

# Tax Bulletin No. 60

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# Tax Rulings, Resolutions and Newsletters of the Colombian Tax Authority

## 1. The national tax on disposable plastic products used to pack or wrap goods should not be listed on the sales invoice.

The DIAN explains that, according to Law 2277 of 2022, the taxpayer and responsible for the national tax on single-use plastic products is the producer or importer. This means that the tax burden falls on the same natural person that produces or imports the taxed products. It is clarified that the tax is not deductible in the income and supplementary tax, so it does not affect the purchaser of the products from a tax point of view. However, it may have an economic impact if it is passed on as an increase in the value of the goods.

It is concluded that it is not necessary to itemize the tax in the sales invoice, since the buyer is not an economic taxpayer of the tax, although the tax may be reflected as an increased value of the goods. It is emphasized that, unlike other indirect taxes, the law does not require specific itemization of the national tax on disposable plastic products used for packaging or wrapping goods.

## 2. Conditions for exemption of VAT on imports by postal, express or courier services, the value of which does not exceed USD 200.

The DIAN deals with the exclusion of Value Added Tax (VAT) on imports originating in countries with which Colombia has Free Trade Agreements (FTA). The modification introduced by Law 2277 of 2022 extends this exclusion, allowing its application not only to imports originating in FTA countries, but also to imports from these countries, according to the terms of each FTA. To benefit from this exclusion, certain requirements must be met, including that the FTA excludes VAT on imports of certain goods, that the value of the goods does not exceed USD 200, that the goods are not subsequently traded, and other requirements established by the FTA. The document also highlights Article 5.7 of the Colombia-United States FTA, which establishes expedited customs procedures for express deliveries, eliminating the need for a certificate of origin for the exclusion of VAT

on express deliveries with a value of USD \$200 or less.

## 3. The DIAN adds Unified Concept No. 0106 of 2022 - Obligation to Invoice and Electronic Invoicing System.

Decree 2231 of 2022 regulates the changes to the Colombian Tax Code derived from Law 2277 of 2022, with emphasis on the determination of income tax and withholding tax for resident individuals. Among the measures highlighted is the obligation of individuals to declare, in writing and under oath, the non-application of certain costs or deductions in the determination of the tax. Specific limits are also established for exempt income and deductions to regulate their application and avoid possible abuses.

In addition, the Sub directorate of Standards and Doctrine of the DIAN issued Unified Concept No. 0106 to clarify several aspects related to invoicing, credit notes and statements in credit transactions. It emphasizes the validity of paper invoices in situations of technological inconvenience, the obligation to generate credit notes in case of rejection of electronic invoices and the importance of evaluating the obligation to issue electronic invoices for credit operations, especially for entities not supervised by the Superintendency of Finance of Colombia. Failure to generate credit notes may have VAT implications, maintaining the enforceability of the tax until the invoice is canceled.

## 4. The DIAN completes the General Concept of Income Tax of entities in relation to Law 2277 of 2022

The DIAN deals comprehensively with several tax changes introduced by Law 2277 of 2022 in relation to the income tax of legal entities. The fifth addition to the General Concept of Income Tax focuses on the requirements for the application of the 15% rate established for income derived from the provision of hotel services, ecotourism theme parks and agrotourism. The importance of analyzing the possibility of applying this rate depending on the type of contract entered is highlighted, in line with the principle of fiscal transparency.

It also discusses the concept of Significant Economic Presence (SEP), clarifying that it refers to a company's ability to generate income in a country without having a physical presence. The document emphasizes that the provisions of Decision 578 of the Andean Community and the Double Taxation Avoidance Agreements (DTAs) signed by Colombia and in force take precedence over Article 20-3 of the Tax Statute. In this regard, it emphasizes the importance of compliance with the DTAs signed by Colombia and the principle of good faith in the actions of public officials, in accordance with the Political Constitution. In summary, the document provides detailed information on the SEP and its relationship with international tax treaties.

## **5. The DIAN complements the General Concept on the Simple Taxation Regime - SIMPLE in relation to Law 2277 of 2022.**

The General Concept on the Simple Taxation Regime - SIMPLE, third addition, addresses issues related to the interpretation and application of the unified tax under this regime, in response to Law 2277 of 2022 and Constitutional Court ruling C-540/23. The tax rates are established for the years 2024 and beyond, emphasizing the obligation of taxpayers to calculate quarterly advances and highlighting the importance of preserving the fundamental rights to equality and legal certainty.

The unified tax rates under the Simple Taxation Regime for the taxable years 2024 and beyond are as follows, based on annual gross income in Units of Tax Value (UVT):

- Income between 0 UVT and less than 6,000 UVT: 5.9%.
- Income between 6,000 UVT and less than 15,000 UVT: 7.3%.
- Income between 15,000 UVT and less than 30,000 UVT: 12%.
- Income between 30,000 UVT and less than 100,000 UVT: 14.5%.

These rates are applicable to taxpayers who provide professional, consulting, and scientific services, with the emphasis on the intellectual factor over the material factor under the Simple Taxation Regime.

Regarding the declaration and payment of the unified tax under the Simple Taxation Regime, the General Concept states that, based on the revival of paragraph 3 of article 42 of Law 2155 of 2021, the taxpayers consulted must calculate and pay quarterly in accordance with article 910 of the Tax Statute. The applicable rates for these quarterly advances are as follows:

- Quarterly gross income between 0 UVT and less than 1,000 UVT (\$47,065,000 COP): 5.9%.
- Quarterly gross income between 1,000 UVT and less than 2,500 UVT (\$117,662,500 COP): 7.3%.
- Quarterly gross income between 2,500 UVT and less than 5,000 UVT (\$235,325,000 COP): 12%.
- Quarterly gross income between 5,000 UVT and less than 16,666 UVT (\$784,385,290 COP): 14.5%.



## Case Law of the Constitutional Court and the Council of State

### 1. The Council of State establishes that the marking of liquid fuels is not a taxable activity for VAT purposes.

The recent ruling of the Council of State deals with the legality of the administrative acts related to the modification of the VAT declaration submitted by Ecopetrol. The decision confirms the annulment of the administrative acts that rejected part of the declared income from excluded operations, specifically those related to the marking of liquid fuels and sales to International Marketing Companies (SCI).

The decision establishes that the marking of liquid fuels is not a taxable activity for VAT purposes and details the requirements and effects of the late issuance of the supplier certificate. It emphasizes the obligation of the SCI to issue a "Supplier Certificate" through the electronic computer services of the National Directorate of Taxes and Customs (DIAN) within the legal timeframe and according to the parameters established by the tax authority. In addition, the ruling emphasizes that the marking of liquid fuels is considered an activity of public interest to guarantee the legal origin of fuels in their distribution chain. The responsibility of Ecopetrol in the marking process is highlighted, including the approval and supervision of marking injection systems in wholesale distribution facilities, local refineries, and port storage facilities.

### 2. The Council of State establishes that the issuance of invoices and the delivery of goods during the audited period constitute sufficient evidence to prove "actual exportation"

The ruling deals with actual exportation and the issuance of supplier certificates: In connection with the exportation of goods, it has been determined that the issuance of invoices and the delivery of goods during the audited period constitute sufficient evidence to establish "effective exportation," even though supplier certificates were issued in a subsequent taxable biennium. This finding supports compliance with the substantive requirement for exemption under the current regulations. In addition, it is emphasized that, according

to the provisions of Articles 1 and 40-5 of the Customs Code, the actual export must take place within six months of the issuance of the supplier's certificate, an aspect that has not been the subject of controversy.

### 3. The Council of State addresses the relevant legal norms and regulations to determine whether a credit is economically linked to the country.

The opinion addresses the legal norms and relevant regulations to determine whether a credit is economically linked to the country. Reference is made to paragraph 6 of article 23-1 of the Tax Statute in force for the year 2018, which establishes that the interest generated by credits economically linked to the country is of national origin and, consequently, subject to taxation.

### 4. The Council of State declares null and void the phrase '*y sin que se requiera de acto administrativo que así lo indique*' (and without requiring an administrative act that indicates it) in Article 1.6.1.29.3 of Decree 963 of 2020.

The judgment deals with the annulment of the expression '*y sin que se requiera de acto administrativo que así lo indique*' (and without requiring an administrative act indicating so) in Article 1.6.1.29.3 of Regulatory Decree 963 of 2020, which regulates the mechanism for the automatic refund of balances in favor arising from self-assessments of income tax and sales tax.

The Court establishes that the adaptation of the procedure for the automatic refund of favorable balances to the ordinary refund procedure requires the issuance of a reasoned administrative act, which is communicated to the applicant by electronic means. Furthermore, it is established that the electronic communication can be carried out in accordance with the procedure provided for in Article 566-1 of the Tax Code, in conformity with Article 565 of the same Code. Consequently, it is considered appropriate to cancel the expression in article 1.6.1.29.3 of the Decree 963 of 2020.

## Projects of Decrees and Resolutions

### 1. Resolution:

The DIAN (National Tax and Customs Directorate) announced the value of the Tax Unit (UVT) for the year 2024. During 2024, the Tax Unit (UVT) was set at 47,065 Colombian Pesos, as established by the DIAN through Resolution 000187 of November 28, 2023.

### 2. The DIAN would adjust the rates of the National Tax on Gasoline, Diesel (ACPM), and the National Carbon Tax as of February 1, 2024

In its resolution project, the DIAN states that the tax base and the rate of the National Tax on Gasoline and Diesel (ACPM) will be calculated from February 1, 2024, based on the tax bases and rates outlined below:

The national tax on regular gasoline will be calculated at a rate of \$728.15 per gallon, on super gasoline at a rate of \$1,382 per gallon, and the national tax on ACPM will be calculated at a rate of \$696.95 per gallon. For other products defined as gasoline and ACPM according to Law 1607 of 2012, as amended by Law 1819 of 2016, other than premium gasoline, it will be calculated at a rate of \$728.15.

The ACPM blends are calculated as follows:

- ACPM at 98% or Biofuel at 2% will be taxed at \$683.01.
- ACPM at 96% or Biofuel at 4% will be taxed at \$669.07.
- ACPM at 92% or Biofuel at 8% will be taxed at \$641.19.
- ACPM at 90% or Biofuel at 10% will be taxed at \$627.25.



## Various Matters

### 1. OECD Issues Pillar II Administrative Circular.

The OECD has issued an important administrative circular entitled "Tax Challenges Arising from the Digitalization of the Economy - Agreed Administrative Guidance". This guidance focuses on the rules of the global model against base erosion (Pillar II), which aims to ensure that large multinational groups are subject to a minimum effective tax rate of 15% in each jurisdiction in which they operate.

The guidance addresses key issues such as the timelines for filing the Global Anti-Base Erosion (GloBE) Information Return and national disclosures, the treatment of hybrid arbitration agreements, and the interpretation and operation of the GloBE Model Rules. It also provides detailed examples illustrating the application of these rules to fact patterns.

In terms of deadlines, multinational companies are required to file the GloBE Information Return within 12 months of the end of the fiscal year, with specific deadlines for national notifications, which must be filed within 6 months of the end of the fiscal year. The guidance also emphasizes the importance of informing tax authorities about hybrid arbitration agreements and their treatment in tax returns. The guidance on the GloBE Model Rules is intended to provide detailed examples to encourage consistent interpretation, provide certainty to multinational groups, and facilitate coordinated outcomes.

For Colombians, this guidance provides a more robust framework for taxing the profits of international companies, promotes tax fairness and transparency, and provides clarity on tax challenges related to the digitalization of the economy.

### 2. PRESS RELEASE No. 004 of the Tax and Customs Directorate Regarding Taxation of Significant Economic Presence now in force in Colombia

In relation to the limits of tax benefits, article 259-1 of the Tax Statute establishes that the non-taxable income or occasional gains (INCRNGO) referred to therein are those classified as such in the tax regulations. In addition, it is mentioned that the limit applies only to national companies and their equivalents, permanent establishments of foreign companies and foreign legal entities, with or without residence in the country, that are taxpayers of income tax and complementary tax. This document provides detailed information on the limits of tax benefits and incentives and the application of such limits to certain taxpayers subject to Income Tax and Complementary Tax.





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- Advice to non-profit entities in aspects related to their establishment and audit.

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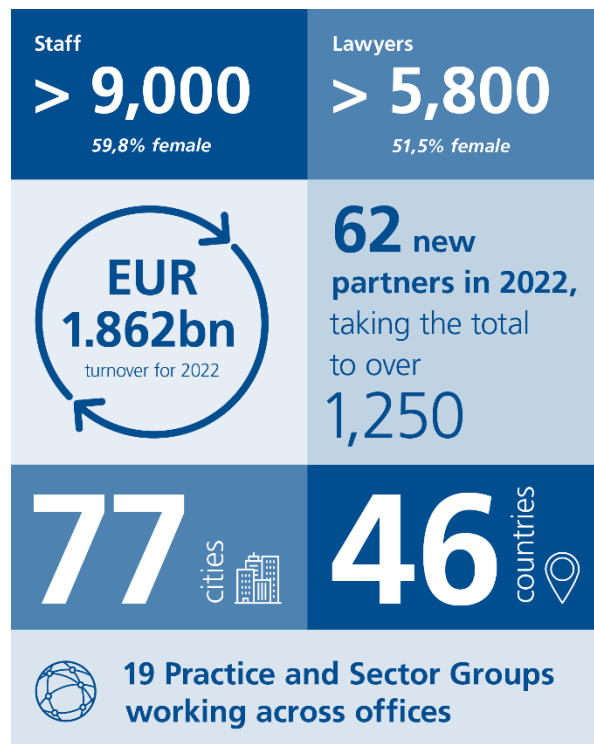
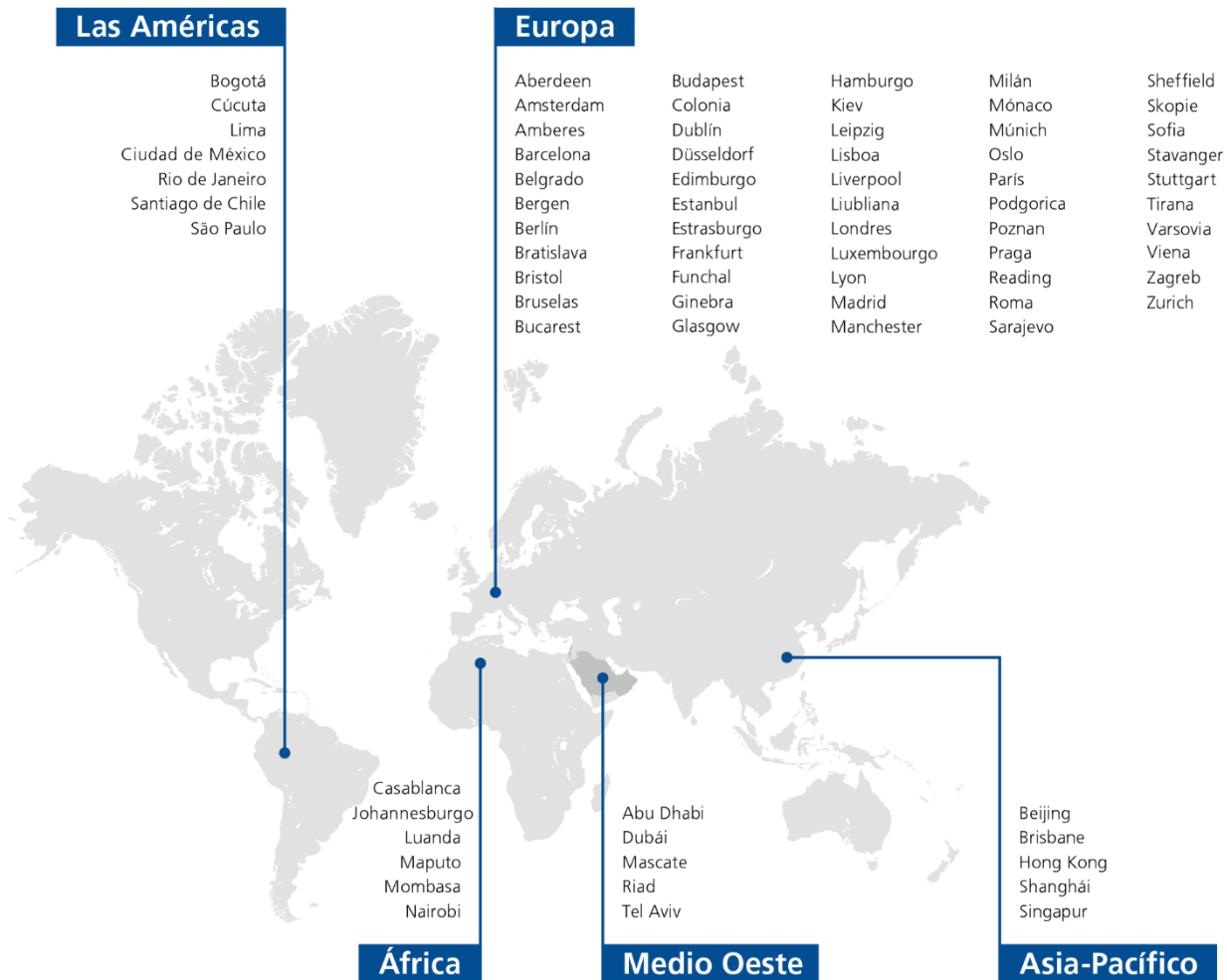
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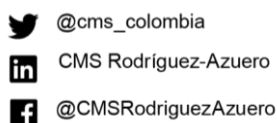
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