

Overview on Colombian Taxation & Investing in Colombia

Benjamín Cubides Pinto
cubidesvaldes@yahoo.com

**FIT – International Taxation Conference – Mumbai,
India, December 2nd, 2010**

1. Forms of business organization

- **Corporate**

Limited liability companies (“Ltda”): 2 to 25 quota holders. Limited liability except for labour and tax. No external auditor unless income and/or equity cap. Board of directors not mandatory.

Corporations (“S.A.”): 5 shareholders. External auditor. Board of directors.

Simplified companies by shares (“S.A.S.”): Flexible and simple. Allowed to have a unique shareholder and indefinite duration. No external auditor unless income and/or equity cap. Board of directors not mandatory.

Branches: Business establishment in Colombia. No independent legal personality. Home Office jointly and severally responsible for its liabilities.

- **Non Corporate**

Trusts: Restricted for foreign companies: **(i)** transitory step for incorporating a subsidiary; **(ii)** to administrate, purchase or sell shares or quotas of companies. Fiscally transparent. Not tax payer

Foreign capital investment funds

Collaboration agreement or joint ventures

2. Taxation of businesses

- **Income and capital gains tax**

Taxable profit: net income

Deductible expenses: art. 107 TC; special expenses

Depreciation and amortization

Losses: carry forward without limits; mergers and splits

Taxable profits and accounting profits

Worldwide / local source profit: foreign tax credit available

Capital and income

Rates: Corporate income tax rate 33%. Special 15% for free trade zones

Auditing: 2 years

Tax rulings

Tax grouping

2. Taxation of businesses

- **Value added tax, VAT**

Taxable event: Sale of tangible movable goods, rendering of services and imports; exemptions available

Rate: 16%. Different rates apply (10%, 20%)

Credit: To the extent goods and services are subject to VAT, seller or importer will be entitled to credit VAT paid.

Taxable base: Amount of transaction.

VAT withholdings apply: Among others: services rendered by foreign non-residents or non-domiciled entities to local beneficiaries; local party obliged to self assess and withhold total VAT accrued

2. Taxation of businesses

- **Net Worth Tax - Law 1370 of 2009**

Taxable Event: Net equity equal or greater COP3,000MM (approx. USD1,600MM) on January 1, 2011.

Taxable Base: Net equity. Shares in Col. companies excluded

Rates: 2,4% (base COP3,000MM) or 4,8% (base COP5,000MM)

Payment: 8 equal payments (2 per year from 2011 to 2014)

Non-Deductibility: Not deductible for Income Tax purposes

- **Industry and Commerce Tax – Local tax**

Taxable event: industrial, commercial or service activities within a municipal jurisdiction. Exports not subject

Tax Rate: From 0 to 1,38%

Taxable Rate: Gross income

Deductibility: 100% of Tax paid

Special consideration for mining industry: tax not applicable if royalties paid for extraction of minerals equal or greater

2. Taxation of businesses

- **Financial transaction tax:**

Taxable event: disposition of funds in bank or savings accounts

Tax Rate: 0,4%

Taxable Base: value of transaction

Deductibility: 25% of tax paid deductible for Income Tax purposes

- **Real State Tax – Local tax on property**

Rates: From 0,4% to 3%

Taxable base: official appraisal, some jurisdictions (e.g. Bogota)
appraisal done by taxpayer

Tax paid deductible for Income Tax purposes

- **Local stamp-tax**

Some municipalities and departments have created stamp tax-like taxes. Generally do not exceed 1% of the taxable base

3. Tax incentives

- **Special Deduction for the Purchase of Fixed Productive Tangible Assets: 30%** of investments in this type of assets are deductible in year of purchase
- **Profits obtained by Branches exempted from income tax, not taxed when paid to the home office**
- **Colombia has not issued a tax heaven black list**
- **Free trade zones: Industrial Goods and Service**
Users of a Free trade zone are subject to a special 15% income tax rate. This special rate does not result on dividends being taxed at the shareholder level

4. Withholding taxes

Charge	Rate
Dividends	0% if taxed at corporate level; 33% if not
Royalties	33%
Technical assistance	10% (whether in Colombia or abroad)
Technical services	10% (whether in Colombia or abroad)
Consulting services	10% (whether in Colombia or abroad)
Other services	0% if they are rendered abroad or 33% if they are rendered in Colombia
Interests	33%; 0% on short term credits, credits to finance exports, etc.

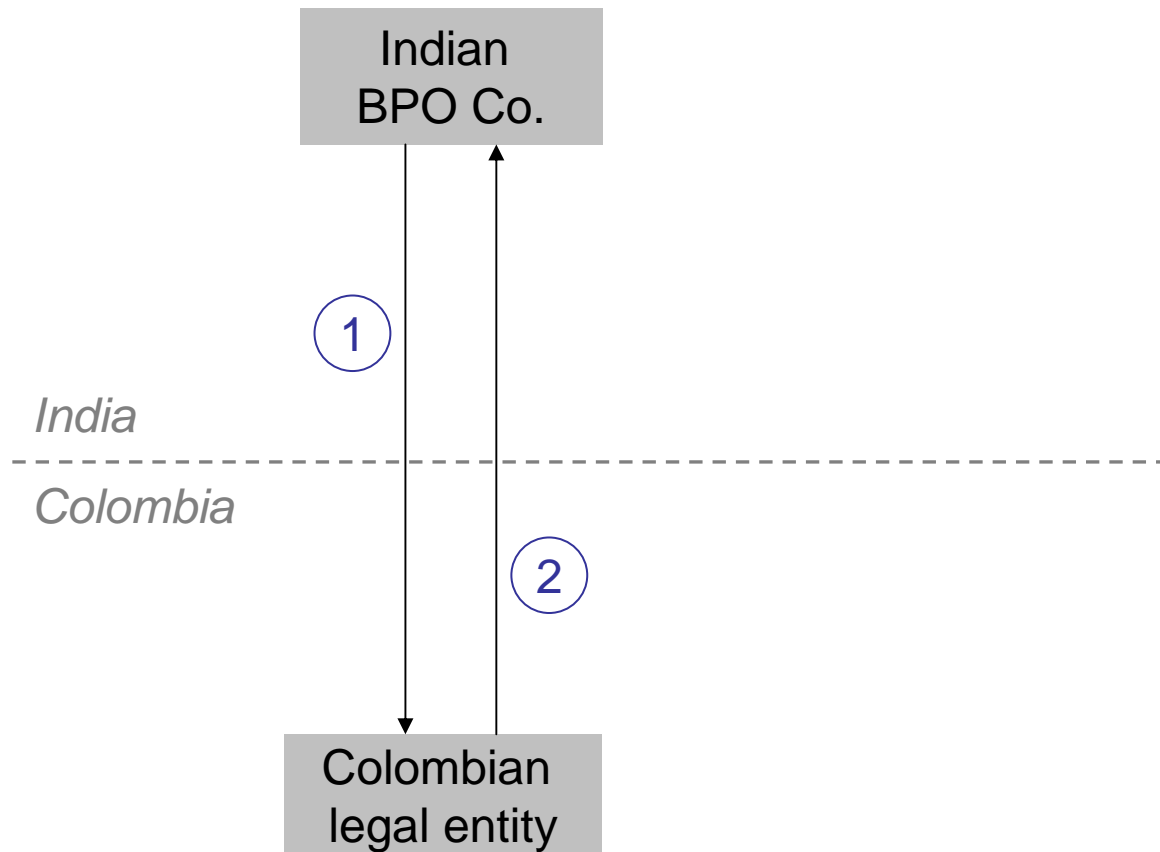
4. Withholding taxes – tax treaties

Country	Dividends	Interests	Royalties
Spain	5% / 0% if 20% or more of capital <u>Protocol</u> : dividends not taxed at corporate level 0% if 20% or more of capital and reinvest profits for 3 years	10% / 0% if contracting state, credit for the sale of merchandise or credit granted by a credit institution	10%
Chile	7% or 0% if 25% or more of capital <u>Protocol</u> : dividends not taxed at corporate level 7% if profits are reinvested for 3 years	15% / 5% if the lender is a Bank or Insurance Company	10%
Switzerland	15% or 0% if shareholder owns more than 20% of capital	10% / 0% if contracting state, credit for the sale of merchandise or credit granted by a credit institution	10%
Canada	15% or 5% if shareholder owns more than 10% of capital. <u>Protocol</u> : dividends not taxed at corporate level 15% in all cases	10%	10%
Mexico	Taxed by the residence State. <u>Protocol</u> : dividends not taxed at corporate level at 33%	10% / 5% if lender Bank or Insurance Co., 0% lender is a contracting State, a public bank	10%

5. Other relevant issues

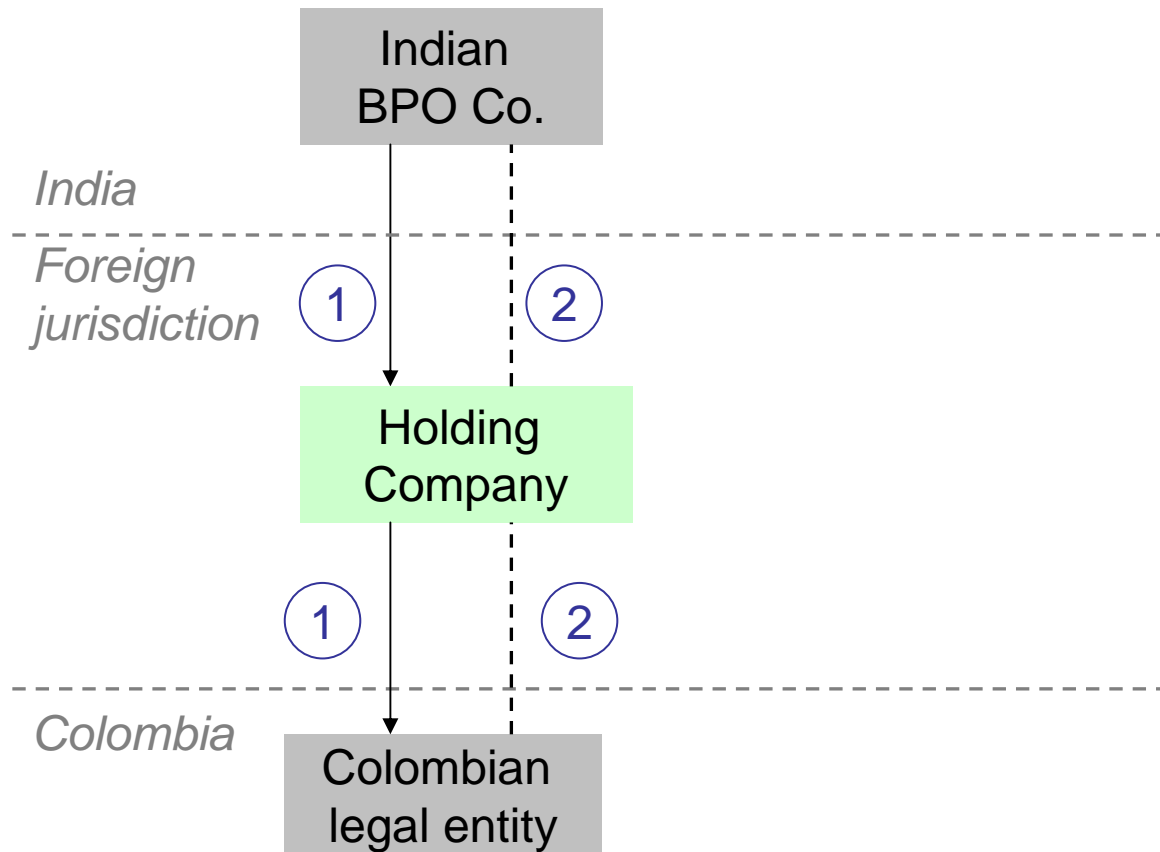
- **No thin capitalization rules:** Debts with foreign related parties: (i) interests not deductible, unless arm's length; (ii) debt part of equity
- **Deduction of payments abroad:** Deductible if tax withholdings; if not 15% deduction limit apply
- **Return of capital:** Capital returns are tax free.
- **Acquisition:** Common tax driven structure to acquire a local business: (i) seller incorporates a holding company in a tax heaven; (ii) transfer shares or quotas to holding; (iii) sell the shares of holding
- **Reorganization:** Mergers and spin offs tax free. International reorganizations allowed.
- **Relocation:** From commercial law perspective not possible.
- **General anti-avoidance:** No local general anti-avoidance rules
- **No controlled foreign corporations rules**
- **Transfer pricing rules:** OECD oriented. Cross-border transactions with foreign related parties

Indian BPO Co. investing in Colombia



1. An Indian BPO Co. is going to invest in Colombia by setting up a legal structure in the country
2. The Colombian legal entity will make payments abroad for:
 - (a) Technical Assistance
 - (b) Technical Services
 - (c) Management
 - (d) Royalties
 - (e) Software use
 - (f) Data storing and data processing
 - (g) Interests
 - (h) Dividends

Indian BPO Co. investing in Colombia



1. The Indian BPO Co. uses a holding company for the investment in Colombia
2. Funding and exit alternatives