

13 May 2020

# Global Tax Alert

News from EY Americas Tax

## Colombia issues holding company regime regulations

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The Colombian Government issued Decree 598 (26 April 2020), which contains the Colombian holding company (CHC) regime regulations.

### Background

The CHC regime was re-established when Law 2010 of 2019 reenacted Law 1943 of 2019, which was declared unconstitutional due to procedural flaws. The CHC regime may apply to any domestic company and foreign entities with an effective place of management in Colombia. To qualify for the CHC regime, one of the company's main business activities must be holding securities, investing in either foreign or Colombian shares, or managing such investments.

The CHC regime exempts, for income tax purposes, certain items of income, such as: (i) dividends distributed by foreign entities to a CHC entity; (ii) dividends distributed by a CHC to nonresident shareholders out of profits from foreign entities; (iii) gain realized on the transfer of shares held by the CHC in foreign companies; and (iv) gain realized from the transfer of shares owned by a nonresident in the CHC, in proportion to the gain attributable to the value of the participations held by the CHC in foreign entities.

To be eligible for the CHC regime, Colombian entities must meet the following requirements:

- i. Own, directly or indirectly, at least 10% of the equity in two or more Colombian and/or foreign entities for a minimum of 12 months
- ii. Have human and capital resources to achieve the corporate purpose, which entails having at least three employees and an address in Colombia, as well as proving that the CHC's strategic decision-making is made within the Colombian territory
- iii. Outlining the nature, and providing examples, of strategic decision-making activities
- iv. Specifying what is deemed as having an address in Colombia

Furthermore, the decree establishes the procedure for applying for the CHC regime, including the supporting documentation companies must attach to the request submitted to the National Tax Authority.

## Decree 598

Decree 598 clarifies the scope of the eligibility requirements by:

- i. Defining the direct or indirect ownership concepts, and the method for calculating the ownership
- ii. Establishing the requirements that the company's employees must meet for the company to apply the CHC regime

If the Tax Authority rejects the CHC application, the decree allows the company to submit an application again in the following tax year. Likewise, the decree allows a company to withdraw from this special regime at any time and to re-apply to be re-qualified as a CHC in the future.

Finally, Decree 598 establishes the documents required to support an application (1) for a capital gains tax exemption, or (2) to characterize the disposal of shares owned by or in the CHC as foreign-source income not subject to taxation in Colombia.

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EYG no. 003091-20GbI

1508-1600216 NY  
ED None

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