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## Executive Summary 2018 Tax Reform

On October 31, 2018, the National Government presented the legislative bill “issuing financing measures to reinstate the balance of the national budget and establishing other provisions”. This bill, which includes 87 articles, introduces changes in the tax system in relation to sales tax (VAT), personal income tax and corporate income tax, creates a new wealth tax, introduces a new economic amnesty, and creates special regimes for mega-investments and for Colombian holding companies.

This document includes a summary of the main changes. As this is proposed legislation, it should be borne in mind that it may undergo substantial modifications when it is discussed in Congress.

### Contact information:

Camilo Zarama Martínez - [camilo.zarama@garrigues.com](mailto:camilo.zarama@garrigues.com)

Laura Galeano Daza - [laura.galeano@garrigues.com](mailto:laura.galeano@garrigues.com)

### VAT - Sales tax

New aspect	Change	Comments
Reduction in the standard VAT rate	The standard VAT rate was reduced from 19% to 18% starting in 2019, and to 17% as from 2021.	Although the rate hike from 16% to 19% generated higher tax collection, the bill envisages a general reduction in the rate accompanied by an increase in the VAT base, by eliminating multiple exclusions and exemptions.
Goods excluded from VAT	The number of goods that are excluded from VAT are reduced. The bill levies VAT on the household basket of goods.	The goods excluded from VAT are considerably reduced, thus taxing the products in the household basket of goods.
VAT compensation for the lower-income population	Since more goods are subject to VAT under the bill, as a compensatory measure, the National Government will transfer, before the first day of each two-month period, compensation for the VAT on the basket of goods that each household will have to bear during the following two-month period.	<p>The compensation mechanism has yet to be defined. Although this measure envisages reimbursement, it will have a huge impact on the purchasing capacity of lower-income persons.</p> <p>In any case, the measure will have to pass the constitutionality test that limits the possibility of extending VAT to the household basket of goods.</p>

## VAT - Sales tax

New aspect	Change	Comments
Suppliers of services from abroad will be obliged to report VAT	Nonresidents that supply VAT taxable services from abroad must register as VAT taxable persons with the Colombian tax agency (DIAN) and must report and pay that tax.	The measure extends the status of VAT taxable person to nonresident suppliers of any service subject to VAT. Currently, this status only applies to those who supply digital economy services.
Increase in VAT withholding rate	The general VAT withholding rate will increase from 15% to 50%. The bill “revives” the 100% VAT withholding on transactions between persons under the common regime with those who are not VAT taxable persons.	In the past, the reduction in withholding rates was due to the huge balances being accumulated by taxpayers for this tax, tying up their working capital. The fact of raising the rate back up will generate this situation again, especially for state contractors.
VAT taxable amount on imports	<p>The taxable amount on which VAT is assessed for imported goods will be the same as that taken into account to assess customs duties, to which the value of this tax will be added.</p> <p>Imports from abroad or from a free zone with exported national components will be assessed in the same way, but without deducting the value of the exported national component.</p>	The bill eliminates the special treatment for free zones declared prior to 2012, according to which the VAT taxable amount upon import of products into national customs territory from a free zone was assessed without taking into account the value of the products of Colombian origin integrated in the goods.
Reduction in exempt and excluded goods and services	The bill significantly reduces the services that are excluded from VAT, mainly leaving public services, educational services, housing and health-related services as excluded, and the exportation of services, hotel services and sales to companies selling Colombian goods abroad, among others, as exempt.	The bill seeks to extend the VAT taxable amount by eliminating exclusions and exemptions. The foregoing offsets the reduction in the standard rate.
Disappearance of the simplified VAT regime	Individuals who meet the requirements established in the bill will not be VAT taxable persons.	Previously, individuals who met certain requirements were included in the simplified regime.

## Personal income tax

New aspect	Change	Comments
<b>Elimination of exempt income</b>	The bill eliminates certain exemptions, such as for pensions, 50% of representation expenses provided to court judges and their prosecutors, and 25% of employment income.	This income was capped at 40% of earnings. Following the change, employment income and pensions are taxed almost in full.
<b>Elimination of exemptions for voluntary contributions to pension plans and to savings account for prospective homeowners</b>	To date, contributions to savings accounts for prospective homeowners and voluntary contributions to pension plans are deemed exempt income. Under the proposed reform, these contributions will no longer be exempt.	The elimination of this tax relief, which was already limited, generates a higher tax cost for individuals, by increasing the personal income tax base, and it discourages savings by individuals.
<b>Increase in tax rate of resident individuals</b>	New tax rates are established for high-income individuals, with rates of 35% and 37% for individuals with income above COL\$20 million per month.	The bill aims to step up the progressive taxation of high-income individuals, a measure which, coupled with the elimination of income exemptions, can generate an increase in tax collection.
<b>Unification of schedular income in a single general income tax base</b>	The bill creates a single income tax base for assessing tax on income other than dividends.	Although the concept of schedule income is maintained, the net income will no longer be determined for each schedule. The bill goes back to establishing a single net income tax base, taking the total earnings, without including those derived from dividends, and assessing tax on it, as was done before the schedular system was implemented.
<b>Presumption of standard deduction at 35%, limited to 240 TVU per month</b>	In order to determine the net income in the general component of the tax base, taxpayers may deduct amounts that do not constitute income, exempt income, costs and deductions, which are presumed to be 35% of the previous value, and losses.	After unifying components of earning in a single tax base, it is presumed that the standard deduction equals 35% of reported earnings with the earnings that do not constitute income or occasional gains and the exempt income. Through this form of assessing tax, individuals who incur higher expenses in their business activity, as would be the case of traders, are denied the possibility of deducting them.

## Legal entities - Tax on income and occasional gains

New aspect	Change	Comments
Standard income tax rate	<ul style="list-style-type: none"> <li>33% for fiscal year 2019.</li> <li>32% for fiscal year 2020.</li> <li>31% for fiscal year 2021.</li> <li>30% as from fiscal year 2022.</li> </ul> <p>Starting on January 1, 2019, income derived from services provided in hotels that are built or remodeled within the 10 years following the entry into force of this law will be subject to the 9% rate for a period of 20 years.</p>	<p>Gradual decrease in the current standard rate.</p> <p>Regarding hotel remodeling, the law is clear when requiring that the value of the remodeling and/or enlargement must not be below 50% of the acquisition value of the asset, in accordance with article 90 of the Tax Code.</p> <p>The proposed exemption will not apply to motels and extended-stay residences.</p>
Presumptive income	The percentage of presumptive income established will be progressively reduced to 0% in 2021.	The aim is to gradually do away with presumptive income, going from 3.5% to 3% in 2019, to 1.5% in 2020 and to 0% in 2021.
Tax on dividends paid to legal entities	The 5% tax on dividends is levied on the dividends distributed between national companies, bringing the treatment into line with that of nonresidents.	Currently, dividends are only taxed when distributed to individuals or nonresidents. The fact of taxing the flow of dividends between national companies constitutes an unjustified taxation on the legal structure of groups.
Change in commercial criteria applicable to the sale of assets and the provision of services	The obligation to apply commercial criteria to determine the tax treatment will apply not only in cases of transfer of assets but also for services. The agreed value will not be considered a commercial value when it differs by more than 15% from the assets' market value, or when it is less than 130% of the underlying value, in the case of shares in unlisted companies.	The rules of article 90 of the Tax Code applied solely to asset transfers but there was no rule for services provided between residents.
Taxation of indirect sales of assets owned in Colombia	The bill introduces the obligation to pay tax in Colombia on the indirect transfer of assets located in the country. This occurs when the change of ownership of assets located in Colombia results from the transfer of vehicles located abroad that own those assets.	To date, only direct transfers of assets that result in a direct change in ownership of the asset are taxed in Colombia.
Taxation of permanent establishments on worldwide income	Permanent establishments will be taxed in Colombia on Colombian and foreign source income and occasional gains.	Although permanent establishments must perform an income attribution study, under the current laws only Colombian source income attributable to them is taxed.

## Legal entities - Tax on income and occasional gains

New aspect	Change	Comments
Creation of a deduction for taxes paid	As a general rule, taxpayers may deduct 100% of the taxes paid in the respective year. Based on the literal wording of the law, it appears that taxpayers can apply a deduction (not a tax credit) of 50% of the tax on financial movements (GMF) and the tax on industry and commerce (ICA) effectively paid.	<p>With the envisaged change, taxes such as that of vehicles that were previously in a gray zone as regards their deductibility, will now be deemed as 100% deductible expenses, provided they have a causal relationship with the economic activity.</p> <p>There are doubts as to the deduction mechanism given that it is not clear whether it is obligatory.</p>
Another change in the treatment of VAT paid on the acquisition of fixed assets	The total VAT borne on the acquisition, formation, construction or import of fixed assets, including the services necessary to put them into operation, may be deducted from income tax.	With the proposed change, the sales tax paid in these cases would no longer be a special deduction and would become a tax credit.
Exempt income	<p>Without prejudice to the income recognized in the international treaties ratified by Colombia, starting in 2019, only the following income will be exempt:</p> <ul style="list-style-type: none"> <li>Income derived from the pursuit of industries with added technological value and creative activities - Tax incentives for orange economy companies.</li> <li>Income derived from investments that increase the productivity of the agricultural sector.</li> </ul>	<p>The new income exemptions will only apply if certain requirements stipulated in the law are fully met for a period of 5 and 10 years, respectively.</p> <p>With this proposed change, the remaining income exemptions envisaged up to fiscal year 2018 in article 235-2 of the Tax Code are eliminated.</p> <p>The exemptions specified will only apply for taxpayers that have gross annual income below 80,000 TVU (around COL\$2,700,000.00) and are registered on the Single Tax Registry ("RUT") as taxpayers under the general tax regime.</p>

## Legal entities - Tax on income and occasional gains

New aspect	Change	Comments
<b>Tax deductions</b>	As from fiscal year 2019, the tax deductions applicable to income tax will be eliminated.	<p>Only the following tax deductions will be available:</p> <ul style="list-style-type: none"> <li>• 50% of the tax on financial movements (GMF) and the tax in industry and commerce (ICA) effectively paid</li> <li>• Sales tax on imports, formation, construction or acquisition of fixed assets</li> <li>• Deduction for taxes paid abroad</li> <li>• Deduction for investments made in monitoring, conservation and improvement of the environment</li> <li>• Deduction for investment made in research, technological development or innovation</li> <li>• Deduction for donations to non-profit organizations</li> <li>• And the provisions established for the zones most affected by the armed conflict (ZOMAC).</li> </ul>
<b>Withholding at source for capital gains and employment income</b>	<p>Increase of the withholding rate to 20% of the nominal value of the payment or account deposit.</p> <p>Increase of the withholding rate to 33% of the administration or management expenses to which article 124 of the Tax Code refers.</p>	The increase to 20% will apply to the payment or account deposit for interest, commissions, fees, royalties, lease payments, compensation for personal services, among others, and to the payments for consulting services, technical services and technical assistance, provided by persons not resident or domiciled in Colombia.
<b>Change in deferral rules in the tax treatment applicable to private equity and collective investment funds</b>	<p>Taxation will only arise at the time of distribution of fund profits if it is a close-ended fund the units of which are traded on the stock market, or if the fund is not more than 20% owned by the same person or group.</p> <p>In addition, an anti-avoidance rule is introduced when the funds have been formed with the sole aim of deferring taxation.</p>	The general deferral rule for income obtained through investment funds is not subject to special conditions. Therefore, as long as the flows are maintained in the fund, the unitholders should not be taxed on that income. Following the change, the tax arises when the income is received from the fund, unless the rules of the new article 23-1 are met.
<b>Presumption regarding income of FCCs</b>	It will be presumed that all of the income obtained by FCCs is business or professional income, when this type of income represents 80% or more of the FCC's total income.	The current article 885 only included the presumption with respect to investment income. Following the change, the existence of a lower percentage of investment income does not give rise to the application of the FCC regime, adjusting the conceptual error derived from the law in force.

## Regime for colombian holding companies

A new Colombian holding companies ("CHC") regime is created for Colombian companies whose main purpose is the ownership of securities, investment or holding of shares or units abroad, and/or the administration of those investments

Dividends or profits distributed by nonresident companies to a CHC will be reported as exempt income	Dividends distributed to residents by a CHC are taxable income, and the taxpayer may apply the tax credit for taxes paid by the foreign entity that distributed the dividend to the CHC. Dividends distributed to nonresidents shall be deemed foreign-source income.	The sale of shares owned by the CHC are exempt occasional gains. The sale of the shares issued by the CHC will be exempt for residents and deemed foreign-source income for nonresidents.
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## Special regime for mega-investments

New aspect	Change
Tax benefits for mega-investments	<p>Taxpayers that make new investments in Colombia with a value of 50,000,000 TVU (around COL\$1.5 billion) which generate at least 50 direct jobs can access the following benefits:</p> <ul style="list-style-type: none"> <li>Income tax rate of 27%;</li> <li>They can depreciate fixed assets over a minimum period of 2 years, regardless of the asset's useful life;</li> <li>They will not be subject to the provision regarding presumptive income;</li> <li>The profits they distribute will not be subject to tax on dividends. Profits taxed according to articles 48 and 49 will be subject to the rate of 27%;</li> <li>They will not be subject to wealth tax;</li> <li>In addition, rules for tax law stability are created to permit these taxpayers to maintain the benefits in case of unfavorable changes in the regime.</li> </ul>

## Simple tax

New aspect	Change	Comments
Unified tax under the simple taxation regime for formalizing and generating employment	<p>The provisions and rules applicable to the single tax are replaced.</p> <p>As from January 1, 2019, the bill creates the Unified Tax Under the Simple Taxation Regime - SIMPLE, which is a tax that accrues annually and is paid every two months.</p> <p>The SIMPLE tax replaces the tax on income and supplementary taxes, excise tax, industry and commerce tax and supplementary taxes on advertising and billboards, for taxpayers that voluntarily elect to apply this regime.</p>	This tax is created with the sole aim of reducing formal and substantial burdens, promote administrative compliance and, in general, simplify and facilitate compliance with tax obligations for taxpayers that voluntarily elect to apply this regime.
Elements of the SIMPLE tax	<p>The SIMPLE tax regime may be applied by individuals or legal entities that meet a number of requirements, one of which is that in the preceding fiscal year, they must have obtained gross income of at least 1,400 TVU but less than 80,000 TVU.</p> <p>The tax rate will depend on the gross annual income in TVU and on the business activity, starting at 2.6% and up to a maximum of 13.6%.</p> <p>Taxpayers that elect to apply the SIMPLE tax regime must be registered in the Single Tax Registry ("RUT") as taxpayers thereof before January 31 of the fiscal year for which they make that election.</p>	One of the relevant changes is that the Colombian legal entities that meet the requirements set forth in the law can also apply this regime.



## Wealth tax and asset regularization

New aspect	Change	Comments
<b>Parties subject to wealth tax</b>	<p>A wealth tax is created for fiscal years 2019 and 2020. The following parties are subject to this tax:</p> <ul style="list-style-type: none"> <li>Individuals and non-liquid successions, income tax taxpayers.</li> <li>Individuals that do not reside in the country, with respect to their assets owned directly in the country or indirectly through permanent establishments.</li> <li>Non-liquid successions of decedents not residing in the country at the time of death, with respect to their assets owned in the country.</li> <li>Foreign companies and entities that do not file income tax in Colombia and that own assets located in Colombia other than shares.</li> </ul>	<p>In this case, just as with the tax created in 2014, the liable parties are not determined based on whether they are subject to income tax. The reform includes a list of parties subject to the tax.</p> <p>Unlike the previous wealth tax, national and foreign legal entities that are subject to income tax in Colombia are not listed as being subject to the tax. However, wealth tax is payable by foreign legal entities that are not declarants of income tax, with respect to their assets in the country.</p>
<b>Taxable event</b>	<p>The taxable event is ownership of assets with a value of COL\$3 billion or more as of January 1, 2019.</p>	<p>The taxable event follows the line established for previous wealth and equity taxes. This time, the taxable event is determined only on January 1, 2019 and, for this, the assets will be equal to gross equity minus debts in force at the date.</p> <p>The asset value has been raised to COL\$3 billion.</p>
<b>Rate</b>	<p>The tax rate will be:</p> <ul style="list-style-type: none"> <li>0.5% where the tax base is below COL\$5 billion.</li> <li>1% where the tax base is COL\$ 5 billion or more.</li> </ul>	<p>The wealth tax included in the bill would be calculated solely based on two rates. The equity tax passed under the 2014 reform had progressive and decreasing rates, lower than those included in this bill.</p>
<b>Tax base and accrual</b>	<p>The tax base will be the assets owned on January 1, 2019 and 2020.</p> <p>The legal obligation to pay wealth tax will accrue on January 1 of each year (2019 and 2020).</p>	<p>As in the previous tax on equity, the tax base will be calculated for each of the periods.</p> <p>In general terms, the wealth tax base will be calculated in the same way as for the previous tax.</p>

## Wealth tax and asset regularization

New aspect	Change	Comments
<b>Taxable event</b>	<p>A regularization tax is created for fiscal year 2019, the taxable event of which will be the ownership of unreported assets or inexistent liabilities as of January 1, 2019.</p> <p>The tax will be reported and paid independently on September 25, 2019.</p>	<p>A regularization tax is created for fiscal year 2019, the taxable event of which will be the ownership of unreported assets or inexistent liabilities as of January 1, 2019.</p> <p>The tax will be reported and paid independently on September 25, 2019.</p>
<b>Tax base</b>	<p>The tax base with respect to unreported assets will be the assets' historical cost for tax purposes or their commercial appraisal value. For inexistent liabilities, the value of those liabilities for tax purposes shall be used.</p> <p>When the taxpayer regularizes assets abroad and invests them on a long-term basis in Colombia, the tax base of the tax will be 50%.</p>	<p>The aim of this provision is to encourage taxpayers to repatriate their assets from abroad and invest them in the country. In order to determine whether an investment in Colombia is made on a long-term basis, the assets must remain in the country for at least two years.</p>

## Procedural rules - tax procedures

New aspect	Change	Comments
<b>Invalid declarations of withholdings at source</b>	<p>Until the taxpayer files again the return for withholdings at source which was deemed invalid and makes the respective payment, the tax return initially filed is considered to be a document recognizing a clear, express and enforceable obligation that may be used by the tax authorities in enforced collection proceedings, even if the return has been marked as invalid in the system.</p>	<p>The change seeks to permit the tax authorities to initiate enforced collection proceedings based on tax returns that did not give rise to legal effects.</p> <p>Currently, when a tax return is deemed invalid, the tax authorities must initiate a process to assess the taxpayer's obligation, given that there is no instrument recognizing that obligation.</p>
<b>Notification by e-mail</b>	<p>When an e-mail address is included through the RUT, all administrative decisions will be notified to that address.</p> <p>Electronic means will be the preferred method for notification of the decisions of the DIAN starting on July 1, 2019.</p>	<p>Lastly, e-mail notification is implemented for all decisions of the DIAN.</p> <p>When an e-mail address is included in the RUT, it shall be understood to mean that the taxpayer wishes to be notified electronically.</p> <p>Notifications shall be deemed to take effect at the time the e-mail is received at the address specified in the RUT, and the terms established therein for the taxpayer shall begin to run five days afterwards.</p>

## Procedural rules - tax procedures

New aspect	Change	Comments
Partial correction of tax returns as a result of administrative proceedings	The bill establishes that, on occasion of the response to a list of alleged infringements or to a special requirement or within the term for filing appeals, the taxpayer may partially agree to the claims made by the tax authorities, settling interest in proportion to the facts which it accepts.	At present, according to article 590 of the Tax Code, the taxpayer can correct its tax returns in these cases. However, it is not possible for the correction to be partial only with respect to certain claims.
Electronic invoicing	The bill includes an article relating to the penalties applicable to suppliers of electronic invoicing. Additionally, the parties obliged to issue an electronic invoice but that do not do so in 2019, will not be subject to the penalties established for those cases, provided that: (i) they issue invoices using traditional methods; and (ii) they prove that the failure to issue electronic invoices was due to technological obstacles or justified commercial reasons.  Likewise, the costs and expenses associated with these invoice shall not be rejected.	The bill postpones the obligatory implementation of electronic invoices, recognizing the possibility of not doing it in 2019 due to the difficulties in question. It is not clear how taxpayers must prove to the authorities that there are actually technological obstacles or justified commercial reasons for not issuing electronic invoices.

## Public works tax deduction

New aspect	Change	Comments
The public works tax deduction mechanism is implemented in the Tax Code	The payment mechanism laid down in Law 1819 is repealed, except for in the case of taxpayers that were already applying the mechanism prior to the entry into force of the amended Tax Code.	This means that the public works tax deduction mechanism established under Law 1819 will disappear upon final completion of the projects already underway when the new drafting enters into force.
No longer a payment method, but rather a way of entering into agreements	Under the new statute, taxpayers will not pay their tax directly, but rather are given marketable securities called "Títulos para la Renovación del Territorio" (securities for territorial renewal) that can be credited against tax due.	This eliminates, from the outset, the problem entailed under the previous law with respect to the "freezing" of the tax through the payment mechanism.
Limit for these agreements set at 30% of equity per books	The previous rule established a limit at 50% of the tax due for the fiscal year in which the mechanism was to be applied.	This should mean that taxpayers can invest more resources in carrying out these projects.
Projects allowed outside the ZOMACs (zones most affected by the armed conflict)	Projects no longer need to be located in a municipality declared as a ZOMAC. The Territorial Renewal Agency (ART) must only deem them to be "strategic" for the ZOMACs.	The previous geographic limit meant that broad-reaching projects could not be carried out under the mechanism. This could change with the amendment.

Contact information:



Camilo Zarama Martínez  
[camilo.zarama@garrigues.com](mailto:camilo.zarama@garrigues.com)



Laura Galeano Daza  
[laura.galeano@garrigues.com](mailto:laura.galeano@garrigues.com)

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Follow us



Avenida Calle 92 No.11-51 Piso 4  
Bogotá D.C. (Colombia)  
T +57 1 326 69 99  
[bogota@garrigues.com](mailto:bogota@garrigues.com)

[www.garrigues.com](http://www.garrigues.com)