

## Colombian tax reform: challenges and opportunities in 2013

### 哥伦比亚税务改革：2013 年的机遇和挑战

Colombia's congress is currently debating a comprehensive reform of its tax legislation. This article addresses the challenges and opportunities for foreign investors in view of the expected legal landscape.

哥伦比亚国会目前正在进行一项全面改革其税收立法的讨论。本文讨论了预期的法律环境对外国投资者面临的挑战和机遇。

Colombia's congress is currently debating a comprehensive amendment to the tax rules applicable in the country. Although it is currently unclear whether or not the amendment will be enacted and enter into effect on January 1, 2013 (and the specific drafting remains under debate), we provide a high-level summary of the changes that are expected to affect foreign investors and their local vehicles.

- The general income tax rate may be reduced from 33% to 25%.
- The tax on capital gains may be reduced from 33% to 10%.
- Profits from branches or other unincorporated entities may be reclassified as dividends, and therefore subject to the same tax treatment.
- Capital surpluses may be considered as part of the capital contribution, and therefore part of the cost. Furthermore, capitalization of the surplus would no longer be considered as taxable income.
- Contributions in cash or in kind to a Colombian entity may no longer be considered as a sale or divestiture for tax purposes, and would therefore be exempt from income tax.
- M&A operations may be taxed in view of their ultimate goal, that is, as acquisitions or reorganizations. Generally, M&As would be deemed as acquisitions when made between unrelated parties, while M&As made between entities pertaining to the same beneficiary would be considered reorganizations. The latter would not be subject to income tax.

- Permanent establishment rules may be created establishing an autonomous taxable presence regime in Colombia. Without the proposed amendment, the tax consequences from engaging in a trade or business in Colombia would be determined through corporate analysis.
- M&A transactions made between foreign entities with Colombian assets may be considered as a local divestiture and therefore subject to income tax rules.
- Strict rules on the deductibility of interest payments are being deliberated, which would require that specific debt-to-equity ratios be met in order to benefit from the deductions.
- A broad substance-over-form regulation designed to prevent abuse is also being considered, which would mirror sophisticated tax systems in developed countries.

As is clear from the above, the business environment in Colombia is expected to change drastically in the near future, perhaps as soon as 2013. Careful assessment of investment alternatives must be made in order to benefit from the opportunities inherent to the proposed amendments, and to avoid unfavourable consequences.

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