**INCENTIVES AND TAX REGIMEN IN COLOMBIA**



**Bogota, February 2019**

# Energy Incentives in Colombia

## Law 1715 of 2014

Law 1715 of 2014 establishes a series of incentives to stimulate investment, research and development for the production and use of energy from Non- conventional sources ("NCE"). NCE is generated by using wind, tides, solar, geothermal heat, and biomass including farm and animal waste. Said Law also established an incentive for companies that make investments in energy efficiency. Incentives for investment in NCE projects are:

* Income tax exemption for five years, following the taxable year in which the investment is made, for 50% of the total value of the investment.

**Scope:**

* + **Duration:** The deduction can be made the following 5 years of the following year in which the investment was made.
  + **Maximum deductible amount:** The deductible amount for this concept cannot exceed 50% of the gross income of the tax payer.
  + **Investments made by leasing:** This deduction is applicable to investment carried through leasing contacts with irrevocable purchase option.
  + **Cancellation, resolution or termination of contracts for the investment:** When the contacts that were signed to carry out the investment are cancelled, resolute or terminated the tax payer will have to return the benefit incorporating it as gross income in the year the contract is cancelled, resolute or rescinded according to the conditions in articles 195 and 196 of the Tax Code.

**Requirements:**

The procedure to apply for the benefit is established in Resolution 1283 of 2016 of the Ministry of Environment. The interested party will have to submit before the National Authority of Environmental Licenses (ANLA for its acronym in Spanish) the tax benefits single application for non-conventional energy sources and energy efficiency. The following information will have to be provided:

* For legal entities, certificate of existence and legal representation issued by the Commercial Chamber with issue date no longer than one month to the application date.
* Description of the project in which the new investment is going to be made.
* Detailed description of the new investment in non-conventional renewable energies which will have to have at least the following:
* Detailed description and quantification of the environmental benefits associated to the project subject of the new investment regarding:
* Brochures, descriptive plans duly signed by the developer of the project and / or documents that include the technical specifications of the elements, equipment and machinery object of the application.
* For new investments in projects that are in the stages of investment or operation, provide a copy of the valid environmental authorizations issued by the competent environmental authority, for the development of the project in which the elements, equipment and machinery are going to be used. If the project is in the pre-investment or investment stages (in their phases of technical, financial, economic and environmental definitive studies), it is not necessary to present the environmental authorizations.

Act 1715 also establishes the following incentives:

* VAT exemption for equipment, machinery and domestic or imported services destined to be used in NCES.
* Exemption from payment of customs duties on machinery, equipment, materials and imported inputs that are not produced by the domestic industry used for new projects NCES.
* The pre-investment, investment and operation of the generation of NCES will enjoy of accelerated depreciation scheme, which will apply on machinery, equipment and civil works, up to 20% as an overall annual rate.

## Income Tax Exemption (Law 1943 Of 2018 Financing Law)

Sale of electric power generated by wind, biomass, solar, geothermal or marine waste, according to the definitions of Law 1715 of 2014 and Decree 2755 of 2003, made only by generators, is exempted of the income tax for a term of fifteen (15) years starting 2017. It must comply with the following requirements:

a) To process, obtain and sell carbon dioxide emissions certificates in accordance with the regulations of the national Government;

b) At least 50% of the resources obtained from the sale of said certificates must be invested in works of **social benefit** in the region where the generator operates. The investment that entitles the benefit will be made according to the proportion of each municipality affected by the construction and operation of the generating plant.

## Mega Investments

New investment within the national territory of 30.000 UVT (COP$ 1.028.100.000 approx. USD$ 342.700.000). generate at least 250 direct jobs.

**Benefits:**

* Corporarate income tax rate of 27%
* Fixed assets may be depreciated in a minimum term of 2 years, regardless of the useful life of the asset.
* Mega Investments won’t be subject to presumptive income.
* Mega Investments won’t be subject to the wealth tax
* A new regime of legal fiscal stability is created to keep the benefits in case of adverse legal modifications in Exchange for a premium of 0,75% of the investment value made every year for 5 years.

Exclusions: Investments in hydrocarbons and mines are excluded of this regime.

## Free Trade Zone Regime

**Main Characteristics**

Free Trade Zones are specific geographic areas in which companies may undertake industrial or commercial activities, taking advantage of a special tax and customs regime that provides them certain tax and customs benefits[[1]](#footnote-1).

Within a Free Trade Zone any legal activity of a commercial, industrial or services-rendering nature may be performed, except those expressly restricted, which include:

* No Free Trade Zones may be declared in geographical areas suitable for the exploration, exploitation or extraction of non-renewable natural resources as provided pursuant to the Colombian Mines and Oil Code.
* Providing financial services.
* Providing public domiciliary utilities, except from companies that generate electricity or new companies that provide international long-distance public phone service.
* Activities under the framework of any concession agreement with the Colombian State.

**Tax benefits:**

* 20% income tax rate for all users of the Free Trade Zones, except for Commercial Users which remain subject to general income tax rate, the current income tax rate is 33%.
* Exemption of customs duties (i.e. VAT and tariffs) for goods imported from abroad, while the goods remain in the Free Trade Zone. However, custom duties are triggered when goods are permanently imported into the Colombian national territory.
* Manufactured goods in the Free Trade Zone may be sold to the local market.
* The sale of raw materials, parts, inputs and finished goods to industrial users of goods and services is exempted from VAT, provided that these goods are necessary for the execution of the user’s corporate purpose.
* The sale and shipment of goods abroad which are located within the Free Trade Zone is exempted from VAT.

**Customs benefits:**

* Quick and simplified introduction procedures.
* To enter goods into the Free Trade Zone it is only required that the transportation document is consigned or transmitted in favor of the Free Trade Zone user.
* The merchandise within a Free Trade Zone may remain inside such zone indefinitely.
* The trade regulations allow partial processing or manufacturing processes of raw materials outside of the Free Trade Zone for a period of up to 9 months.
* Goods produced within the Free Trade Zone are considered to have Colombian origin for the purpose of Free Trade Agreements signed by Colombia.
* Ease of handling inventories and logistics operations between Border Port Free Trade Zones and Interior Port Free Trade Zones.

## Labor Incentives

**Hiring people with disabilities.**

Employers who employ workers with a proved disability of not less than 25% and who are required to file income and supplementary declarations are entitled to deduct from the income tax 200% of the value of the wages and social benefits paid during the taxable year or period to workers with disabilities, while it subsists.

These employers are also preferred under equal conditions in the bidding, awarding and conclusion of contracts, whether public or private, if they have at least a minimum of 10% of their employees with the named disability conditions.

**Exemption of payment to Compensation Funds.**

Employers who employ new staff between the ages of 18 and 28 will not have to make the contributions to Compensation Funds (Cajas de Compensación Familiar in Spanish) by the affiliated workers during the first year of employment.

**Incentive for the first job**

It is a subsidy granted by the Government to companies legally constituted under Colombian laws and with at least one year of existence, which provide employment for young people within 18 and 28 years old with no previous labor experience.

| Level of education of the employee | Subsidy granted to the company for each employee |
| --- | --- |
| High School | COP 644.350 (Approx. USD 214) + transportation subsidy + social benefits |
| Technical professional | COP 700.000 (Approx. USD 233) + transportation subsidy + social benefits |
| Technical | COP 750.000 (Approx. USD 250) + transportation subsidy + social benefits |
| University | COP 900.000 (Approx. USD 300) + transportation subsidy + social benefits |

*The subsidy is granted until six months, provided that the company maintains the labor contract, with at least the 60% of the employee appointed for another six months.*

# Tax Regime in Colombia

The following chart provides a general overview of the main attributes of the Colombian tax system:

|  |  |
| --- | --- |
| **Type of Tax** | **Main Aspects** |
| **NATIONAL TAXES** | |
| Income tax | Corporate income tax (CIT) rate from 33% in 2019 to 32% for 2020, 31% for 2021 and 30% for 2022 and onwards.  Tax Reform also repeals the 4% surcharge imposed on corporate income, making the total tax rate 33% for 2019  Free trade zones users (with the exception of commercial users): 20% |
| Presumptive income tax system | The minimum basis (presumptive income tax system) will be reduced to 1.5% on 2019 and 2020. Upon 2021 the rate will be 0%. |
| Dividend taxation | Dividends that are paid to foreign companies and/or non-resident natural persons will be taxed at a rate of 7.5%.  The tax will be charged only on the first distribution of dividends between Colombian entities and may be credited against the dividend tax due once the ultimate Colombian company makes a distribution to its shareholders (nonresident shareholders (entities or individuals) or to Colombian individual residents).  The dividend tax on local distributions does not apply if the Colombian companies are part of a registered economic group, or the distribution is to a Colombian entity qualifying for the new Colombian holding company (CHC) regime. |
| Capital gains | Levies certain specific incomes such as profits obtained as a result of sale of fixed assets, inheritances and lotteries.  Rate: 10% |
| Debit tax (GMF) | Levies financial transactions at a 0.4% rate. |
| Value added tax - VAT | General rate: 19%  Special rates: 0% - 5%  On imports from free trade zones, the VAT will apply to the total amount of the product for customs purposes, plus the customs duties.  Soda and beer are subject to VAT in all phases of the production and supply chain.  Foreign services providers of digital services to opt into a VAT withholding tax collection system through debit and credit card issuers. |

|  |  |
| --- | --- |
| Consumption tax | Levies the provision of mobile telephone services, internet and mobile navigation, and data service, the sale and importation of vehicles, and the service of selling food and drinks prepared in restaurants, cafeterias, self-services, ice cream parlors, fruit shops, bakeries for consumption on the same spot, to be carried by the buyer or delivered at home, food services under contract, and service of selling food and alcoholic beverages for consumption in bars, taverns and nightclubs.  Rates: 4%, 8% and 16%. |
| Colombian holding company (CHC) regime. | Under this regime, dividends received from, and proceeds from the sale of, certain non-Colombian entities are not taxable in Colombia. In addition, for nonresident shareholders, dividends distributed by a CHC, and proceeds from the sale of a CHC’s shares (the proportion of the gain derived from foreign nonresident entities owned by the CHC), generally are not subject to tax in Colombia. If the CHC receives dividends from a Colombian subsidiary, the 7.5% dividend tax does not apply. The regime does not apply if the shareholder of the CHC is in a tax haven. |
| Green tax / Carbon national tax | Levy the sale, withdrawal, import for own consumption or importation for the sale of fossil fuels, (including all oil derivatives and all kind of fossil gas) that are used with energy purposes, provided that they are used for combustion.  The rate is determined depending on the emission factor of carbon dioxide (CO2) for each given fuel, expressed in unit volume (kilogram of CO2) per unit of energy (Terajouls) according to the volume or weight of the fuel:   |  |  |  | | --- | --- | --- | | Fossil Fuel | Unit of measure | Rate/unity | | Natural gas | Cubic meter | $29 | | Oil liquified gas | Galon | $95 | | Gasoline | Galon | $135 | | Kerosene and Jet Fuel | Galon | $148 | | Diesel | Galon | $152 | | Fuel Oil | Galon | $177 | |
| **LOCAL TAXES** | |
| Industry and commerce tax (ICA) | It is triggered by the development of industrial, service or commercial activities within a municipality or district.  Applicable rate to the revenues of the company will depend on the municipality in which it develops its operations, which may vary between:   * Industrial activities, is 0.2% to 0.7%. * Commercial and service activities, is 0.2% to 1%.   The Tax Reform allows taxpayers to claim 50% (100% from 2022) of paid industry and commerce and debit (i.e., financial transaction tax) taxes as a credit against their income tax liability. |
| Real estate tax | From 0.5% to 1.6% of the value of the property, depending on the municipality in which the property is located.  National tax on the consumption of real estate 2% rate on the total sale price (applied on for assets value more than $USD 306.145 approx.). |
| Registration tax | According to the act, between 0.1% and 1%. |

Foreign Direct Investment

[www.inviertaencolombia.com.co](http://www.inviertaencolombia.com.co)

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1. Free Trade Zones are

   regulated principally in Law 1004 of 2005 and Decree 2147 of 2016. [↑](#footnote-ref-1)