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## Doing Business in Colombia

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Edition No. 1 / February 2021



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MSI's guide on *Doing Business in Colombia* provides current information about the financial, regulatory and legal considerations that could affect business dealings within Colombia. For further assistance please contact our MSI member firms in Colombia.

## Country overview

### Population

Colombia has a total population of approx. 50 million inhabitants as of 2020 in an area of 1,142,748 km<sup>2</sup>.

### Government

Colombia is a unitary and decentralized republic. The government is divided into three branches: executive, legislative and judicial. The Republic of Colombia has a presidential system of government and for the period of 2018-2022, the elected President is Ivan Duque Marquez. He belongs to the Democratic Centre Party and is the Head of the Executive Branch.

Colombia is divided in 32 states and the capital of the country is Bogotá, D.C.

### Languages

The official language is Spanish. In addition to Spanish, there are several other languages spoken in Colombia. 65 of these languages are Amerindian in nature.

### Currency

The national currency is the Colombian Peso. However, under the special exchange regime it is possible to agree payments in US dollars when doing business within the hydrocarbon sector and specific minerals, provided they comply with regulations.

### Economic summary

GDP: **US\$ 301.7 billion (2020)**

Income per capita: **US\$ 5,207 (2020)**

Inflation: **1.61% (2020)**.

### Main sectors of the economy

Colombia's main sectors of economy are the hydrocarbon sector, coal, nickel,

gold, coffee, flowers, banana and other agricultural products, as well as tourism.

### Colombia for business and investments

Colombia is member of the WTO, OECD and has in place Free Trade Agreements with United States, Canada, Mexico, Chile, European Union, South Korea, and Israel among others. Colombia is a country with growing prospects in real estate, infrastructure, and technology.

## Setting up a business

Under Colombian Commercial Legislation, foreign investment in general, can take place directly through incorporating a subsidiary. The most common types of companies are simplified stock companies –SAS- by its acronym in Spanish. In addition, foreign corporations may establish a branch. It is also possible doing business by means of:

1. Temporal union
2. Consortium
3. Joint venture
4. Collaboration, consultancy, distribution, agency agreements
5. Technology transfer (technical services and technical assistance) agreements

### How to set up a business

The Simplified Stock Company (SAS) popular due to the flexibilities it offers in comparison with other company types. Examples of some of these flexibilities are:

- It can be constituted through a private document authenticated by a public notary

- It can be set up with a single shareholder.

- Its stocks are freely negotiable

- It is administrated through a shareholders meeting and a Board of Directors is not a required body

To set up a company, basic documents need to be filed with the local Chamber of Commerce, a proceeding at the National Tax and Customs (DIAN) and a bank account needs to be opened in Colombia with the respective currency exchange channel.

### Financial year of taxes and financial accounts

The financial/fiscal year is equal to the calendar year. However, for corporate purposes, legal entities may choose for different financial year if they wish.

### Accounting

Every legal entity is obligated to maintain accountancy and bookkeeping. The financial statements must be prepared in accordance with Accounting and Financial Reporting Standards accepted in Colombia, based on International Financial Reporting Standards (IFRS).

### Auditing

The obligation to have a statutory audit may arise by legal disposition, or by the amount of income or assets of the company:

- Stock companies and branches by legal provision must have a statutory audit
- Simplified stock company and limited liability companies must only have a statutory audit when (in the previous year) the income was equal to / or

greater than approx. US\$725,000 or its assets were equal to/ or greater than approx. US\$1,200,000.

### Incentives

The Colombian government offers several tax incentives:

- Special tax credit for investments in scientific, technological development and innovation.
- Tax credit for taxes paid abroad.
- Exempt income from the application of the rules of the Andean Community Agreement.
- Exempt income from the development of technology added value and creative industries (Orange Economy Companies).
- Exempt income raised from investments that increase the productivity of the agricultural sector.
- Income raised from the usage of new cultivations.
- Income associated to social interest house building.
- Special incentive to investments in hydrocarbons and mining sectors.
- Reduction in the income tax rates for hotels, ecotourism, new theme parks and publishing of scientific or cultural books or magazines.

## Taxation

The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Colombian government is that the tax system may under no circumstances form an impediment for companies wishing to incorporate a company in Colombia.

Colombia has signed tax treaties with many other countries to prevent double taxation. At the same time, its vast network of tax treaties offers instruments for international tax planning. The tax system can be divided into taxes based on income, profit and assets, and cost price increasing taxes.

### Income tax for corporations

Colombia's tax system is based on a source-based system. National companies are subject to tax: the

Colombian and foreign source income and capital gains. Foreign companies are only subject to tax on their Colombian source income and capital gains. Permanent Establishments and branches must pay income tax on any Colombian and foreign source income that are attributable to them.

The general rate of income tax is 32% for 2020, which will be decreasing gradually to 30% in the 2022 taxable year.

The law also established an income tax surcharge for financial institutions. The surcharge is: 4% for 2020; 3% for 2021 and 3% for 2022.

In addition, the following special rates have been established if some requirements are met:

- Free-trade zone goods and services industrial users: 20%.
- Free-trade zone users created in Cucuta between January 2017 to December 2019: 15%
- Hotel services rendered through new hotels or remodeled hotels: 9%.
- New theme parks ecotourism parks, agricultural tourism parks and natural wharves: 9%.
- Publishing enterprises established in Colombia as legal entities, with an exclusive line of business is the publishing of scientific or cultural books, magazines: 9%.

Other considerations are:

- Dividends received by a foreign entity from profits that were not taxed at the corporate level are taxed at the general income tax rate, plus special rate of 10%.
- Dividends paid out of profits that were taxed at the corporate level, are subject only to the 10% rate.
- Colombia has established the Holding Company Regime for Colombian corporations that own direct or indirect participation higher than 10% of the equity, in two national or foreign corporation entities and its main commercial objects must be the investments or holding activities. The dividends obtained by the Holding Company in

Colombia from foreign entities are exempt of the income tax and the distributions of those dividends by the Holding Company to its foreign shareholders will be deemed non-taxed dividends for the foreign investors.

- Technical services, technical assistance, consulting services, software and royalties are levied at a 20% withholding tax rate.
- Management services are levied at a 32% withholding rate.
- Payments made for foreign due to interest, will be subject to a 15% withholding tax rate if the debt term is equal to or greater than one year, and 20% if the term is shorter than one year.
- Payments made to non-cooperative jurisdictions, low or non-tax jurisdictions and preferential tax regimes will be subject with the highest withholding tax rate applicable.
- A presumptive minimum income is calculated annually for income tax purposes, at a rate of 0,5% for 2020 (0% for 2021), on the taxpayer's net worth held in the year immediately preceding the taxable year.
- Taxpayers may carry forward tax losses, with their net taxable income, within the following 12 taxable periods.

### Income tax for individuals

The tax base for resident individuals is based on their worldwide source income and wealth, and for non-residents their national source income and wealth.

The income tax rate for residents corresponds to a progressive rate of 0% to 39%, and 35% for non-residents.

### Simple tax regime

This is an optional tax system (for individuals or small companies that meet some requirements), where tax accrues annually and is paid bimonthly (estimated tax payments). It replaces the income tax and consolidates the following taxes: industry and commerce tax and the related billboards tax; and the excise tax in the case of restaurants and food service providers. The taxable base is made up of the total gross revenues, whether regular or special,

earned by the taxpayer in the respective taxable period.

The tax rate depends on the activity carried out by the taxpayer and ranges from 2% to 14.5%, which is often more favorable to the taxpayer than paying taxes separately.

### Capital gain tax

The following revenues are subject to capital gain tax in Colombia:

- Income from the sale of fixed assets owned from a term not less than two years;
- Profits arising from the liquidation of companies with two or more years of existence;
- Income received over title inheritances, legacies, donations, and any other income arising from any legal act between individuals;
- Profits generated from a divorce;
- All income generated from lotteries, prizes, raffles, gambling and similar.

The capital gain tax rate is 10% for national companies and foreign entities, and all individuals. However, the revenues produced from lotteries, prizes, raffles, gambling and similar, are subject to a 20% rate.

### VAT

This tax is assessed on the sale of goods and provision of services in the national territory and over importing of personal property. Certain goods and services are expressly excluded from the VAT. The general rate of VAT is 19% although, some goods or services are taxed between 0% and 5%.

### The National Excise Tax

The taxable event of the national excise tax is the provision or sale to the end-user or the import by the end-user of the following services or goods, which are taxed at the following rates:

- Mobile phone and internet services: 4%
- The sale of certain items of luxurious personal property such as automobiles, motorcycles and yachts: 8-16%

- Sale of food and beverages services, prepared in restaurants, cafes, bars, supermarkets, ice cream, fruit, pastry shops and bakeries: 8%

Any taxpayers that carry out foods sales operations under franchise contracts are not subject to the national excise tax but to VAT instead.

### Industry and Commerce Tax (ICA)

This tax is levied on industrial, commercial or service activities conducted in a given municipality or district, applicable to any operating and no operating income. Certain exceptions are applicable to sales of fixed assets and exports. Each municipality sets the rates depending on the nature of the taxed activity.

The rate will depend on each jurisdiction and the activity performed; however, the maximum rate is 10 per 1,000.

### GMF

This tax is charged on every financial transaction related to the withdrawal of funds from current or savings accounts and cashiers' checks. Transfers between checking and savings accounts of the same institution are exempted, provided they belong to the same account holder. Currently, the rate is 4 per thousand (4 x 1,000) over the amount of each transaction.

### Property Tax

This tax is assessed on real estate properties located within each municipality. The tax is collected and managed by the municipality where the real property is located. Property tax paid during the tax year is deductible at 100% for purposes of income tax provided that it has to be connected to the taxpayer's income producing activity.

### Formal tax obligations

Domestic companies or branches of foreign companies are subject to a series of formal obligations. These include, obtaining the corresponding taxpayer identification number, procuring an authorization for issuing invoices, reporting to tax authorities the operations for the fiscal year (filing of exogenous information), filing of regular

tax returns and acting as withholding agents of income tax and ICA over payments made to third parties and in some cases acting also as VAT withholders.

### Transfer Pricing

Transfer pricing regulations have been in force in Colombia since 1 January 2004 and apply to operations with financially related third parties or affiliates abroad, with residents of tax havens and over operations conducted between taxpayers located at free-trade zones with financially related parties located in Colombia.

### Country by country report

The country-by-country report will provide to the tax authority information of the total revenue of the entity and its related parties, earning before taxes, taxes generated and paid, equity, retained earnings, number of employees, among others. In Colombia it applies to those multinational companies with combined revenues reaching US\$900 million.

### Foreign assets return

Taxpayers who have assets abroad worth approx. US\$21,000 must file a return detailing the assets.

### Double Taxation Treaties

These agreements seek to avoid double taxation and prevent tax evasion over Income Taxes. Colombia entered treaties with Spain, Chile, Portugal, Korea, India, Mexico, Czech Republic, Canada, Switzerland, Japan, Italy, France, United Kingdom and Northern Ireland, United Arab Emirates and with the Andean Community.

### Free Trade Zones

Free trade zones are excluded zones (like if there were outside the territory by legal fiction). The same are managed by an operator. Within its boundaries there are some companies which can carry industrial or commercial activities or render services, under a special tax, customs and of foreign commerce normativity. In Colombia, there are 26 Free Trade Zones. It is worth mentioning that it is also allowed to establish offshore Free Trade Zones dedicated

exclusively to the activities of technical evaluation, exploration and production of hydrocarbons, also activities of logistics, compression, transformation and other activities directly related to the offshore hydrocarbons sector.

## HR/ Labour Law

### **Employment law**

A foreign company hiring workers in Colombia may register a local branch or incorporate a Colombian company, which will be the employer.

Under Colombian law a work week is max. 48 hours and 8h per day.

Employees' rights have a significant constitutional and legal protection. The prerogatives granted by law cannot be waived or negotiated, and employees have the right to stability and to a vital and changeable remuneration in accordance with the quality and quantity of their job.

Annually, the government and work groups agree on the legal minimum monthly salary for workers. In the absence of an agreement, the government fixes the minimum salary and, in both cases, it is incorporated in a decree.

The minimum monthly wage fixed for 2021 is COP \$908,526 (approximately US\$267), and the transportation allowance is COP \$106,454 (approximately US\$31).

Night work, work on Sunday and holidays, as well as overtime work, must be paid with special surcharges.

### **Social security**

Workers are entitled to receive social benefits and statutory benefits based on Colombian labour law, which are paid in proportion to the time rendered. Those are: semi-annual bonus, severance, interests on severance and vacation. For salaries exceeding 10 times the minimum legal salary it is possible to pay a lump sum salary including all fringe benefits amounting to 30%. Aside salary, employer payments together including

healthcare, pension, labour risks, fiscal contributions amount approx. to 52%

### **Pension**

Pension contributions are paid to the governmental owned agency – Colpensiones, or private pension funds. The pension age is 57 for women and 62 for men.

### **Payroll**

When starting a business and employing staff, the company must register with the social security system, which handles pension, health, and professional risks contributions. Employees are taxed on income and withholding is mandatory by employers.

### **Visa and work permits**

VISITORS VISA OR "V" TYPE VISA: For foreigners who want to visit Colombia once or several times, or for a temporary stay in the country. The Type V Visa is valid for two years.

MIGRANT VISA OR "M" TYPE VISA: For foreigners wishing to enter or remain in the national territory with the intention of establishing themselves, and who do not meet the requirements to apply for the "R" type visa. The type "M" visa is valid for three years.

RESIDENT VISA - "R": For those who aspire to establish a permanent residence in Colombia; are a parent of a Colombian national by birth; accumulated residence time; foreign direct investment. The Type "R" visa is valid indefinitely.

WORK PERMIT: It is the duty of the foreign citizen and / or his/her contracting company to verify that he/she is the holder of permission to exercise his /her profession. Therefore, the pertinent steps must be undertaken in the respective Professional Council.

## Contact us

The information\* provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Colombia should seek professional advice from our member firms before making any business or investment decision.

### Contact our member firms in Colombia to discuss your requirements:

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\* Sources :National Statistics: DANE: <http://www.dane.gov.co>; Central Bank: [www.banrep.gov.co](http://www.banrep.gov.co); Tax and Customs Administration Agency: DIAN: [www.dian.gov.co](http://www.dian.gov.co) ; Immigration Agency: [www.migracioncolombia.gov.co](http://www.migracioncolombia.gov.co); Labor Statute: Law 3743 of 1950 as amended