



Tax Bulletin

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I. 2014 Tax Reform: Bill Details

The National Government filed last Friday October 3, 2014 Bill Number 134 containing a new tax reform that will undergo the corresponding legislative process at the Congress of the Republic of Colombia. Taking into account the significance of this bill, below we provide a brief summary of the main topics of the same.

New Affluence Tax

The bill provides the creation of a new wealth tax termed "Affluence Tax", which will be assessed to income tax payers whose gross net worth as of January 1, 2015 adjusted for outstanding debts as of such date exceeds one billion Colombian pesos as per the following table:

Tax Base Ranges COP \$		Marginal Rate	Tax
Lower Limit	Upper Limit		
>0	<2,000,000,000	0.20%	(Tax Base) * 0,20%
>=2,000,000,000	<3,000,000,000	0.35%	((Tax Base - \$2,000,000,000) * 0,35%) + \$4,000,000
>=3,000,000,000	<5,000,000,000	0.75%	((Tax Base - \$3,000,000,000) * 0,75%) + \$7,500,000
>=5,000,000,000	And above	1.50%	((Tax Base - \$5,000,000,000) * 1,50%) + \$22,500,000

The effective tax for the following 4 years will be accrued annually until 2018 (on January 1st of each year).

In order to determine the tax base of the Affluence Tax (net worth as of 01/01/15 less debts), the bill defines the following as net worth items that may be excluded from the tax base:

1. For natural persons the first 12,000 UVT of the net worth value of the dwelling house or apartment.
2. The net worth value of shares, units or interest shares in national companies.
3. The net worth value of business contributions made by members, in case of cooperatives, its associations, unions, central leagues, higher level bodies of a financial nature, mutual associations, cooperative aiding institutions, and cooperative confederations, as provided under cooperative regulations and monitored by any superintendence or control body.
4. The net equity value of real properties for public use and benefit of public mass passenger transport companies, as well as the net equity value of land banks held by public territorial companies destined to priority housing.

This tax may not be offset with other taxes in it is not deductible or discountable from income tax or CREE tax under any circumstance.



The Affluence Tax is not payable by natural persons or business companies or entities not required to pay income tax, or foreign portfolio capital investors, event and convention centers where the Chambers of Commerce hold a majority interest and those incorporated as industrial and business companies of the Government or mixed economy (state-private) companies where the government interests exceeds 51%, authorized by the Ministry of Commerce, Industry and Tourism, as well as those entities undergoing liquidation, debtor reorganization plan, administratively compulsory liquidation, compulsory liquidation, or that have entered into restructuring or reorganization agreements and natural persons subject to insolvency regulations.

Tributary Normalization Supplemental Tax

This new tax has been provided in order to obtain more information in connection with assets held by Colombian tax residents which have not been previously reported (omitted assets). This tax is supplemental to the Affluence Tax, reason why it will be declared, calculated and paid with the return of such tax.

The tax rate will be applied over the equity value of the omitted asset as follows:

Year	Rate
2015	10%
2016	15%
2017	20%

Annual Declaration of Assets Abroad

From 2015 on income taxpayers being Colombian tax residents that own any type of assets abroad will be required to file a new return whose contents include:

- A detailed list, net worth, jurisdiction where same are located and type of assets owned as of January 1st of every year whose net worth exceeds 3,580 UVT.
- If the assets owned as of January 1st do not meet the aforesaid limit, the same will have to be declared in aggregate according to the jurisdiction where the same are located for their net worth value.

New criminal offense in tax matters: Omission of assets or inclusion of inexistent liabilities

A new criminal offense has been added that is committed when a taxpayer willfully omits assets or provides inaccurate information in regard to the same or reports inexistent liabilities for an amount equal to or exceeding 12,996 effective minimum legal monthly salaries and by doing the above the income tax, CREE tax of affluence and supplemental tax due thereby or the positive balance from any of the aforesaid taxes is affected. It is penalized by incarceration from 48 to 108 months and a fine of 20% the value of the omitted assets, of the value of asset misrepresented or the value of the inexistent liability.

The criminal action is extinguished by paying the respective obligation.

Surcharge to the income tax for equality - CREE



A CREE surcharge has been created for the tax years 2015, 2016, 2017 and 2018 to be paid by those taxpayers having a tax base in excess of one billion Colombian pesos, which will be paid in two annual installments. This surcharge will be marginally calculated as follows: (Tax Base - \$1,000,000,000) * 3,0%.

The surcharge is subject to a 100% advance of the same, taking as tax base the CREE reported for the immediately preceding year.

GMF (Tax on Financial Transactions)

The bill also provides the extension of the so called 4 per thousand (4 por mil) until 2018. The Tax on Financial Transactions which is accrued by the disposal of funds made by users of the financial system was created in 1998 as a temporary relief in light of the crisis in such sector yet it has been repeatedly extended through the years.

We will be monitoring progress of this project in the Congress of the Republic in order to report any new development in the legislative.

II. Issuance of the Income Code of the Department of Cundinamarca (Ordinance No. 216 of 2014).

The new code issued by the Departmental Assembly of Cundinamarca establishes, among other provision, the creation of the Tax Identification Registry of Cundinamarca ("RITCUN"), and new stamp taxed accrued from the issuance or signing of assessed acts and documents involving the entities of the Department of Cundinamarca.

III. Constitutional Court declares constitutional the rule on sub-capitalization included in Article 118-1 of the Tax Code.

In Sentence C-665 of September 10, 2014, the Court concluded that the contested rule in so far as establishing a limit over which interests generated from debts were not deductible did not contravene the constitutional precepts provided under the 1991 Political Constitutions, thus rejecting the alleged infringement of principles relating to freedom of enterprise and equity of the tax system.

IV. The "Agreement between the Government of the Republic of Colombia and the Government of the United States of America for interchange of tax information" is declared constitutional

In Sentence C-225 of 2014 the Constitutional Court conducted the constitutional review of Law 1666 of 2013 *"whereby approval is issued to the "Agreement between the Government of the Republic of Colombia and the Government of the United States of America for interchange of tax information" signed in Bogotá D.C. on March 30, 2001"* and such agreement itself, declaring the same to be aligned with the Political Constitution.

Upon concluding this stage, it will be necessary to complete the exchange letters notes by the US and Colombian representatives authorized for such purposes for the Agreement to become effective.



V. The Constitutional Court issues a pronouncement over the Income Tax for Equality – CREE (Sentence C-289 of 2014).

The Court examined the origin of the tax for equality – CREE - and underscored that the regulatory contents being challenged (Articles 24 and 25 – partially – of Law 1607 of 2012) are not intended to modify the precepts under the Budget Organic Law purportedly infringed, reason why the Court declared the same constitutional.

VI. Bonuses may be excluded from the base for paying payroll contributions, if such bonuses are agreed with employees to not constitute salary.

According to the ruling from the Council of the State, for the employer to exclude, as passive subject of payroll contributions, extra-legal bonuses expressly excluded by the parties as a salary factor from the payroll contribution base, it is necessary to evidence that it was agreed with its employees that such benefits would not constitute salary. (Council of State. Sentence 20030 of August 6, 2014).

VII. Portions of the Agreement setting terms for filing ICA tax returns in Barrancabermeja are temporarily suspended. (Council of State, Writ 20284 of June 11, 2014).

Sections 1, 2 and 4 of Article 63 of Agreement 029 of 2005 issued by the Municipal Council of Barrancabermeja were suspended under the aforesaid Writ. In this regard the Council of State provided: *“The Municipality of Barrancabermeja encroached the faculty to establish the elements of the industry and commerce tax, as the tax accrual period established under a law may not be amended by a rule having a territorial nature.”*

VIII. In determining the tax base of wealth tax in Colombia of those taxpayers who own properties in Bolivia, Ecuador and/or Peru, it is possible to exclude properties taxed in those countries.

According to the Council of State, under the provisions of Article 17 of Decision 578 of 2004, the State where the properties liable of being assessed with the wealth tax are located has the prevalent taxing authority, which is translated into the impossibility for such State to tax properties or rights located outside the same.

Accordingly, in order to tax all or part of the equity of a legal entity or person, being a resident or domiciled in Colombia, it is necessary to determine where the property or right liable of assessment is located to determine which member country of the Andean Community holds such taxing authority. In addition, Article 17 of Decision 578 of the Andean Community is applicable *provided a wealth tax does exist in the member country where the property subject matter of such assessment is located. If the property or right is not assessed by the State holding the priority tax authority “it may be assessed in other Member Country where the passive subject is located and such tax is enforced”*. (Council of State. Sentence 18884 of August 21, 2014).

IX. DIAN confirms its doctrine over contribution of public works for exploration and exploitation contracts. (Opinion 048027 of 2014).

The aforesaid authority has confirmed the above doctrine by concluding that the signing by government owned entities of exploration and exploitation contracts does not generate payment of such tax, or from the signing of contracts that are ancillary to the same and whose purpose is



understood to refer to the commercialization and other commercial and industrial activities of the same.

X. DIAN issues a pronouncement on the suitability of deductions for rent payments over business space paid to a natural person without being necessary to verify payment to the social security system.

The DIAN stated: *“As a general rule, in contracts, whether civil, commercial or administrative, involving the provision of a service by a natural person or private or public legal entity, regardless of the form under which such service is agreed, of the denomination, remuneration thereof or the elements or machinery used to provide the same, the contracting party shall verify affiliation and payment of contributions to the social security system owed by the contractor under the law.*

Otherwise, in those contracts no entailing provision of a personal service, such as those related to real property lease contracts, it is not applicable the verification provided under Article 3 of Decree 1070 of 2013, as amended by Article 9 of Decree 3032 of 2013”. (Opinion No. 048258 of August 2014).

XI. The statute of limitations concerning the penalizing administrative action in customs matters runs 3 years after the event or omission constituting an administrative customs infraction.

The DIAN has clarified that in order to apply correctly the statute of limitation of the penalizing administrative action provided under Article 478 of Decree 2685 of 1999, the customs authority must issue and make service of the resolution levying the penalty within the three-year term provided under the same, thus revoking Opinion 076 of November 16, 2007. (DIAN. Opinion 041678 of 2014).

Sincerely yours,
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