A. At a glance

Fiscal regime

The fiscal regime that applies to the mining industry in Colombia consists of a combination of corporate income tax (CIT) and royalty-based taxation.

<table>
<thead>
<tr>
<th>Income tax rate</th>
<th>Corporate is 34% for 2017 and 33% for 2018 onward. CIT surtax is 6% for 2017 and 4% for 2018. Free trade zone is 20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalties</td>
<td>1%-12%</td>
</tr>
<tr>
<td>Capital allowances</td>
<td>D: depreciation. A: amortization; from 2017, taxpayers can deduct from CIT all VAT paid on the acquisition or importation of capital goods taxed at the general rate</td>
</tr>
</tbody>
</table>

Investment incentives

- Don: donations
- Tax credit of 25% of investments in the environment
- R&D: Special deduction for donations and investments in research, technological development and innovation and/or tax credit of 25% of investments made in research, technological development or innovation
- CERT: The investments in the mining sector that will give rise to the granting of CERT
- Heavy machinery VAT credit: CIT tax credit of VAT paid on the acquisition and importation of heavy machinery for basic industries
- Capital goods: Special CIT deduction of all VAT paid on the acquisition or importation of capital goods taxed at the general rate
B. Fiscal regime

Corporate taxpayers

National companies are taxed on their worldwide income (subject to review in detail, with a corresponding tax credit).

Colombian-registered opened branches of foreign corporations and permanent establishments are taxed only on their Colombian-source attributed income and capital gains attributed. Attribution is based on analysis of functions, assets, risks and personnel.

National corporations are those that have their effective place of management in Colombian territory, or its principal domicile within the Colombian territory; or it has been organized under Colombian law.

Note that if a non-resident company earns Colombian-source income, such income is taxable in Colombia. A non-resident company that is in this position may be required to file an income tax return in Colombia. Exceptions may apply to certain types of income where income tax withholding constitutes final tax.

Permanent establishment

Regardless of double taxation agreements entered into by Colombia, a permanent establishment is defined as: (1) a fixed place of business, through which a foreign legal entity or individual conducts all or part of its activity (included but not limited to mines, oil and gas fields, quarries, and any other place of extraction or exploitation of natural resources) or (2) a legal entity acting on behalf of the foreign entity (as opposed to an independent agent) that is regularly granted power to conclude acts or contracts binding the foreign entity.

Foreign entities devoted to mining activities in Colombia are required to incorporate a Colombian branch or a subsidiary in order to enter into a concession agreement.

Corporate income tax rate

Tax reform (Law 1819 of 2016) unified income tax and income tax for equality (CREE) into one single tax (corporate income tax —CIT).

The general rate is 34% for 2017 and 33% for 2018 onward.

In addition, a surtax of 6% and 4% is applicable for 2017 and 2018, respectively; this surtax applies to taxpayers with taxable income greater than COP$800m (approx. US$266,000). Surtax is subject to an advance of 100% of its value.

In summary, CIT rates are:

<table>
<thead>
<tr>
<th>Concept</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>From FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>34%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>Surtax</td>
<td>6%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>Total rate</td>
<td>40%</td>
<td>37%</td>
<td>33%</td>
</tr>
</tbody>
</table>

The free trade zone income tax rate is 20% for legal entities that perform activities in the industrial free trade zones that qualify as "manufacturing users" or "users that provide services." The reduced income tax rate does not apply to commercial users. It is important to note that subsection 2(1) of Decree 4051 of 2007 forbids the establishment of permanent free trade zones in areas of exploration or extraction of non-renewable natural resources with certain exceptions.

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1 The effective place of management for a corporation or entity is defined as the place where material and necessary business decisions are made in order to develop the activities of the company or entity as a whole. In order to determine the effective place of management, all facts and circumstances resulting relevant, especially regarding the place where high executives and managers of the company or entity usually performed their responsibilities and daily activities of senior management, are taken into consideration.

2 Section 19 of the Colombian Mining Code.

3 The figures in this document are based on an exchange rate of COP$3,000 to the US dollar.

4 "Manufacturing user" is an entity authorized to produce, transform or assemble goods through the processing of raw materials or semi-manufactured products.

5 "User that provides services" is an entity authorized to develop the following activities exclusively in one or more free trade zones: (i) logistics, transportation, handling, distribution, shipping, labeling and classification of goods; (ii) communications and data processing; (iii) science and technological research; (iv) medical assistance and health services; (v) tourism; (vi) maintenance of goods; (vii) technical support maintenance of aircraft and related equipment; and (viii) auditing, administration, consulting and others.

6 Beginning in 2014, an offshore free trade zone is allowed for developing oil and gas activities of fulfillment of certain conditions (Decrees 2682 of 2014 and 2129 of 2015).
Tax year and due dates for corporations

The tax year is the calendar year. The government sets the due dates for filing income tax returns and making tax payments annually. Income tax is paid in three installments by “large taxpayers” and in two installments by all other corporate taxpayers. Early each year, the tax authorities identify and list the companies that they will consider “large taxpayers” that year, as well as any companies that will be removed from the list.

Taxable income for corporate income tax purposes

The basis for the calculation of the annual CIT payment is the higher of ordinary taxable income and presumptive income (see the presumptive income section below).

Ordinary taxable income is calculated by subtracting costs and deductible expenses from net revenues (taxed revenues minus rebates and discounts). If this calculation results in a net operating loss (NOL), the loss may be carried forward in the following twelve (12) taxable periods. No carryback is available.

Additional restrictions apply to the transfer of tax losses in mergers or spin-offs (which may be tax-free events for Colombia tax purposes if certain requirements are met). The transfer of tax losses in mergers and spin-offs is applied only where the economic activity of the companies involved (which generate the losses) remains the same after the merger or spin-off occurs.

Presumptive income

Presumptive income is calculated as 3.5% of the prior fiscal year’s net tax equity (tax assets minus tax liabilities) calculated on 31 December. Liabilities held with related parties abroad are accepted (if transfer pricing requirements are met) as debt for local tax purposes (instead of being deemed as tax equity).

Some assets may be excluded from the taxable basis, such as net equity value of assets directly related to companies exclusively devoted to the mining industry, other than exploitation of liquid or gaseous hydrocarbons.

In addition, other benefits provide that net present value of assets of companies in a non-productive stage can be excluded as well. The following are understood to be non-productive stages: prospecting, construction, building and assembly, and testing and setoff.

If presumptive income would apply in a given fiscal year, and the result is higher than the net taxable income, the income tax is calculated over the presumptive income (presumptive income multiplied by income tax rate).

Whenever the taxpayer is taxed on presumptive income, the difference between the presumptive income and the net taxable income generates a deduction that may be carried forward for five years. The excess of presumptive income over ordinary income may be carried forward as a compensation for five years.

Costs and deductible expenses

In general terms, costs and expenses may be deducted from income tax as long as they are necessary, related to the generation of taxable Colombian-source income, and of a proportionate amount, and as long as the expenditure is not limited or forbidden by the law.

Additional limitations may apply depending on the type of expenses to be deducted. As an example, from 2018, deduction of payments in cash will not be granted. Nonetheless, as of 1 January 2018, the deduction of payments in cash will be limited as follows:

- In 2018: the lower of 85% of the payments made, in any case, it cannot exceed 100,000 tax value units (UVT), or 50% of the total cost and expenses.
- In 2019: the lower of 70% of the payments made, in any case, it cannot exceed 80,000 UVT, or 45% of the total cost and expenses.
- In 2020: the lower of 55% of the payments made, in any case, it cannot exceed 60,000 UVT, or 40% of the total cost and expenses.
- From 2012 and subsequent years: the lower of 40% of the payments made, in any case, it cannot exceed 40,000 UVT, or 35% of the total cost and expenses.

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7 The new presumptive income rate is only applicable from 2017. Until 2016, it was 3%.
8 Net equity value results from multiplying the equity value of the asset with the percentage resulting from dividing the net equity by gross equity corresponding to the taxable year in which the presumption assessment is being conducted.
9 Net present value of assets can be excluded.
10 Section 1, Decree 4123 of 2005.
11 One UVT is approximately US$11.
Payments abroad

Subject to certain exceptions, payments abroad are deductible if: (1) they are incurred to generate taxable income in Colombia, (2) the applicable tax withholdings are made on the payments (when applicable), (3) the amounts charged comply with applicable transfer pricing and exchange rules, and (4) the foreign exchange law regime is observed.

Where tax withholdings are not required, the deductibility of such payments that should be imputed to Colombian-source income is limited to 15% of the net taxable income before deducting said payments; however, there are some exceptions to this provision. Payments abroad related to foreign-source income are not subject to the 15% limitation.

Accruals

As a general rule, provisions are not deductible, except for those related to receivable accounts and, subject to special rules, accruals for the payment of pensions.

For the purposes of determination of the taxable basis and valuation of assets, liabilities, income, costs and expenses, taxpayers must use systems and principles currently effective for the recognition and measurement, whenever the tax legal framework makes a reference to Colombian International Financial Reporting Standards (IFRS) or when a differential treatment is not provided for.

Accounting rules of accrual and accumulation should be used for the registration of assets, liabilities, income, costs and expenses. In case of no accrual under accounting but the right to collect exists, then income is realized for tax purposes.

A series of exemptions to the general rule of accrual or accumulation of income, costs and expenses are accepted. Among others, accounting recording originated on implicit interest, measure of reasonable value and impairment, will not have tax recognition. Transactions that may have an impact on OCI (other comprehensive income) will only have tax effects in the moment they must be presented as year-end results or reclassified to an account different from OCI generating a taxable income.

Capital gains tax

Gains on the sale of assets considered fixed assets\(^\text{12}\) and owned for more than two years are subject to capital gains tax (CGT) at a rate of 10%. Capital losses may be offset against capital gains generated in the same taxable year. The portion of the capital gains that corresponds to previous depreciation/amortization deductions must be treated as a deduction recapture, which means that the amount is treated as ordinary income. In case of payment in favor of foreign entities on the basis of capital gains, a withholding tax must be conducted at a 10% rate.

Functional currency

For tax purposes, financial and accounting information, as well as its assets, liabilities, equity, revenues, costs and expenses, shall be carried and presented in Colombian pesos (COP$), from the moment of initial recognition and thereafter.

Transactions in other units of measurement must be reflected in Colombian pesos using the conversion rate applicable on the date of occurrence.

Accounting books and financial statements must be prepared in Spanish, using Colombian pesos, irrespective of foreign requirements governing reports made by the entity to its parent company (i.e., subsidiary) or its home office (i.e., branch).

Transfer pricing

Income taxpayers who (1) carry out transactions with foreign related parties; (2) have their domicile in the national customs territory (Territorio Aduanero Nacional —TAN in Spanish) and carry out transactions with related parties located at any of the free trade zones; or (3) carry out transactions with people, partnerships, entities or companies located, resident or domiciled in tax havens or in tax preferential tax regimes are required to comply with the transfer pricing regime.

In addition, permanent establishments of non-resident persons or of juridical entities or of foreign entities, as well as branches and agencies of foreign partnerships, subject of tax income that carry out transactions with (1) related parties domiciled abroad; (2) related parties domiciled in free trade zones; or (3) people, partnerships, entities or companies located, resident or domiciled in tax havens or in tax preferential regimes are also required.

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\(^{12}\) Section 60 of the Colombian Tax Code defines “fixed assets” as “those assets which are not sold or changed in the regular course of business.” Additionally, “movable assets correspond to inventories. Fixed assets correspond to all assets other than inventories and will be classified in accordance with new regulatory technical frameworks, such as property, plant and equipment, investment property, non-current assets held for sale.”
As a consequence, taxpayers obliged to fulfill the transfer pricing regime must determine their income, costs and deductions considering the conditions that would have been used in comparable transactions with, or between, independent parties, i.e., their transactions should comply with the arm’s-length principle. For purposes of income tax, and particularly for the purposes of applying the transfer pricing system, the law considers that a party is related to another under the following scenarios: (1) subsidiaries; (2) branches; (3) agencies; (4) permanent establishments; and (5) other situations, including cases when the transactions are carried out between related parties through an independent third party, whenever more than 50% of the gross revenues arise individually or jointly from their partners or shareholders, or when consortiums, temporary unions, participation agreements and other association models that do not give origin to the establishment of legal entity exist.

The transfer pricing regime includes several methods contained in the OECD rules. However, as a result of rulings of the Constitutional Court of Colombia, the OECD guidelines may not be directly referred to for purposes of interpretation of the Colombian transfer pricing rules and are considered auxiliary criteria for interpretation. Significant aspects of the transfer pricing system in Colombia include the following:

• Several events create economic linkage, including, among others:
  • Transactions between branches and their home offices
  • Transactions in which a permanent establishment participates
  • Transactions between related parties made through third parties
  • Transactions between related parties executed through joint venture types of agreement and other collaborative agreements
  • The rules cover transactions performed with related parties abroad or located in free trade zones and any company located in a tax haven or in tax preferential regime.

• Income taxpayers, including people, entities and permanent establishments, that on the previous taxable year register either: (1) gross equity (assets) higher than 100,000 tax value units (UVT in Spanish) (approximately US$991,776 for taxable year 2016) or (2) gross revenues higher than 61,000 UVT (approximately US$604,977 for taxable year 2016) are required to present for that fiscal year a transfer pricing return including all the transactions carried out with related parties.

• On the other hand, a transfer pricing report must be prepared and filed, and such document must contain a master file, including relevant information of the multinational group as a whole, and a local file, containing information related to the specific transactions carried out. The transfer pricing report must be prepared by companies whose total transactions with related parties surpass 61,000 UVT (approx. US$604,977 for taxable year 2016), and the report must only contain transactions whose total amount, per type, surpass 32,000 UVT (approx. US$317,365).

• In the event the taxpayer registered transactions with persons, partnerships, entities or companies located, resident or domiciled in tax havens, the taxpayer should not prepare a transfer pricing report if the total amount of transactions with such countries does not surpass 10,000 UVT (approx. US$991,776 for taxable year 2016).

• The purpose of the transfer pricing documentation is to evidence the proper application of the transfer pricing regime, and it shall be retained (1) during five years, which will be counted starting on 1 January of the following taxable year, or (2) for as long as the tax return’s statute of limitation period is open, whichever covers the longest span of time.

• As of taxable year 2016, taxpayers of income tax who fulfill any of the following conditions shall present a country-by-country report, and such document shall contain information related to the global allocation of income and taxes paid for the multinational group.

• Segmented financial information used for the preparation of the transfer pricing documentation must be certified by a public accountant, independent auditor or its counterpart.

• With regard to payment for services, the taxpayer must demonstrate that the services were in fact received and that there is a benefit for the Colombian entity. Moreover, it is necessary to prove that the fee paid complies with the arm’s-length principle.

• Business restructuring where functions, assets or risk of the Colombian entity are assigned or transferred to a foreign related party must be in compliance with the arm’s-length principle.

• Advanced pricing agreements (APAs) may be signed with tax authorities and will have a five-year term (including one-year rollback).

• Penalties are imposed for failure to meet filing requirements, submitting erroneous or incomplete reports, or failing to meet other requirements.

• In the case of financing operations, attributes, such as the principal, term, debtor’s credit rating, guarantees and interest rate of a loan, should be considered to determine the comparability between transactions with related and independent parties. If an intercompany transaction does not comply with the elements mentioned above, interest expenses could be considered as non-deductible because the transaction has not been carried out at market conditions. In such cases, the intercompany transaction would not be considered as a loan, but as a capital contribution, and the interest expense would be treated as a dividend.
In the event that the terms and conditions of the loan are not consistent with market practice, this operation would not be considered as a loan for tax purposes. In that case, an eventual re-characterization may take place, regardless of the interest rate agreed between the parties. However, there are no precedents for the application of the re-characterization rule, so the Tax Administration’s position on what constitutes non-compliance with market conditions is unknown.

When purchasing used assets, using the comparable uncontrolled price (CUP) method to assess the market price, under Colombian regulations, this must be supported with the original invoice and the depreciation of the asset. In cases where the invoice is not available, the taxpayer can rely on a technical appraisal.

Since 2017, in commodity operations, the CUP method is mandatory and is the most appropriate method. It should be used to establish the price in these transactions.

The CUP for commodity transactions can be determined: (1) by reference to comparable transactions between independent parties or (2) by reference to quoted prices. A determining factor for the application of the method will be the date or the specific period agreed by the parties to fix the commodity, which must be demonstrated by reliable documents (e.g., contracts, offers and acceptances or other documents that establish the terms of the agreement).

In case the taxpayer does not provide reliable evidence or if the agreed date of price fixing is inconsistent and the tax authority cannot otherwise determine the date of fixing the price, the tax authority may consider “the date” on the basis of available evidence. This can be the date of shipment registered in the document of embarkation or in the equivalent document according to the means of transport.

Dividends

Dividends paid to non-residents are not subject to CIT if the dividends paid were taxed at corporate (paying resulting corporate income tax), permanent establishment or branch level. However, these amounts will be subject to an additional special rate over dividend.

Dividend distributions to non-resident legal entities would be subject to 5% tax, even if the dividends paid were taxed at corporate or branch level. This tax would apply to profits obtained beginning in 2017.

Dividends paid to foreign legal entities arising from profits that were not subject to taxes at the level of the company distributing them would be first subject to a 35% withholding tax, and then subject to a 5% withholding tax on the amount to be distributed, net of the 35% withholding tax.

If the non-taxable dividends in a given year are higher than the commercial profits of that year, the difference can be carried back for two years or carried forward for five years to offset the profits of such periods.

Before the enactment of the special rate on dividends, Regulation No. 3026 of 27 December 2013 provided guidance for profit distribution of branches that belongs to the special exchange law regime (coal, uranium and ferronickel).

Such regulation provides that for income tax purposes, a branch that belongs to the special exchange law regime is transferring profits to its home office when this fact arises:

- The equity account called “supplementary investment to assigned capital account” (ISCA by its initials in Spanish) results in a “debit balance” (negative balance). The Executive Order states that the value of the dividend shall be the same as the “debit balance” at the end of the year.
  
  Or

- When “debit balance” at the beginning of the year increases during the year, dividend value will correspond to the increase in the debit balance during the year.

Royalty regime

In Colombia, ownership of minerals found beneath the surface is vested in the nation. Therefore, companies engaged in the exploration and extraction of non-renewable resources must pay the government a royalty (regalia).

A royalty is a percentage of the exploited gross product of the object of the mining license and its sub-products, calculated or measured at mine gate and payable in money or in kind.

Royalty is deductible for income tax purposes.

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13 The term “quoted price” refers to the price of the commodity in a given period in a domestic or international commodity exchange market.

14 Law 1819 of 29 December 2016.

15 As a general rule, all business entities undertaking business operations in Colombia are subject to Colombia’s exchange control regime provisions. Colombian incorporated legal entities qualify as a “residents” for exchange control purposes and are subject to what is referred to as the “ordinary exchange control regime.” Colombian registered branches of foreign legal entities also qualify as residents and are therefore subject to this same regime; however, if the sole business purpose of such a branch is to enter into oil and gas, coal, ferronickel, uranium exploration or exploitation activities (qualified branch), the same may apply and validly qualify for “special exchange control regime” treatment.
Currently, the percentages used to calculate the royalty’s prices are as follows:

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal (more than three million annual tons exploitation)</td>
<td>10%</td>
</tr>
<tr>
<td>Coal (less than three million annual tons exploitation)</td>
<td>5%</td>
</tr>
<tr>
<td>Nickel</td>
<td>12%</td>
</tr>
<tr>
<td>Iron and copper</td>
<td>5%</td>
</tr>
<tr>
<td>Gold and silver</td>
<td>4%</td>
</tr>
<tr>
<td>Alluvial gold in concession contracts</td>
<td>6%</td>
</tr>
<tr>
<td>Platinum</td>
<td>5%</td>
</tr>
<tr>
<td>Salt</td>
<td>12%</td>
</tr>
<tr>
<td>Limestone, gypsum, clay, chippings</td>
<td>1%</td>
</tr>
<tr>
<td>Radioactive minerals</td>
<td>10%</td>
</tr>
<tr>
<td>Metallic minerals</td>
<td>5%</td>
</tr>
<tr>
<td>Non-metallic minerals</td>
<td>3%</td>
</tr>
<tr>
<td>Building materials</td>
<td>1%</td>
</tr>
</tbody>
</table>

Note: The above are general rates. In special cases and old contracts, specific rates may apply.

The Constitutional Court accepts that the mining industry could be simultaneously taxed with royalties and taxes. In fact, the court declared that the prohibition established in the mining code (Law 685 of 2001) to prevent taxation of those activities that are also liable to royalties was not in accordance with the Colombian Constitution.

Nevertheless, over the last years, the court has given opposing decisions when studying the compatibility between taxes and royalties. It is possible that the legislature could continue to promulgate exonerating laws (i.e., legislation to relieve companies from paying taxes and royalties simultaneously, which would apply until the court pronounces on it).

Surface fees (canon superficiario)

The mining code also includes the obligation for the concessionary to pay an amount in consideration of the concession’s area. This payment is deductible for income tax purposes.

The surface fee will be paid annually and in advance, over the entire area of the mining concession during the exploration stage, according to the following values and periods:

<table>
<thead>
<tr>
<th>Number of hectares (HA)</th>
<th>0 to 5 years</th>
<th>More than 5 ** years up to 8 years</th>
<th>More than 8 ** years up to 11 years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MLMW/HA</td>
<td>MLMW/HA</td>
<td>MLMW/HA</td>
</tr>
<tr>
<td>0–150</td>
<td>0,5</td>
<td>0,75</td>
<td>1</td>
</tr>
<tr>
<td>151–5,000</td>
<td>0,75</td>
<td>1,25</td>
<td>2</td>
</tr>
<tr>
<td>5,001–10,000</td>
<td>1,0</td>
<td>1,75</td>
<td>3</td>
</tr>
</tbody>
</table>

*For 2017, a minimum legal monthly salary/wage (MLMW) is equivalent to approximately US$246/hectare.

**As of year plus one day.

These values are compatible with the royalties and constitute a consideration that will be charged by the contracting authority without regard to who owns the land where the contract is located.

For the construction and assembly or additional exploration stages, if this is done, the value equivalent to the last fee paid during the exploration stage will be payable.
Tax credit

Taxpayers who obtain foreign-source income subject to income tax (or any nomination) in their country of origin are entitled to a discount (equal to a tax credit) on the income tax amount payable in Colombia, comparable to the tax paid abroad for that income. This tax credit shall not exceed the amount to be paid by the taxpayer in Colombia for the same income. Tax credits are not provided for branches of foreign companies because they are taxed only on Colombia-source income.

The amount of income tax payable after tax credits may not be less than 75% of the income determined under the presumptive income rules before taking the tax credits into account.

Notwithstanding, in the case of dividends or participations received from companies domiciled abroad, taxpayers may, in addition, take a credit from the amount of income tax payable in Colombia a value equivalent to the result of multiplying the amount of dividends or participations by the income tax rate to which the profits that generated such dividends or participations have been submitted in the name of the issuer company (indirect tax credit). When the dividends have been taxed in the country of origin, the discount will be increased by the amount of said tax (direct tax credit).

In no event may this credit exceed the amount of the income tax generated in Colombia by such dividends.

The tax credit must be claimed in the taxable year in which the payment has been made or in any of the following four years (carryforward). This change applies to dividends received starting in 2011, regardless of the year in which the profit was generated.

Furthermore, the law requires a certificate of the auditor to be provided as evidence of the taxes paid abroad.

C. Capital allowances

Depreciation

For income tax purposes, taxpayers are entitled to deduct reasonable amounts for the depreciation caused by wear and tear of goods used in business or income-producing activities provided those have rendered service in the taxable year or period.

For income tax purposes, a taxpayer will depreciate the tax basis of depreciable assets, less its residual value over its useful life. Depreciation basis is the acquisition price plus the directly attributable costs until the asset is available for use.

The useful life is determined according to the IFRS accounting technique (support — study).

The depreciation rate to be deducted annually shall be that established in accordance with the accounting technique, provided that does not exceed the maximum rates determined by the national government.

Maximum annual depreciation rates will vary between 2.22% and 20%.

In the absence of regulations, in selected items, the maximum value should be as follows:

<table>
<thead>
<tr>
<th>Concepts of assets to depreciate</th>
<th>Annual tax depreciation rate %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and buildings</td>
<td>2.22%</td>
</tr>
<tr>
<td>Aqueduct, plant and networks</td>
<td>2.5%</td>
</tr>
<tr>
<td>Electric equipment</td>
<td>10%</td>
</tr>
<tr>
<td>Fleet and land transport equipment</td>
<td>10%</td>
</tr>
<tr>
<td>Machinery, equipment</td>
<td>10%</td>
</tr>
<tr>
<td>Furniture and movable goods</td>
<td>10%</td>
</tr>
<tr>
<td>Computer equipment</td>
<td>20%</td>
</tr>
</tbody>
</table>

The depreciable fixed assets held by the end of 2016 may be subject to depreciation during their remaining useful lives and applying the depreciation methods available at the end of 2016.

Accelerated depreciation: the depreciation rate can be increased by 25% if the depreciable good is used daily for 16 hours and proportionally in higher fractions, provided this is demonstrated.

19 At the time of the issuance of this guide, such regulation has not been issued. Monitoring and verification should be done on this point.
Amortization of investments

The following assets of the evaluation and exploration phase of natural resources will be amortized:

- Acquisition of exploration rights
- Seismic, topographical, geological, geochemical and geophysical studies, as long as they are linked to a finding of the non-renewable natural resource
- Exploratory drilling
- Excavations of ditches, trenches, pikes, exploratory tunnels, quarries, scaffolds and the like
- Sampling
- Activities related to the assessment of the commercial viability of the extraction of a natural resource
- Other costs, expenses and acquisitions necessary in this stage of evaluation and exploration of non-renewable natural resources that are likely to be capitalized in accordance with accounting technique.

The new tax reform introduced new amortization and deduction rules of investments on evaluation, exploration, development and construction of mines, along with some transition rules for existing balances as of 31 December 2016.

Changes in amortization rules include rules over:

<table>
<thead>
<tr>
<th>Field</th>
<th>Amortization rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profitable mine</td>
<td>Units of operation (UOP) = (units produced in the year/proved reserves developed remnants or proven recoverable reserves at the end of the previous year)*balance to be amortized at the end of the previous year</td>
</tr>
<tr>
<td>Unprofitable mine</td>
<td>When the mine is unprofitable: in the year in which it is determined or at the latest, in the following two years</td>
</tr>
</tbody>
</table>

However, investments on exploration and evaluation phases made between 1 January 2017 and 31 December 2027 shall be amortized by the straight-line method over a period of five years.

In the event that the production is depleted earlier than provided for in the corresponding contract, the outstanding balance may be amortized in the taxable year or period in which that situation is verified and in any case, at the latest, within two years of the testing.

Costs incurred in the processes of improvement in the exploitation of a non-renewable natural resource will be capitalized and amortized.

Up until 2016, the necessary investments made in the field of mines and oils, for the purposes of amortization, could include disbursements made in areas in operation, as in non-production areas, continuance or discontinuance. Beginning in 2017, this is no longer permitted.

**D. Incentives**

**Tax holiday**

Colombia does not have a tax holiday regime for the mining industry.

**Tax losses**

Taxpayers can offset tax losses\(^{20}\) with the ordinary net income obtained in the following taxable periods without prejudice to the presumptive income for the year. If there is a tax loss, such loss may be carried forward in the following 12 taxable periods.

Corporate income tax returns from which tax losses arise or in which prior year tax losses are used as setoffs (or loss carry-forwards) are opened for review by a tax authority for a longer period than the standard.

When tax losses are offset or generated, the statute of limitations is 12 years, even in the event that they carry transfer pricing (contradiction arts. 89 and 277 of Law 1819).

If the tax loss is offset in any of the last two years that the taxpayer has for such purposes, the statute of limitations will be extended from said offset for a further three years in relation to the return in which said loss was offset.

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\(^{20}\) Tax losses arising from non-taxable income and on costs and deductions that do not have a causal relationship with the generation of taxable income in no case may be offset by the net income of the taxpayer.
Offsetting tax losses and presumptive income excess originated before 2017 (for income tax and income tax for equality purposes) will follow applicable rules at the time they were originated. However, the value to be offset should be determined in accordance to the formula provided for in article 290 of Law 1819 of 2016.

Additional restrictions apply to the transfer of losses in mergers or spin-offs (which are tax-free events for Colombian tax purposes, under certain circumstances). In mergers, the surviving entity may offset losses originating in the merged entities, limited to the percentage of its equity participation in the merged entity’s equity. In spin-offs, the new company (or companies) or the resulting companies may offset losses originating in the spun-off entity, limited to the participation percentage of the new companies in the equity of the spun-off company. Tax losses generated do not affect the entity’s presumptive income for the relevant tax year. To have the right to offset tax losses, companies involved in mergers or spin-offs are required to carry on the same economic activity as they did before the merger or spin-off process.21

Regional incentives (industry and commerce tax)

Certain regulations established for the mining industry include the prohibition to apply the local industry and commerce tax (ICA) to the exploitation of quarries and mines whenever the value received by the municipality from royalties and contributions is equal to or greater than the value that would be received from ICA. However, this treatment does not apply to salt, emeralds or precious metals. If the product is exported, no ICA will be triggered.

ICA applies to gross income from industrial, commercial and service activities in a municipality jurisdiction. The applicable rate will depend on the municipality in which it develops its operations, which may vary depending on the municipality regulation. Special tax rates exist in the case of selected minerals if ICA arises.22

In addition, a special exemption to tax mining activities in the municipality exists in the Mining Code.

Tax credit for donations

Donations made to nonprofit entities that have been qualified as part of the income tax special regime and to qualified non-taxpayers of sections shall grant a tax credit against income tax purposes of 25% of the value donated in the year or taxable period. In these cases, these donations may not be used as a deduction. This treatment will be regulated for its application.

Tax credit for investment in control and improvement of the environment

Legal entities that directly make investments in the control, conservation and improvement of the environment shall be entitled to take a tax credit of 25% of the investments they have made in the respective taxable year from their income tax. The investments that have been demanded by the environmental authorities are not acceptable for the benefit.

Research, technological development and innovation

Investments in research, technological development and innovation give rise to:

- A special deduction for donations and investments in research, technological development and innovation. Taxpayers may deduct 100% of the investment made in research, technological development or innovation.

- Tax credit for investments made in research, technological development or innovation. There is an entitlement to credit 25% of the value invested in the taxable year or period. Investments can be made through researchers, groups or research centers, among others. For the discount to proceed, the project qualification must comply with environmental impact criteria. These should be projects qualified by the National Tax Benefits Council (CNBT) in accordance with the criteria and conditions defined by CONPES.

The CNBT will define a maximum annual amount of deduction and a maximum annual amount when simultaneously requesting deduction and tax credit.

Income tax credit for value-added tax paid on heavy machinery for basic industries

The value-added tax (VAT) paid on the importation of heavy machinery for use by basic industries may be used as a tax credit (discount) for income tax purposes. The mining industry is considered a basic industry for these purposes.23

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21 Section 147 of the Colombian Tax Code.
22 Law 56 of 1981
23 Section 258-2 of the Colombian Tax Code.
Special deduction of VAT paid on importation or acquisition of capital goods

VAT at the general rate for the acquisition or importation of capital goods may be taken as a deduction on the corporate income tax in the period of acquisition or importation, provided that such benefit is not used concurrently with the tax credit for heavy machinery. It also applies to the assets acquired under the financial leasing modality with exercise of the purchase option at the end of the contract.

CERT (tax refund certificate)

The investments in the mining sector that will give rise to the granting of CERT will be exclusively those that aim to maintain or increase the production of the current projects, to accelerate the projects that are in transition (from construction and assembly to exploitation) and to increase the mining exploration projects.

Holders of mineral exploration rights must enter into investment agreements with the National Mining Agency, in accordance with the regulations issued by the national government for that purpose.

CERT value shall neither constitute a non-taxable income nor capital gains for the person who receives or acquires it and may be used for the payment of national taxes administered by DIAN.

This benefit is pending regulation.

E. Withholding taxes

Colombia has a withholding tax regime that is intended to secure the collection of taxes and make the system more efficient by providing for the advance collection of tax. The most important taxes subject to this procedure are income tax, VAT, and industry and commerce tax (a municipal tax described in more detail below).

New self-withholding for income tax purposes (an additional self-withholding)

As of 1 January 2017, taxpayers have the status of self-withholding agents for purposes of income tax provided they meet the following conditions:

- To be a national company, foreign company or permanent establishment
- To be exempt from the payment of social security contributions and payroll taxes with respect to their workers who earn a wage less than 10 SMMLV

This self-withholding must be settled on each payment or credit entry to income tax taxpayers, and the rate may range from 0.4% to 1.6% according to each type of economic activity.

Those responsible for self-withholding must file and pay self-withholdings performed each month, within the deadlines set for the effect by the national government.

The self-withholding will be applied regardless of the traditional tax withholding.

Payments made abroad

Generally, services rendered abroad generate foreign-source income and, therefore, no Colombian withholding tax applies. However, this provision does not apply to certain services rendered abroad that are related to foreign-source income, for example, these services include payments or accruals related to managerial and administrative services, consulting, technical services and technical assistance services, which are subject to withholding at the rate of 15% whether they are rendered in the country or abroad.

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The following table contains a list of the most relevant items subject to withholding tax, together with the relevant withholding rates on payments made to beneficiaries abroad, except where treaty modifications apply. This list is not exhaustive.

<table>
<thead>
<tr>
<th>Items</th>
<th>Income tax withholding</th>
<th>Deductibility (income tax)</th>
<th>VAT(****)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment for technical assistance services, technical services(^{26}) and consulting (rendered in Colombia or abroad)</td>
<td>15%</td>
<td>15% limit does not apply(*)</td>
<td>19%</td>
</tr>
<tr>
<td>Managerial and administrative services rendered abroad and charged to the related entities</td>
<td>15%</td>
<td>15% limit does not apply(*)</td>
<td>19%</td>
</tr>
<tr>
<td>Royalties in acquisition and exploitation of intangibles (other than software)</td>
<td>15%</td>
<td>100%</td>
<td>19%</td>
</tr>
<tr>
<td>Royalties in exploitation of software</td>
<td>26.4%(effective tax rate)</td>
<td>100%</td>
<td>19%</td>
</tr>
<tr>
<td>Payments for services rendered in Colombia (other than those mentioned above); in certain cases, tax filing is required</td>
<td>15%</td>
<td>15% limit does not apply</td>
<td>19%</td>
</tr>
<tr>
<td>Interest and leasing payments</td>
<td>15%</td>
<td>100%</td>
<td>N/A</td>
</tr>
<tr>
<td>Payments for services rendered abroad (general rule) (other than those mentioned above)</td>
<td>0%</td>
<td>15% limit does not apply (*)</td>
<td>0%</td>
</tr>
<tr>
<td>Construction services</td>
<td>1%(**)</td>
<td>15% limit does not apply (*)</td>
<td>19%</td>
</tr>
<tr>
<td>Payments to preferential tax regimes defined by the national government</td>
<td>34% for 2017</td>
<td>100%(***)</td>
<td>19%</td>
</tr>
<tr>
<td></td>
<td>33% from 2018</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(*) Provided that the withholding tax has been made.

(**) Obligation to file an income tax return by the non-resident.

(***) Payments could be deductible to the extent the transaction represents services rendered pursuant to the arm’s-length principle supported by a transfer pricing study, and general deductibility requirements are met.

(****) Colombian residents receiving services in Colombia from non-resident providers must apply a reverse-charge mechanism. In this case, a special withholding method is applied whereby the Colombian resident who requests the service must withhold the total VAT generated. If the VAT paid is creditable, the resident computes the self-accounted VAT amount from its bimonthly VAT return for the period when the payment was made.

F. Financing considerations

Thin capitalization rules

Effective 1 January 2013, thin capitalization rules are applicable. Any interest paid on loans (with third parties or related parties) that exceeds an average 3:1 debt-to-equity ratio is not deductible. For this purpose, the equity that should be taken into account is the taxpayer’s previous year net equity, as well as only debt that accrues interest. Certain exemptions exist but not over mining activity.

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\(^{25}\) Treaty to prevent double taxation with Spain is applicable as of 2009. Treaty with Chile is applicable as of 2010. Treaty with Switzerland is applicable as of 2012. Treaty with Canada is applicable as of 2013. Treaty with Mexico is applicable as of 2014. Treaties with South Korea and India are applicable as of 2015. Treaties with the Czech Republic and Portugal are applicable as of 2016. Treaties with the United States, France, Belgium, the United Kingdom, Germany, the Netherlands and Japan are pending to enter into force.

\(^{26}\) In order to deduct the payments associated with technology import contracts (among these, assistance services and technical services), it is necessary to get their registration by the tax authority (DIAN), a specific term of six months is established from the signing of technology import contracts to make said registration. In case the contract is modified, the registration must be made within three months after its modification.
Interest on credit obtained abroad

Generally, payments or credits to accounts made by legal entities relating to interest are subject to withholding tax (WHT), at the rate of 15% from 2017 onward (unless modified by a treaty). Nevertheless, the following credits obtained abroad (among others) are not considered as national source income and so they are not subject to WHT:

- Short-term credits originating from imports of goods and banks overseas
- Credits for foreign trade operations obtained through financial corporations and banks incorporated pursuant to the Colombian law
- Credits devoted to promote pre-exports and exports

Note that foreign indebtedness is not allowed for branches belonging to the special exchange regime.

Please note that direct foreign indebtedness is not allowed for branches of the foreign exchange special regime (for detailed information, refer to the foreign exchange regime section below).

G. Transactions

Farm-ins and farm-outs

Farm-in arrangements are used in the Colombian mining industry, but no tax rules exist to determine their treatment. Case-by-case analysis is required. For tax purposes, the local selling price cannot be lower than 75% of the fair market value of the rights. Transactions with foreign related parties must comply with transfer pricing provisions.

Selling shares in a company (consequences for resident and non-resident shareholders)

A share sale is generally subject to the capital gains or income tax regime. The taxable capital gain or taxable net income is equal to the positive difference between the sale price of the asset and its adjusted tax basis (fiscal cost).

Sales including a foreign related party and a resident related party must comply with transfer pricing provisions. Specific methodology applicable to shares exists. Income or gain recognized by non-residents that sell shares in a Colombian company is considered Colombian source income and shall require the filing of an income tax return even if there is no gain or income in the transaction.

Conversely, unrelated sales or domestic sales between resident related parties shall have to be undertaken at a fair market value of the assets to be sold, in which case a variation of 25% compared to the market prices is acceptable.

The tax reform (Law 1819 of 2016) includes a presumption that the market value of the shares not listed on the stock exchange market cannot be lower than the equity value plus 15%. The same treatment will apply on the sale of rights on investment vehicles, such as trusts and collective investment funds that hold shares or interests.

Proceeds from the sale of shares owned in Colombia for two years or longer are treated as capital gains. If the shares are owned for less than two years, proceeds from the sale are treated as ordinary income subject to income tax; such income will be part of the income obtained in the taxable year by the company, and thus, it can be offset against tax losses and other applicable benefits of the whole operation of the company. Under capital gains tax, the applicable rate is 10%.

Losses on sales of shares are not deductible for income tax purposes.

H. Indirect taxes

VAT

Colombian VAT is triggered by the following transactions:

- Sales of movable and immovable tangible goods that have not been expressly excluded
- Sale or transfer of rights in intangible assets solely associated with industrial property
- Render of services in Colombia or abroad, unless expressly excluded
- The import of movable tangible goods that have not been expressly excluded

It is important to note that the services provided from abroad are taxed with VAT when the recipient and/or beneficiary is in the national territory. There are specific rules to determine when the beneficiary is in the national territory.
The following are excluded from VAT:

- Salt (including table salt and denatured salt) and pure sodium chloride, whether or not in an aqueous solution or with the addition of anti-caking agents or agents that ensure good flow; seawater
- Sulfur of any kind, other than sublimated or precipitated and colloidal
- Natural calcium phosphates, natural calcium phosphate and phosphate chalk
- Dolomite without calcining or sintering, called “raw,” and calcite inorganic dolomite for agricultural use as fertilizer
- Coal, anthracite, whether or not pulverized, but not agglomerated; coal other than anthracite or bituminous, whether or not pulverized, but not agglomerated
- Coke and semi-coke of coal
- Coke and semi-coke of lignite or peat

Other excluded products include goods that are basic necessities and services, such as transportation and public services. Excluded supplies are not subject to VAT, and therefore, the VAT paid to suppliers of goods and services cannot be credited in the VAT return and should be accounted for as an increase in the cost or expense of the goods or service. If a company exclusively makes excluded supplies, the VAT paid on its supplies cannot be recovered through the VAT credit system; thus, VAT paid becomes an additional cost or expense for the company.

In Colombia, the term “exempt supplies” is used for supplies of goods and services that are liable to VAT but have a zero rate (0% rated). Exported goods and services are included within this category. If the taxpayer has paid more VAT to its suppliers than it has charged, the credit balance may be requested as a refund from the tax authorities (subject to compliance with certain requirements and conditions). In the case of gold exportation, a VAT refund is subject to additional requirements.

To improve the tax collection system, the Colombian Government has introduced a VAT withholding mechanism and designated certain entities as VAT withholding agents (including government entities, large taxpayers and taxpayers of the common system to contract with persons or entities without Colombia residence). These agents are responsible for withholding 15% of the VAT on any payment or accounting accrual related to taxable goods or services. In the case of transactions with non-residents (both entities and individuals), the withholding rate is 100% of the VAT.

Beginning in 2017, the general VAT rate is 19%. This rate applies to all goods and services, unless specific provision allows a reduced rate.

Acquisition of gold production made by the Central Bank (Banco de la República) is subject to 75% of the value of the tax as withholding tax.

The VAT rate on imported goods for the mining sector is generally 19%. The tax basis is the CIF (cost, insurance and freight) value of the goods, plus the value of any applicable customs duties. However, the Tax Code offers the following VAT benefits for imported goods:

- Subsection 428 (e) of the Colombian Tax Code establishes a VAT exclusion for the temporary importation of heavy machinery for use by basic industries (the mining sector is regarded as a basic industry) if those goods are not produced in the country (subject to the opinion given by the Ministry of Commerce, Industry and Tourism). Any request for VAT exclusion must be submitted at the time of the importation.
- Subsection 428 (f) of the Colombian Tax Code establishes a VAT exclusion for importation of machinery or equipment for treatment of residues when said machinery is not produced in the country.
- Subsection 428 (g) of the Colombian Tax Code establishes a VAT exclusion for ordinary imports of industrial machinery made by qualified exporters (Usuarios Altamente Exportadores) to the extent that the machinery is used to transform raw materials and does not have local production (according to the opinion given by the Ministry of Commerce, Industry and Tourism). Any such request for exclusion should be submitted at the time of the importation.

VAT will be accrued on mergers and spin-offs if the tax event does not qualify as tax-neutral under the circumstances set below.

**Import duties**

Goods imported by mining sector companies on a permanent basis are generally subject to customs duties and VAT charges even if they are imported on a non-reimbursable license basis.

**Export duties**

In general, no duties apply to goods or services exported from Colombia.

However, income received from the exportation of minerals is subject to a “self–withholding tax” by the exporter (per Section 50 of Law 1430, issued 29 December 2010).

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27 Section 424 of the Colombian Tax Code.
28 Article 1, Decree 3991, 2010.
The government issued a regulation stating that the tax withholding rate cannot be higher than 10% by decree issued on 9 May 2011, the tax rate was set at 1% over the amount accrued or paid.\(^{29}\) The exchange rate applicable on the day on which the amount is accrued or paid shall be observed.

This self-withholding tax also includes disposal of gold to the so-called international trading companies incorporated in Colombia under the Colombian legislation.

This income withholding tax constitutes an advance to the final income tax liability of the current fiscal year, effectively serving as a pretax for income tax purposes.

Excise duties

Excise duties do not apply to the mining industry.

Stamp duties

In certain state jurisdictions (departamentos and municipios), there are local stamp taxes that tax several situations, starting from transactions exclusively entered into with the local (state or municipal) public entities to services rendered in or in relation to a given municipality.

Most of these stamp taxes have been created to provide additional funds for public utilities, infrastructure, hospitals, senior citizen retirement homes and activities of a social nature, and each state may have several simultaneous stamp taxes.

Usual rates go from 0.3\% to 1.5\% of the value of a transaction; however, the rates and tax basis may vary depending on the state or municipality.

Operations/investments made in a given jurisdiction need to consider the possible impact of these kind of taxes, some of which are constructed as contributions or tolls within a given activity.

Registration fees

Registration tax is levied on documents or contracts that must be registered with the Chamber of Commerce or with the Public Instruments Office.

As explained below, a branch can be a convenient legal structure for mining companies. Companies that operate using other legal structures must register with the authorities (for example, before a notary), and if they decide to increase their equity, they must pay registration taxes. Branches do not have these obligations. Instead, a branch maintains a special account named the “supplementary investment to the assigned capital” in which it registers capital differences after funding, just as if the account were held with the home office.

Other significant taxes

Wealth tax

Law 1739 of 2014 creates a new wealth tax. In general terms, all individuals and legal entities in Colombia that are deemed income taxpayers, including non-residents (not expressly excluded by the law from paying this tax) are subject to this tax, provided their tax net equity (gross assets minus debts) on 1 January 2015 is greater than COP$1b (approximately US$418,060\(^{30}\)). Unliquidated inheritances are also subject to this tax if the tax net equity threshold is met.

In accordance with the wording of this rule, those that do not meet the tax net equity threshold as of 1 January 2015, or are not considered income taxpayers, are not subject to the tax for corporations for 2015, 2016 and 2017. Per new enacted tax reform, this tax is eliminated as of 2017; therefore, only pending payments as of 2017 for this previous tax assessed as of 2015 must be made for this year.

For foreign non-residents, the tax will be assessed on their equity held in Colombia directly or indirectly through branches and permanent establishments located in Colombia.

The taxable basis for corporations will arise on 1 January 2015, 2016 and 2017.

The taxable basis is the gross equity minus debt as of each year. The reform protects the taxable basis from potential fluctuations in the equity (increase/decrease). The reform includes a limitation that assumes a formula with reference to the taxable basis as of 1 January 2015, bearing in mind the adjusted inflation with a 25\% variation, as follows:

- When the tax basis is higher in 2016 and 2017, the lesser value between the taxable basis determined for the current year and the taxable basis assessed for 2015 with a 25\% inflation increase, certified by the National Planning Department (DANE acronym in Spanish) for the previous year, will be the taxable basis.

\(^{29}\) Article 7 of Decree 2418 of 2013.

\(^{30}\) Official rate of exchange at 1 January 2015 is COP$2,392.46 per dollar.
When the tax basis is lower in 2016 and 2017, the higher value between the taxable basis determined for the current year and the taxable basis assessed for 2015 with a 25% inflation decrease, certified by DANE for the previous year, will be the taxable basis.

For branches and permanent establishments, the taxable basis will correspond to the attributed equity. For the latter, an attribution study will be conducted in accordance with the arm’s-length principle, with functions, assets, personnel and assumed risks all being considered.

Rates of wealth tax are as follows:

<table>
<thead>
<tr>
<th>Range</th>
<th>Applicable formula</th>
<th>Rate for 2015</th>
<th>Rate for 2016</th>
<th>Rate for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;0 &lt;2,000,000,000</td>
<td>Taxable basis x rate</td>
<td>0.20%</td>
<td>0.15%</td>
<td>0.05%</td>
</tr>
<tr>
<td>&gt;=2,000,000,000 &lt;3,000,000,000</td>
<td>(Taxable basis – $2,000,000,000) x rate + sum set</td>
<td>0.35%</td>
<td>0.25%</td>
<td>0.10%</td>
</tr>
<tr>
<td>&gt;=3,000,000,000 &lt;5,000,000,000</td>
<td>(Taxable basis – $3,000,000,000) x rate + sum set</td>
<td>0.75%</td>
<td>0.50%</td>
<td>0.20%</td>
</tr>
<tr>
<td>&gt;=5,000,000,000 and onward</td>
<td>(Taxable basis – $5,000,000,000) x rate + sum set</td>
<td>1.15%</td>
<td>1.00%</td>
<td>0.40%</td>
</tr>
</tbody>
</table>

This tax may be offset against equity reserves without affecting profits and losses, including profits for both individual and consolidated balances.

The wealth tax will not be deductible for income tax assessment.

**Tax on financial transactions**

The tax on financial transactions (TFT) applies to any financial debit transactions involving a withdrawal of deposited resources in checking or savings bank accounts opened in financial entities. Exemptions apply, but none apply specifically to the oil and gas sector.

The current tax rate is 0.4% applied to the total amount of the transaction. In general, the withholding agents of TFT are financial entities and the Colombian Central Bank.

Fifty percent of the amount paid will be a deductible allowance.

**Explosive tax**

Law 1438 of 2011 imposed a 20% tax over the value of the explosive order before VAT. This so-called explosive tax is currently collected by the national military industry, INDUMIL.

**National tax on gasoline and diesel oil**

A taxable event of the national tax on gasoline and the ACPM is the sale, withdrawal or import for own consumption or import for the sale of gasoline and ACPM and is caused in a single stage with respect to the taxable event that occurs first. The tax is levied on the sales made by the producers, on the date of issue of the invoice; in withdrawals for the producers’ consumption, on the date of withdrawal; and on imports, on the date on which the gasoline or the ACPM is nationalized.

The taxpayer shall be who purchases the gasoline or the ACPM from the producer or importer; the producer when making withdrawals for his own consumption; and the importer when, after prior nationalization, it makes withdrawals for its own consumption.

The national tax on regular gasoline will be settled at a rate of COP$490 (approx. US$0.16) per gallon, that of extra gas at a rate of COP$930 (approx. US$0.31) per gallon, and the national tax on the ACPM will be settled at a rate of COP$469 (approx. US$0.16) per gallon. The other products defined as gasoline and ACPM in accordance with this law, other than extra gasoline, will be settled at a rate of COP$490 (approx. US$0.16) per gallon.
I. Other

Foreign exchange regimes
As a general rule, all business entities that undertake business operations in Colombia are subject to Colombia’s exchange control regime provisions. Colombian-incorporated legal entities qualify as residents for exchange control purposes and are subject to what is referred to as the General Exchange Control Regime. Colombian-registered branches of foreign legal entities also qualify as residents and are, therefore, subject to this same regime. However, if the purpose of the business of a branch of a foreign entity is exclusively to enter into, among other exploration and exploitation activities, coal, ferronickel and uranium exploration (as a qualified branch), the branch may apply and qualify for treatment under the Special Exchange Control Regime.

Business presence
Due to exchange law regulations, branches are a convenient structure for companies devoted to coal, uranium and ferronickel activities.

In addition, the most-used vehicles for foreign investors are sociedad anonima, a Colombian corporation (SA), and sociedad de responsabilidad limitada (SRL). A third type of corporation, sociedad por acciones simplificada, created in 2008, has a more flexible legal regime. An SA is a separate legal entity in which shareholders’ liability is limited to its capital subscriptions. An SRL is a limited liability corporation that has the characteristics of both a partnership and a corporation. Unlike shareholders in an SA, members of an SRL are liable only up to the amount of their capital contributions except for labor and tax obligations, for which they are jointly and severally liable.

Mergers and spin-offs

Acquisition mergers and spin-offs
The acquisition merger and spin-off rules apply to domestic companies that are not deemed to be related parties under the definitions contained in the transfer pricing rules. The merger and spin-off rules are neutral for income tax and VAT purposes, as no disposal of property is deemed to occur.

No disposal of shares is deemed to take place for the shareholders of the participating companies, provided that certain conditions are met, such as (1) owners of 75% of the shares of the existing companies participate in the resulting company and (2) shareholders receive a participation equivalent to no less than 90% of the resulting capital as measured by application of the valuation methods and share exchange method used. A two-year minimum holding period is required; otherwise, a special fine may be imposed, with certain exceptions. Other restrictions apply.

When foreign and domestic companies participate in a merger or spin-off, the same consequences apply as are set out in the preceding paragraph, to the extent that the absorbing company (in mergers) or resulting company (in spin-offs) is a domestic entity.

Reorganization mergers and spin-offs
The reorganization merger and spin-off rules apply to domestic companies that are deemed to be related parties under the definitions contained in the transfer pricing rules. The merger or spin-off is tax-free for income tax and VAT purposes. The requirements that apply to acquisition mergers or spin-offs also apply to reorganization mergers and spin-offs, except that certain thresholds increase. For example, (1) ownership of interest in shares is increased to 85% and (2) shareholders must receive a participation equivalent of no less than 99% of the resulting capital as measured by the application of the valuation methods and share exchange method used. Other restrictions apply.

Mergers and spin-offs of foreign entities

Owning Colombian property
Foreign mergers or spin-offs of companies holding Colombian interests are taxed in Colombia when, through these mechanisms, direct ownership of Colombian companies or assets is transferred, provided the value of the assets exceeds 20% of the total assets of the group to which the participating companies in the merger or spin-off belong, according to the consolidated balance sheet of the ultimate parent company.

Anti-abuse rules
An operation or series of operations constitute tax abuse when they meet the following requirements:

- Involve the use or implementation of one or more artificial acts or legal transactions without apparent economic and/or commercial purpose or purpose
- In order to obtain tax benefit, regardless of any additional subjective intent

The tax authority is empowered to act against abuse:
• To characterize (determine “the true” nature) the whole operation that constitutes abuse and consequently to ignore its effects
• Issue administrative acts in which it proposes and settles taxes, interests and penalties
How EY’s Global Mining & Metals Network can help your business

With increasingly positive sentiment in the sector, miners are focused on restoring balance sheet strength and liquidity in preparation for growth. The sector’s key opportunity is still productivity. Although many have made productivity improvements, the critical next wave of gains needs a strong focus on loss elimination, with digital being a key enabler.

EY has significant experience in assisting companies to evaluate and implement strategic initiatives, with deep sector knowledge to support you on finance initiatives, such as portfolio optimization and capital planning, and through to operational improvement programs, such as productivity and digital enablement.

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