

Colombian Congress approves tax reform bill in first debate

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On 3 December 2019, after some discussions on the tax reform proposal submitted by the Colombian Executive Power to the Congress, the Congress approved in first debate the text of the proposal. If enacted, the proposal would replace the 2018 tax reform (Law 1943 of 2018), which was declared unconstitutional by the Constitutional Court on 16 October 2019.

In general, the proposed text maintains many of the provisions introduced under Law 1943. However, it makes several changes to the initial proposal filed by the Government on 22 October 2019. Specifically, the proposed text would:

- ▶ Reduce the dividends tax rate applicable to Colombian resident individuals from 15% to 10% and increase the dividends tax rate applicable to foreign nonresidents (individuals and companies) from 7.5% to 10%
- ▶ Eliminate the consumption tax applicable to the sale of immovable property
- ▶ Establish a new normalization tax (tax amnesty) with a 15% rate for year 2020
- ▶ Reduce the presumptive income tax rate from 1% to 0.5% for 2020 and maintain the 0% rate for year 2021 and onwards
- ▶ Establish a deduction equivalent to 120% of salaries paid to employees for new employers conducting their first hiring of employees, provided certain conditions are met
- ▶ Recognize the inflationary component of financial yields as non-taxed income

- ▶ Clarify the way in which the taxable basis for the value-added tax (VAT) should be determined when importing goods from free trade zones
- ▶ Add a VAT exclusion for cosmetic surgeries
- ▶ Modify the income tax surcharge applicable to financial institutions by allowing an advance payment equivalent to 100% of the surcharge
- ▶ Extend the audit benefit to tax year 2021
- ▶ Reduce the statute of limitations to 5 years for tax returns in which losses have been accrued or offset (the current statute of limitations is 12 years), as well as those filed by taxpayers to which the transfer pricing regime applies (the current statute of limitations is 6 years)
- ▶ Increase from two to three years the period for voluntarily amending tax returns to reduce the balance in favor or increase the amount due
- ▶ Modify the criminal law provisions related to tax matters and their applicability
- ▶ Establish payment provisions for (i) mutual agreement terminations in administrative procedures and (ii) conciliations at the judicial stage, and provisions that would require tax authorities to apply the most favorable application of the law at the collections stage
- ▶ Include some provisions to create employment, e.g., increasing the number of employees required for employers to access the mega investments benefit
- ▶ Reintroduce Article 491 of the Colombian Tax Code, which expressly indicates that VAT paid on the acquisition of fixed assets generally cannot be treated as creditable input VAT
- ▶ Establish three days per year in which there will be a VAT exemption for some products, provided the value does not exceed certain amounts
- ▶ Clarify that the tax basis for the equity tax will correspond to the net equity held as of 1 January 2020
- ▶ Provide a fixed amount to low-income families to reimburse them for VAT paid from 2021 and onwards
- ▶ Progressively reduce from 12% to 4% the health contributions made by pensioners that receive a minimum wage
- ▶ Create an expert commission to study the existing tax benefits
- ▶ Grant an additional six-month term for investment funds to adjust to the new requirements to apply the income recognition deferral regime for their investors (under such regime investors would recognize income when the funds distribute profits)
- ▶ Allow individuals that receive income from sources outside of their employment to reduce their taxable basis with costs and expenses related to their income-producing activities
- ▶ Require the Colombian Executive Power to deliver to the Congress a report on the effect of eliminating the VAT and replacing it with an 8% national consumption tax
- ▶ Include some clarifications of the income tax exemption for entrepreneurial and technological activities (so-called orange economy), such as the number of employees required based on the investment and income required, and the moment at which the company would have to be incorporated to access the benefit
- ▶ Modify the limits previously imposed on extractive companies and ports so they may make in-kind tax payments (i.e., performing projects for the community in lieu of paying taxes)

Because the proposal has not yet been approved, the text could be subject to additional modifications. Therefore, taxpayers should closely follow the developments of the proposal as some of the provisions may be effective in 2020. Likewise, Colombia's political situation could affect what is finally approved.

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