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Global Tax Alert

News from Americas Tax Center

Colombian Tax Authority clarifies scope of new thin cap rule

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Colombia's Tax Authority (DIAN) issued Opinion No. 8159 on 5 April 2019, clarifying the scope of the thin capitalization (thin cap) rule that was recently amended by the Financing Law (Law 1943 of 2018).

The Financing Law made several changes to the thin cap rule. Effective 1 January 2019, taxpayers generally may not deduct for income tax purposes interest paid on loans that are acquired, directly or indirectly, from related parties (foreign or local) and exceed a 2:1 debt-to-equity ratio on average. In addition, a loan granted by a third party may be considered related-party debt if: (1) a related party guarantees the loan ("Aval" in Spanish); (2) there is a back-to-back transaction involving a related party; or (3) any other transaction takes place in which a related party is substantially deemed to be the creditor. Therefore, such loans should be considered in determining the debt-to-equity ratio for thin cap purposes.

For purposes of the thin cap rule, Opinion No. 8159 deems a loan to be indirectly acquired from a related party to the extent the related party funds the loan granted by an unrelated party (e.g., a related party loans the funds to a third party, and the third party grants the loan to a Colombian taxpayer).

Regarding credits guaranteed by related parties, the DIAN explained that the thin cap limitation does not apply to the extent the related party merely issues a guaranty stating that it is liable for the payment of the Colombian taxpayer's

debt with a third party. In those cases, it noted, the guarantor is not substantially deemed the real creditor. However, if the creditor of record is deemed a related party of either the guarantor or the debtor, the thin cap limitation applies.

Additionally, Opinion No. 8159 requires the taxpayer to demonstrate, by means of a certification issued by the creditor of record, that the loan is not a debt substantially acquired with a related party.

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