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# Global Tax Alert

News from EY Americas Tax

## Colombian Government issues regulations on mega-investment special tax regime

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On 21 August 2020, the Colombian Government issued Decree 1157, which regulates the mega-investment special tax regime. The Decree contains certain definitions, rules and procedures for applying to this regime.

### Mega-investment tax regime

The mega-investment regime was re-established when Law 2010 of 2019 reenacted most of the provisions of Law 1943 of 2019, which was declared unconstitutional due to procedural flaws.

Under this regime, income taxpayers that make investments in mega-investment projects will be subject to a 27% income tax rate (9% for hotel services and 20% for industrial users of goods and/or services located in free trade zones), as opposed to the general corporate income tax rate of 32% (for 2020). In addition, taxpayers are eligible for the following benefits under the regime: (i) exclusion from the presumptive income system;<sup>1</sup> (ii) depreciation of assets over a two-year period (regardless of the useful life of the asset); (iii) exemption from the 10% dividends tax on dividend distributions; and (iv) exemption from the equity tax for mega-investment projects. However, if profits were not taxed at the corporate level, dividend distributions will be subject to a 27% recapture tax. The regime is applicable for 20 years beginning with the year the Government recognizes the status of the mega-investment.

In addition, taxpayers under the mega-investment regime may be able to enter into tax stability agreements to secure the tax benefits granted under the regime. With an agreement, taxpayers will not lose the benefits under the regime if there are law changes.

### Requirements to qualify for the regime

To be qualified as a mega-investment project, the following requirements must be met:

Sector	Number of new jobs (under labor agreement)	Amount of investment in productive property, plant and equipment
Industrial, commercial and / or services	400	30 million tax units (approx. US\$290 million)
High Technology, new emerging technologies and e-commerce	250	30 million tax units (approx. US\$290 million)
Aviation	400	2 million tax units (approx. US\$19 million)

Taxpayers must make the investments in property, machinery and equipment, which may be considered productive assets (or potentially have such character). Acquisitions via financial leasing, with irrevocable purchase options, qualify as investments for these purposes; leaseback agreements, however, do not qualify.

For taxpayers in the aviation industry, investments must be made before 31 December 2021.

Taxpayers must achieve the job creation and investment requirements within five tax years of the year in which the project is approved as a mega-investment by the Ministry of Commerce, Industry and Tourism (the Ministry). The new jobs created must be maintained in each tax year in which the mega-investment regime applies.

Investments made before the Ministry approves the project as a mega-investment project will not be considered for the fulfillment of the investment requirement. Likewise, investments made with equity increases as a result of mergers, demergers or any restructuring procedures will not satisfy the investment requirement.

Projects related to the evaluation, exploration and exploitation of non-renewable natural resources (e.g., mining, oil and gas projects) are not eligible for the mega-investment regime.

### Procedure for the approval of mega-investment projects

The Ministry will receive a technical opinion from the competent authority of the sector to which a project relates and will determine whether to approve the project as a mega-investment project based on that opinion. The Ministry must approve or deny the request within three months of the submission.

Taxpayers must submit a request to participate in the regime before 1 September 2023, to complete the approval process before 1 January 2024. For taxpayers in the aviation industry, the request must be submitted before 1 September 2021, to complete the approval process before 31 December 2021.

If the taxpayer fails to meet the job generation or investment requirements, the Ministry may revoke the mega-investment project's approval. If the approval is revoked, the taxpayer may be subject to a recapture of deductions taken on property, plant and equipment (i.e., accelerated depreciation).

## **Tax stability agreements for mega-investment projects**

To ensure that they will not lose the benefits under the regime if there are law changes, taxpayers may enter into tax stability agreements with the Colombian tax authorities, in exchange for a premium of 0.75% of the value invested in the prior tax year based on the investment schedule approved by the Ministry (premium may be paid for up to five years). The premium must be paid within the first 15 days of each year. The total premium paid cannot be less than 0.75% of 2 or 30 million tax units, depending on the sector in which the investment is made.

Tax stability agreements will be valid for a term of no more than 20 years from the tax year of the mega-investment project's approval.

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## **Endnote**

1. The presumptive income system is an alternative taxable income system based on a percentage of the net equity as of 31 December of the preceding year.

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