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STRUCTURAL TAX REFORM BILL – COLOMBIA 2016

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On October 19th, 2016, the **Minister of Finance of Colombia**, Mauricio Cárdenas, presented to the Colombian Congress, a Tax Reform Bill, filed under number 178/2016, to be approved and then enacted by the Colombian President, Juan-Manuel Santos.

This tax bill was described as a **Structural Tax Reform Bill**. Its main goals are to fight aggressive tax planning, tax evasion and seek billions of Colombian Pesos in order to make up for the lack of revenues that Colombia stopped receiving from the oil industry.

It was described as a Structural Tax Reform. The text presented to the Chamber of Representatives of the Colombian Congress includes 16 sections with 311 articles, some modifying current articles and some are new provisions for the **Colombian Tax Code** (CTC).

If this Structural Tax Reform Bill is approved by **Colombian Congress**, in its 8 debates procedure, and signed by the Colombian President before December 31, 2016; it will be in force starting in the year 2017.

The main provisions are the following:

INDIVIDUALS INCOME TAX

- More individuals will have to file an income tax return on a yearly basis. The lower bracket to become an income tax filer was reduced. Is expected that more than 450,000 new individuals will have to file an income tax return.
- The current alternative methods for individuals denominated IMAN and IMAS systems are removed from the CTC.
- The highest rate was increased from 33% to 35%
- The tax return will be divided depending on the type of income received by the individual. Each of the following types of income will be treated separately:
  - Labor income
  - Pensions
  - Capital Gains
  - Dividends
  - Not labor income
- A new tax on dividends will is levied on individuals. Dividends that are distributed as not taxable income, according to current tax rules will be taxed with a progressive rates: 0% – 5% – 10%.

DIVIDENDS TAX

- Dividends to be paid to foreign investors, when the local payer paid taxes on that profit, will be subject to a 10% withholding tax.
- Dividends to be paid to foreign investors, when the local payer did not pay taxes on that income, will be subject to a 35% withholding tax.
- Same rate will be applied for the individual that receives dividends from foreign entities.
- Dividends distributed to a Colombian entity, will not trigger this dividends tax.

CORPORATE INCOME TAX

- Miscellaneous expenses, dully supported, such as gifts to employees and clients, invitations to clients and parties will be deductible up to 1% of the gross income.
- Expenses on labor litigations will also be tax deductible for the payer.
- Two additions to the 15% limitation, that current applies to expenses abroad:
  - Commissions paid abroad for the sale of goods
  - Interests on short term loans derived from import or export of goods and over banking overdraft
- Loss carry forwards are limited in time. May only be compensated with future profits obtained in future 8 years. Currently, that loss carry forward was unlimited in time.
- The statue of limitation for the tax returns where the loss was generated and compensated is extended to 8 years.
- Presumptive income tax rate is increased from 3% to 4%.
- For the taxable year 2017, the income tax rate is 34%. For the taxable year 2018, the income tax rate is 33%. Starting on the year 2019, the income tax rate for Colombian entities is 32%.
- Same rates will be applicable to Permanent Establishments and foreign entities subject to filing income tax return in Colombia.
- CREE Tax and Surcharge CREE is repealed.
- For taxable years 2017 a 5% income tax surcharge will be levied for entities with a taxable base over CoP$800,000,000. For taxable years 2018 a 3% income tax surcharge will be levied for entities with profits over CoP$800,000,000.

- The current advance payment carried out in 2016 by the entity, for the CREE Surcharge, may be used in 2017 for this new Income Tax Surcharge.
- An advance payment of 100% of the Income Tax Surcharge, applicable for 2018 will have to be paid in 2017.
- The income tax rate for users of Free Trade Zones will be the general rate minus ten (10) points.
- Expenses related to agreements of technology imports, patents and brands are deductible, as long as the agreements are registered before the intellectual property authorities.
- The word "Tax Havens" was modified for Non-Cooperating jurisdictions, or jurisdictions with low or no taxation. Payments to said jurisdictions would not be tax deductible in Colombia, unless withholding tax is applied.
- Adjustments in the exchange rate – Assets or liabilities in a foreign currency will not have tax effects until said asset is sold or said liability is paid. A transitional regime will be applicable for said assets and liabilities that the taxpayer currently has.

TRANSFER PRICING RULES

Lthis chapter is based on the OECD Rules and the BEPS initiatives.

- A country-by-country report is requested starting on 2016 for Colombian holding companies with subsidiaries abroad as long as their consolidated income exceeds 81.000.000 UVTs.
- Amendment to the Master file and Local File information to be reported to the tax authorities was included.
- Tax Heaven connotation is changed for non-cooperating jurisdictions. Their characteristics will be ruled separately.
- New bases to apply penalties are included.

NIIF

- Starting on 2017, the accounting base to be taken for tax purposes is the one adopted according to NIIF.
- The 4-year rule established in Law 1607 of 2012 is repealed. Some transitional parameters were included.

WITHHOLDING TAX

- A 15% withholding tax will be applicable to payments abroad on interests, royalties, fees, commissions, rents, compensation of personal services, know how. Current regime had a 33% rate applicable.
- A 15% withholding tax over payments abroad on technical services, technical assistance and consulting services will be applicable. Current regime had a 10% rate applicable.
- A 15% withholding tax over interest payments over loans of a 1-year or more. Current regime had a 14% rate applicable.
- A 15% withholding tax over administrative services rendered by the home office. Current regime had a 0% rate applicable.
- As follows a summary of the changes in withholding tax rates for payments abroad:

	Current rate	Proposed rate
Personal services	33%	15%
Technical service, Technical assistance,consulting	10%	15%
Interest: Long term loans	14%	15%
Airplane and helicopter leasing	1%	1%
Interest on construction proyects of more than 8 years	5%	5%
Reinsurance payments	Not Subject	1%
Administrative payments to home office	33% rendered in Colombia 0% rendered outside Colombia	15%
Payments to tax havens – Non cooperating jurisdictions	33%	35%
Movies	35% sobre el 65% del pago	15%
Computer software	33% sobre el 80% del pago	15%
International trasportation	3%	5%
Others	14%	10%
Capital gains	14%	10%

CONTROLLED FOREIGN CORPORATION RULES

- Controlled Foreign Corporations (ECE Rules) – Will apply to Colombian tax residents, both individuals and local corporations that have 10% or more of direct or indirect interest in a foreign entity that said entity receives passive income. The Colombian tax residents, under ECE circumstances, will have to register in Colombia, for tax purposes, a presumptive income. In other words, if the foreign entity receives income, from passive income activities, said income perceived abroad, is presumed to be in Colombia, and taxed accordingly.

EXCHANGE OF INFORMATION AND INFORMATION TO BE PROVIDED TO TAX AUTHORITIES

- Subsidiaries of local and foreign entities must file a special report before the tax authorities where the final beneficial owner is fully identified.
- Authorizes the Tax Director to issue a regulation regarding the standards of the information in order to comply with international standards. The information to be reported by the Colombian authorities, to other countries is as follows:
  - – Name and tax ID
  - – Account number
  - – Banking institution
  - – Balance of the account
  - – Average balance of the account
  - – Movements of the accounts

BENEFICIAL OWNERS

- Defines beneficial owners are the individuals that:
  - – Have direct or indirect control over the local corporation
  - – Is beneficiary of the activities and operations of the local corporation
  - – Own more than 25% of the capital or voting rights of the local corporation
- Tax authorities may not accept as deductible any expense abroad in case:
  - – The beneficiary of said payment is the same beneficial owner as the payer.
  - – Payment carried out to a non cooperating jurisdiction
  - – Foreign fiscal residence certificate is not provided

ASSOCIATION AGREEMENTS

- Apply to joint ventures, consortiums, temporary unions, "cuentas en participacion" agreements.
- Are still not considered taxpayers but special reporting rules are included.

VAT

- VAT Regime – General rate goes up to 19%.
- VAT triggered in the importation or purchase of fixed assets considered capital assets may de deducted from income tax in that same year.
- National Consumption Tax on sodas and sweet drinks. $300 pesos per liter.
- Services rendered by using Internet will be subject to VAT at a theoretical withholding tax. The withholding agent is the Credit Card issuer. The services included are: hosting, cloud computing, Internet downloads, music, games, and publicity.

NATIONAL CONSUMPTION TAX

- Include the Internet mobile services at a 4% rate. Previously only the telephone mobile services were subject to this tax.

MONOTAX

- Monotax – Is triggered to individuals classified as small merchants. Replaces income tax and some social security contributions. This Monotax is optional.

AGGRESSIVE TAX PLANNING

- Based on Action 12 of BEPS. Aggressive Tax Planning must be reported to the tax authorities. The responsibility goes to the tax advisor. What is considered Aggressive tax planning is:
  - Triggers tax losses in excess of 31.000 UVTs (CoP $900.000.000)
  - Structures using jurisdiction with low taxation. Jurisdictions with low taxation mean: jurisdictions where the income tax rate is lower in more than 80% of the Colombian rate.
  - Application of double tax treaties
  - Existence of payments that may be deductible to the payer and not taxable to the receiver.

NON FOR PROFIT ORGANIZATIONS

- Non-for profit organizations – Will be considered taxpayers under the general income tax regime of corporations. A special regime will be granted to some entities as Non-for Profit Organizations, after being classified as so, by the Colombian Tax Authorities.
- Payments to directors of these entities may not exceed 30% of the total annual expense of the entity.

FINANCIAL TRANSACTIONS TAX

- Financial Transactions Tax remains at a 4 x 1000 rate.

CARBON TAX

- Creation of a Carbon Tax that is levied on the volume of carbon in fuel.

PROCEDURE AMMENDMENTS

- Suggested Provisional Tax Return – The Tax Authorities may suggest a tax return for the taxpayer. The suggested provisional tax return freezes the statute of limitation of the private tax return for a period of 6 months. Due process variations.
- In case the taxpayer accepts the suggested tax return, the statute of limitation is reduced down to 6 months.
- The general statue of limitation of the tax returns is increased up to 3 years.
- A special 6-year statue of limitation rule applies when a tax return is affected by a transaction subject to Transfer Pricing Rules.
- Inaccuracy penalties that were considered under current rules with a 160%, is reduced to 100% over the tax not paid to the tax authorities.

INDUSTRY AND COMMERCE TAX

- Industry and Commerce Tax – Direct sales to the consumer by means of catalogs, online sales, TV sales, email sales; will be taxed in the Municipality where the goods are delivered.

CRIMINAL CODE

- Jail to tax evaders – Taxpayers in Colombia that have assets not registered, or inexistent liabilities of over 7.250 Minimum Monthly Wages (CoP$5,000,000,000) will be punished with jail (4 – 9 years) and a penalty of 20% of the tax not paid.

MISELANEOUS PROVISIONS

- Progressive income tax rate under Law 1429 is repealed, however, companies that already applied to this special regime, will keep said benefit, for the remaining period granted, with a 9% income tax rate. Bigger the benefit.
- New hotels and remodeled hotels that applied to the 0% tax exemption will start paying 9% income tax starting on 2017.
- Leasing for housing that has less than a 10 year agreement that applied to the 0% tax exemption, will start paying 9% income tax starting on 2017.

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