

Global Tax Alert

News from EY Americas Tax

Colombia issues regulations on tax incentives for agricultural activities

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On 16 June 2020, the Colombian Government issued Decree 849, which contains regulations on various tax incentives for agricultural activities. The regulations include provisions on:

- (i) The 10-year income tax exemption for investments in projects for the development of agricultural activities (Article 235-2 numeral 2 of the Colombian Tax Code (CTC))
- (ii) The value-added tax (VAT) exclusion for certain services related to land adaptation, agricultural and fish production, and the sale of the products derived from the agricultural activities (Article 476 numeral 24 of the CTC)

10-year income tax exemption

Investors in projects intended to increase productivity in the agricultural sector may qualify for a 10-year income tax exemption (as from the year the project is approved by the Ministry of Agriculture). The incentive applies to entities formed on or after 28 December 2018, that begin business activities before 31 December 2022. The activities covered include agriculture, livestock, hunting, forestry or fishing, as well as the production of some foods and beverages. To qualify for the income tax exemption, the entity must meet certain requirements, including generating a certain number of jobs (during all the years of the exemption) and investing a certain amount (during the first six years).

Decree 849 regulates the procedure for obtaining the certificate for the tax exemption, and clarifies certain requirements, among other things.

Submission of the project with the Ministry of Agriculture.

To claim the income tax exemption, the entity must submit the investment project to the Ministry of Agriculture (or the entity designated for such purposes) for approval. The submission must provide details about the technical implementation of the project, the project's financial viability and its economic feasibility. The entity also must include its proposal for job creation and investments in property, plant, equipment and biological productive assets.

The project must be submitted before 14 October 2022 and the Ministry of Agriculture should approve the investment on or before 31 December 2022.

Within two months of the date on which Decree 829 entered into force (16 June 2020), the Ministry of Agriculture should issue regulations on the internal procedure for reviewing and approving investment projects, as well as for auditing compliance with the requirements once the investment project has been approved.

Investments requirement. The entity should make investments in property, plant equipment or biological productive assets over six years beginning on the date the Ministry of Agriculture approves the investment project. The minimum investment amount, which should be completed by the end of the sixth year, will depend on the average gross income received from the project over the first five years. In the highest bracket (average gross income from 170,001 to 290,000 tax units (for 2020 one tax unit equals COP 35.607 (approximately US\$10)), a minimum investment of 80,000 tax units over six years is required.

Any equity increases of the entity claiming the income tax exemption resulting from a merger, demerger or any reorganization process cannot be considered as investments in the productivity of the agricultural sector.

The entity should report the amount it invested in the project to the Ministry of Agriculture every year. At the end of the sixth year, the entity's legal representative and its statutory auditor or accountant should certify that the entity has complied with the investment requirement.

Employment requirement. The number of employees an entity must have to claim the income tax exemption will depend on the total gross income received during each tax year, according to a progressive schedule (i.e., from one employee in the lowest bracket until over 51 employees in the highest bracket).

The entity must certify the number of employees twice a year (on 30 June and 31 December). The entity should not count officers, legal representatives or board members when determining its number of employees. Other limitations and restrictions apply for determining the number of employees for the employment requirement.

VAT exclusion

To apply the VAT exclusion of Article 476 numeral 24 of the CTC, the recipient of the services related to the agricultural activities must issue a certificate, which is deemed to be provided under oath and contains the following information:

- i. The recipient's name and tax identification number (TIN)
- ii. The service provider's name and TIN
- iii. The date the service was provided
- iv. The registration number of the real estate property on which the service was provided
- v. The value of the service
- vi. The service recipient's signature
- vii. Service details and where the service was provided

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