANEOUS PROVISIONS

- Tax determination will be made through electronic invoicing where the taxpayer has not filed its income tax return.
- Default interest rates will be reduced by 50% for outstanding customs and tax obligations that are fully paid by June 30 of 2023 or for which DIAN and the taxpayer sign a payment facility before then.
- Withholding tax returns filed without payment will be legally effective when the unpaid amount does not exceed over USD90 and it is paid within the year following the due date for filing the return. .
- The maximum penalty for not sending information to DIAN is reduced from over USD131K to over USD65K.
- Taxpayers who as of December 31, 2022 have not filed the national tax returns may opt for a temporary reduction in interests and penalties upon compliance with certain requirements.
- The thresholds that determine the crimes of non-disclosure of assets, reporting of non-existing liabilities, tax fraud and tax evasion are lowered.
- Grandfathering rule: taxpayers adversely impacted by any limitation of removal of tax holidays under this law will continue to enjoy any such prerogatives to the extent having met the conditions for full entitlement.

*We look forward to speaking with you, should you have any questions.*
Email: co_impuestos_en_linea@pwc.com



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