
Tax Reform: Act 2155 / 2021

Bogota, Colombia

September 16th, 2021



On September 14, 2021 the Tax Reform Bill was enacted, adopting a new Tax Reform in Colombia.

In this Legal Flash, we highlight some of the most relevant issues of the Tax Reform.

Topics:

Corporate income tax and dividends tax for Concessions and PPPs

Reduced statute of limitations

Anti-evasion mechanisms

Reduction of penalties and default interest and mechanisms for early termination of proceedings and litigation

Works paid for in lieu of taxes

Tax normalization

SIMPLE taxation regime

Automatic refund of VAT balances

Changes to tax benefits



Corporate income tax

- The corporate income tax rate was increased to **35%**. The current rate is 31% and was expected to decrease to 30% as of 2022.
- Between 2022 and 2025, **financial institutions** with a taxable income equal to or higher than COP 4,356,960,000 (approx. USD 1,140,000) will have to pay a surcharge of 3%, i.e., a rate of **38%**.
- The rule that was expected to allow, as of 2022, a full tax credit against income tax of the turnover tax paid, was repealed; therefore, only **50% of the turnover tax paid will be creditable**.

Dividends tax for concessions and PPPs

- As part of the dividends tax assessment, when the tax profit is greater than the accounting profit, general rules allow a 2-year carry back and a 5-year carry forward of the excess tax profit to offset commercial profits that would otherwise be deemed taxed profits.
- The Tax Reform **extends the carry forward and carry back term to 10 years**.

Reduced statute of limitations

- For 2022 and 2023, taxpayers will be able to reduce the statute of limitations of their income tax return, which generally is of 3 years.
- The reduction will be to **6 months** with a 35% increase in the net income tax.

- With an increase of 25%, the statute of limitations term would be **12 months**.

Mechanisms for early termination of proceedings and litigation

- Applications may be submitted until **March 31st, 2022**.
- Applies to tax, customs and foreign exchange controversies.
- A **reduction of penalties and interest of up to 80%** is offered.

Reduction of penalties and default interest

- The default interest rate and penalties for unfulfilled obligations with DIAN are **temporarily reduced to 20%** when the non-compliance has occurred or worsened because of the pandemic.

Works paid for in lieu of taxes

The scope of the rule allowing paying for works in lieu of taxes is expanded, so that it will apply to the financing of projects, **not only in regions particularly affected by the conflict**, but also:

- To projects of strategic national importance for economic and/or social reactivation, regardless of their location.
- In territories with high poverty rates.
- In territories that totally or partially lack infrastructure to provide public utilities.



- › In areas designated for the development and promotion of creative industries.

Automatic refund of VAT balances

- › The **producers of VAT exempt goods** are now eligible for the automatic refund of their VAT balances, provided that 100% of their income and of the creditable taxes that originated the balance are supported by electronic invoicing.

SIMPLE taxation regime

- › The gross income **threshold to be eligible** for the simplified tax regime applicable to little and medium enterprises **increased** to COP 3,630,800,000 (approximately USD 947,000).
- › During 2022, taxpayers engaged in the sale of food and beverages **will not be subject to VAT or excise tax**.

Beneficial Owner

- › The definition of “beneficial owner” was modified.
- › We emphasize that whoever has a participation of **5% or higher** in the capital or in the political or economic rights of a company, as well as whoever exercises individual or joint control over it, will be deemed a beneficial owner.
- › The Sole Registry of Beneficial Owners (RUB) is maintained and it is clarified that it will become part of the Colombian Tax Registry (RUT).
- › A new system **to identify unincorporated structures** was created.

Normalization tax

- › The normalization tax for taxpayers with omitted assets or nonexistent liabilities as of January 1st, 2022 is introduced once again for the year 2022.
- › We highlight that, on this occasion, the regulation establishes that whoever has any type of economic use (real or potential) on an asset, **even if he/she is neither owner nor usufructuary** thereof, and regardless of the vehicle or business through which he/she owns it, must report it.
- › The rate will be **17%** and a **50% reduction** of the taxable base is available again in cases of **repatriation**.
- › For the repatriation, the tax cost of the assets will be determined based on the conversion rate in force as of January 1, 2022.
- › The return must be filed no later than **February 28, 2022**. The normalization tax is subject to an **advance payment of 50%** of its value in 2021.

Official income tax assessment by invoicing

- › DIAN is authorized to make an official income tax assessment by means of an invoice, which will be enforceable.
- › The taxpayer may file an income tax return and pay the corresponding tax within the following **2 months**, in case of disagreement with the official assessment of DIAN.



Tax benefits for tourism

The following tax benefits for the tourism sector were extended until December 31st, 2022:

- › Exemption from payment of the special surcharge of the electricity sector; and
- › Transitory VAT exemption.

Tax benefits for creative industries

- › The **minimum investment** requirement of COP 159,755,200 (approx. USD 41,700) to attain the income tax exemption was **repealed**.
- › The maximum date for eligible companies to be incorporated and operational was extended until **June 30, 2022**.
- › The term of the income tax exemption was reduced from 7 to **5 years**.

VAT holiday

- › The Government will be able to set by decree **up to 3 days per year** in which certain goods will be VAT exempt.
- › The potentially exempt goods include those accepted when this was a temporary measure in response to COVID-19, plus those used in the agricultural sector.
- › During VAT holidays, cash will be admitted as a means of payment, in addition to electromagnetic means.

For additional information on the contents of this document, please contact our Tax team in Colombia.

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