



**COUNTRY
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Colombia

PRIVATE CLIENT

Contributor

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Colombia.

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COLOMBIA

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1. Which factors bring an individual within the scope of tax on income and capital gains?

Tax residents are subject to income tax and capital gains on worldwide basis. Non-residents are subject to income tax and capital gains only on Colombian sourced income and capital gains.

Residents:

An individual becomes a tax resident when she/he remains in the country, continuously or discontinuously, for more than 183 calendar days during a period of 365 days.

If the individual remains in the country continuously or discontinuously for 183 days during 2 consecutive fiscal years, it will become tax resident after the second of the two consecutive years.

Colombian citizens are considered tax residents if their family members (i.e., spouse or dependent children) are Colombian tax residents, or if 50% or more of the individual's income is Colombian sourced, or if 50% or more of the individual's assets are managed or held in Colombia. A Colombian citizen is considered a tax resident in Colombia if she/he has tax residence in a tax haven.

Colombian citizens are not deemed as tax residents in Colombia if 50% or more of the individual's income is sourced in the jurisdiction of their domicile and 50% or more of their assets are managed or possessed in the country in the jurisdiction of their domicile.

Non-residents:

Non-residents are subject to income tax only on source income and they are only required to report Colombian sourced income or assets located in Colombia.

Colombian sourced income refers to income from activities undertaken within Colombian territory. The Colombian tax code refers to this as the provision of

services inside Colombian territory, the transfer of assets located in Colombian territory at the time the transfer takes place and the exploitation of tangible or intangible assets located inside the country.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

The fiscal year in Colombia is the same as the calendar year. The Colombian fiscal year starts on January 1st and ends December 31st of each year.

Non-residents:

Non-residents are subject to income tax at a 35% rate on Colombian sourced income and at a 15% rate on Colombian sourced capital gains, or 20% in the case of gains from lotteries, draws and gambling. They are only required to report assets located in Colombia.

Residents:

Individual tax rates depend on income baskets and residence status. The applicable rates for each type of income are the following:

General basket: Labour income, Capital Income and Non-labour income	Pensions basket	Dividends basket
0% to 39% for residents.	0% to 39% for residents.	<ul style="list-style-type: none"> • 0%-39% for dividends paid out of taxed profits at the corporate level (for residents). Dividend payments would be part of the general basket tax basis. • 35% plus the aforementioned dividend tax rates on the distributed net dividend (net of the 35% initial tax) if not taxed at the corporate level. • Note that in the case of Colombian tax residents a 15% marginal income tax withholding as well as a marginal tax credit up to 19% applicable to resident individuals earning dividends that exceed 1,090 UVTs (Approximately USD 11,560).

The following exemptions, reliefs or deductions are available:

Revenues not considered as income	Mandatory health and pension contributions made by employees.
	Voluntary contributions to the individual's pension savings scheme provided that the contributions do not annually exceed: <ul style="list-style-type: none"> • 2,500 Tax Value Units - UVTs (Approximately USD26,514); or • 25% of the annual labour income.
Deductions	Payments of interests derived from loans destined to housing purchase, up to an annual threshold of 1,000 UVTs (USD 10,606 approx.).
	The interest paid on educational loans and technical studies of the Colombian Institute of Educational Credit and technical studies abroad - ICETEX directed to the higher education of the taxpayer, the deduction shall not exceed 100 UVT per year (USD 1,061 approx.).
	Payment of pre-paid health services and health insurance payments up to a monthly threshold of 16 UVTs (USD 2,036 per year approx.).
	10% of all labour payments made to individuals who are dependent from the taxpayer (i.e., children who have not reached legal age, children who have reached legal age but are being financed in a recognised educational institution and children older than 23 years old who are dependent due to physical or psychological incapability). This deduction shall not exceed 32 UVT per month (USD 4,073 per year approx.).
Exempt income	Voluntary contributions to pension funds and AFC accounts (savings accounts for housing purchase) provided that: <ul style="list-style-type: none"> • The Income does not annually exceed 3,800 UVTs (Approximately USD 40,301); or • The contributions do not annually exceed 30% of the annual labour income. Pensions not exceeding 1,000 UVTs (Approximately USD 10.606) are exempted. Any amount exceeding this amount will be subject to tax; and 25% of the individual's net labour income, provided that exempted income does not exceed 790 UVTs annually (Approximately USD 8.378).

The abovementioned tax benefits may be applied as long as they do not exceed 40% of the total income received or 1,340 UVTs (Approximately USD 14.212).

Capital gains

For Colombian tax purposes, capital gains are those that are not obtained by a taxpayer as a result of the activities that she or he ordinarily carries out. The activities that trigger capital gains are specifically listed in the Colombian Tax Code:

- Capital gains from the sale or indirect sale of fixed assets that have been owned by the taxpayer for a term of two or more years;
- Profits obtained in the liquidation of legal

entities, and that do not correspond to undistributed profits or reserves;

- Gains resulting from estates, legacies and donations (gifts);
- Prizes, awards, lotteries and gambling earnings; and
- Life insurance indemnities, only on the amount that exceeds 3.250 UVTs (Approximately USD 34.468).

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Yes. They are. As a mean to collect income taxes in advance, Colombian law establishes a system of income tax withholdings that requires every person making payments to a taxpayer to withhold a certain percentage, depending on the income characterization being paid. For those who must file an income tax return, all amounts withheld or self-withheld are a prepayment of the final tax liability and as such are credited on their income tax return.

The following payments made to individuals are subject to income tax withholding:

Concept	Rate
Provision of services	4% - 6%
Fees/Commissions	10% - 11%
Salary	Salary income tax withholdings are calculated based on the applicable taxation rate (0 to 39%) of the individual.
Dividends	0% - 15% if taxed at the corporate level. 35% plus 0% - 15% on the distributed net dividend (after applying the 35% initial tax) if not taxed at the corporate level.

Income tax withholding rates applicable to payments abroad (non-resident individuals not required to file an income tax return in Colombia) are as follows:

Concept	Rate
Technical services, technical assistance, consulting services, royalties, leases, commissions, fees, software exploitation and, in general all services.	20%
Credits obtained abroad for a term of 1 year or more	15%
Dividends	20% if taxed at the corporate level. 35% plus 20% on the distributed net dividend (after applying the 35% initial tax) if not taxed at the corporate level.

If Colombian sourced payments are not subject to income tax withholdings, the foreign individual will be required to file an income tax return in Colombia. On the contrary, if income tax withholdings are applied entirely, this will be the final tax liability.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Currently Colombia has 14 enforceable Double Taxation Treaties: with the Andean Community of Nations (Bolivia, Ecuador and Peru), Canada, Czech Republic, Chile, Spain, South Korea, Switzerland, India, Portugal, Mexico, the United Kingdom, Italy, France, and Japan.

Tax treatment of payments made abroad may change if a Double Taxation Treaty applies. Therefore, analysis should be carried out on a case-by-case basis.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

A new net worth tax was re-established as from FY 2023 onwards. In general terms, it is pretty similar to those that have been established in the past except that:

- (i) this will be a permanent tax rather than temporary;
- (ii) the tax basis will not be "frozen" / "tied" to a specific triggering period with variations subject certain percentage of the annual inflation as it was provided for the previous version of the equity tax, but instead will have to be determined annually; and
- (iii) specific rules on valuation and reporting obligation for assets such as shares in Colombian companies and Colombian companies publicly traded at the stock market, and investments held through private investments funds, trusts, private foundations, life insurance policies with material savings component and other fiduciary arrangements will apply.

Furthermore, the new net worth tax is levied mainly on resident individuals and on non-resident individuals with respect to the equity they own in Colombia, as well as non-resident entities, with respect to assets located in Colombia such as real estate, yachts, boats, art, aircraft or mining or oil rights (other than shares, accounts

receivables, portfolio investments, and / or financial leasing contracts with entities or persons resident in Colombia).

The tax rate will be 0.5% for the portion of the taxable equity exceeding 72,000 UVTs (Approximately USD 763,607), 1% for the portion that exceeds 122,000 UVTs (Approximately USD 1.3 million) and 1.5% for the portion that exceeds 239,000 UVTs (Approximately USD 2.5 million). The 1.5% net worth tax rate will apply temporarily between fiscal years 2023 and 2026 only.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritances, gifts and donations are subject to capital gains tax in Colombia. The transfer of any real estate involved will also trigger registry tax of approximately 1.8%.

Once an estate has covered all obligations, the inheritance is distributed among all heirs. Such distribution is subject to capital gains tax at a 15% rate. However, in some cases part of the inheritance may be considered as exempted income.

Inheritances, gifts and donations are subject to capital gains tax regardless of the location of the assets if the individual is a Colombian tax resident. If the individual is not considered as a tax resident, only inheritances gifts and donations of Colombian source are subject to taxation in Colombia.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

Inheritances, gifts and donations are subject to capital gains tax in Colombia at a 15% rate. The transfer of any real estate involved would also trigger registry tax of approximately 1.8%.

Generally, the applicable taxable base shall be the assets or rights' cost basis as of 31 December of the previous year. The following income is considered exempt for capital gains purposes:

- The equivalent to 13,000 UVTs

(Approximately USD 137,873) of the deceased's primary residence;

- The equivalent to 6,500 UVTs (Approx. USD 68,937) of all the deceased's real estate property other than their primary residence;
- The equivalent to 3,250 UVTs (Approximately USD 34,468) of the value inherited by the deceased's surviving spouse and heirs;
- 20% of assets or rights received by individuals not considered as heirs or surviving spouse; and 20% of assets or rights gifted or transferred by the deceased during their lifetime that were received gratuitously by a beneficiary without exceeding 1,625 UVTs (Approximately USD17,234); and
- Books, clothing, personal belongings and furniture belonging to the deceased.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Yes. 25% of the gifts made to entities of the special tax regime can be credited for income tax purposes. However, certain requisites must be met as explained below.

The Colombian Tax Code establishes that non-profit corporations, foundations and associations are subject to a special tax regime with respect to income tax and complementary taxes provided always that they comply with the following conditions:

- They are incorporated under Colombian law;
- Their main purpose and resources are destined to health, sports, formal education, culture, scientific or technological, ecological research, environmental protection or social development programmes;
- Such activities are of general interest and may be freely accessed by the community.
- Their capital contribution or surpluses cannot be distributed; and
- Their surpluses are totally reinvested in the activity of its corporate purpose and such corporate purpose corresponds to the activities mentioned in the preceding clause.

Entities that comply with the aforementioned requirements can be considered as entities of the special tax regime, with the Colombian Tax office's approval.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

The following taxes apply to a non-resident individual's real property:

i. Property tax:

Real estate held by an individual is subject to taxation at a municipal level at an applicable rate of 0.5% to 1.6% based on the valuation of the real state assets made by the municipalities where the asset is located.

ii. Transfer tax:

Transfers of immovable property trigger notary fees and land registry taxes at 0.3% and 1.5% of the purchase price, respectively.

iii. Stamp tax:

A 1.5% stamp tax applies on public deeds related to the transfer of immovable property amounting 20,000 UVTs or more (Approximately USD 212,113); and a 3% stamp tax in the case of the transfer of immovable property exceeding 50,000 UVTs (Approximately USD 530,283). The stamp tax would also apply on public deeds that document the transfer of ships, or mortgages on such immovable property or ships.

iv. Net Worth Tax

As noted above, as per the text recently approved by Congress, a new net worth tax was re-established from FY 2023 onwards.

This tax applies to individuals and foreign entities. It is based on Colombia situs assets. In the case of foreign entities assets subject to net worth tax would exclude shares, accounts receivables or portfolio investments; but would include real estate, aircrafts, yachts, boats, speedboats, art or oil mining titles.

The tax rate will be 0.5% for the portion of the taxable equity exceeding 72,000 UVTs (Approximately USD763,607), 1% for the portion that exceeds 122,000 UVTs (Approximately USD 1.3million) and 1.5% for the portion that exceeds 239,000 UVTs (Approximately USD 2.5million). The last 1.5% tax rate will be applicable temporarily between fiscal years 2023 and 2026 only.

10. Does your jurisdiction have any specific

rules in relation to the taxation of digital assets?

Colombia has no regulations concerning the transfer of digital assets. Access to digital assets such as email accounts or cryptocurrency belonging to a deceased whose last place of domicile is Colombia is usually regulated by foreign regulations (due to the absence of regulations in Colombia) dealing with this type of situation.

Despite the above, attempts have been made to legislate this matter. In 2021 a draft bill for "regulating the Crypto-asset Exchange Services offered through Crypto-asset Exchange platforms" was discussed in Congress and even though it was approved in the second debate the current status of the bill is "Archived".

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

The following taxes are relevant to individuals in Colombia:

i. Value Added Tax:

VAT is levied on the sale or import of goods into the country and rendering services when the direct user or recipient is located in Colombia. Certain goods (livestock, certain fruits and vegetables, seeds and others) and services (catering services for companies, food preparation services, bar services) are excluded from VAT. The general rate is 19%, but there are certain goods and services subject to a 5% (coffee, corn for industrial use, agricultural machinery, pre-paid medicine plans, security services and temporal services).

ii. Industry and Commerce Tax:

A municipal tax is triggered on revenues derived from the performance of industrial, service and commercial activities within a Colombian municipality at an applicable rate of 0.7% to 1%. The tax is triggered on gross income, excluding revenues for exports, proceeds from the sale of fixed assets, refunds, subsidies and withholdings.

iii. Income tax withholding:

As a mean to collect income taxes in advance, Colombian law establishes a system of income tax withholdings that requires every person making payments to a taxpayer to withhold a certain percentage, depending on the income characterization.

For those who must file an income tax return, all amounts withheld or self-withheld are prepayment of the final tax liability and as such are credited on their return.

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

There is no preferential tax regime for individuals who have recently arrived or are only partially connected with the jurisdiction.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

This must be analysed on a case-by-case basis. It is always advisable to analyse the ultimate beneficial owner's (UBO) applicable tax rules according to the UBO's tax residence and the *situs* assets' tax rules.

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Colombian rules on forced heirship are mandatory and apply to the estates of all individuals (nationals and foreigners) who die with their last residence in Colombia. Colombian resident heirs and foreign heirs have the same rights and, thus, are entitled to equal treatment in Colombian probate proceedings. The Civil Code forces the testator to assign certain compulsory portions, applicable to half of their estate even against their will.

The following are the compulsory portions: (i) maintenance provided by law; (ii) the marital portion and; (iii) the legitimate.

1. Maintenance provided by law:

A compulsory portion for the subsistence of the beneficiary in a way that corresponds to their standard of living. Individuals entitled to maintenance include the spouse and, descendants per stirpes, ancestors or, siblings. The amount of maintenance will be assessed by a judge.

2. Marital portion:

The marital portion is the portion of the estate that the

law assigns to the surviving spouse or permanent partner lacking the necessary means for a subsistence. Taking into account the existence of any legitimate descendants, the widower or widow shall be counted among the children, and shall receive as the marital portion a share equivalent to the legitimate portion corresponding to the legitimate descendants.

3. Legitimate portion:

The legitimate is that part of the estate of a deceased that the law assigns to the legal heirs. The following are legal heirs: Children personally, or represented by their descendants; and ancestors. The legitimate is obtained by dividing half of the inheritance between all legitimate descendants and the widow or widower. The legal heirs converge to the succession and are excluded and represented according to the order and rules of the intestate succession.

Should there be any legitimate heirs:

The testator may, at their discretion, favour the descendant or descendants that she/he prefers assigning part of the estate in the proportion desired.

Should there be no legitimate heirs:

If there are no heirs entitled to inherit this part of the inheritance, it will increase the freely disposable portion as explained below.

4. The Freely disposable portion:

A testator may under Colombia law, dispose of a certain part of their wealth, up to half of their estate. Should there be no descendants or beneficiaries, directly or by representation, entitled to inherit, the freely disposable portion will represent the entire estate.

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

The general rule for marital property is the community of property regime. This is a regime that automatically comes into effect for all marriages and will remain so until the community of property is dissolved; either as result of a judicial decision, or as result of free will. In this regime, community property is commonly owned by the spouses. It is not similar to co-ownership because the spouses (joint owners) do not possess a share in the property, but are full owners of the community property.

Colombian law also recognises 'common law' unions

under 'de facto marital union' provisions. Opposite-sex couples that have cohabited together for at least two continuous years may request the declaration of the existence of de facto marital union. As of 2007, both opposite and same-sex couples who have cohabited together for at least two continuous years may request the declaration of the existence of de facto marital union. This declaration implies the presumption of the existence of a community of property regime (as applicable to married couples), and leads to the distribution of the common property. This declaration may be made by a family judge or by mutual consent of the couple before a notary public or a duly authorised conciliation centre.

Upon the death of one of the spouses, the 'marital portion' is the portion of the estate that the law assigns to the surviving spouse or permanent partner lacking the necessary means for a congruent subsistence. Taking into account the existence of any legitimate descendants, the widower or widow will be counted among the children and receive as marital portion a share equivalent to the legitimate rigorous corresponding the legitimate descendants.

The 'legitimate' is that part of the estate of a deceased individual that the law assigns to the legal heirs. The following are legal heirs: children (personally or represented by their descendants) and ancestors. The legitimate is obtained by dividing half of the inheritance between all legitimate descendants and the widow or widower. The legal heirs converge to the succession and are excluded and represented according to the order and rules of the intestate succession.

16. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

The following factors cause Colombian succession law to apply on the death of an individual:

1. The death of nationals or foreigners who die with their last residence in Colombia; and/or
2. Colombian situs assets.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Colombian rules on forced heirship are mandatory and apply to the estates of all individuals (nationals and

foreigners) who die with their last residence in Colombia. However, Colombian courts will recognize the succession rights of Colombian heirs under forced heirship rules without considering the decedents last place of domicile. Furthermore, Colombian courts have also applied Colombian law in respect of real personal property located in Colombian territory.

Colombia is also a member of the treaty on International Civil Law promoted in Montevideo in 1889, which is currently enforceable in Colombia (Law 33 of 1992). The treaty seeks to provide uniformity to the solution of conflicts of law concerning successions. The treaty provides the following rules:

- The validity of a will disposing of property is governed by the jurisdiction where the property is situated at the time of death. However, an executed will under the laws of any of the member states must be admitted in the other member jurisdiction.
- The law of the situs of the property is applicable for any rules of inheritance, heirship rules and validity of the wills and generally any matter concerning the succession and wills.

In the event of conflict on succession laws, the treaty shall prevail.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Colombian rules on forced heirship are mandatory and apply to the estates of all individuals (nationals and foreigners) who die with their last residence in Colombia. For this reason, there are no specific rules and procedures governing intestacy in Colombia (unlike many common law jurisdictions).

Notwithstanding the above, if the individual is subject to forced heirships rules in accordance with Colombian law, by executing a Will, a person may freely dispose half of their estate. The Civil Code forces the testator to assign some compulsory portions that will be assigned when the testator did not make them, even against their will.

Foreigners whose only connection to Colombia is real property may elaborate a Will in their preferred jurisdiction. Under Colombian law, a foreign Will is considered to be valid if it complies with the requirements of each country and is granted by public

deed.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

Under Colombian law, an estate executor is designated to administer the assets and insure the fulfilment of the deceased's last will. The estate executor must accept such designation; however, if an executor is not designated, the heirs oversee administering the estate.

The estate executor is required to hold the estate assets under deposit. When the inventory and appraisals of the estate are final, the administrator may sell the deceased's assets to cover any debts or payment of any taxes and fees.

The result constitutes the net estate available for partition between heirs, which must be performed in accordance with the rules on forced heirship and half of the estate that may be freely assigned by will.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Yes, Colombian law allows individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth. Several precisions must be made:

Civil law

Colombian civil law does not provide rules on common law trusts or private foundations. However, Colombian law sets out rules on civil and commercial local trust agreements whereby a settlor transfers the property or administration of certain assets to a trustee in exchange for fiduciary rights. The trustee is responsible for managing such assets or transferring them to a third party to carry out the purpose determined in the local trust agreement, either for the benefit of the settlor or a third party. The local trusts should not be confused with the Anglo-Saxon or common law trust.

Local trusts are commonly used in Colombia as

instruments to administer properties or businesses with a specific purpose or to grant guaranties or collaterals, considering that trustees are professional regulated entities.

Foreign structures

There are no civil or commercial regulations regarding the establishment of foreign trusts, private foundations, etc. However, foreign entities are recognized by Colombian law and tax authorities and may be used as structures to administer private family wealth and circumvent forced heirship rules in Colombia. However, anti-abuse rules must be observed.

21. How are these structures constituted and what are the main rules that govern them?

Domestic trusts

In Colombia only those companies duly authorized by the Colombian financial authority (Superintendencia Financiera de Colombia – “SFC”) may offer trust services and act as trustees (i.e. compañías fiduciarias). Such entities are subject to SFC supervision and regulation.

Colombian tax law treats local trusts as flow-through entities for tax purposes. Thus, trusts must determine their profits annually and the beneficiaries have to include such profits in their own income tax returns for that same year and pay the relevant taxes.

The title to the assets that an individual contributes to the trust fund must pass to the trust fund (exceptions apply – for example, for the guarantee trust) or otherwise such assets would have to be declared by the individual as part of their equity and thus be subject to net worth taxes.

Additionally, if the individual receives fiduciary rights over the trust fund because of said contribution, he or she would be obliged to report such rights for Colombian income tax purposes.

Whenever the settlor or any of the beneficiaries receive income from the trust, they must pay the relevant taxes in Colombia. Income tax regulations establish that the results of any activities of the trust and all equity increases must be included in the income tax return of the beneficiaries.

Foreign structures

There are no civil or commercial regulations regarding the establishment of foreign trusts, private foundations

and life insurance policies. However, these are recognized by Colombian tax law and tax authorities.

Colombian tax residents are subject to income tax based on their worldwide source income. Therefore, any distributions made by a foreign trust/foundation would be subject to income tax in Colombia at a 15%. Life insurance indemnities are taxed as capital gains, only on the amount that exceeds 3,250 UVTs (Approximately USD 34,468) would be subject to capital gains tax.

Assets held by a trust/foundation (which is revocable and directed) are understood to be directly held by the settlor and shall be reported in their Colombian income tax returns, as well as their foreign assets return (Form 160) as part of their own equity. If the characteristics of the trust/foundation are different, the reporting obligation could be of the settlor. This analysis should be carried case by case.

If a trust/foundation is revocable and controlled by the settlor, then it would be considered as a CFC under Colombian law. Hence, net profits derived from passive income obtained by the trust/foundation shall be recognized immediately in proportion equivalent to the participation in the foundation/trust's capital or profits, and not upon receipt of profits. Which means, no tax deferral would be applicable in this case.

Colombian tax residents shall report on their income tax returns the passive income realized by the trust/foundation, considering the nature and characteristics of said income, as if it was received directly by them.

If the underlying assets of an irrevocable and discretionary foundation cannot be attributed to the beneficiaries because their benefits are conditioned, the settlor, founder or originator must report the trust or foundation rights as part of their equity. But if settlor, founder or originator cannot be identified or determined, the reporting obligation falls on the beneficiaries irrespective of whether they are conditioned or do not have any control over the assets and income of the structure. This, without any consideration of the trust or foundation's irrevocable and discretionary character.

For the purposes of the new wealth tax, rules referred above will further apply in the event of the settlor's / founder's death. In that case, the deceased estate will report the trust or foundation rights as part of its equity until the structure beneficiaries actually receive the assets in cash basis.

22. What are the registration requirements

for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Financial entities are required to identify and report to the Colombian tax authorities the ultimate beneficial ownership in accordance with the Laundering Assets Risk Management and Terrorism System (SARLAFT) standards. This, provided that a non-resident has direct or indirect ownership and control of more than 25% of the shares of a resident entity, local trusts and mutual funds. This information is not available to the public.

Taxpayers are required to identify and report to the Colombian Tax Office the ultimate beneficial owner of legal entities and non-corporate structures such as trusts and other fiduciary businesses, collaboration agreements, private capital funds, pension funds, besides others.

The Law 2155, 2021 included some changes to the definition of the ultimate beneficial owner, incorporating a broader definition in the case of non-corporate structures, in which settlors, trustees, fiduciary or financial committees, and conditioned beneficiaries, among others, may be deemed ultimate beneficial owners for the purposes of the aforementioned report. Law 2155 of 2021 also created the Beneficial Owners Registry (RUB) in order to regulate taxpayers obliged to report information about ultimate beneficial owners and manage said information.

For the purposes of RUB, the definition of ultimate beneficial owners will depend on who is the subject to provide the report as follows.

- For legal entities, the ultimate beneficial owner will be the shareholder who directly or indirectly, individually or jointly, controls 5% or more of the voting rights or economic benefits; in the event the ultimate beneficial owner cannot be identified, the legal representative or general manager shall be considered as the ultimate beneficial owner.
- In the case of non-corporate structures, the ultimate beneficial owner will, under certain circumstances, be the settlor, trustee, beneficiary or anyone that possesses ultimate control.

First submissions to the RUB had to be completed before 31 July 2023 (Res. 01240, 2022) for legal entities/structures established before 31 May 2023. New legal entities or non-corporate structures established from 1 June 2023 must comply with the report within the

two months following their inscription/obtention of their tax ID. Information provided on the RUB must be updated (if applicable) on the first day of January, April, July and October every fiscal year. Failure to comply with the reporting obligations or submitting incompletely or with errors will trigger penalties for the required taxpayers.

This information won't be available to the public but as set forth in Law 2195 of 2022 there will be some governmental entities that in compliance with their legal and constitutional functions will have guaranteed access to the information of the RUB (ie. The Colombian Tax Office – CTO, the Public Prosecutor's Office, the General Comptroller's Office, the Superintendence of Companies and Superintendence of Finance, besides others).

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

There are no civil or commercial regulations regarding the establishment of common law trusts or private foundations in Colombia. However, common law trusts are recognised by Colombian law and tax authorities.

24. Are foreign trusts, private foundations, etc recognised?

There are no civil or commercial regulations regarding the establishment of common law trusts or private foundations in Colombia. However, common law trusts are recognised by Colombian law and tax authorities.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Asset's report

Assets held by a trust or foundation that is revocable and directed are understood to be held directly by the settlor and must be reported for all tax purposes as part of their own net worth.

If the underlying assets of an irrevocable and discretionary foundation cannot be attributed to the beneficiaries because their benefits are conditioned, the settlor, founder or originator must report the trust or foundation rights as part of their equity. But if settlor, founder or originator cannot be identified or determined, the reporting obligation falls on the beneficiaries irrespective of whether they are conditioned or do not have any control over the assets and income of the

structure. This, without any consideration of the trust or foundation's irrevocable and discretionary character.

For the purposes of the new wealth tax, rules referred above will further apply in the event of the settlor's / founder's death. In that case, the deceased estate will report the trust or foundation rights as part of its equity until the structure beneficiaries actually receive the assets in cash basis

Income's report

If a trust/foundation is revocable and controlled by the settlor, then it would be considered as a CFC under Colombian law. Hence, net profits derived from passive income obtained by the trust/foundation shall be recognized immediately in proportion equivalent to the participation in the foundation/trust's capital or profits, and not upon receipt of profits. Which means, no tax deferral would be applicable in this case.

Colombian tax residents shall report on their income tax returns the passive income realized by the trust/foundation, considering the nature and characteristics of said income, as if it was received directly by them.

Any distributions made by a foreign trust/foundation would be subject to income tax in Colombia at a 15% rate.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

In case of Colombian situs assets:

In structuring asset transfers, whether or not gratuitously made, attention should be paid to Colombian civil and commercial regulations:

1. Trusts: The Commercial Code includes a provision whereby the assets of a trust negotiation cannot be pursued by the creditors, unless the debts are prior to the constitution of the trust. The creditors of the beneficiary of the trust can only pursue the financial yields the assets report. The execution of a trust with fraud can be challenged by the interested creditors.
2. Specific assets and income: Colombian law stated immunity from seizure to some assets as follows: (i) property assigned as family housing; (ii) the legal minimum salary except the 50% to provide food rents or pay debts to

cooperatives; (iii) the excess over the minimum salary is only seized in one-fifth; (iv) pension payments receive the same treatment as the salary; (v) individual pension savings.

3. Marital property: Under Colombian law, individuals have the freedom to dispose of their state without limitation during their lifetime. However, the disposition of certain assets may require the approval of the other spouse under Colombian marital rules.

In case of foreign assets:

1. Individuals may place assets held in their own names into trusts, private foundations, etc. in order to designate them or their proceeds to a specific purpose or persons. The assets placed into a properly structured trust, private foundation, etc. form an estate separate from the assets of the settlor, so as to avoid such assets being requested by creditors.
2. Attention should be paid to foreign creditor rules when establishing a foreign structure.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

Foreign tools

Foreign entities such as trusts and private foundations may be used to hold and manage assets for minor children and grandchildren that may be transferred once a specific condition is met.

Domestic tools

Local trusts may also be used to hold and manage assets for minor children and grandchildren that may be transferred once a specific condition is met (e.g. legal age).

Typical arrangements under Colombian law

Colombian family law grants the parents of a child usufruct over the property of the child, save for some exceptions, such as the assets acquired by the child because of their work, or received by the child as a result of an inheritance, legacy or gifts. In addition, Colombian family law grants the parents a right to manage the property of their children, except for the assets acquired by the child because of their work.

Once a child becomes of legal age, and the parental powers over a child terminate, the parents are required

to give full account of and hand over the property to the child. Parents are liable for any damage or reduction in the property of the child administered by them resulting from their negligence or wilful misconduct. They must therefore act in a careful and faithful manner. The administration of the child's property by the parents can be subject to review by the authorities. Apart from establishing specific regulations regarding the administration of the property, authorities may, as an ultimate measure, appoint a legal guardian for the administration of the child's property.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

All persons with disabilities are subjects of rights and obligations, and have legal capacity under equal conditions and without any distinction and regardless of whether or not they use supports to perform legal acts, legal capacity is presumed for persons with disabilities.

In defence of the basic rights enshrined in Colombia, such as human dignity, non-discrimination and individual autonomy, Law 1996 of 2019 establishes the non-use of the term 'incapable' to describe people who lost their legal capacity by means of a judicial decision or ruling. In fact, the same law eliminates the possibility of declaring a mentally disabled person as an 'interdicted'.

The Colombian regulation establishes that in no case can the existence of a disability be a reason to impede the legal exercise of a person's basic right to make decisions. Since the enactment of this law, people with disabilities have full possibility to make their decisions and express their will.

However, taking into account possible guidance on the needs that a person with a disability may have, Colombian law allows a series of supports and accompaniments to which such people may have access in case of need.

There are three ways to legitimise any decision made by a person with a disability:

- signing a support agreement with other individuals who are willing to assist;
- requesting the judge to designate the support; and
- signing an advance directive (only in cases of incapacity due to old age) through which the will is established in different cases prior to

the incapacity.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

In Colombia, charitable projects are usually carried out with foundations in Colombia. Foundations are characterised as the union of assets dedicated to a social benefit activity.

Foundations are incorporated either through a private document or a deed of foundation, with compliance of requirements established by law. These must be registered before the chamber of commerce of the entity's domicile. The governor of the corresponding jurisdiction (or the mayor, in the case of Bogota) exercises surveillance and control over foundations. Specific documents must also be filed before these entities.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

Colombian is very active on EOI. During the last decade, Colombia has introduced numerous tax rules involving the taxation of individuals, identification of UBOs, foreign assets and the implementation of information exchange mechanisms (e.g. the Foreign Account Tax Compliance Act, the OECD common reporting standard and the anti-money laundering and counter terrorism financing measure known as Sistema de Administración del Riesgo de Lavado de Activos y de la Financiación del Terrorismo (SARLAFT)) leading to greater transparency. These developments (among others) have led Colombia to officially become the 37th member country of the OECD after Colombia's willingness to adopt OECD legal recommendations and standards had been assessed and confirmed.

OECD exchange of information

Colombia has also entered into several agreements for the exchange of tax information, and it is very active on this matter. For a list of countries with which Colombia has received and shared information under the OECD common reporting standard, please go to the OECD site.

FATCA

In relation to the exchange of information, the Colombian and US government have an enforceable Intergovernmental Agreement Model 1 (IGA), within the

framework of Law 1666 of 2013, which made the Foreign Account Tax Compliance Act (FATCA) mandatory for Colombian financial institutions and taxpayers. The IGA was implemented in 2015 by means of Resolution 60 of 2015 issued by the Colombian Tax Office.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

2022 Tax Reform

As expected, the president's tax reform was approved by the Colombian Congress in December 2022 under Law No. 2277 of 2022 pursuing equality and social justice in Colombia. Some of the most important changes are related to the income tax regime for individuals, including:

- taxation of dividends at progressive income tax rates ranging from 0% to 39%;
- the reduction of available or applicable deductions and exempted income by the establishment of lower thresholds;
- an increase in the capital gains rate; and
- the reintroduction of a wealth tax from FY2023 onwards as a permanent tax.

Overall, Law No. 2277 of 2022 represents a reform of the tax regime for individuals. By simplifying the reporting of taxable income, introducing additional limitations on deductions and exemptions, increasing the tax rates applicable to dividends and capital gains and reestablishing a wealth tax, the law aims to create a fairer, more efficient and transparent tax system for individuals. In the words of the government, it will encourage and promote socio-economic development in Colombia.

Notwithstanding the above, the Colombian Constitutional Court has accepted several lawsuits that challenge the constitutionality of this law, claiming that it:

- infringes the principles of equity, efficiency and progressiveness due to the disregard of the principle of contributive capacity;
- violates the fundamental right of equality; and
- violates the legislative procedure established in articles 144, 149, 157, 160 and 161 of the Colombian Constitution as the rapporteurs did not comply with the basic procedures for the protection of the principle of publicity.

There are already a number of cases in which the Constitutional Court has accepted a lawsuit challenging the constitutionality of articles 35, 36, 37, 38 and 39 of

Law No. 2277 of 2022. These articles establish relevant definitions related to taxpayers, taxable events, taxable base determination, tax rates and accrual procedures associated with the new wealth tax.

The claimants have stated that the provisions sued directly violate the fundamental principle of tax equity, which supports the fair distribution of tax burdens in society, presenting as the main points and arguments to support the claims:

- it is contended that the wealth tax imposes multiple taxation on the same subject or source item; and
- the provisions fail to consider the financial constraints faced by certain taxpayers (eg, wealth value versus cash availability).

Furthermore, the claimants have alleged that the provisions also infringe upon the principles of equality and respect for acquired pension rights. The lack of differentiation for elderly individuals, who are forced to utilise their limited pension income to cover the wealth tax liability, results in a reduction of their overall pension earnings. This compromises their economic security and their pension rights, which are fundamental to ensuring a dignified life.

Additionally, the provisions encroach upon the right to property by establishing a tax system with confiscatory implications. The excessive burden imposed by the wealth tax can have adverse effects on individuals' ability to retain and enjoy their property rights, thus undermining their constitutional protections.

Lastly, claimants have also argued that these provisions violate article 317 of the Colombian Constitution, which governs the imposition of taxes on real estate assets. By imposing a national tax directly and specifically targeting real estate, these provisions deviate from the constitutional framework that outlines the principles for taxing real property.

The admission of these lawsuits by the Constitutional Court reflects the need for a thorough examination of the constitutionality of the challenged provisions. The outcome of this case will have significant implications for the wealth tax regime and the overall fairness and equity of the tax system in Colombia.

Other relevant recent case: Colombian Administrative Court - ruling 25400 of 2023

The Colombian Administrative Court declared the nullity of the Colombian Tax Office ruling No. 2949 of 27 December 2019, considering that it misinterpreted article 90 of the Colombian Tax Code (CTC) by trying to

apply it to the cases of free disposals and transfer of assets such as donations or gifts.

Article 90 of the CTC establishes rules for the determination of gross income in the disposal of assets and the application of the fair market value in commercial operations on goods and services, which is one of the bases for calculating the income tax burden for individuals and entities.

The purpose of the article would be misunderstood, because a disposal by way of donation or any other title without a payment in exchange does not generate income in favour of the donor or transferor but, on the contrary, does generate a patrimonial detriment. There is no place to then apply valuation rules (fair market value) as set forth in article 90 of the CTC to free transfer of assets.

According to the court, article 90 of the CTC is based on the existence of a price for the transfer of certain property, and that it expressly establishes disposals that have the potential to increase the taxpayer's net worth, which can only be achieved through onerous agreements. The aforementioned is also in accordance with the provisions of article 26 of the CTC (ie, taxable income definition).

The court also indicated that the purpose of article 90 of the CTC cannot be applied to donations, as they are free of charge, and what is achieved for the active party is a reduction of its net worth to the extent that there is no payment or price in the transfer of the donated assets ownership. Given the case in which it would be assumed that the donor makes a sale (by the simple disposal of the assets), it would speak of a theoretical profit that never existed, which is opposite to the nature of non-

onerous and free arrangements and therefore could lead to double taxation – the latter to the extent that the donor and the donee would be paying individual taxes for the exact same event or transaction.

Thus, just for applying article 90 of the CTC in the case of free disposals, it is not possible to establish a price arbitrarily when the contract that aims to transfer the assets' ownership foresees said transfer is for free.

The case analysis also covered distributions resulting from the liquidation of companies and the payment of dividends in kind, for which the court concluded that there are specific rules that the CTC had set forth regarding the tax effects and rules to be observed to determine taxable income (if any) for the beneficiaries of these payments or distributions. In this court's opinion, article 90 of the CTC does not say anything about companies' liquidation or dividends in kind, given that the active part in these legal arrangements is not considered as a seller or simply because there is not a price paid to it; besides, the income that these may generate would have to follow other special rules.

To conclude, to apply article 90 rules, it is necessary to distinguish the type of income, to establish the fiscal period when it is earned and to confirm that it is likely to produce an increase in the taxpayer's equity. It is important to note that, as per the court's conclusions, this rule would be applicable to onerous disposals (ie, those that have a price) only, as in free transfers of assets or in the other events analysed, the active part would be experiencing an equity detriment due to the lack of consideration or price, which, strictly speaking, does not generate income and would not be aligned to the main purpose of income tax.

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