Tax Agenda Colombia

April 2024

Building a better working world

No.	Fact	Action
1	**Significant Economic presence (SEP) rules** As from 01.01.2024, nonresidents with a SEP in Colombia will be subject to 3%/10% income tax. The taxable income will be the gross income obtained by the foreign entity on certain digital services or transferring of assets to Colombian clients. The non-resident entity subject to PES rules, may opt to be subject to a 10% WHT or to file an income tax in Colombia at a 3% tax rate. Read more: Regulatory decree provides guidance for nonresidents subject to Colombia's version of digital services tax (Significant Economic Presence)	Taxpayers who are regarded as withholding tax agents (normally all corporations are WHT agents) should plan necessary action to inform non-resident entities who are foreign service/goods providers of the upcoming regulation. Analyze the service rendered to Colombian recipients to determine whether such service is subject to SEP rules. Analyze the transfer of assets to Colombian recipients to determine whether such transfer is subject to SEP rules. Support nonresident taxpayers with a SEP in Colombia whether to choose (i) the withholding tax mechanism or (ii) the filing of a tax return in Colombia (applicable options under SEP rules). This election should be made based on the quantification of tax costs (i.e., WHT rates) vs administrative cost (i.e., compliance of formal obligations) . Evaluate alternative structures that do not create a SEP in Colombia.

Apr | May | Jun | Jul

Compliance | *Risk management* | *Cash-flow and ETR impact*

Use text boxes above the timeline to plan your actions for coming months

No.	Fact	Action		
2	**Local rules to determine the place of effective management (POEM)** Rules on the possibilities of non-resident entities to have a POEM in Colombia (thus, becoming Colombian tax residents) have been broadened, as currently a POEM may exist based on the day-to-day activities (not only on strategic activities). Read More: Colombian Congress approves tax reform bill.	Nonresident entities should review their corporate arrangements to: - Identify Colombian POEM risk - Create a tax audit support file to manage the risk - Implement Ey's recommendations in order strength the position of not having a POEM in Colombia		
3	**15% minimum tax rate (adjusted tax rate)** A tax reform bill establishes a 15% minimum tax rate (referred to as adjusted tax rate). The adjusted tax rate would be determined based on the ratio between the adjusted income tax (AIT) over the adjusted income (AI). The calculation is not necessarily aligned with the Base Erosion and Profit Shifting (BEPS) 2.0 Pillar Two model rules. Read more: Colombian Congress approves tax reform bill.	Taxpayers should review whether the 15% minimum tax rules were correctly applied in their tax assessment.		
4	**Most favored nation clause (MFN) activation** As a result of the entry into force of the Double Tax Treaty (DTT) between Colombia and the United Kingdom (UK), the tax treatment of certain services changed on the different DTT signed with Colombia. MFN clause activation may trigger lower taxation of certain services, depending on the treaty to be analyzed. Read more: Colombian tax authority addresses the application of the most-favored nation clause of double tax treaties signed by Colombia.	Entities using the DTT should review payments made under an applicable DTTs in order to identify : - Technical assistance, - Technical services and - Consultancy services To analyze the potential application of the MFN rules and the reduction of the withholding tax on such payments.		
5	**Substance of foreign holding entities** Colombia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2017, introducing a Principal Purpose Test (PPT) clause, which will be enforceable once the MLI is ratified by Colombia. The beneficial ownership requirement included in the DTTs, entered with Colombia, for specific items of income, have been recently highlighted by the local legislation as a requirement to be verified in order to access benefits of the DTT.	Entities using the DTTs signed by Colombia, should: - Review the holding **structuring** and their business purposes. - Strengthen the substance of the holding entity - Properly document the ultimate beneficiary requirement - Create a tax audit support file for the use of the DTT benefits (e.g., payments of royalties, dividends, interests).		

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6	**Preferential tax regime regulation** Consistent with BEPS 1.0 Action 5 report which established minimum standards on Preferential tax regimes (PTRs), the Colombian government included in its tax legislation a higher tax withholding rate on Colombian source payments to those jurisdictions and entities considered as a non-cooperative or low tax jurisdictions or a PTR. In the case of PTRs, in order to establish whether a specific regime should be regarded as such, specific criteria was included in the tax law. Read more: Colombia issues regulations to identify preferential tax regimes.	Taxpayers should identify payments abroad to regimes that could be regarded as potential PTRs (e.g., payments to off-shore Panama entities, LLC entities in the US etc. They should analyze tax treatment of payments made to such jurisdiction in order to discard the application of PTR rules (tax audit support file).
7	**Ultimate beneficial owner (UBO) reporting** Colombian tax law requires all Colombian legal entities and structures without legal personality to identify and report their UBOs before the Colombian Tax Authority. • The deadline to report UBO for the first time, was 31.07.2023. Periodic updates must be carried out in case the reported UBO changes. • All entities must have a due diligence report supporting the UBO findings. Read More: Colombia issues resolution on ultimate beneficial owners.	Colombian companies should implement a methodology to identify the UBO of the legal entity or structures without legal personality. Support the initial UBO registration Prepare the "due diligence" report which supports the UBO registration. Update the registry if changes on the ownership/control take place.
8	**National tax on single-use plastic and the so -called Health taxes (sugary beverages and ultra-processed foods)** National tax on single-use plastics will be levied on the sale, self-consumption and importation of single-use plastics used for packaging, wrapping or packing goods. Beginning 01.11.2023, Health taxes apply over ultra-processed sugary beverages, as well as concentrates, syrups, and powders which, after being mixed or dissolved, create sugary beverages.	Taxpayers should review the impact of these taxes to the business model of clients. Identify potential exemptions that could apply, based on a product-by product analysis. Monitor the developments around these taxes and the right interpretation of the new tax rules by requesting rulings to the tax authorities on areas that could be controversial.
9	**Tax benefits for non-conventional energy projects and for energy efficiency projects** Investment projects developed in Colombia that generate renewable energy or reduce energy consumption will be eligible for certain tax benefits, such as, VAT exclusion, tariff exemption, accelerated depreciation and special tax deduction of 50% of the approved investment. Read More: Colombia enacts law modifying tax incentives applicable to renewable energy projects.	Investors should analyze whether an investment may qualify for the tax benefits and can be submitted to the Mining and Energy Planning Unit (UPME) to obtain the qualification. Presenting of the project (formats, technical reports and budget reports) and its filing before the UPME. Follow-up of the Tax Benefits request until the UPME issues an approval/denial resolution.

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