

Tax Agenda Colombia

September 2024





No.	Fact	Action
	<p>Significant Economic presence (SEP) rules</p> <p>As from 01 January 2024, nonresidents with a SEP in Colombia will be subject to 3%/10% income tax. The taxable income will be the gross income obtained by the foreign entity on certain digital services or transferring of assets to Colombian clients.</p> <p>The non-resident entity subject to SEP rules, may opt to be subject to a 10% WHT or to file an income tax in Colombia at a 3% tax rate. Read more: Regulatory decree provides guidance for nonresidents subject to Colombia's version of digital services tax (Significant Economic Presence).</p>	<p>Analyze the service rendered to Colombian recipients to determine whether such service is subject to SEP rules.</p> <p>Analyze the transfer of assets to Colombian recipients to determine whether such transfer is subject to SEP rules.</p> <p>Support nonresident taxpayers with a SEP in Colombia whether to choose (i) the withholding tax mechanism or (ii) the filing of a tax return in Colombia (applicable options under SEP rules). This election should be made based on the quantification of tax costs (i.e., WHT rates) vs administrative cost (i.e., compliance of formal obligations) .</p> <p>Evaluate alternative structures that do not create a SEP in Colombia.</p>
1	<p>On 30 April 2024, the Colombian Tax Authority issued a ruling clarifying several aspects of SEP rules. The Colombian Tax Authority concluded, among others, the following aspects: digital services taxed for the purposes of SEP are solely those included in the list provided by tax law; for sales of goods payable in foreign currency, it is mandatory to use the exchange rate applicable at the moment of initial recognition in the accounting records; and no withholding will apply when the foreign entity (i) has stated that it does not meet the criteria to be subject to Colombian SEP rules, or (ii) has chosen to file income tax and has requested that no withholding should apply. Read more: Colombian Tax Authority issues new ruling on Significant Economic Presence.</p>	



Use text boxes above the timeline to plan your actions for coming months

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2	<p>Local rules to determine the place of effective management (POEM)</p> <p>Rules on the possibilities of non-resident entities to have a POEM in Colombia (thus, becoming Colombian tax residents) have been broadened, as currently a POEM may exist based on the day-to-day activities (not only on strategic activities). Read More: Colombian Congress approves tax reform bill.</p>	<p>Non-resident entities should review their corporate arrangements to:</p> <ul style="list-style-type: none"> - Identify Colombian POEM risk. - Create a tax audit support file to manage the risk. - Implement Ey's recommendations in order strength the position. of not having a POEM in Colombia.
3	<p>15% minimum tax rate (adjusted tax rate)</p> <p>A tax reform bill establishes a 15% minimum tax rate (referred to as adjusted tax rate). The adjusted tax rate would be determined based on the ratio between the adjusted income tax (AIT) over the adjusted income (AI).</p> <p>The calculation is not necessarily aligned with the Base Erosion and Profit Shifting (BEPS) 2.0 Pillar Two model rules. Read more: Colombian Congress approves tax reform bill.</p>	<p>Taxpayers should review whether the 15% minimum tax rules were correctly applied in their tax assessment.</p>
4	<p>Most favored nation clause (MFN) activation</p> <p>As a result of the entry into force of the Double Tax Treaty (DTT) between Colombia and the United Kingdom (UK), the tax treatment of certain services changed on the different DTT signed with Colombia. MFN clause activation may trigger lower taxation of certain services, depending on the treaty to be analyzed. Read more: Colombian tax authority addresses the application of the most-favored nation clause of double tax treaties signed by Colombia.</p>	<p>Entities using the DTT should review payments made under an applicable DTTs in order to identify :</p> <ul style="list-style-type: none"> - Technical assistance, - Technical services and - Consultancy services <p>To analyze the potential application of the MFN rules and the reduction of the withholding tax on such payments.</p>
5	<p>Substance of foreign holding entities</p> <p>Colombia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2017, introducing a Principal Purpose Test (PPT) clause, which will be enforceable once the MLI is ratified by Colombia.</p> <p>The beneficial ownership requirement included in the DTTs, entered with Colombia, for specific items of income, have been recently highlighted by the local legislation as a requirement to be verified in order to access benefits of the DTT.</p>	<p>Entities using the DTTs signed by Colombia, should:</p> <ul style="list-style-type: none"> - Review the holding structuring and their business purposes. - Strengthen the substance of the holding entity. - Properly document the ultimate beneficiary requirement. - Create a tax audit support file for the use of the DTT benefits (e.g., payments of royalties, dividends, interests).

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6	<p>Preferential tax regime regulation</p> <p>Consistent with BEPS 1.0 Action 5 report which established minimum standards on Preferential tax regimes (PTRs), the Colombian government included in its tax legislation a higher tax withholding rate on Colombian source payments to those jurisdictions and entities considered as a non-cooperative or low tax jurisdictions or a PTR.</p> <p>In the case of PTRs, in order to establish whether a specific regime should be regarded as such, specific criteria was included in the tax law. Read more: Colombia issues regulations to identify preferential tax regimes.</p>		<p>Taxpayers should identify payments abroad to regimes that could be regarded as potential PTRs (e.g., payments to off-shore Panama entities, LLC entities in the US etc).</p> <p>They should analyze tax treatment of payments made to such jurisdiction in order to discard the application of PTR rules (tax audit support file).</p>	
7	<p>Ultimate beneficial owner (UBO) reporting</p> <p>Colombian tax law requires all Colombian legal entities and structures without legal personality to identify and report their UBOs before the Colombian Tax Authority.</p> <ul style="list-style-type: none"> - The deadline to report UBO for the first time, was 31 July 2023. Periodic updates must be carried out in case the reported UBO changes. - All entities must have a due diligence report supporting the UBO findings. <p>Read More: Colombia issues resolution on ultimate beneficial owners.</p>		<p>Colombian companies should implement a methodology to identify the UBO of the legal entity or structures without legal personality.</p> <p>Support the initial UBO registration.</p> <p>Prepare the “due diligence” report which supports the UBO registration.</p> <p>Update the registry if changes on the ownership/control take place.</p>	
8	<p>National tax on single-use plastic and the so -called Health taxes (sugary beverages and ultra-processed foods)</p> <p>National tax on single-use plastics will be levied on the sale, self-consumption and importation of single-use plastics used for packaging, wrapping or packing goods.</p> <p>Beginning 01 November 2023, Health taxes apply over ultra-processed sugary beverages, as well as concentrates, syrups, and powders which, after being mixed or dissolved, create sugary beverages.</p>		<p>Taxpayers should review the impact of these taxes to the business model of clients.</p> <p>Identify potential exemptions that could apply, based on a product-by product analysis.</p> <p>Monitor the developments around these taxes and the right interpretation of the new tax rules by requesting rulings to the tax authorities on areas that could be controversial.</p>	
9	<p>Tax benefits for non-conventional energy projects and for energy efficiency projects</p> <p>Investment projects developed in Colombia that generate renewable energy or reduce energy consumption will be eligible for certain tax benefits, such as, VAT exclusion, tariff exemption, accelerated depreciation and special tax deduction of 50% of the approved investment. Read More: Colombia enacts law modifying tax incentives applicable to renewable energy projects.</p>		<p>Investors should analyze whether an investment may qualify for the tax benefits and can be submitted to the Mining and Energy Planning Unit (UPME) to obtain the qualification.</p> <p>Presenting of the project (formats, technical reports and budget reports) and its filing before the UPME.</p> <p>Follow-up of the Tax Benefits request until the UPME issues an approval/denial resolution.</p>	

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10	<p>Colombian Tax Authority issues ruling on limitation of expenses incurred abroad in cases of futures contracts and forward agreements</p> <p>Colombian Tax Law establishes that the deductibility of costs and expenses incurred abroad for the generation of Colombian source income, which are not subject to Colombian income withholding tax, is limited to 15% of the taxpayer's taxable income (15% limitation), before deducting these costs and expenses. Furthermore, in 2017, Colombian Tax Authority issued an opinion stating that expenses incurred abroad derived from a forward agreement are subject to the 15% limitation, to the extent the expenses are related to the generation of Colombian-source income.</p> <p>On 23 April 2024, the Colombian Tax Authority issued an opinion on the deductibility of "loss" or "expenses" generated by future agreements with nonresident entities, as well as on the tax treatment of forward contracts. Colombian Tax Authority concluded that costs and expenses incurred abroad, derived from future agreements entered with nonresident entities are not related to Colombian-source income; therefore, the deductibility of these expenses is not limited to the 15% threshold. Likewise, Colombian Tax Authority stated that forward agreements share some elements with futures contracts; thus, forward agreements may be subject to a similar tax treatment.</p>	<p>Colombian companies involved in these type of operations, should take in consideration that the 15% limitation would not apply to the deduction of their costs and expenses.</p> 
11	<p>Colombian Tax Authority issued Ruling on Beneficial Ownership and Royalty Payments in Colombia-Italy DTT</p> <p>The Colombian Tax Authority (CTA) issued a new Ruling regarding the beneficial owner of royalty payments under the Double Taxation Treaty (DTT) entered into force between Colombia and Italy. In Ruling 100208192-466 dated 21 June 2024, the CTA clarified who should be considered the beneficial owner in transactions involving royalty payments and the process for refunding source withholding tax that was not properly adjusted to DTT application.</p> <p>In their analysis, the CTA examined a case where royalties were paid by a Colombian resident to an Italian company acting on behalf of natural persons who were the actual copyright owners. The CTA determined that those individuals were the beneficial owners for the purposes of the DTT, meaning that the reduced withholding tax rate of 10% of Article 12 DTT applies only if those individuals are Italian residents. If the beneficial owners reside in a country without a DTT with Colombia, the standard domestic rate of 20% is applicable.</p> <p>The CTA's interpretation stated that DTT application when the beneficial owner of a payment is a tax resident in a country that has subscribed a DTT with Colombia. Therefore, DTT's lower tax rates would apply even if intermediaries without substantial requirements are involved in the operation.</p>	<p>Tax benefits of Double Taxation Treaties entered into force with Colombia would apply only if the recipient of payment from Colombian companies would be deemed as its beneficial owner, that is the entity/ individual deemed to have the economic and legal right to dispose of the income.</p> 

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12	<p>Colombian Tax Authority issues ruling on recognition and foreign exchange (FX) rate for Colombian companies with foreign branches</p> <p>The Colombian Tax Authority issued a Ruling on the tax and accounting recognition for foreign branches of Colombian companies. Branches are defined as commercial establishments that are part of the parent company, lacking separate legal identity, and their financial activities should be consolidated with the parent company's accounts. For taxation, all transactions of foreign branches must be recorded in Colombian pesos from the moment of recognition.</p> <p>In terms of FX rates and international payments, the Colombian company should apply the FX rate at the time of recognition.</p>	<div></div> <p>Colombian companies with foreign branches should establish a routine for converting their financial transactions from the local currency to Colombian pesos using the current FX rate</p> <p>They must integrate these converted financials with the parent company's statements for tax reporting.</p> <div> <div></div> <div></div> <div></div> <div></div> </div>

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