

PRIVATE CLIENT

Colombia



Private Client

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Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

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TAX

Residence and domicile

How does an individual become taxable in your jurisdiction?

An individual is subject to income tax in Colombia due to residence status or upon deriving Colombian source income.

Non-residents

Non-residents are subject to income tax only on source income and they are only required to report income or assets derived or located in Colombia. Colombian source income refers to income from activities undertaken within Colombian territory and certain activities rendered from abroad.

Applicable law refers to this as the provision of services inside Colombian territory, the transfer of assets located in Colombian territory at the time the transfer takes place and the exploitation of tangible or intangible assets located inside the country.

If Colombian-sourced payments are not subject to income tax withholdings, non-residents are required to file an income tax return in Colombia. If income tax withholdings are applied, this could be the individual's final tax liability in Colombia.

Residents

An individual becomes a Colombian tax resident when they remain in the country, continuously or discontinuously, for more than 183 calendar days during a period of 365 days.

If the individual remains in the country continuously or discontinuously for 183 days during two consecutive fiscal years, the individual will become a tax resident after the second of the two consecutive years.

Colombian citizens are considered residents if their family members (ie, spouse or dependent children) are Colombian residents, if 50 per cent or more of the individual's income is of a Colombian source, or if 50 per cent or more of the person's assets are managed or held in Colombia. A Colombian citizen will also be considered a tax resident in Colombia if they reside in a tax haven.

Colombian citizens will not be deemed as tax residents in Colombia if 50 per cent or more of the individual's revenue is sourced in the jurisdiction of their domicile abroad or 50 per cent or more of their assets are managed or possessed in the country in the jurisdiction of their domicile.

Law stated - 09 November 2021

Income

What, if any, taxes apply to an individual's income?

Non-residents

Non-Colombian tax residents are taxed at a 35 per cent rate on their Colombian sourced income and are only required to report any earnings or assets generated or located in Colombia.

Dividends distributed to foreign individuals paid out of profits that are taxed at the corporate level are subject to dividend tax at a 10 per cent rate. Dividends distributed to foreign companies or foreign individuals paid out of profits that are not taxed at the corporate level are taxed at the general income tax rate (31 per cent for 2021 and 35 per cent

from 2022 onwards), in which case, the dividend tax of 10 per cent indicated above is applied once this tax has been reduced.

Residents

Colombian tax residents are subject to income tax in Colombia on a worldwide basis. Resident individuals' income tax rates are determined according to income baskets. Losses can be offset only against the same type of income.

The general tax rate applicable to labour, pensions, capital and non-labour income is progressive between 0 per cent and 39 per cent.

Dividends paid to resident individuals by resident entities out of taxed profits at the corporate level are taxed as follows:

- payments up to 300 tax value units (UVTs) (approximately US\$3,000): 0 per cent; and
- payments exceeding 300 UVTs (approximately US\$3,000): 10 per cent.

Dividends paid out of untaxed profits at the corporate level are taxed at the general corporate income tax rate depending on the period in which they are paid or accrued, in which case the income tax withholding of 10 per cent is applied once this tax has been determined. The same rate applies for dividends received from foreign companies and entities.

The exemptions, reliefs and deductions available are outlined below.

Revenues not considered as income

- Mandatory health and pension contributions made by employees; and
- voluntary contributions to pension funds (mandatory account) if income does not exceed 2,500 UVTs (approximately US\$24,000); and contributions do not exceed 25 per cent of the annual earned income.

Deductions

- Interest payments from loans destined for a housing purchase;
- payment of prepaid health services and health insurance payments; and
- 10 per cent of labour income paid to individuals who are dependent on the taxpayer (ie, children who have not reached legal age, children who have reached legal age but are receiving funding from their parents or the taxpayer to attend a recognised educational institution and children over 23 years of age who are dependent owing to physical or psychological incapability).

Exempt income

- Voluntary contributions to pension funds (voluntary account) and AFC accounts (savings accounts for housing purchase without exceeding 30 per cent of the individual annual income and limited to 3,800 UVTs (approximately US\$36,000);
- pensions not exceeding 1,000 UVTs (approximately US\$9,500) are exempted. Any amount exceeding this amount will be subject to tax; and

- 25 per cent of the individual's net labour income, provided that exempted income does not exceed 2,880 UVTs (approximately US\$27,500).

The above-mentioned tax benefits may be applied as long as they do not exceed 40 per cent of any income received or 5,040 tax UVTs (approximately US\$48,000).

Further considerations are that joint returns (husband and wife) are not acceptable under Colombian tax law, and the taxable period is annual and coincides with the calendar year.

One UVT is valued at 36,308 pesos (approximately US\$9.40) for 2021.

Law stated - 09 November 2021

Capital gains

What, if any, taxes apply to an individual's capital gains?

For Colombian tax purposes, capital gains are those that are not obtained by a taxpayer because of the activities an individual ordinarily carries out. The activities that trigger capital gains are specifically listed in the Colombian Tax Code :

- gains from the direct or indirect sale of fixed assets that have been owned by the individual for a term of two or more years;
- profits obtained by the individual in the liquidation of legal entities, and that do not correspond to undistributed profits or reserves;
- gains resulting from estates, legacies and donations (gifts);
- prizes, awards, lotteries and gambling earnings; and
- life Insurance indemnities are taxes as capital gains, only on the amount that exceeds 12,500 UVTs (approximately US\$119,000).

Distributions made by foreign trustees, private interest foundations or other similar fiduciary arrangements to Colombian tax residents are considered as gifts, and as such, are taxed as capital gains.

The applicable tax rate for capital gains is 10 per cent. As an exception, gains from lotteries, draws and gambling are subject to 20 per cent rate.

Law stated - 09 November 2021

Lifetime gifts

What, if any, taxes apply if an individual makes lifetime gifts?

The gift of Colombian situs assets is considered capital gains for the beneficiary and is subject to capital gains tax at a 10 per cent rate. The gift of foreign assets in favour of Colombia tax residents is also subject to capital gains tax at 10 per cent rate.

Law stated - 09 November 2021

Inheritance

What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

Following the death of the individual, the administrator of the estate is required to hold the estate assets under deposit. Once the inventory and appraisals of the estate are final, the administrator may sell the deceased assets to cover any debts or outstanding taxes or fees.

Once the estate has covered all obligations, the inheritance is distributed among all heirs. Such distribution is subject to capital gains tax at a 10 per cent rate. However, in some cases part of the inheritance may be considered as exempt income.

Law stated - 09 November 2021

Real property

What, if any, taxes apply to an individual's real property?

The following taxes apply to an individual's real property:

Property tax

Real estate held by an individual is subject to taxation at a municipal level at an applicable rate of 0.5 per cent to 1.6 per cent based on the valuation of the real state assets made by the municipalities where the asset is located.

Transfer tax

There is no transfer tax in Colombia. However, the net gain on the sale of real state is taxed as income or capital gains. This tax depends on the holding period and the nature of the asset.

The sale of fixed assets that have been owned by the taxpayer for at least two years is subject to capital gains tax at a rate of 10 per cent. Otherwise, the gain is subject to an income tax progressive rate (0 to 39 per cent) and a non-resident individual is subject to a 35 per cent rate.

Law stated - 09 November 2021

Non-cash assets

What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

As a general rule, the import of assets or goods that are not expressly excluded are subject to custom duties (0 to 20 per cent) and value added tax (VAT) at a 19 per cent rate.

Law stated - 09 November 2021

Other taxes

What, if any, other taxes may be particularly relevant to an individual?

The following taxes are relevant to individuals in Colombia.

Net worth tax

For fiscal year 2021, a net worth tax was triggered on the possession of a net worth equal to or in excess of 5 billion pesos.

This tax applies to individuals and foreign entities. In the case of resident individuals, this tax was based on worldwide assets and in the case of non-resident individuals and entities it is based on Colombia situs assets other than shares, accounts receivables or portfolio investments; for example, real estate, aircrafts, yachts, boats, speedboats, art or oil mining titles.

The taxable base was the value of the taxpayer's net equity on 1 January 2021. The applicable tax rate is 1 per cent.

Normalisation tax (tax amnesty)

Law 2155 of 2021 re-introduced a normalisation tax allowing taxpayers to report omitted assets without having to pay income tax on the resulting equity increase, but instead by paying an additional 17 per cent tax on the omitted assets.

To benefit from the normalisation tax, the following rules should be observed:

- Taxable base: Historical cost basis of the omitted assets.
- Applicable rate: 17 per cent.
- Repatriation of assets: Reported assets held abroad that are reinvested in Colombia are subject to a reduced taxable base of 50 per cent of the assets' fair market value. Assets must be repatriated before 31 December 2022 and remain in Colombian for at least two years.
- Foreign vehicles: Foreign trusts, private foundations, insurance policies with material savings components, investment funds or any other type of foreign fiduciary business must be reported considering the underlying asset's cost basis.

The deadline for filing and payment of the normalisation tax is 28 February 2022, but a 50 per cent advance payment must be paid in November 2021 considering an estimated basis as of when Law 2155 came into force. Assets reported under the normalisation tax must be included in all applicable tax return from fiscal year 2022 onwards.

VAT

VAT is levied on the import of goods into the country and rendering services when the direct user or recipient is located in Colombia. Certain goods and services are excluded from VAT. The general rate is 19 per cent.

Industry and commerce tax

A municipal tax Industry and Commerce tax (ICT) is triggered on revenues derived from the performance of industrial, service and commercial activities within a Colombian municipality at an applicable rate of 0.7 per cent to 1 per cent.

ICT is triggered on gross income, excluding revenues for exports, proceeds from the sale of fixed assets, refunds, subsidies and withholdings.

Financial transactions tax

A Financial Transactions Tax is triggered on any financial transaction whereby funds held by a Colombian entity or individual are transferred (eg, debits on bank accounts). The taxable base is the amounts being transferred. The applicable rate is 0.4 per cent and is withheld and collected by financial entities.

Income tax withholdings

As a means to collect income taxes in advance, Colombian law establishes a system of income tax withholdings that requires every person making payments to a taxpayer to withhold a certain percentage, depending on the tax being paid. For those who must file an income tax return, all amounts withheld or self-withheld are a prepayment of the final tax liability and as such are credited on their return.

Law stated - 09 November 2021

Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

The following is the applicable tax treatment for both local trust and foreign trusts in Colombia.

Local trusts

Colombian tax law treats local trusts as flow-through entities for tax purposes. Thus, trusts must determine their profits annually and the beneficiaries must include such profits in their own income tax returns for that same year and pay the relevant taxes.

The title to the assets that an individual contributes to the trust fund must pass to the trust fund (exceptions apply, for example, for the guarantee trust) or otherwise such assets would have to be declared by the individual as part of their equity and thus be subject to net worth taxes.

Additionally, if the individual receives fiduciary rights over the trust fund because of said contribution, they would be obliged to report such rights for Colombian income tax purposes.

Whenever the settlor or any of the beneficiaries receive income from the trust, they must pay the relevant taxes in Colombia. Income tax regulations establish that the results of any activities of the trust and all equity increases must be reported in the income tax return of the beneficiaries.

Trusts are used in Colombia as an instrument to administer properties or businesses or to grant a warranty, considering that trustees are professional entities. In the case of successions, trusts are used to administer the estate of certain heirs until they can do so themselves.

Common law trusts or foreign foundations

There are no civil or commercial regulations regarding the establishment of common law trusts or foreign foundations in Colombia. However, common law trusts are recognised in the Colombian Tax Code. The following requirements

must be observed:

Distributions made by a foreign trust or foundation

Colombian tax residents are subject to income tax based on their worldwide source income. Therefore, any distributions made by a foreign trust or foundation would be subject to income tax in Colombia at a 10 per cent rate.

Reporting of assets

Assets held by a trust or foundation (that is revocable and directed) are understood to be held directly by the settlor and must be reported for all tax purposes as part of her or his own net worth.

If the underlying assets of an irrevocable and discretionary foundation cannot be attributed to the beneficiaries, the settlor must report the trust or foundation interest as part of their equity. But if the settlor cannot be identified or determined, the reporting obligation falls on the beneficiaries irrespective of whether they are conditioned or do not have any control over the assets and income of the structure. This, without any consideration of the trust or foundation's irrevocable and discretionary character.

Law stated - 09 November 2021

Charities

How are charities taxed in your jurisdiction?

As a general rule, non-profit corporations, foundations and associations are subject to the general tax regime and are subject to income tax at a 31 per cent for 2021 and 35 per cent from 2022 onwards.

However, the Colombian Tax Code establishes that non-profit corporations, foundations and associations are subject to a special tax regime with respect to income tax and complementary taxes provided always that they comply with the following conditions:

- they are incorporated according to Colombian law;
- their main purpose and resources are destined to health, sports, formal education, culture, scientific or technological, ecological research, environmental protection or social development programmes;
- such activities are of general interest;
- their capital contribution or surpluses cannot be distributed; and
- their surpluses are totally reinvested in the activity of its corporate purpose and such corporate purpose corresponds to the activities mentioned in the preceding clause.

Entities that comply with the aforementioned requirements may be considered as entities of the special tax regime, with the Colombian Tax Office's approval.

Entities approved by the Colombian Tax Office as eligible for the special tax regime are subject to income tax at a 20 per cent. However, any income surplus is considered as exempt if the funds are destined directly or indirectly for programmes that develop the entity's social purpose and meritorious activities. Any excess benefits or surplus that are not reinvested in programmes that develop the entity's social purpose are deemed as taxable for the next fiscal year.

Law stated - 09 November 2021

Anti-avoidance and anti-abuse provisions

What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Colombia's main anti-avoidance and anti-abuse provisions in the context of private wealth management are as follows.

Anti-abuse rule

Under article 869 of the Colombian Tax Code, the Colombian Tax Office may re-characterise or reconfigure any operation or series of operations that may be considered as abusive for tax purposes.

Conduct is considered abusive if:

- the transaction is not reasonable from a commercial or economic point of view;
- a high tax benefit is achieved but is inconsistent with the risks undertaken by the taxpayer; or
- the transaction is structurally correct and allowed by applicable law, but the true intention of the parties is concealed.

Exchange of information

Colombia has also entered into several agreements for the exchange of tax information, and it is very active on this matter. For a list of countries with which Colombia has agreed to share information under the Organisation for Economic Co-operation and Development (OECD) common reporting standard, please go to the OECD site.

Foreign account tax compliance

In relation to the exchange of information with the USA, the Colombian and the US government have an enforceable Intergovernmental Agreement Model 1 (IGA), within the framework of Law 1666 of 2013, implementing foreign account tax compliance as mandatory for Colombian financial institutions and taxpayers. The IGA was implemented in 2015 by means of Resolution 60 of 2015 issued by the Colombian Tax Office.

Ultimate beneficial ownership

Taxpayers are required to identify and report to the Colombian Tax Office the ultimate beneficial owner based on the Laundering Assets Risk Management and Terrorism System standards and other information exchange commitments.

Ultimate beneficial ownership is defined in terms of entities or other fiduciary structures, as follows:

- In the case of entities, the ultimate beneficial owner is deemed the individual who has direct or indirect ownership of 5 per cent or more of the entity's interest, who has direct or indirect control over the latter considering transfer pricing rules, or the legal representative in case no other individual is identified.
- In the case of other fiduciary structures such as local trusts, mutual funds or foundations, the ultimate beneficial owner is deemed the individual acting as settlors, constituents, trustees, committees, beneficiaries or an equivalent position; or any other individual exercising effective control over the structure's assets and income.

Law 2155 of 2021 created the Beneficial Owners Registry (RUB) in order to control taxpayers obliged to report information about ultimate beneficial owners and manage said information. Relevant regulation is pending.

Voluntary disclosure (normalisation tax)

Law 2155 of 2021 re-introduced a mechanism allowing taxpayers to include any omitted assets without having to pay income tax on the resulting equity increase, but instead by paying an additional tax on the omitted assets.

The additional tax would apply at a 17 per cent rate if reported, liquidated and paid only on 28 February 2022, although with a 50 per cent advance payment to be paid in November 2021. Normalised assets must be included in all applicable tax returns for fiscal year 2022 and onwards.

Law stated - 09 November 2021

TRUSTS AND FOUNDATIONS

Trusts

Does your jurisdiction recognise trusts?

Local trusts

Colombian civil law does not provide rules on common law trusts. However, Colombian law sets out rules on civil and commercial local trust agreements whereby a settlor transfers the property or administration of certain assets to a trustee in exchange for fiduciary rights. The trustee is responsible for managing these assets or transferring them to a third party to carry out the purpose determined in the local trust agreement, either for the benefit of the settlor or a third party. A local trust should not be confused with the Anglo-Saxon or common law trust.

Local trusts are commonly used in Colombia as instruments to administer properties or businesses with a specific purpose, or to grant guaranties or collaterals, considering that trustees are professional regulated entities.

Common law trusts or foreign foundations

There are no civil or commercial regulations regarding the establishment of common law trusts or foreign foundations in Colombia. However, common law trusts are recognised in the Colombian Tax Code. The following requirements must be observed:

- Distributions made by a foreign trust or foundation: Colombian tax residents are subject to income tax based on their worldwide source income. Therefore, any distributions made by a foreign trust or foundation would be subject to income tax in Colombia at a 10 per cent rate. As from fiscal year 2019, life insurance indemnities are taxed as capital gains only on the amounts that exceed 12,500 UVTs (approximately US\$119,000).
- Reporting of assets: assets held by a trust or foundation (that is revocable and directed) are understood to be held directly by the settlor and must be reported for all tax purposes as part of their own net worth. If the underlying assets of an irrevocable and discretionary foundation cannot be attributed to the beneficiaries, the latter must be reported by the settlor. But if the settlor cannot be identified or determined, the reporting obligation falls on the beneficiaries irrespective of whether they are conditioned or do not have any control over the assets and income of the structure. This is without any consideration of the trust's or foundation's irrevocable and discretionary character.

Reporting of income: if a trust or foundation was revocable and controlled by the settlor, then it would be considered as a controlled foreign corporation under Colombian law. Hence, net profits derived from passive income obtained by the trust or foundation shall be recognised immediately in a proportion equivalent to the participation in the trust's or foundation's capital or profits, and not upon receipt of profits. This means no tax deferral would be applicable in this case. Accordingly, Colombian tax residents must report on their income tax returns the passive income realised by the trust or foundation, considering the nature and characteristics of that income.

Law stated - 09 November 2021

Private foundations

Does your jurisdiction recognise private foundations?

There are no civil or commercial regulations regarding the establishment of foreign private foundations in Colombia. However, private foundations are recognised by Colombian civil, commercial and tax authorities. The above-mentioned tax treatment for trusts is also applicable for foreign private foundations.

Law stated - 09 November 2021

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

Does your jurisdiction have any form of legally recognised same-sex relationship?

A progressive recognition of legal rights for same-sex couples has taken place in Colombia through case law. Today, same-sex couples can constitute de facto marital unions and can even formalise their contractual bond before a judge or a notary public, and have the same pension, social security, property, inheritance and adoption rights as heterosexual couples. The latest legal development took place with Ruling SU-214/2016 whereby the Constitutional Court accepted same-sex marriages.

Law stated - 09 November 2021

Heterosexual civil unions

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Colombian law recognises common law unions under de facto marital union provisions. Opposite-sex couples that have cohabited together for at least two continuous years may request the declaration of the existence of a de facto marital union. As of 2007, both opposite- and same-sex couples who have cohabited together for at least two continuous years may request the declaration of the existence of a de facto marital union. This declaration implies the presumption of the existence of a community of property regime (as applicable to married couples) and leads to the distribution of the common property. This declaration may be made by a family judge or by mutual consent of the couple before a notary public or a duly authorised conciliation centre.

Law stated - 09 November 2021

SUCCESSION

Estate constitution

What property constitutes an individual's estate for succession purposes?

In accordance with article 1016 of the Colombian Civil Code, the following allocations must be deducted from the unsettled estate:

- public advertising of the deceased's will (if applicable);
- hereditary credits;
- outstanding taxes;
- allocations for child support; and
- marital share.

The result constitutes the net estate available for partition between heirs, which must be performed in accordance with the rules on forced heirship and half of the estate that may be freely assigned by a will.

Law stated - 09 November 2021

Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals have the freedom to dispose of their state without limitation during their lifetime. However, the disposition of certain assets may require the approval of the other spouse under Colombian marital rules.

The general rule for marital property is the community of property regime. This is a regime that automatically comes into effect for all marriages and will remain so until the community of property is liquidated (as a result of either judicial decision or the will of the spouses). In this regime, most community property is owned in common by the spouses. It is different to co-ownership because the spouses (joint owners) do not possess a share in the property but are full owners of the community property.

Upon liquidation of the community of property, the entire community property is split into equal shares. Under this regime, the right of a spouse to unilaterally dispose of assets is unlimited. A spouse is entitled to dispose of personal property and the assets of the community of property as they see fit. However, other dispositions may require, as a rule, the approval of the other spouse. This would be the case with real estate property. Some assets expressly excluded from the community of property by the Civil Code are:

- real estate owned by each spouse before marriage;
- real estate acquired by each spouse during marriage 'replacing' a real estate property owned by the spouse before marriage; and
- real estate received during marriage as an inheritance.

At the time of the dissolution of the community property, each spouse is subject to debts acquired by the community of property and entitled to half the value of the community property. This, again, does not apply to certain properties or rights already owned by each spouse before the marriage.

Law stated - 09 November 2021

To what extent do individuals have freedom of disposition over their estate on death?

By executing a will, a person may freely dispose of only half of their estate. The Civil Code contains compulsory portions that cannot be circumvented by will. In the event that no descendants or beneficiaries are entitled to inherit, the testator may freely dispose of the entire estate. Otherwise, the Colombian state through the Colombian Family Welfare Institute will inherit the entire state.

Law stated - 09 November 2021

Intestacy

If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Colombian law distinguishes between different orders of heirs in an intestate succession. Succession orders or levels determine who inherits and what proportion of the inheritance they receive. One level excludes the others. The following table sets out the different orders of heirs in an intestate succession.

Order of heirs	Proportion
Descendants: biological and adopted	Descendants inherit equal portions, not including the surviving spouse's marital portion
Ancestor and surviving spouse: ancestors of nearest degree exclude the others	Heirs inherit per capita along with the surviving spouse, who receives the marital portion
Siblings and surviving spouse	The inheritance is divided into two parts, one for the brothers and sisters, who receive equal portions, and one for the spouse
Children of brothers and sisters	Equal portions
The state through the Colombian Family Welfare Institute	The entire estate

Law stated - 09 November 2021

Adopted and illegitimate children

In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

There is no legal distinction between natural and adopted children in terms of estate and succession planning. Natural and adopted children have the same rights and obligations.

Law stated - 09 November 2021

Distribution

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

In Colombia, the last residence of the deceased determines the successions applicable law. Colombian rules on forced heirship are mandatory and apply to the estates of all individuals (nationals and foreigners) who die with their last residence in Colombia. Colombian resident heirs and foreign heirs have the same rights and, thus, are entitled to equal treatment in Colombian probate proceedings.

Law stated - 09 November 2021

Formalities

What formalities are required for an individual to make a valid will in your jurisdiction?

If the law governing the will is Colombian law, one should bear in mind that the testator is free to assign its properties to their legatees but must consider the compulsory portions. Such portions are the part of the estate that, according to the forced heirship law, are assigned to the forced heirs.

Law stated - 09 November 2021

Foreign wills

Are foreign wills recognised in your jurisdiction and how is this achieved?

Colombian law and courts recognise foreign wills executed by Colombian nationals or resident foreigners provided that:

- the will is presented before any Colombian consulate abroad;
- witnesses of the will are domiciled in the jurisdiction where the will is granted; and
- the will is compliant with the law of the jurisdiction in which it is executed.

Law stated - 09 November 2021

Administration

Who has the right to administer an estate?

An estate executor is designated to administer the assets and insure the fulfilment of the deceased's last will. The estate executor must accept such designation; however, if an executor is not designated, the legal heirs are in charge of administering the estate.

Law stated - 09 November 2021

How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

An estate executor is designated to administer the assets and insure the fulfilment of the deceased's last will. The estate executor must accept such designation; however, if an executor is not designated, the legal heirs are in charge of administering the estate.

The administrator of the estate is required to hold the estate assets under deposit. When the inventory and appraisals of the estate are final, the administrator may sell the deceased's assets to cover any debts or payment of any outstanding taxes and fees.

Law stated - 09 November 2021

Challenge

Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

A valid will may not be amended after the deceased's death. The validity and content of a will can be challenged for various reasons, such as the deceased's lack of capacity or the existence of an heir that was not included in the deceased's inheritance as a rightful heir under Colombian law. Colombian succession law determines that the testator may freely assign only part of their inheritance. Thus, if the testator does not respect the compulsory portions, the judge can still apply the will and change its content in order to assign to the heirs the portions that they are legally entitled to under Colombia's mandatory heirship laws.

Law stated - 09 November 2021

CAPACITY AND POWER OF ATTORNEY

Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

Colombian family law grants the parents of a child usufruct over the property of the child, with some exceptions, such as the assets acquired by the child because of their work or received by the child as a result of inheritance, legacy or gifts. In addition, Colombian family law grants the parents the right to manage the property of their children, except for the assets acquired by the child because of their work.

Once a child becomes of legal age, and the parental powers over a child terminate, the parents are required to give full account of and hand over the property to the child. Parents are liable for any damage or reduction in the property of the child administered by them resulting from their negligence or wilful misconduct. They must therefore act in a careful and faithful manner. The administration of the child's property by the parents can be subject to review by the authorities. Apart from establishing specific regulations regarding the administration of the property, authorities may, as an ultimate measure, appoint a legal guardian for the administration of the child's property.

Law stated - 09 November 2021

Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

Law 27/1997 determines that an individual has full capacity to exercise their civil rights (including holding and managing property) at 18 years of age.

Law stated - 09 November 2021

Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

Any individual is subject to legal rights and obligations, except for individuals deemed to be incapable by a Colombian

judge after a medical evaluation and due process.

An individual may be declared incapable by means of a voluntary interdiction whereby a judge declares that an individual is unfit to exercise their rights and obligations. Once the individual has been declared unfit to handle their own affairs, the judge will designate a guardian to take care of their affairs.

Law stated - 09 November 2021

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Foreign nationals belonging to one of the 102 jurisdictions established in Resolution No. 10,535 of 2018 of the Ministry of Foreign Affairs (eg, the United States, Canada, Japan, EU member states) are not required to apply for a visa for a tourist or business stay of up to 90 days.

Law stated - 09 November 2021

High net worth individuals

Is there a visa programme targeted specifically at high net worth individuals?

There is no specific visa programme targeted at high net worth individuals in Colombia. However, foreigners making direct investments starting from 650 minimum monthly wages (approximately US\$154,500) may obtain a resident visa.

Law stated - 09 November 2021

UPDATE & TRENDS

Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

On September 14 of 2021 a new tax reform (Law 2155) was issued in Colombia, as a response to the fiscal and social crisis triggered by the economic slowdown resulting from the covid-19 pandemic and the need of stabilising the country finances, maintaining its credit rating and funding social programmes.

Some of the new rules and re-introduced mechanisms relevant to high-net worth individuals included in this new tax reform include:

2022 new normalisation tax (tax amnesty)

On 26 September 2019, the Colombian Tax Office (CTO) announced that 5,400 Colombian residents with unreported assets and liabilities abroad, filed and paid the 2019 normalisation tax resulting in the collection of 1.1 billion Colombian pesos, exceeding the established collection goal by 115 per cent.

In accordance with the annual collection report issued by the CTO for FY 2020, other 4,778 taxpayers filed a

normalisation tax return in 2020 resulting in an additional collection of 627.6 billion Colombian pesos.

Based on this success, the government re-introduced a new normalisation tax for 2022, allowing taxpayers to include any unreported assets without having to pay income tax and penalties on the resulting equity increase but instead by paying an additional tax on the omitted assets.

This new normalisation tax may maintain many of the features of the previous taxes with the exception of an increased tax rate of 17 per cent and a 50 per cent advance payment that would have to be completed during November 2021. As in previous years, if the assets were to be reinvested in the country for at least two years, the effective tax rate could be reduced to 8.5 per cent and the deadline for filing and payment will be February of 2022.

Taxation and tax reports of foreign trusts, foundation and other similar entities

Before the enactment of Law 1943 of 2018, regulations regarding the taxation and tax report of trusts were poorly regulated. However, the CTO determined the main aspects to be considered by Colombian taxpayers acting as settlors, contributors or beneficiaries. Contributors assigning assets to a revocable trust were required to report assets held by the trust and declare them at cost basis. Conversely, contributors assigning assets to a discretionary and irrevocable trust were not required to report those assignments in Colombia.

With the enactment of Law 1943 of 2019 (and subsequently Law 2100 of 2019) new rules regarding the taxation of foreign trusts, foundations and similar entities were introduced. As a result, if the underlying assets of a foreign trust or foundation are not controlled or cannot be unconditionally disposed of by the beneficiaries, it will be the settlor, contributor or originator who must report them for all Colombian tax purposes. This, without any consideration of the structure's irrevocable and discretionary character.

Law 2155 of 2021 re-introduced some of the definitions and reporting and taxation rules in Law 1943 and Law 2100 in connection to foreign trusts, foundations and similar entities. In addition, it established that in case the settlor, contributor or originator could not be identified the reporting obligation falls on the beneficiaries irrespective of whether they are conditioned or do not have any control over the assets and income of the structure.

Information exchange agreements and ultimate beneficial owner report

During the past decade, Colombia has introduced numerous tax rules involving the taxation of individuals and the implementation of information exchange mechanisms (eg, the Foreign Account Tax Compliance Act, the Organisation for Economic Co-operation and Development (OECD) common reporting standard and the anti-money laundering and counter terrorism financing measure known as Sistema de Administración del Riesgo de Lavado de Activos y de la Financiación del Terrorismo (SARLAFT)) leading to greater transparency. These developments (among others) have led Colombia to officially become the 37th member country of the OECD after Colombia's willingness to adopt OECD legal recommendations and standards had been assessed and confirmed.

From a private wealth law perspective, these developments have also increased the demand for wealth management services in Colombia as individuals seek to remain compliant while ensuring the protection and successful transfer of wealth. Furthermore, the recent tax reforms adopted by Colombia have created new challenges for private clients wishing to maintain and create family wealth by introducing higher taxation rates on income and net worth for individuals.

In this regard, new developments regarding ultimate beneficial owners report introduced in recent years, such as the included in Law 2155 of 2021, which now defines and recognises beneficiaries of entities and other fiduciary structures, represent interesting opportunities and challenges in the field.

Law 2155 of 2021 also proposed the creation of a Beneficial Owners Registry to control taxpayers obliged to report information about ultimate beneficial owners and manage said information. Relevant regulation is pending.

Jurisdictions

	Andorra	Cases & Lacabra Abogados SLP
	Australia	Kalus Kenny Intalex
	Austria	DORDA
	Belgium	Loyens & Loeff
	Bermuda	Butterfield Trust
	Cayman Islands	Butterfield Trust
	Colombia	Rimôn
	Cyprus	Patrikios Pavlou & Associates LLC
	Germany	POELLATH
	Guernsey	Butterfield Trust
	Hong Kong	Charles Russell Speechlys LLP
	Ireland	Matheson
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Gasser Partner
	Malta	GVZH Advocates
	Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	Panama	Pardini & Asociados
	Spain	Cases & Lacabra Abogados SLP
	Switzerland	Kellerhals Carrard
	United Kingdom - England & Wales	McDermott Will & Emery
	USA	Holland & Knight LLP