

2011

Colombian Corporate Taxation Overview

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TAX TEAM

Partners:	Alfredo Lewin	alewin@lewinywills.com
	Laureano Gómez	lgomez@lewinywills.com
	Adrian Rodríguez	arodriguez@lewinywills.com
	Luz Clemencia Alfonso	lcalfonso@lewinywills.com
Associates:	Juan P. Wills	jwills@lewinywills.com
	Andrés González	agonzalez@lewinywills.com
	Cristina Carrillo	ccarrillo@lewinywills.com
	Johanna Betancourt	jbetancourt@lewinywills.com
Of-counsel:	Maria del Pilar Abella	mabella@lewinywills.com
	Andrés Forero	aforero@lewinywills.com

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Highlights				
National Level				
Corporate Income Tax			33%	
Free Trade Zones Reduced Corporate Income Tax Rate			15%	
Capital Gains Tax			33%	
Regular Withholding Taxes on Cross-border				
- After Tax Dividends (if untaxed at Corporate Level)			0% (33%)	
- Branch Profits			0%	
- Interest			<p>In general, In-bound credit facilities and leasing transactions, are subject to a 14% withholding.</p> <p>Interest payments on certain Qualified Credit Facilities continue to be not subject to Colombian withholding tax.</p>	
- Royalties (on software)			33% (26.4%)	
- Technical Assistance, Technical and Consulting Services			10%	
- Imports			no withholding	
- Tax Havens			33%	
Tax Loss Carry-forward Term			Unlimited	
Tax Loss Carry-back Term			not available	
Transfer Pricing Rules			yes, OECD-like	
Tax-free Reorganizations			Statutory Mergers, Statutory Divisions, Transformations, and cash-for-stock reorganizations of "simplified stock companies"	
General VAT Rate on Sales, Services and Imports			16%	
Custom Duties			0% – 20%	
Bank Debits Tax			4 per thousand	
Stamp Tax			0%	
Local Level				
Tax on Industrial, Commercial and Service Activities			2 – 13.8 per thousand	
Property Tax (including Real Estate)			0.1% – 3.5%	
Registration Tax			0.3% – 1.5%	
Local Stamp Taxes			1%, usually	
Income Tax Treaties				
Country	Dividends	Interest	Royalties	In Force
Bolivia	source	source	source	yes
Canada	up to 15%	up to 10%	up to 10%	no
Chile	up to 7%	up to 15%	up to 10%	yes
Ecuador	source	source	source	yes
Mexico	up to 33%	up to 10%	up to 10%	no
Peru	source	source	source	yes
Spain	up to 5%	up to 10%	up to 10%	yes
Switzerland	up to 15%	up to 10%	up to 10%	yes
India	up to 5%	up to 10%	up to 5%	no

1. Income Tax on Companies

1.1. Corporate Residence

For Colombian Tax purposes, the place of incorporation of a company and not the place of its effective management, will determine whether it is resident in Colombia or elsewhere.

1.2. Income Tax Rate

As of January 1st, 2008, the general statutory corporate income tax rate is 33%¹. Unless otherwise provided, all Colombian and foreign entities subject to income tax in Colombia, including Colombian branches of foreign companies are subject to this 33%² rate. The reduced statutory corporate income tax rate applicable to entities that qualify as "industrial users" in Colombian "Free Trade Zones" is 15%.³ Please bear in mind that there are statutory eligibility requirements in place for "industrial users"⁴ wishing to benefit from the 15% reduced income tax rate.

In 2010 a new regulation was enacted in order to encourage the formalization of businesses in Colombia. According to such regulation, as of 2011, small businesses (less than 50 employees and less than USD 1,3m⁵ in assets) that complete the registration procedure in the merchants' registry after December 29, 2010 are entitled to a progressive income tax rate⁶ as follows:

First two years	0% of the applicable rate
Third year	25% of the applicable rate
Fourth year	50% of the applicable rate
Fifth year	75% of the applicable rate
As of the sixth year	100% of the applicable rate

¹ Tax code § 240

² *ibidem*

³ Tax code § 240-1

⁴ Colombian Tax Service, Ruling 79604-2007, October 2, 2007.

⁵ The currency exchange rate used is USD \$ 1 x COP \$ 2.000

⁶ Act 1429-2010, § 4

Additionally, payments made to such registered small business will not be subject to withholding for 5 years after the moment the small business is first registered in the merchant's registry.

In order to determine whether an entity can benefit from the progressivity on the income tax rate and from the no-withholding treatment, the individual facts and circumstances of each case should be carefully considered.

1.3. Taxable Base and Income Tax Assessment Process

The Taxable Base is multiplied by the applicable statutory corporate income tax rate and the result is the Income Tax Liability, from which applicable Tax Credits are subtracted to find the Income Tax Charge.

The Taxable Base of the Colombian corporate income tax is the result from subtracting the taxpayer's specifically Exempt Items of Income from the greater of (i) the Net Taxable Income ("NTI") and (ii) the Alternate Minimum Taxable Income. The NTI results from the sum of all revenues realized by the taxpayer, minus the sum of all specifically Excluded Items of Income, minus the sum of all costs and expenses allowed as Deductions. The Alternate Minimum Taxable Income computation is explained in §1.3. below.

The regular income tax assessment process can be illustrated as follows:
Gross Income

(sum of all items of income, including short-term capital gains)

[-]	Excluded Items of Income
[=]	Gross Taxable Income
[-]	Allowed Deductions
[=]	NTI or Alternate Minimum Taxable Income (if greater)
[-]	Tax Loss Carry-forward (if applicable)
[-]	Exempt Items of Income
[=]	Taxable Base
[*]	33% Corporate Income Tax Rate (or 15% or progressive
[=]	Income Tax Liability
[-]	Tax Credits
[=]	Income Tax Charge

1.4. Alternate Minimum Taxable Income ("AMTI")

The taxpayer's AMTI is equal to the taxpayer's Net-worth (i.e., all assets net of all liabilities and other allowable exclusions, e.g., shares in Colombian corporations) as of December 31st of the year immediately preceding the taxable year, multiplied by 3%.⁷

If the AMTI is greater than the NTI, the difference between these two items generates a carry-forward against the taxpayer's NTI, which can be within the following five (5) taxable years.⁸

According to a regulation enacted in 2010 small businesses should not be subject to AMTI during five years as of the moment they complete the registration procedure in the merchant's registry. To benefit from this treatment, the registration should take place after December 29, 2010. Please note that to ascertain whether an entity can be covered by the "5-years no AMTI treatment", the individual facts and circumstances of each case should be carefully considered."

1.5. Capital Gains

Short-term Capital Gains are deemed as a regular item of income subject to income tax. Long-term Capital Gains, i.e., gains realized on the sale or exchange of certain assets owned for at least two (2) years, are subject to the Capital Gains Tax.⁹ The taxable base of the Capital Gains Tax is the result of the amount realized, minus the taxpayer's adjusted tax basis on the asset, plus any recaptured depreciation, amortization or deductions, as applicable.¹⁰ Capital gains can be offset with capital losses only.¹¹ The capital gains tax rate is 33%.¹² Except for certain isolated cases" the taxpayer's capital gains tax is assessed, filed and paid with the taxpayer's regular yearly income tax assessment.¹³ Colombian tax law authorizes tax authorities to challenge through an audit the amount realized in the sale or exchange of assets and reported by the taxpayer, when they find evidence that they have breached certain statutory thresholds that use criteria such as the asset's fair market value, the greater of its cadastral appraisal or the owner's self-appraisal in the case of real estate, and the "intrinsic" value in the case of stock or quotas.¹⁴ There are special rules to determine capital gains in the sale or exchange of intangibles depending on whether the intangible is formed or acquired.¹⁵

⁷ Idem, § 188 and 189

⁸ Idem, § 189.

⁹ Idem, § 300.

¹⁰ Idem, § 69 to 72.

¹¹ Idem, § 311.

¹² Idem, § 313.

¹³ These include the case of both short and long term capital gains realized on the sale or exchange of sock or quotas in Colombian companies by a non-resident alien ("NRA"). In this case the NRA must file an advanced income tax return reporting the transaction within the first month following the transaction. In this case, other Foreign Investment Control requirements apply. Tax Code, § 326. Decree 1242-2003. 12 Tax Code, § 5 and 596.

¹⁴ Idem, § 90.

¹⁵ Idem, § 74 and 75.

1.6. Income Tax Deductions

Unless otherwise provided by the statute, all costs and expenses incurred by the taxpayer are deductible, provided that they are related, proportional and necessary to the taxpayer's income producing activity.¹⁶ Costs or expenses related to specifically Excluded and/or Exempted Items of Income are not deductible.¹⁷ Certain costs and expenses may be subject to limitations, depending on the facts and circumstances of each case, e.g., related party charges and commissions,¹⁸ among others. Special limitations apply to the deduction of expenses incurred outside Colombia (see § 1.20. below).¹⁹

1.7. Depreciation and Amortization

Tangible fixed assets' depreciation is deductible.²⁰ The applicable depreciation term varies depending on the nature of the asset; twenty (20) years for real estate, ten (10) years for all other tangible fixed assets, except for motor vehicles and computers for which regulations establish a Five (5) year term.²¹ For tax purposes, regular methods used worldwide are commonly accepted in Colombia, e.g., straight-line method, declining balance method, etc.²² Unless specifically restricted, double and triple shift accelerated depreciation is also available and can be combined with the declining balance method when the asset needs to be depreciated in full in the first years of its useful life.²³

Certain assets, including acquired intangibles, and certain costs and expenses deemed as necessary investments for the taxpayer's income producing activity that must be capitalized²⁴ can be amortized through a minimum five (5) year period using any generally accepted amortization method.²⁵

1.8. Transfer Pricing

Colombia has OECD-like transfer pricing rules that are applicable to all transactions between a Colombian party and a foreign related party.²⁶ A different set of rules applies to transactions between two Colombian related parties.²⁷ Under these rules, the Colombian party exceeding certain statutory

¹⁶ Idem, § 107.

¹⁷ Idem, § 177-1.

¹⁸ Idem, § 124-124-1.

¹⁹ Idem, § 122.

²⁰ Idem § 128

²¹ Decree 3019-1989

²² Tax Code, § 134

²³ Idem, § 140.

²⁴ These include expenses for the installation, organization and development or cost of acquisition or exploitation of mines and oil and gas exploration costs.

²⁵ Tax Code, § 143

²⁶ Idem, § 260-261

²⁷ Idem, 260-4 and 260-8.

net assets or revenues thresholds must keep and file with the tax authorities supporting documentation, and prepare a transfer pricing study showing whether the corresponding prices or profit margins are arm's-length.²⁸ Parties domiciled in tax havens are deemed as related parties.^{29,30} The Colombian transfer-pricing regime has a catalogue of situations where two parties are deemed related. This catalogue is complex and its application requires a detailed case-by-case analysis.

Sale or exchange of stock or quotas in Colombian companies by foreign holders to a related party located abroad is subject to transfer pricing rules.³¹

1.9. Inflation Adjustments

The mandatory income tax inflation index adjustment system was revoked on 2006.³² Nevertheless, as of January 1st, 2007, income taxpayers can continue to use it to adjust the tax basis of fixed assets.³³ Such adjustment is not mandatory and will not have effect in the taxpayer's Profits and Losses statement.

1.10. Tax Loss Carry-forward

As of January 1st, 2007 an evergreen tax loss carry-forward against the taxpayer's NTI is available.³⁴ The tax loss must arise from an income producing activity commonly taxable under the regular income taxation rules.³⁵ Should the tax loss lack such nexus, i.e., be related to a non-taxable or exempt income producing activity, the tax loss carry-forward would not be available.³⁶ The credited amount cannot be greater than the taxpayer's NTI on the year the carry-forward is credited, i.e., a tax loss carry-forward cannot generate further tax loss.³⁷ There is no carry-back possibility.

Tax losses realized by December 31st, 2006 can be carried forward subject to: (i) an eight (8) year expiration term, and (ii) a cap equal to 25% of the tax loss in the year the loss was realized.³⁸

Tax loss generated from the 30% Fixed Assets Investments special deduction can be carried forward without anytime limitation (see §1.12. below). Please

²⁸ Idem, § 260-4 and 260-8.

²⁹ Idem, § 260-6.

³⁰ The government must issue a tax havens list, which as of June, 2011 had not been issued.

³¹ Colombian Tax Service, Ruling 53175-2009, July 3, 2009.

³² Act 1111, 2006.

³³ Tax Code, § 68.

³⁴ Idem, § 147.

³⁵ Idem

³⁶ Idem

³⁷ Idem

³⁸ Act 1111-2006, § 5 and Circular 9-2007.

bear in mind that the Fixed Assets Investment special deduction was eliminated in the 2011 tax reform currently in place.³⁹

Except as provided for reorganizations, tax losses are not transferable to share or quota holders, or to other taxpayers (see §1.10. below).⁴⁰ In the case of tax-free mergers the above-mentioned general limitations continue to apply. Nonetheless, in this case part of the tax losses is transferable to the new or surviving entity.⁴¹ For tax-free spin-offs a proportional part of the tax losses of the target entity are transferred to the resulting entity (ies).⁴² In order to qualify for the tax losses transfer under reorganization tax rules, the corporate purpose of the merging entities should be the same.⁴³ For spin-offs the corporate purpose of the target entity and of the resulting entities should also be the same.⁴⁴ The new, surviving or resulting entities will not be allowed to benefit from all of the tax losses accrued by the entities subject to the merger or to the spin-off. Only that part proportionally corresponding to their participation in the net-worth of the new, surviving or resulting entities, should be deductible.⁴⁵ The tax loss expiration term (when applicable) is not renewed by a reorganization event.⁴⁶

Colombian tax law limits (or in some cases sets special conditions) for the assessment and deduction of tax losses other than those generated by the net operating losses. We list some of these cases:

- a. Loss generated by acts of god damaging taxpayer's assets;⁴⁷
- b. Loss generated in the sale of fixed assets;⁴⁸
- c. Loss generated in the sale of assets (fixed or current) between related parties, or a corporation and its shareholders - not deductible;⁴⁹
- d. Losses in the sale of stock- not deductible.⁵⁰

³⁹ Act-1430-2011, § 1

⁴⁰ Tax Code § 68

⁴¹ Idem

⁴² Idem

⁴³ Idem

⁴⁴ Idem

⁴⁵ Idem

⁴⁶ Idem

⁴⁷ Tax Code § 148

⁴⁸ Idem, § 149.

⁴⁹ Idem, § 151.

⁵⁰ Idem, § 153.

1.11. Tax-Free Reorganizations

Tax-free treatment is available for statutory mergers, statutory divisions, corporate transformations,⁵¹ and cash-for-stock reorganizations of "simplified corporations." Although most tax attributes should survive in the head of the beneficiary corporation pursuant to a tax-free reorganization, due care should be given to the restriction on the use of tax losses (see §1.10. above). Except for the proportionality and the corporate purpose matching requirements for the transferability of tax losses, currently in Colombia there are no requirements of continuity of business or continuity of interest as a requirement to qualify for tax-free reorganization treatment.

1.12. 30 % Fixed Assets Investments Special Deduction ("FAID")

As of 2011 income tax taxpayers are not longer entitled to deduct the 30% of their investments in tangible fixed assets used in their income producing activity, since in the 2011 Tax Reform, the Colombian Congress opted for the immediate elimination of the FAID for all sectors.

The Lawmaker in the 2011 tax reform act established that any income tax taxpayers that included the 30% FAID in an application for a Legal Stability Agreement (hereinafter "LSA") filed for before November 1st, 2010, will be entitled to benefit from the 30% FAID for up to three-years as long as the Legal Stability Agreement is approved.⁵²

1.13. 175% Research and technological investment special deduction. ("RTISD")

According to a recent Legislation, taxpayers are allowed to deduct 175% of their investments in research and technological projects. The 175% deduction cannot exceed the 40% of the taxpayer's taxable income before the deduction. In order to benefit from the RTISD, the investment should be completed through centers and entities approved by the Colombian Science and Technology Department "Colciencias".⁵³

1.14. Leasing Tax Treatment

Leased assets must be initially accounted for their value, both as an asset and a liability.⁵⁴ The lease payments' portion allocated to principal decreases the liability

⁵¹ Idem, § 14-1 and 14-2, Act 222-1995, § 3.

⁵² Act-1430-2011, § 1

⁵³ Act 1450-2011 § 36.

⁵⁴ Tax Code § 127-1.

the liability while the portion allocated to interest is a deductible expense.⁵⁵ Depreciation and amortization deductions are available, as applicable.⁵⁶

In the case of M&E leasing agreements executed by "Medium Size Companies"⁵⁷ where the lease term is thirty-six (36) months or more, or twenty-four (24) months or more in the case of motor vehicles and computers, or sixty (60) months or more in the case of real estate, the taxpayer cannot account an asset and a liability. Instead and provided that all the deductibility requirements are met, the full payment amount should be treated as a deduction.⁵⁸ This treatment, which also applies to certain infrastructure projects, covers only leasing agreements entered into until December 31st, 2011⁵⁹

1.15. Certain Exempt Items of Income

Subject to eligibility and compliance by the taxpayer of the statutory requirements, income from the following activities is treated as an Exempt Item of Income:

- (i) a fifteen (15) year exemption on income from power generation activities based on wind, biomass and agricultural waste technologies;⁶⁰
- (ii) as of January 1st, 2003,⁶⁰ a fifteen (15) year exemption on income from fluvial transportation services using low draught boats;⁶¹
- (iii) a thirty (30) year exemption on income from hotel services rendered in newly built or refurbished facilities, provided that the facilities were built or refurbished within the fifteen (15) year term following January 1st, 2003.⁶²
- (iv) as of January 1st, 2003, a twenty (20) year exemption on income from eco-tourism activities certified as such by the correspondent authority, available for twenty (20) years beginning on January 1st, 2003.⁶³

⁵⁵ Idem

⁵⁶ Idem

⁵⁷ i.e., with assets in an amount between approx. USD\$1,200,000 and

⁵⁸ USD\$7,200,000

⁵⁹ Idem

⁵⁹ Idem

⁶⁰ Tax Code, §207-2

⁶¹ Decree 2755-2003, § 3.

⁶² Decree 2755-2003, § 4-6.

⁶³ Decree 2755-2003, § 10.

- (iv) use of qualified new forestry plantations or investment in new sawmills for the use of said plantations.

1.16. Filing and Payment

The taxpayer must file the income tax return and pay the corresponding tax liability on the year immediately succeeding the fiscal year for which the return was prepared. Every year tax authorities issue a filing and payment schedule with specific deadlines that vary depending on the last number of the taxpayer's Tax Identification Number.⁶⁴ Usually, filing and payment dates are similar year after year.

For FY2010, all entities including corporations must file their income tax return on April 2011. The taxpayer can pay the Income Tax Charge in two (2) 50% installments. The first installment, on the filing date, and the second installment on June 2011, observing the yearly payment schedule issued by the tax authorities.

There are special filing and payment schedules issued by the tax authorities for certain corporations in the list of "grand income taxpayers." For FY2010 all "grand income taxpayers" must file their return on April 2011. "grand income taxpayers" benefit from a three (3) installments payment facility. For FY2010 these installments are due on February, April (upon filing) and June 2011.

1.17. Non-payment and Lateness Penalties

Unpaid taxes are subject to daily interests⁶⁵ at a rate equal to the highest legally accepted three (3) month rate certified by the Financial Regulatory Agency.⁶⁶

Depending on the facts and circumstances of each case, other penalties apply for non-filing, late filing, or inaccurate filing, which may range from 5% up to 200% of the corresponding tax liability.⁶⁷

1.18. Dividends Tax/ Branch Profits Tax

As of January 1st, 2007, there is no remittance tax charge on dividends and branch profits distributed to non-resident alien entities or individuals.⁶⁸

Dividends or profits generated by December 31st, 2006, were subject to the former 7% charge on dividends and branch profits. If such dividends or profits

⁶⁴ Decree 4836-2010

⁶⁵ Tax Code § 634

⁶⁶ Idem § 635

⁶⁷ Tax Code, § 641 to 647

⁶⁸ The 7% remittance tax on dividends and branch profits distributed to non-resident alien entities or individuals was eliminated by Act 1111, 2006

were reinvested in Colombia for a minimum five (5) year term, they were eligible for an exemption from this tax.⁶⁹

Company profits are only taxed at the company's level. Nevertheless, if the earnings and profits of the company exceed the tax profits subject to income tax at the company level, the excess would be subject to income tax at the share or quota holder level.⁷⁰ If the shareholder is a foreign resident, the applicable rate is 33%. In the case of a Colombian branch of a foreign company, there should be no home office level taxation on the excess of the branch's earnings and profits over the tax profits subject to income tax in Colombia at the branch level.

1.19. Withholding Tax on Cross-border Payments

When Colombian sourced income is remitted abroad to a beneficiary that is a non-resident alien individual or entity, the payment should be subject to a withholding tax.

1.19.1. Dividends

If the corresponding profits were taxed at the corporate level then no withholding tax applies, otherwise a 33% withholding tax would be applicable.⁷¹

1.19.2. Royalties

Royalty payments are subject to a 33% withholding tax for income tax, with the exception of royalties on movies and software that are subject to an effective withholding tax rate of 19.8% and 26.4%, respectively.⁷²

1.19.3. Technical Services, Technical Assistance and Consulting Services

Whether rendered in Colombia or abroad by non-residents, payments for technical services, technical assistance and consulting services are subject to 10% withholding tax.⁷³

1.19.4. Other Services

If rendered from abroad and are not technical services or technical assistance or consulting services, then no withholding tax applies.⁷⁴ If the

⁶⁹ Tax Code, § 245.

⁷⁰ Idem, § 48 and 49.

⁷¹ Tax Code, § 408.

⁷² Idem

⁷³ Idem

⁷⁴ Idem § 418

services were rendered in Colombia, then a 33% withholding tax applies, unless otherwise provided by special rules.

1.19.5 Interest and Leasing Payments

Pursuant to the 2011 tax reform act and unless otherwise provided for in the applicable regulations, interest payments on certain inbound cross-border "Qualified Credit Facilities" and "Qualified Leasing Transactions" (both as defined further below), shall be subject to a **14%** withholding tax. If the **14%** withholding tax is not applied, the Colombian payer cannot deduct the corresponding interest payment, without prejudice of its joint and several liability for the tax that was not withheld.

For over 25 years, the Colombian income tax regulations privileged interest payments on certain Qualified Credit Facilities and Qualified Leasing Transactions, by deeming such payments as income not from a Colombian source thus not subject to Colombian Withholding Tax. If the cross-border inbound financing was not qualified or otherwise exempted, the corresponding interest payments were subject to a **33%** withholding tax.

Under the previous regime, the following cross-border inbound financings were deemed Qualified Credit Facilities and eligible for the withholding tax-free treatment:

- (a) Short term bank overdrafts and short term financings (without any changes in the 2011 tax reform act).
- (b) Exports financings or pre-financings (without any changes in 2011 tax reform act)
- (c) Financings contracted abroad by Colombian financial institutions (in the 2011 tax reform act, Congress adopted certain modifications to this item to include Bancoldex and other financial type entities).
- (d) Financings for foreign trade operations through Colombian financial institutions (in the 2011 tax reform act, Congress adopted certain modifications to this item to include Bancoldex and other financial type entities).
- (e) Financings with foreign financial institution which funds were destined to a "Qualified Activity." Qualified Activities were those that according to the directives of the Colombian Council for Social and Economic Development (CONPES), were deemed of public interest for Colombia's social and economic development, which included all activities related to the primary,

manufacturing and services sector, including transportation, engineering, lodging, tourism, health, trade, and housing construction.

Under the new regime, item (e) above has been revoked and no longer qualifies as a Qualified Credit Facility eligible for the withholding tax-free treatment, and any cross-border interest payments on such facilities made pursuant to agreements entered on or after January 1st, 2011, will be subject to a 14% withholding tax, provided that the facility's term is equal or greater than 1-year. If the facility is not within items (a) through (d) and it's term is less than 1-year, the applicable withholding tax rate on the interest payments should be 33%. For the avoidance of doubt, it is important to highlight that under the new regime, facilities within items (a) through (d) above with a term equal or greater than 1-year, will continue to be deemed as Qualified Credit Facilities eligible for the withholding tax-free treatment.

Under the previous regime, the following cross-border inbound leasing transactions were deemed Qualified Leasing Transactions eligible for the withholding tax-free treatment:

(f) Leasing transactions with foreign leasing providers to finance investments in a "Qualified Activity" (as defined above).

(g) Leasing transactions to finance M&E investments in Colombian export activities.

Pursuant to the changes introduced by the 2011 tax reform act, both items (f) and (g) above have been revoked and no longer qualify as Qualified Leasing Transactions eligible for the withholding tax-free treatment, and the interest component of any cross-border leasing payments on such transactions made pursuant to agreements entered on or after January 1st, 2011, except otherwise provided by applicable regulations, will be subject to a 14% withholding tax, and unless the equipment leased is a vessel, helicopter or their parts, case in which the reduced applicable withholding tax rate will be 1%.

Any interest payments on inbound Facilities and Qualified Leasing Transactions under items (e), (f) and (g) above (and also items (a) through (d)), made pursuant to agreements entered on or before December 31st, 2010, shall continue to be eligible for the withholding tax-free treatment.

It is important to highlight that the new regime has made clear that offerings of notes, bonds and similar debt securities, are not deemed held in Colombia, provided that the offering is made by a Colombian issuer and

that the securities are traded outside of Colombia. Nonetheless, please bear in mind that application of this rule should be carefully analyzed on a case-by-case basis.

Finally, cross-border interest payments on inbound cross-border financings where the borrowers/debtors are Colombian Governmental entities are eligible for withholding tax free treatment.

1.19.6 Capital Contributions Repatriation

For the foreign share or quota holders, reimbursements of capital contributions not corresponding to dividend or profit distributions are non-taxable items of income. Therefore no withholding tax should apply.

1.19.7 Tax Havens⁷⁵

Payments directed to a tax haven beneficiary corresponding to items of income deemed from a Colombian source, are subject to a 33% withholding tax. Otherwise the corresponding deduction will not be allowed.⁷⁶ This higher withholding tax rate should not be applicable to interest and leasing payments corresponding to cross-border transactions duly registered with the Central Bank, provided that they meet the criteria to be deemed as income from a source outside Colombia (see § 1.17.5. above).⁷⁷

For the time being this provision is not applicable because the Government has not published a list indicating what countries are considered as tax havens for Colombian tax purposes.

1.20. Additional Limitations on Costs and Expenses Incurred Abroad by Colombian Taxpayers

In addition to the regular deductibility requirements, costs and expenses incurred abroad are subject to additional limitations.

Costs and expenses incurred abroad are deductible only to the extent that such deductions do not exceed 15% of the taxpayer's Net Taxable Income assessed without taking into account these deductible items.⁷⁸ This 15% limitation does not apply whenever the payment abroad has been subjected to the corresponding statutory withholding tax, on certain commission payments, on interest and leasing payments

⁷⁵ The Government must issue a tax havens list, which as of June 18, 2011 has not been issued

⁷⁶ Tax Code § 124-2

⁷⁷ Idem

⁷⁸ Idem § 122

that are deemed not from a Colombian source, and on payments on imported movable tangible property.⁷⁹

Payments to a home office or parent company abroad are only deductible if they were subject to withholding tax in Colombia and meet the transfer pricing arm's-length criteria. There are other limitations on interest to a related party abroad, among others, which need to be analyzed on a case-by-case basis.

1.21. Statutory Foreign Tax Credit ("FTC ")

Provided compliance of the statutory requirements and subject to certain limitations, Colombian companies with operations outside Colombia are eligible for both a direct and an indirect statutory FTC for taxes levied by the source country on non-Colombian source income and dividends, respectively.⁸⁰

The 2011 tax reform modified the Colombian unilateral foreign tax credit, among others, on the following aspects:

a) Concerning individuals, the credit is now available to foreign individuals that have resided in Colombia for more than 5 years (they are taxed in Colombia on their worldwide income)

b) An "extra indirect tax credit" is given down the chain upon the tax levied at the level of the companies that are paying dividends to the foreign entity in which the Colombian entity participates.

c) In order to benefit from the indirect tax credit, the Colombian entity should hold at least 15% of the shares with voting rights of the company that is paying the dividends.

d) In order to have access to the "extra indirect tax credit" the Colombian entity should indirectly hold at least 15% of the shares with voting rights of the entity that is paying dividends to the one in which it directly participates.

e) The tax credit can be carry forward for 4 years.

f) In general, the Colombian tax credit is given on "per investment" basis. However, a sort of pooling is allowed between the indirect tax credit and the "extra indirect tax credit".

⁷⁹ Idem

⁸⁰ Idem § 254

1.22. Income Tax Treaties

Colombia's belated development of a network of OECD-like treaties has led to the conclusion of income tax treaties with Spain, Chile, Switzerland, Canada, Mexico, and India. Currently there are ongoing negotiations with Belgium, Czech Republic, Germany, South Korea, the Netherlands and the United States. The treaties with Spain, Chile and Switzerland are already enforceable. The treaties with Mexico, Canada and India are not yet enforceable because the ratification process has not yet concluded.

Colombia is a member of the Andean Pact. Therefore, it benefits from the Andean Pact tax Directive 578 to avoid double income taxation, enacted in 2004. With isolated exceptions, this tax Directive provides for exclusive source taxation among member countries.⁸¹

In addition, Colombia currently has limited scope income tax treaties to avoid double taxation on sea and air transportation activities with Argentina,⁸² Brazil,⁸³ France (air),⁸⁴ Germany,⁸⁵ Italy,⁸⁶ Panama (air),⁸⁷ United States of America,⁸⁸ and Venezuela.⁸⁹

1.23. Group Taxation.

Colombian Tax Law does not provide for a group taxation mechanism.

81 Currently, Bolivia, Colombia, Ecuador and Peru (Venezuela withdrew on April 22, 2006).

82 Act 15-1970.

83 Act 71-1993

84 Act 6-1988.

85 Act 16-1970.

86 Act 14-1981.

87 Act 1265-2008.

88 Act 4-1988.

89 Act 16-1976

2. Value Added Tax ("VAT")

2.1. Tax Rates

VAT's general rate is 16%⁹⁰ There are reduced (10%) and increased rates for certain goods and services, e.g., motor vehicles rates range from 20% to 35%, depending on the vehicle type.⁹¹

2.2. Taxable Transactions

The sale and importation of movable tangible property, and services rendered in Colombia are subject to VAT.⁹² The sale of intangibles and seller's fixed assets is not subject to VAT.⁹³ Certain public entities of the national and local territorial level are not subject to VAT.⁹⁴

Consulting, advising and auditing services, rendered outside of Colombian to a Colombian party are subject to VAT. In these cases the VAT does not affect the foreign party as the Colombian party must cover and pay directly to the tax authorities 100% of the accrued VAT.⁹⁵

Certain goods and services are exempted ("Zero-rated")⁹⁶ or not taxable with VAT ("Excluded") goods.⁹⁷ The lists of zero-rated and excluded goods are extensive and should be checked in detail on a case-by-case basis. In the case of Excluded goods and services, any VAT paid by the taxpayer to her goods and service suppliers has to be capitalized as part of the cost of the Excluded goods sold. In the case of Zero-rated goods and services, any VAT paid by the taxpayer to her goods and service suppliers generates a VAT credit (See §2.4. below).⁹⁸ In certain cases VAT credits from Zero-rated transactions may result in a refundable VAT balance.

2.3. Taxable Base

As a general rule, the taxable base is the price or value of the consideration paid for the goods or services, which should correspond their fair market value.⁹⁹

⁹⁰ Tax Code §468.

⁹¹ Tax Code, § 468-1 and 468-3.

⁹² Tax Code, § 420

⁹³ Idem

⁹⁴ Act 21-1992, § 100. Act 30-1992, §92. m

⁹⁵ Tax Code, § 437-2.

⁹⁶ Idem, § 477 to 479 and § 481

⁹⁷ Idem, § 423, 423-1, 424, 424-2/5/6, 425, 427, 428 and 480.

⁹⁸ Tax Code, §489.

⁹⁹ Idem, §447 and 453,

There are certain cases¹⁰⁰ where certain items must be either included or excluded from the taxable base and/or cases with either mandatory or optional taxable bases, which should be analyzed on a case-by-case basis.

2.4. Creditable VAT

Unless otherwise provided, all VAT paid to suppliers of goods and services that constitute a cost or expense of the taxpayer's income producing activity, is creditable towards the VAT collected by the taxpayer from her clients.¹⁰¹

Unless otherwise allowed by law (See §2.5. below), VAT paid on the acquisition and importation of goods that become fixed assets for the buyer is neither creditable against VAT nor income tax.¹⁰² This VAT should be capitalized increasing the taxpayer's cost basis of the fixed asset.

There are certain limitations on the VAT credits available for zero-rated transactions.

2.5. Selected VAT Incentives

The following are some of the statutory VAT incentives available:

2.5.1. Temporary Importation of Heavy M&E

Temporary importation of "heavy"¹⁰³ M&E not produced in Colombia effectively used in a "basic industry"¹⁰⁴ in Colombia, should not be subject to import VAT¹⁰⁵. Although it is not clear, it is likely that this treatment does not apply to goods imported for construction sites.

2.5.2. Permanent Importation of Heavy M&E

Permanent importation of heavy M&E (whether or not produced in Colombia) is subject to VAT. But if the M&E's is going to be used in a "basic industry" and its CIF value exceeds USD\$500K, payment of the VAT can be deferred (40% upon importation, and 30% each of the following 2 years).¹⁰⁶ In addition, in these cases the VAT paid can be credited against the taxpayer's income tax in the taxable year in which the VAT was paid or in the subsequent taxable years if the VAT paid cannot be initially credited in full.¹⁰⁷

100 Idem, §448.

101 Idem, § 484.

102 Idem, § 491.

103 Qualified as such by the Ministry of Trade pursuant to a request filed by the importer.

104 i.e. mining, hydrocarbons, heavy chemistry, iron and steel industry, extracting metallurgy, electric generation and transmission, obtaining purification and conduction of hydrogen oxygen.

105 Idem § 428

106 Idem § 258

107 Idem

2.5.3. Environmental Monitoring and Control Systems

Any domestic or imported equipments or devices to be used in the construction of control and monitoring systems required by environmental law and standards in any activity, are not subject to VAT. Access to this exemption requires certification of the environmental authority qualifying the specific equipment or devices acquired.¹⁰⁸

2.6. Payment and Filing

VAT has a bimonthly taxable period.¹⁰⁹ The VAT return must be filed and paid in full on the filing dates scheduled by the government for these purposes, which are usually after the first week immediately following the end of the corresponding bimonthly period.¹¹⁰

2.7. Andean Pact VAT Harmonization

In addition to Andean Pact Directive 578 to Avoid Double Income Taxation (see §1.20. above), Andean Pact Directive 599 establishes the framework for the near future harmonization of the VAT regimes in member countries.¹¹¹

¹⁰⁸ Decree 2532-2004, §4.

¹⁰⁹ Tax Code § 600

¹¹⁰ Decree 4680-2004, § 23.

¹¹¹ Andean Pact Directive 599 of 2004.

3. Bank Debits Tax

This is a national level tax. Colombian banks (and other savings institutions) must withhold the tax at source.¹¹² It applies on any funds deposited that are either withdrawn or transferred from checking or savings accounts.¹¹³ The taxable base is the amount withdrawn or transferred. The tax rate is 4 per thousand.¹¹⁴ There are very limited exemptions to this tax.¹¹⁵ It is an important tax to keep in mind when structuring a transactions' cash flow.

In the 2011 tax reform, the Colombian Congress approved the sunset of this tax through a phase-out tax rate scale that begins on 2014 with a reduction to 2 per thousand, followed by a further reduction in 2016 to 1 per thousand, and its final elimination beginning 2018.

4. Local tax on industrial, commercial and service activities

This is a municipal (local) level tax applicable to all industrial, commercial and service activities performed in the territory of a municipality. The taxable base is the sum of the taxpayer's gross revenue from the activity carried out in the relevant municipality. The tax rates vary from one municipality to the next and range from 2 to 10 per thousand¹¹⁶ (Bogota's rates go as high as 13,8 per thousand).¹¹⁷ This tax is usually paid and a return filed yearly, with the exception of some municipalities that have adopted a two (2) month taxable period, e.g., Bogota.. Incentives for this tax are created and regulated by each municipality. Therefore, the availability of incentives must be confirmed on a case-by-case basis.

5. Property Taxes

There are municipal (local) level taxes on real estate¹¹⁸ and vehicles. Each municipality adopts the applicable tax rates.¹¹⁹ Therefore, they vary from one municipality to the next. Real estate tax rates usually range between 0,5% and 0,16%.¹²⁰ Motor vehicles tax rates range between 1 % and 3.5%. Unless otherwise specified, the taxable base in the case of real estate is the cadastral value of the property,¹²¹ and in the case of motor vehicles is their fair market value. Unless otherwise specified in the corresponding municipal ordinances, filing and payment is usually on a yearly basis.

112 Tax Code § 876

113 Idem § 871

114 Idem § 872

115 Idem § 879

116 Act 14-1983, §33

117 Decree 352-2002, §53.

118 Colombian Constitution, § 317.

119 Act 44-1990, §4

120 Act 1450 -2011. §23

121 Act 44-1990, §3.

Local tax incentives available, if any, are regulated by the relevant municipal ordinance applicable in the municipality in which the property is located or registered. Therefore, the availability of incentives must be confirmed on a case-by-case basis.

6. Registration Taxes

A taxpayer registering acts and documents with the cadastral registry or merchants' registry offices is subject to this tax.¹²² Depending on the type of act or document, the tax rate ranges from 0.5% to 1.5%¹²³ (including registration rights) when the registration is with the cadastral registry office, and from 0.3% to 0.7% when the registration is with the merchants' registry office. Unless otherwise provided, the taxable base is the amount of the price or consideration reflected in the document. Very few documents subject to registration are exempt from this tax.¹⁴⁹ If one of the parties to the document is a public entity, the taxable base is reduced to 50% of the regular taxable base.

7. Local Stamp Taxes

Certain laws authorize departments¹²⁴ to enact local stamp taxes to support investments in hospitals, universities and other public entities and activities.¹²⁵ Such local stamp taxes are usually levied at a 1 % rate on the gross income attached to the taxable event. Before engaging in activities, agreements or transactions with effects within the jurisdiction of any department in Colombia, the Taxpayer must confirm whether a local stamp tax is in place that could be triggered by such activity, agreement or transaction.

8. Royalties on Natural Resources Exploration Activities

Unless otherwise provided, all natural resources exploration activities are subject to the payment of royalties. This summary does not cover the royalty regime. Prior to engaging on any natural resources exploration activity in Colombia, you must seek qualified legal advice on the royalty regime applicable to the specific activity and jurisdiction.

¹²² Decree 650-1996.

¹²³ *Idem*

¹²⁴ A separate type of local territorial entity.

¹²⁵ Colombian Constitution, § 300. Act 645-2001

9. Welfare Contributions

9.1. Retirement Contributions

The employee can elect between private or public pension funds.¹²⁶ The contribution must be equal to at least 16% of the employee's wage;¹²⁷ both employer and employees can make additional voluntary contributions. Contributions must be computed and paid to the pension funds monthly.¹²⁸ The employer must cover 75%¹²⁹ of the contribution, and the employee the remaining 25%.¹³⁰ The employer must withhold the employee's 25% and deposit 100% of the monthly contribution in the pension fund.¹³¹

9.2. Health Contributions

The employee must be affiliated to a general Health Care Plan ("HCP").¹³² Contributions to the HCP must be equal to 12,5% of the employee's wage.¹³³ Contributions must be computed and paid monthly. The employer must cover 2/3 of the contribution,¹³⁴ and the employee the remaining 1/3.¹³⁵ The employer must withhold the employee's 1/3 and pay 100% of the monthly health contribution.¹³⁶

9.3. Employment Risks Insurance System

The employee must be affiliated to an employment risk insurance system of her election.¹³⁷ Contributions must be between 0.348% and 8,7% (depending on the activity) and are computed and paid monthly.¹³⁸ The employer must cover and pay to the insurer 100% of the contribution.

9.4. Contributions to Child and Family Protection Services, Public Training System, and Compensation Funds

The employer must make these 3%,¹³⁹ 2%.¹⁴⁰ and 4%¹⁴¹ contributions,

¹²⁶ Act 100-1993, §59.

¹²⁷ Act 100-1993, § 20. Decree 4982-2007.

¹²⁸ Decree 1406-1999, §9.

¹²⁹ Act 100-1993, §20.

¹³⁰ idem

¹³¹ idem § 22

¹³² Idem, § 157 and 203.

¹³³ Idem § 204

¹³⁴ Idem

¹³⁵ Idem

¹³⁶ Idem, § 161. Decree 1406-1999, § 9.

¹³⁷ Decree 1295-1994, § 4. Decree 1772-1994, § 3.

¹³⁸ Decree 1406-1999, § 9. Decree 1772-1994, § 13.

¹³⁹ Act 89-1989, § 1.

¹⁴⁰ Act 21-1982, § 12.

¹⁴¹ Idem.

respectively, on behalf of the employee. The employer must cover 100% of these contributions. Filing and payment is done monthly.¹⁴²

In 2010 a new regulation was enacted in order to encourage the formalization of businesses in Colombia.¹⁴³ According to such regulation, as of 2011, small businesses (less than 50 employees and less than USD 1,3m in assets) that complete the registration procedure in the merchants' registry after December 29, 2010 are entitled to a progressive payment of the contribution to Child and Family Protection Services, Public Training System, and Compensation Funds as follows:

First two years	0% of the value of the contribution
Third year	25% of the value of the contribution
Fourth year	50% of the value of the contribution
Fifth year	75% of the value of the contribution
As of the sixth year	100% of the value of the contribution

In order to determine whether an entity can benefit from the progressivity on the payment of the contribution, the individual facts and circumstances need to be carefully evaluated.

9.5. Unemployment Fund Contribution

During the employment relation, the employer must contribute an amount equal to one monthly wage per year to the employee's unemployment fund of choice.¹⁴⁴ In addition, the employer must pay to the employee a 12% yearly interest on the amount of that yearly contribution.¹⁴⁵ Both the contribution and the interest must be paid on a yearly basis.

9.6. Incidence on Wages Deductibility

Payment of the above-mentioned welfare contributions is a requirement for deductibility of the corresponding wages paid by the employer.¹⁴⁶

¹⁴² Act 21-1982, §9 and 10. Act 89-1988, § 1

¹⁴³ Act 1429-2011 § 5

¹⁴⁴ Employment Code, § 249. Decree 663-1993, § 164.

¹⁴⁵ Act 52-1975, § 1

¹⁴⁶ Tax Code, § 108. Act 7-1979, § 45.

10. Customs Imports Regime

The following sections summarize some (not all) general aspects of the Colombian customs imports regime.

10.1. Imports Custom Duties

Unless Exempted, zero-rated or a different rate applies, importation of goods is subject to a 16% import VAT.¹⁴⁷ In addition to import VAT, imports are also subject to custom duties ranging between 5% and 20%.¹⁴⁸ Colombia has entered into Preferred Custom Duties Agreements with many countries,¹⁴⁹ reducing the applicable custom duties for certain goods.

10.2. Taxable Base

Unless otherwise provided, custom duties are computed on the CIF value of the goods, while import VAT is computed on the CIF value plus the corresponding custom duties.¹⁵⁰

10.3. Customs Valuation

Custom valuation rules in place in Colombia are those of the GATT (1994) valuation code, which are similar to the current WTO valuation rules. For valuation purposes, the Andean Pact valuation rules in Directives 378 and 379 apply. These rules are also similar to the first mentioned rules.¹⁵¹

10.4. Filing and Payment

An import return must be filed upon nationalizing the goods. As a general rule in the ordinary importation regime, custom duties and import VAT must be paid and an imports return filed within the first month following the arrival of the goods to Colombia. In certain cases the importer can request before the custom authorities a one (1) month filing extension.¹⁵²

147 Tax Code, §468.

148 Decree 4589-2006

149 CAN, ALADI and Bilateral Agreements

150 Tax Code, §459. Customs Code, §88.

151 Customs Code, §237; Resolution 4240-2000, §159.

152 Idem, § 115.

10.5. Used M&E

Importing used M&E (and spare parts) requires a previous import license that will be granted by the foreign trade authorities¹⁵³ if the M&E are not produced locally or in an Andean country. In practice, the importation of used spare parts is hardly authorized.¹⁵⁴

10.6. Selected Custom Duties Imports Regimes Available

In addition to the ordinary importation regime, a variety of special customs regimes are available for M&E imports. The applicable duties and VAT vary depending on the applicable regime.¹⁵⁵

Both the ordinary and the temporal import regimes are available for M&E importations whether leased, on free bailment, or contributed in kind to a Colombian corporation or branch. Purchased M&E can only be imported through the regular importation regime. Below, some of the features of the different importation regimes will be described.

10.6.1. Ordinary Imports Regime

It applies to all goods that will remain permanently in Colombian territory without restrictions. Upon nationalization, full payment of custom duties and import VAT is required.¹⁵⁶ For foreign exchange purposes, these imports may be reimbursable or non-reimbursable. Non-reimbursable imports require an importation license.¹⁵⁷

10.6.2. Long-Term Temporary Imports Regime

It applies to M&E and spare parts listed as "Capital Goods" in the applicable regulation. This regime is used whenever the temporally imported goods are expected to remain in Colombia for a period between 10 months and 5 years.¹⁵⁸ Under special circumstances, the Customs Administration has the authority to approve a longer importation period. During the importation period, the payment of custom duties and import VAT will be deferred, being payable in equal installments every six months.

153 Decree 3803-2006, §3.

154 Resolution 1512-2007.

155 Customs Code, §116.

156 Customs Code, §116.

157 Decree 3803-2006, §15

158 Customs Code, §143.

It is important to keep in mind that the value of the customs duties and the import VAT must be computed upon the temporary nationalization and that the customs return must be filed within the above-stated one (1) month period (See §12.4. above). If the Customs Administration authorizes an extension of the importation, the duties and VAT must be paid within the initial 5-years period in any case.

The importer must extend a compliance bond, guaranteeing payment default or delays. For foreign exchange purposes, the temporary

importation may be reimbursable or non-reimbursable. Non-reimbursable imports require an importation license. Upon finalization of the term, the importer can either export back or nationalize the goods without paying any additional amounts for custom duties or import VAT.¹⁵⁹

10.6.3. Long-Term Temporary Imports Regime for Leased Equipment

The rules of this regime are similar to the above-explained rules. Nevertheless, because for foreign exchange purposes lease payments are treated as foreign debt payments, the imports should be treated as non-reimbursable. In addition, this regime allows the substitution of the goods initially imported and the importation of the corresponding spare parts (if any).¹⁶⁰

10.6.4. Short-Term Temporary Imports

This regime applies to specific goods that will be used for a certain activities taking no longer than six (6) months. The customs service can authorize a three (3) months extension.¹⁶¹ At the expiration of the authorized importation period, the goods must be exported back or the importer must apply for a long-term importation regime, otherwise the goods are forfeited and/or a 200% fine will be imposed.¹⁶² Although for control purposes an imports return must be filed the operation triggers neither customs duties nor VAT provided that a guarantee for 150% of the VAT and customs duties amount is subscribed.¹⁶³

10.6.5. VAT Incentives

The VAT incentives mentioned above are available for imported goods, if the legal requirements are met.

¹⁵⁹ *Idem*, §150.

¹⁶⁰ *Idem*, §144.

¹⁶¹ *Idem*, §144.

¹⁶² *Idem*, §502 and 503.

¹⁶³ *Idem*, §147

10.6.6. Free Trade Zones ("FTZ")

Colombia has an attractive FTZ regime that should be carefully explored by importers and investor interested in operating in Colombia. Besides the logistic advantages of operating in a FTZ, the Colombian FTZ regime implies, among others, the following benefits: (i) There are neither customs duties nor import VAT upon the "introduction" of foreign goods to the FTZ, (ii) Qualified FTZ users are subject to a special 15% income tax rate (instead of 33%), (iii) If the legal requirements are met the sale of goods from the rest of the territory to FTZ¹ users that such users acquired to develop their corporate purpose are VAT exempt.

10.6.7. "Plan Vallejo" Special Imports Regime (special Draw-back mechanism)

After meeting certain requirements, under the "Plan Vallejo" raw materials, capital goods and spare parts, can be temporarily imported with out triggering custom duties¹⁶⁴ and enjoying a preferential VAT treatment. both agricultural¹⁶⁵ and service activities¹⁶⁶ could be covered with the "Plan Vallejo".

¹⁶⁴ Resolution 1860-1999.

¹⁶⁵ Decree 631-1985; Resolution 4240-2000.

¹⁶⁶ Decree 2331-2001; Decree 2099-2008; Decree 2100-2008.

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TAX TEAM

Partners:	Alfredo Lewin Laureano Gómez Adrian Rodríguez Luz Clemencia Alfonso	alewin@lewinywills.com lgomez@lewinywills.com arodriguez@lewinywills.com lcalfonso@lewinywills.com
Associates:	Juan P. Wills Andrés González Cristina Carrillo Johanna Betancourt	jwills@lewinywills.com agonzalez@lewinywills.com ccarrillo@lewinywills.com jbetancourt@lewinywills.com
Of-counsel:	Maria del Pilar Abella Andrés Forero	mabella@lewinywills.com aforero@lewinywills.com

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