

## 6. Tax system

The Colombian tax system establishes taxes at a national level and taxes at a sub-national level (departmental and municipal).

The main national-level taxes are the Income Tax and the supplementary Capital Gains Tax, the Equity or Net Assets Tax (temporarily in effect), the Sales Tax or Value Added Tax ("VAT"), the Tax on Financial Transactions and the Stamp Tax. Among the sub-national level taxes are: the Industry and Commerce Tax, the Property Tax and the Registry Tax.

In order to avoid double taxation and prevent tax evasion in matters of Income Tax and Net Assets Tax, Colombia has been advancing in the negotiation of international treaties. To date are signed treaties with Spain, Canada, Chile and Switzerland (only the first one is in force) and under negotiation are those with Mexico, Germany, Netherlands and India.

### 6.1. Income Tax and Capital Gains Tax

The Income Tax is imposed on earnings and profits obtained by taxpayers where the same are capable of enriching the taxpayers and are derived from their ordinary operations. On the other hand, the Capital Gains Tax taxes certain extraordinary transactions of the taxpayers beyond the scope of their ordinary operations.

In the past, the Income Tax included a supplementary remittance tax that was applied to the transfer of income or earnings abroad. Although this tax was repealed in the last tax reform of 2006 for branches of foreign companies, some of its effects may remain in force for some time with regard to profits obtained before 2007.

#### 6.1.1 General Features of the Income Tax and the Capital Gains Tax

Generally, income is the entry of resources that in the end produce increases in the gross assets of persons or companies. National companies and persons residing in Colombia are taxed on their Colombian source or foreign source income (regular income and capital gains). On the other hand, foreign companies are taxed only on their Colombian source or foreign source income (regular income and capital gains). Foreign individuals residing in Colombia are taxed on their foreign source income or capital gains, starting only from their fifth year of residence in the country.

Thus, while national companies are taxed both on their Colombian source and foreign source income, branches of foreign companies located in Colombia are taxed only on their Colombian source and foreign source income and capital gains.

As a general rule, the income tax is for annual periods and the annual period coincides with the calendar year. There are exceptions for cases in which the taxpayer has not existed during the entire calendar year, as in the case of incorporation or liquidation of companies or branches. In these events, the income tax is determined for the corresponding fraction of the year.

##### 6.1.1.1 Colombian source income

Colombian legislation establishes the following main categories of income that qualifies as "Colombian source income":

- The income derived from the exploitation of tangible and intangible property within the country.
- The income derived from the provision of services within Colombian territory. Similarly, income derived from the provision of technical services, technical assistance, or consulting, whether done in the country or abroad, is considered income from a national source.
- The income derived from the sale of tangible and intangible property that is in the country at the moment of sale.

##### 6.1.1.2 Income that does not qualify as Colombian source income

The following cases, among others, do not qualify as foreign source income:

- Income obtained from external debt. Interest produced by this external debt is not taxed with income tax.
- Income originated in international leasing contracts to finance investment in machinery and equipment related to export processes or activities considered of interest for the economic and social development of the country.
- Income derived from technical services of repair and maintenance of equipment carried out abroad.

## 6.1.2 Income Tax Rates and Taxable Base

Starting in the taxable year 2008, the income tax rate is 33%.

The Colombian legal system establishes two ways for determining the taxable base for income tax purposes: the ordinary system and the presumptive income system.

### 6.1.2.1 Ordinary system of determination of taxable income

This system takes into account all revenue or income, ordinary and extraordinary, which is realized during the taxable year and is capable of producing an increase in net assets at the moment of realization, and which has not been expressly excluded from taxation. From the revenue, refunds, rebates and discounts are deducted to obtain a net revenue amount. From net revenue, the costs incurred and associated with such revenue are subtracted, in order to obtain gross income. From gross income, the accepted deductions are subtracted to obtain net income. Apart from the legal exceptions, net income is the taxable income on which the rate established by law is applied.

<b>DETERMINATION OF ORDINARY TAXABLE INCOME</b>	
GROSS REVENUE	
Minus: Discounts	
Refunds	
Rebates	
<hr/>	
NET REVENUE	
Minus non-taxable income or capital gains	
<hr/>	
NET TAXABLE REVENUE	
Minus: Costs	
<hr/>	
GROSS INCOME	
Minus: Deductions	
<hr/>	
NET INCOME	
Minus: Exempt income	
<hr/>	
NET TAXABLE INCOME	
Multiplied by: Rate	
<hr/>	
BASIC INCOME TAX	
Minus: Tax credits	
<hr/>	
NET INCOME TAX	

### 6.1.2.2 Presumptive income system

The presumptive income system constitutes an alternate method for determining the income tax, so as to ensure that this tax is not lower than 3% of the net assets as of December 31 of the year prior to the current taxable year. In other words, presumptive income is the minimum estimated amount of profitability of a taxpayer based on which the law expects to quantify and collect the income tax. Presumptive income is not the income generated by the activity of the taxpayer, but rather, it operates by virtue of the law (legal presumption) and under the parameters established by the law.

From the total amount of net assets, which is the base to calculate presumptive income, the following amounts, among others, can be subtracted:

- The net asset value of the shares owned in national companies.
- The net asset value of the assets affected by force majeure.
- The net asset value of assets associated with operations in unproductive periods.

Each year, taxpayers must compare the value resulting from the application of the foregoing two systems. The income tax for the taxable year will be calculated on the higher value resulting from this comparison. If presumptive income is higher than the ordinary net income, the difference constitutes an excess of presumptive income, which can be carried forward (adjusted for inflation) to any of the following five (5) taxable years and set off against the net income determined by the taxpayer.

### 6.1.3 Non Taxable Income

There are under tax legislation certain special tax treatments that allow the exclusion of certain income or revenue from the calculation of the taxable base. Among these revenues are dividends and shares in profits (as long as they are paid out from profits that have been taxed at the corporate level), certain profits on the sale of shares, the premium on shares placements, the capitalization of certain items, casualty insurance proceeds and the distribution of profits from the liquidation of companies.

### 6.1.4 Costs, Deductible Expenses and other Deductions

Costs are payments or charges incurred in the acquisition or production of goods, or to provide a service in order to obtain revenues. Costs having a causal nexus with the activity that produces the revenues are deductible, provided they are necessary, reasonable and provided they have been accrued or paid during the corresponding taxable year. It is understood that deductible costs accrue when the payment of same is actually made, in money or in kind, except for those costs incurred in advance. Costs incurred by taxpayers who use the accrual method of accounting are deemed to have accrued in the year or period in which the obligation to make the payment is created, even if the payment has not been made.

Expenses are all outlays that are made in carrying out the administration, sales, research and financing operations of an economic entity. With regard to expenses, tax law establishes that all expenses made during the taxable year in the course of an income producing activity are deductible, as long as a causal nexus with such activity exists and provided that they are necessary and reasonable.

The following are examples of deductions:

#### 6.1.4.1 Wages and payroll taxes (“payroll-based contributions”)

Wages paid to workers are deductible as long as the employer has paid all the payroll taxes (“*aportes parafiscales*”) (ICBF, SENA, Family Subsidy and Social Security). These contributions are also deductible.

#### 6.1.4.2 Taxes paid

- One hundred percent (100%) of the industry and commerce tax (and the supplementary billboard tax) and 100% of the real property tax actually paid in the respective taxable year, provided they have a causal nexus with the economic activity of the taxpayer.
- 25% of the tax on financial transactions actually paid during the fiscal period, whether or not there is a causal nexus with the economic activity of the taxpayer (See Tax on Financial Transactions – GMF).

#### 6.1.4.3 Interest

Interest accrued under obligations entered into with entities subject to oversight of the Office of the Financial Superintendent is deductible in its entirety.

#### 6.1.4.4 Expenses abroad

Taxpayers may deduct expenses abroad that have a causal nexus with their foreign source income, provided that the corresponding withholding tax has been collected when such payment constitutes taxable income in Colombia for the beneficiary of the expense.

The following expenses abroad are deductible without any withholding tax being required:

- a. Payments to brokers abroad for the purchase or sale of merchandise, raw materials, or other types of goods, to the extent they do not exceed the percentage of the related operation value determined by the Ministry of the Treasury and Public Credit for the taxable year.
- b. Interest on short term credit (for one year or less) on the import or export of goods or bank overdrafts, to the extent they do not exceed the percentage of the amount of each credit or overdraft determined by the central bank (*Banco de la República*).

The costs or deductions for expenses incurred abroad to obtain foreign source income cannot exceed fifteen (15%) percent of the net income of the taxpayer, calculated before subtracting said costs and deductions, except in those cases expressly determined by law.

#### 6.1.4.5 Donations

Donations made to certain entities expressly determined by law are deductible for income tax purposes in the period or year in which the donation is made.

#### 6.1.4.6 Investment in scientific and technological development

Taxpayers that make investments, directly or indirectly, in projects that qualify as scientific, technological or which involve technological innovation or professional training projects of governmental, public or private institutions of higher education, will have the right to deduct from their net income 125% of the amount invested in the taxable year in which the investment was made. This deduction cannot exceed 20% of the taxpayer's net income, determined before subtracting the amount of the investment.

#### 6.1.4.7 Investment in environmental control and improvement

Companies that make direct investments for the control and improvement of the environment will have the right to deduct the amount of such investment for the taxable year in which they were made. The amount of the deduction for this item cannot exceed 20% of the net income, calculated before subtracting the amount of the investment.

#### 6.1.4.8 Investment in real productive fixed assets

40% of the amount of the investments made in real productive fixed assets acquired in the taxable year may be deducted, even if under financial leasing arrangements, when they are used directly and permanently in the income producing activity of the taxpayer. The deduction applies even if it results in a tax loss. The application of this benefit does not generate any taxable income for the partners or shareholders. Those who purchase fixed assets subject to depreciation and claim this special deduction can only depreciate such assets by the straight line method. In addition to the deduction of 40% of the invested amount (tax benefit), the depreciation expense related to the assets can also be deducted.

#### 6.1.4.9 Tax loss carryforwards

Starting in 2007 tax losses (losses for income tax purposes) may be carried forward and set off against the ordinary taxable income obtained by the taxpayer in any subsequent taxable period. Companies may set off their tax losses against any ordinary net income that they obtain in subsequent fiscal periods, without prejudice to the computation of the presumptive income for the period. These tax losses cannot be transferred to the shareholders or company members.

In the case of mergers and spin-offs, the absorbing or resulting company may set off against net income the tax losses incurred by the merged or spun-off companies up to a limit equal to the participation of the assets of the merged or spun-off companies in the assets of the absorbing company or the company resulting from the process of spin-off or merger.

#### 6.1.4.10 Amortization of investments

Amortization is the distribution of the cost of an intangible asset during its useful life or during any other period of time, determined by valid criteria. According to the current tax system, necessary investments, that is, those made in furtherance of the business or activity of the taxpayer, other than investments in land or depreciable fixed assets, are amortizable. The foregoing includes disbursements made for the purpose of the business or activity, susceptible to impairment, that must be recorded as assets for their amortization in more than one year or fiscal period or that must be deferred because they constitute preliminary expenses of installation, organization or development.

These investments must be amortized in a term not shorter than five (5) years, except when, due to the nature or duration of the business, they need to be amortized in a shorter period of time.

#### 6.1.4.11 Depreciation

Reasonable amounts of depreciation caused by the normal wear and tear or obsolescence of fixed assets used in business or income producing activities are deductible in the amount or percentage necessary to amortize 100% of the cost during the useful life of such property.

#### 6.1.4.12 Exchange rate differences

Payments made in foreign currency are estimated at the acquisition price in Colombian currency. When there are debts or assets in foreign currency, their amount is adjusted at the market rate of exchange [the so-called "*tasa representativa del mercado*"] on the last day of the year, and any difference is taxable or deductible, as the case may be.

### 6.1.5 Exempt Income

The law establishes the cases of exempt income described below:

- a. Publishing companies dedicated to the publication of books, magazines, brochures or collectible, numbered publications of a scientific nature, are exempted until year 2013.
- b. The payments of principal and interest, commissions and other fees related to public foreign credit operations and similar operations, are exempt from all types of taxes, fees, assessments and national levies, as long as they are paid to persons who do not have a residence or domicile in the country.
- c. The sale of electric energy generated from wind, biomass, or agricultural waste produced by generating companies is exempt for a period of 15 years, provided the company sells the energy itself and issues and negotiates Certificates of Reduction of Greenhouse Gasses.
- d. Revenue generated by new exploitations of slow yield crops and plantations, in cocoa, rubber, palm oil, citrus and other fruits, as determined by the Ministry of Agriculture and Rural Development, is exempted.
- e. River transportation services with shallow draft vessels and barges are exempt for a period of 15 years, starting in 2003.
- f. Hotel services offered in new hotels that are built within a period of 15 years counted from 2003, for a term of 30 years counted from the date on which the new hotel start its operation (maximum until year 2048).
- g. Hotel services offered in remodeled and/or enlarged hotels, within 15 years, starting in 2003, for a term of 30 years, based on the cost of the remodeling and/or enlargement prorated to the tax basis of the remodeled and/or enlarged facility.
- h. Ecotourism services for 20 years starting in 2003.
- i. Investment on new forestry plantations, sawmills and plantations of timber-yielding trees.
- j. New medicinal and software products developed in Colombia and protected under new patents registered with the authorities, with a high content of national research and technology, until 2013.

### 6.1.6 Tax Credits

The law has established that some items may be subtracted from the tax calculated by the taxpayer:

- a. Tax credits for income taxes paid abroad by domestic taxpayers that receive foreign source income.
- b. Tax credits to air and maritime Colombian transportation companies.

- c. Tax credits for tree plantations in reforestation areas.
- d. Tax credit for the sales tax paid on the importation of heavy equipment for basic industries.
- e. Tax credit for investment in the stock market of shares of companies dedicated to agricultural industries.

In no case can the tax credits exceed the amount of income tax. The tax liability after all tax credits cannot be lower than 75% of the income tax calculated by the presumptive income method on net assets, before any tax credit.

## 6.1.7 Transfer Pricing

Colombian law on transfer pricing matters was written based on the guidelines of the Organization for Economic Cooperation and Development – OECD – and went into effect in 2004.

With the entry into force of this system, the income taxpayers who carry out operations with foreign related parties must determine their income, costs and deductions taking into account the prices and profit margins used in comparable operations with or between independent parties.

Additionally, income taxpayers who carry out operations with related parties with offices or residence abroad, with gross assets of more than US\$ 882,160 and with gross revenue in excess of US\$ 538,118 are required to file an annual informative report of all of the operations carried out with their related parties and to prepare for those transaction that exceed the sum of USD \$88,216 and file previous request of the tax authority probative documentation in order to prove the correct application of the current transfer pricing regulations. This probative documentation must be kept for a period of five (5) years beginning on January 1<sup>st</sup> of the year following its preparation.

## 6.1.8 Capital Gains Tax

As a complement to income tax, the capital gains tax is imposed on earnings that are obtained from certain operations expressly defined by the law.

Capital gains cannot be reduced by the ordinary costs and deductions taken by the taxpayer in the same manner as capital losses cannot be taken into account for purposes of computing the ordinary taxable income of the taxpayer.

The most relevant operations that are subject to the capital gains tax include the following:

- a. Gains (the excess of the sales price over the tax basis of the asset) derived from the sale of fixed assets of the taxpayer owned for a period of two or more years.
- b. Gains originated in the liquidation of any type of company in excess of the invested capital, provided that the same do not correspond to income, reserves or earnings distributable as non-taxable dividends, and provided that the company has completed at the time of its liquidation two or more years of existence.
- c. Gains obtained from inheritances, legacies, donations, as well as those received in the manner of spousal forced shares.
- d. Gains obtained from lotteries, prizes, raffles and the like.

For both national and foreign legal entities, the flat rate on capital gains is 33%.

## 6.1.9 Withholding Taxes

The Colombian tax system provides for withholding taxes as a method of advance tax collection. This mechanism authorizes, by law or regulation, a private or public entity, under certain special conditions, to collect or withhold certain taxes. According to the Tax Code, the withholding agents are (inter alia) the legal entities that due to their activities participate in acts or operations in which they must withhold the tax (or a portion of it) by express order of the law.

The main obligations of the withholding agents in this regard consist of carrying out the applicable withholding, deposit the withheld amounts where and when the government determines, file the monthly withholding tax returns and issue the corresponding withholding tax certificates.

Notwithstanding the above, it is important to point out that given that there are differential rates for local transactions and special rates for payments abroad, in order to determine the applicable withholding tax rate for a given transaction, it is necessary to determine its nature.

## 6.2 Net Assets Tax (Equity Tax)

For taxable years 2007, 2008, 2009 and 2010, corporate and individual income taxpayers that are filers and which net assets as of January 1, 2007 amount to Col\$3,000,000,000 (approximately US\$ 1,200,000) are taxed with the net assets tax. The rate of the net assets tax is 1.2% per each year.

The taxable base for this tax is the amount of the net assets of the taxpayer as of January 1, 2007, excluding the net asset value of the shares held in Colombian companies, as well as the first Col\$ 220,000,000 (approximately US\$ 88,000) of the value of the taxpayer's house or apartment (in the case of individuals). The date of accrual of the tax is January 1 of each year, for the taxable years of 2007, 2008, 2009 and 2010.

This tax is not deductible or creditable for income tax purposes, and it cannot be set off against any other taxes either. However, the law authorizes the taxpayers to charge this tax against the asset revaluation account, without affecting the income statement for the year.

## 6.3 Sales Tax (VAT)

This is a national level tax that taxes mainly the sale of items of tangible personal property that are not fixed assets and have not been excluded, the provision of services within the national territory and the importation of tangible personal property that has not been expressly excluded.

The sales tax is structured as a value added tax in Colombia; therefore, for purposes of VAT calculation, the VAT taxpayer is allowed to credit against the VAT payable the VAT that he has paid on goods and services acquired and used in the production of income from VAT-taxable operations.

The persons liable to the tax authorities in Colombia for the collection and payment of VAT are those who carry out any taxable operations, despite the fact that the person who bears the economic burden of this tax is the final consumer. Thus, the following are the VAT taxpayers:

- In sales transactions, the merchants, whether distributors or manufacturers
- Whoever renders a service that is not excluded from payment of this tax
- The importers

In the case of sales transactions and the provision of services, the taxable base generally comprises the total value of the transaction. The taxable base of this tax includes the goods and services acquired for the account of or on behalf of the beneficiary of the sale or the service. Additionally, there are special taxable bases for certain types of goods and services.

There is a general VAT rate that applies to the majority of transactions, presently 16%, and there are some differential rates that vary from 1.6% to 35%.

### 6.3.1 Exclusions or Transactions that do not trigger Sales Tax

#### 6.3.1.1 Goods in respect of which no sales tax accrues:

- a. National or imported equipment and materials destined for the construction, installation, assembly and operation of environmental monitoring and control systems.
- b. Importation of raw materials and supplies under the so-called Vallejo Plan – a special importation and exportation program –, where these materials and supplies are incorporated into products that will subsequently be exported.
- c. Temporary importation of heavy machinery and equipment for basic industries provided that the M&E are not produced in the country. It is understood that basic industries are mining, hydrocarbons, heavy

chemistry, iron and steel industry, metallurgy, extraction of natural resources, generation and transmission of electrical energy, and obtaining, purifying and conducting hydrogen oxide.

- d. Importation of machinery and equipment not produced in the country, for recycling and processing of waste and refuse.
- e. Ordinary importations on the part of highly exporting users – “ALTEX”, of industrial equipment not produced in the country destined for the transformation of raw materials, for an indefinite period of time.
- f. Sales of fixed assets.

### 6.3.1.2 Excluded Services

- a. Public and private, national and international freight transportation.
- b. Public transportation of passengers in the national territory by water or land.
- c. National air transportation of passengers to national destinations, where there is no organized land transportation.
- d. Transportation of gas and hydrocarbons.
- e. Interest and other financial income from credit operations and financial leasing.
- f. Medical, dental, hospital, clinical and lab services for human health.
- g. Public utilities including energy, water, sewage, street cleaning, garbage collection and gas distribution.

### 6.3.1.3 Excluded Importations

The VAT- excluded importations are explicitly listed in the law. Among the importations that do not trigger VAT are the importations where there is no clearance through customs (short term temporary importations), importation of heavy machinery and equipment for basic industries, importation to special customs zones, etc.

## 6.3.2 Creditable Taxes

The sales tax invoiced to the VAT taxpayer on acquisitions of personal property and services is VAT- creditable, as is the tax paid on the importation of personal property. VAT credits are granted in regard to the acquisition of personal property and services and imports only where the same are to be treated as costs or expenses of the company for income tax purposes and are destined for VAT-taxable operations. In the case of VAT paid on inputs for VAT-exempt operations (transactions), a VAT credit is available only where the taxpayer who carries out the exempt transaction is an exporter or producer of VAT-exempt goods. In the case of exporters, the total VAT invoiced is creditable provided that the related inputs (goods or services) are chargeable as production costs or as cost of goods sold of the exported goods, and provided that the rate of said VAT is the same that would have applied to the corresponding operation. The VAT paid may be entered on the books in the tax period corresponding to the date of accrual of the tax or in any of the two succeeding bi-monthly periods; and it can be claimed as a credit on the tax return of the period in which it was entered on the books.

No VAT credit is allowed for the VAT paid in the following transactions:

- Acquisition of fixed assets
- Unrecoverable trade receivables (bad debts)
- Acquisitions made from suppliers that are not registered as VAT taxpayers
- Acquisitions made from fictitious or insolvent suppliers

## 6.3.3 Determination of VAT

VAT is determined by the difference between the tax accrued on taxable transactions and the VAT credits authorized by law, as follows:

#### VAT DETERMINATION

INCOME FROM TAXABLE TRANSACTIONS

Times: Rate

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TAX ACCRUED

Minus: Creditable taxes

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VAT PAYABLE (VAT LIABILITY)

## 6.4 Stamp Tax

Stamp tax accrues on public instruments or private documents executed or accepted in the country or which are executed abroad but are performed or create obligations in the national territory, and which evidence the creation, existence, modification or extinction of obligations, as well as their extension or assignment, when their value exceeds 6,000 "Tax Value Units" ("TVU") (equal to Col\$ 142,578,000 for taxable year 2009), and provided that the person that executes, accepts or subscribes the document is a public entity, a legal or similar entity, or an individual who qualifies as a merchant and who earned gross income (revenue) or held gross assets in excess of 30,000 TVU in the prior year (with 30,000 TVU being equal to Col\$ 661,620,000 for taxable year 2009).

Instruments evidencing the creation, existence, modification or extinction of obligations related to foreign debt transactions are not subject to the stamp tax.

For taxable year 2009 the rate is 0.5% of the total instrument value. For year 2010 the rate will be 0%.

In the case of contracts or other types of agreements between private parties and government agencies, private parties must pay only half of the stamp duties, that is, their share in the business.

The following, among others, are exempted from this tax:

- a. Private documents through which the parties agree to the exportation of domestically produced goods and services.
- b. Commercial offers accepted through purchase orders or the sale of goods and services.

## 6.5 Financial Transactions Tax (GFM)

The tax on financial transactions is a permanent tax on financial transactions the collection of which is the responsibility of the financial entities and the Central Bank (*Banco de la República*).

The taxable event is the carrying out of financial transactions that involve the disposal of resources deposited in checking or savings accounts as well as in deposit accounts with *Banco de la República*, and the issuance of cashier's checks. Given that this is the case of an instantaneous tax, the same accrues at the moment in which the resources that pertain to the financial transaction are disposed of.

The tax rate is four tenths of one percent (0.4%) of the total amount of the financial transaction through which the resources are disposed of. Starting in 2007, 25% of the total tax paid is deductible for income tax purposes, regardless of whether the transactions have a causal nexus with the income producing activity of the taxpayer.

This tax is collected through withholding, and the withholding agents are *Banco de la República* and the other financial entities subject to oversight by the Office of the Financial Superintendent and the Office of the Superintendent of Cooperatives where the respective checking account, savings account, deposit account or collective portfolio are held, or where the accounting transactions that imply the transfer or disposal of resources are booked.

The law establishes a series of operations and transactions that are exempted from this tax.

## 6.6 Industry and Commerce Tax

This is a sub-national level tax that is imposed on revenue obtained from the exercise of industrial, commercial or service activities that are carried out directly or indirectly by individuals, legal entities or unincorporated entities in any of the Colombian municipal jurisdictions. The definitions of the above types of activities are shown below according to Colombian law:

### 6.6.1 Industrial Activity

The following qualify as industrial activities: any activities that can be described as the production, extraction, making, preparation, repair, manufacturing or assembly of any type of materials or goods and generally any transformation process, as simple as it may be.

### 6.6.2 Commercial Activity

The following qualify as commercial activities: any activities that can be described as sales, purchase and resale or distribution of goods or merchandises, both wholesale and retail. Commercial activities are also those defined as such by commercial laws.

### 6.6.3 Service Activity

The following qualify as service activities: All the tasks, labor or work executed by an individual or legal entity or by an unincorporated entity, without a labor relationship existing with the party that acquires the services, that generate a consideration in money or in kind and that involve the specific obligation to do something, regardless of whether the material or intellectual element prevails in the activity.

The taxable base for this tax is the total amount obtained by the taxpayer as derived from subtracting from ordinary and extraordinary revenue the applicable deductions, exempt amounts and excluded amounts. The tax rate is applied to this amount.

The industry and commerce tax rate is determined by each municipality, with the municipality being allowed to establish any rate within the following limits established by law:

- For industrial activities, from 0.2 to 0.7 percent (from 0.2% to 0.7%)
- For commercial and services activities, from 0.2 to 1 percent (from 0.2% to 1%).

## 6.7 Property Tax

The property tax is imposed on real property located in urban, suburban or rural areas, whether or not constructed land. Therefore, the property tax payers are the owners or holders of the real property. This tax is justified because real estate is the hallmark of concentration of income and it is on account of that fact that real property is subject to this tax.

The taxable base of this tax is the current cadastral value of the property, as adjusted for inflation. In zones such as the Capital District of Bogota, the taxable base is the value of the property as appraised by the taxpayer directly.

The applicable rate depends on the nature of the property; that is to say, if it is rural, urban or suburban, and varies between 0.4 percent and 1.2 percent (0.4% and 1.2%) taking into account the economic use of each property.

This tax is 100% deductible for income tax purposes, as long as there is a causal nexus with the income producing activity of the taxpayer.

## 6.8 Double Taxation Treaties and Decision 578 of the Andean Community

Colombia has been negotiating international treaties in order to avoid double taxation and prevent tax evasion in respect of the income tax and the net assets tax, particularly in cross-border operations.

At the level of the Andean Community, Colombia adopted Decision 578, which is the new supra-national Andean legal system designed to avoid double taxation and prevent tax evasion among member countries of the Andean Community (Colombia, Peru, Ecuador and Bolivia). This Decision is not, in a strict sense, a treaty to avoid double international taxation in respect of the income tax and the net assets tax; rather, it is a supra-national decision adopted by the Andean Community Commission which overrides the internal tax rules of the member countries; hence the application of the rules contained in the aforementioned Decision prevails.

With respect to the double taxation treaties signed by Colombia so far, besides avoiding double taxation and preventing tax evasion, they seek to eliminate barriers to the flow of capital, goods, technology and persons between the signatory countries. Additionally, these treaties allow for a better implementation of transfer pricing regulations, recognize the principles of non discrimination of nationals and non-residents with activities in the other country that is a party to the treaty, implement reciprocal cooperation procedures between tax authorities for the resolution of conflicts, consultations, exchange of information and assistance in the collection of taxes. To date, Colombia has signed treaties with Spain, Canada, Chile and Switzerland, with the first one being the only one in effect, and negotiations are under way for treaties with Mexico, Germany, Netherlands and India.