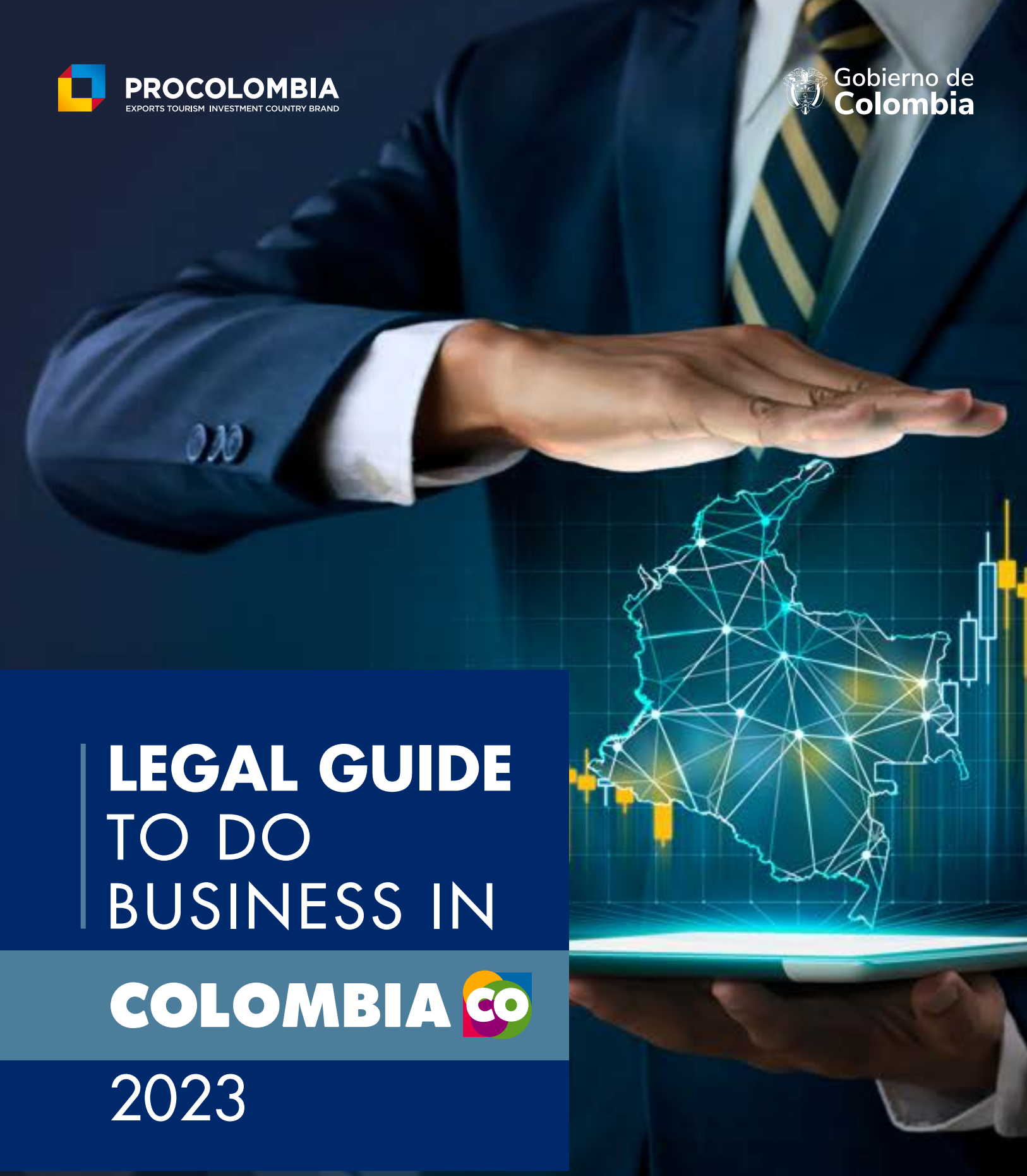
PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND

Gobierno de Colombia



LEGAL GUIDE TO DO BUSINESS IN COLOMBIA CO 2023

This memo reflects the valid Colombian legislation at the date it was sent and it seeks to provide general and basic information of the Colombian law. This message does not represent or replace legal counsel of a specific or particular matter. Such legal counsel must be obtained from specialized legal services. To that effect, we suggest that you contact any of the law firms that can be found in the Investor's Services Directory located in the webpage of ProColombia

www.procolombia.co

PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND

Gobierno de Colombia

CHAPTER 1

PROTECTION TO FOREIGN INVESTMENT

COLOMBIA CO

PROTECTION TO FOREIGN INVESTMENT

Foreign investment plays a key role in the Colombian economy. For this reason, having a clear and efficient regulatory framework, in accordance with international standards, becomes the best way to attract permanent high value-added investments.

The five (5) main aspects a foreign investor should bear in mind regarding FDI in Colombia:

1. **The Colombian Constitution grants equal treatment to foreign investment and local investment, except in specific cases.**

2. **Colombia has several International Investment Agreements, as well as Double Taxation Agreements ("DTA"), showing the country's commitment to promote and protect international investments.**

3. **FDI is allowed in most sectors, excepting national defense and security, and the processing and disposal of toxic, hazardous, or radioactive waste not originated in the country. There are also some restrictions on land property and corporations' capital control in some strategic industries.**

4. **FDI does not require a previous authorization by national authorities, except in specific cases. FDI must be registered before the Colombia Central Bank. Said registration is required for statistical and control purposes.**

Colombian domestic law establishes an FDI regimen based on four (4) fundamental principles:

(i) Equal treatment

The Colombian Constitution states that foreign nationals and citizens share identical rights with Colombian nationals for investment purposes.

(ii) Universality

Foreign investment is allowed in all sectors of the economy except for the following: (i) activities related to defense and national security, and (ii) processing and disposal of toxic, hazardous, or

radioactive waste not originated in the country.

Colombia has sectoral restrictions to foreign ownership that relate to television broadcasting services and the fishing industry. For national security reasons, FDI is prohibited for the following activities: land acquisition near borders; manufacture, possession, use and commercial exploitation of nuclear, biological, and chemical weapons. FDI is also restricted in Private Security and Surveillance Services with weapons. Colombia also imposes limitations with respect to corporate organization and trust personnel in maritime transportation, journalism and radio broadcasting services. The Colombian State maintains a public monopoly in respect to gambling and liquors.

(iii) No prior authorization

As a general rule, FDI in Colombia does not require prior authorization, except in the insurance, finance, mining and hydrocarbon sectors, which may require, for certain cases, prior authorization or recognition by relevant authorities (e.g. the Colombian Financial Superintendence or the Ministry of Mines and Energy). FDI in Colombia must be registered before the Colombian Central Bank ("Banco de la República" in Spanish) for statistical and control purposes.

(iv) Flexibility

Foreign investors may freely determine the destination of their investments, as well as transfer their returns abroad, make reinvestments in the country or even dispose of or liquidate their investments. There are no capital control measures in Colombia. However, the government may impose them when the country's international reserves are equivalent to less than three (3) months of imports.

1.1. International Investment Agreements

To establish an optimal investment environment, Colombia has negotiated and ratified International Investment Agreements ("IIAs"), which are mainly found in Bilateral Investment Treaties ("BITs"), or in investment chapters contained in FTAs.

IIAs create a fair and coherent legal framework that establishes the minimum standards of protection to foreign investors that decide to conduct FDI in Colombia. IIAs also provide said standards of protection to Colombian investors that invest in jurisdictions covered by these international instruments.

1.1.1. Content of IIAs in force

Although the content of IIAs has evolved since the first generation of IIA was ratified in Colombia, generally these types of instruments include the following clauses:

Time frame of IIAs

IIAs have clauses that establish the temporal conditions for an investment to be covered under the Treaty's standards. As a rule, IIAs cover investments made before the entry into force of the treaty, but exclude disputes initiated before that date.

Covered Investment and Investors

IIAs include precise definitions of what does or does not constitute an investment and who is considered a covered investor, whether natural or legal persons. Specifically in the first case, the rules on dual nationality and effective nationality have a very important role when deciding to activate the protection of the IIA.

Protection Standards

Although each IIA has its own particularities, this section contains the standards of protection that the Colombian State generally guarantees for the protection of foreign investments.

National Treatment

Foreign investors and investments are granted a treatment no less favorable than that granted to national investors and their investments in similar circumstances.

Most-Favored-Nation (MFN)

Foreign investors and investments are accorded the same privileges granted by any contracting party to investors of any other country and/or their investments. MFN varies depending on the IIA.

Modern IIA models usually qualify this standard of protection in such a way that it does not generate imbalances in the protection granted.

Minimum Standard of Treatment

Investors and investments are granted a Minimum Standard of Treatment which includes the Fair and Equitable Treatment ("FET"), and full protection and security standards in accordance with the principles of customary international law. Fair and equitable treatment refers to a non-arbitrary or discriminatory treatment, which is in accordance with the principle of due process. On the other hand, full protection and security refer to the physical protection which is granted by the State to its own nationals.

The minimum standard of treatment guarantee does not diminish the regulatory power of the State in strategic sectors for the nation such as health, defense and environmental protection.

Prohibition of Expropriation Without Compensation

Under this standard of protection, expropriation may only take place for public purposes, in a non-discriminatory way and in accordance with due process of law, including a prompt, adequate, and effective compensation. IIAs normally incorporate two types of expropriation: i) direct expropriation, where an investment is nationalized or otherwise directly expropriated through the title transfer or outright seizure, and ii) indirect expropriation, where an action or a series of actions by a State has an equivalent effect to direct expropriation not including a formal transfer of title or outright seizure.

Free Transfer of resources

Under this provision, the State commits itself to allow foreign investors to transfer freely investments, returns, and the product of the liquidation or sale of the investment and payments made as compensation, among others.

As a general rule, free transfer of resources is granted in accordance with domestic law. In any case, the State reserves its right to limit or restrict transfers in case of difficulties in the balance of payments, serious macroeconomic difficulties, or threat thereof.

Investor – State Dispute Settlement Mechanism in IIAs

IIAs include a section for the settlement of disputes between the investors and the State. This mechanism grants the investor the possibility of filing a claim against the State before international arbitration forum for the violation of any of the provisions under an IIA. It is important to note that the vast majority of IIAs provide for amicable negotiation or dispute settlement periods before an arbitration claim can be initiated.

1.2. Double Taxation Agreements ("DTA")

DTA are international bilateral or multilateral treaties to establish clear rules to avoid double taxation on income and equity, which under the domestic governing law, may be taxable in the same way in two or more jurisdictions. The DTAs are negotiated under principles of international public law, and promote both cooperation against tax evasion, and trade between countries.

DTAs also incentive FDI and Outward Foreign Direct Investment by granting the following benefits:

i. **Tax stability on the conditions for operations between tax residents from two (2) different countries.**

ii. **Reduction of the effective and consolidated tax burden via the application of reduced withholding rates.**

iii. **Possibility to exempt a given income, generally in the source country, to the extent that there is not substantial economic presence in that country by the foreign company.**

DTAs usually cover income and, in some cases, equity taxes. Indirect taxes such as Value Added Tax ("VAT") or municipal taxes, such as the turnover tax, are generally not covered under these agreements[1].

The investor, determining whether a country is an opportunity for its investments, besides considering the expectation of profit return and risks, shall consider the taxation impact for its investments. For this reason, DTAs and the tax regimen constitute key factors in the investor's decision-making process.

Double taxation is caused normally because of differences in the application of crucial concepts, such as residency, source of the income, or from limitations in one country to take the taxes paid in another country as a tax credit or recognize certain foreign income as exempt. Therefore, two (2) different countries may tax the same income during the same period. To solve this, DTAs establish common principles regarding equality in the income distribution, promoting international operations.

In this sense, an indicator of the application of such common principles between countries is the number of DTAs in force, considering that these agreements increase the profit levels for the investor and promote legal certainty. Thus, nets of DTAs are an incentive for FDI.

The DTA model of Colombia follows characteristics of the Organization for the Economic Co-operation and Development ("OECD") model and the United Nations ("UN") model.

1.3. Colombia and International Conventions on the Protection of Foreign Investment

Colombia is party to the Treaty establishing the International Center for Settlement of Investment Disputes

[1] However, within the framework of the Andean Community ("CAN", as for its acronym in Spanish), Decisions 599 and 600, as well as Decision 635 modifying them, through which it is intended to harmonize Substantial and Procedural Aspects of Value Added Tax, and selective excise taxes, within the different CAN member countries.

("ICSID") and the Multilateral Investment Guarantee Agency ("MIGA").

Each of these treaties constitutes an important instrument for the international investment law system:

- **The ICSID, created under the auspices of the World Bank, is an international center specialized in dispute resolution between investors and host states. Investors require being covered by a treaty, or another international instrument, to bring claims against a State.**

- **MIGA is a multilateral organization that provides protection to foreign investors in member countries against non-commercial risks, such as riots and civil wars, exchange transfer restrictions and discriminatory expropriations. The agency aims to provide services for foreign investors who invested in member developing countries. Additionally, MIGA provides information about developing countries to support the investment process from the earlier stages.**

1.4. Trade Agreements, Agreements on the Reciprocal Promotion and Protection of Investments, and Double Taxation Agreements Concluded or under Negotiation by Colombia.

1.4.1. International Investment Agreements in Force, Signed or in Negotiation

1.4.1.1. In force[2]

COUNTRY	ENTRY INTO FORCE	KIND OF AGREEMENT
Mexico	In force since 1995. Law 172 of 1994. Approved by decision C-178 of 1995. Decree 2676 of 2011 and amending protocol Law 1457 of 2011. Approved by decision C-051 of 2012.	Free Trade Agreement with an investment chapter.
Cuba	In force since 1996. Law 245 of 1995. Approved by decision C-379 of 1996.	Bilateral Investment Treaty
Chile	In force since May 8 of 2009. Law 1189 of 2008. Approved by decision C-031 of 2009.	Free Trade Agreement with an investment chapter.

[2] Es importante señalar que los Acuerdos con la AELC y la Unión Europea no contienen un capítulo de inversión con la profundidad de un AII estándar. Sin embargo, por contener reglas relativas a inversiones, son citados en este listado.

COUNTRY	ENTRY INTO FORCE	KIND OF AGREEMENT
Northern Triangle (Guatemala, El Salvador and Honduras)	In force with: Guatemala since November 12 of 2009; El Salvador since February 1 of 2010 and Honduras since March 27, 2010. Law 1241 of 2008. Approved by decision C-446 of 2009.	Free Trade Agreement with an investment chapter.
EFTA	In force with: Switzerland and Liechtenstein since July 1 of 2011. Norway since September 1, 2014. Iceland since October 1, 2014. Law 1372 of 2010. Approved by decision C-941 of 2010.	Free Trade Agreement with an investment chapter.
Canada	In force since August 15, 2011. Law 1363 of 2009. Approved by decision C–608 of 2010.	Free Trade Agreement with an investment chapter.
United States	In force since May 15, 2012. Law 1143 of 2007 and Law 1166 of 2007. Approved by decisions C-750 and 751 of 2008.	Free Trade Agreement with an investment chapter.
Spain	In force since September 22, 2007. Law 1069 of 2006. Approved by decision C–309 of 2007.	Bilateral Investment Treaty.
Switzerland	In force since October 9, 2009. Law 1198 of 2008. Approved by decision C–150 of 2009.	Bilateral Investment Treaty.
Perú	In force since December 30, 2010. Law 1342 of 2009. Approved by decision C-377 of 2010.	Bilateral Investment Treaty.
China	In force since July 2, 2012. Law 1462 of 2011. Approved by decision C-199 of 2012.	Bilateral Investment Treaty.

COUNTRY	ENTRY INTO FORCE	KIND OF AGREEMENT
India	In force since July 3, 2012. Law 1449 of 2011. Approved by decision C-123 of 2012.	Bilateral Investment Treaty.
United Kingdom and North Ireland	In force since October 10 of 2014. Law 1464 of 2011. Approved by decision C-169 of 2012.	Bilateral Investment Treaty.
Japan	In force since September 11, 2015. Law 1720 of 2014. Approved by decision C – 286 of 2015.	Bilateral Investment Treaty.
South Korea	In force since July 15, 2016. Law 1747 of 2014. Decision C-184 of 2016.	Free Trade Agreement with an investment chapter.
Costa Rica	In force since August 1, 2016. Law 1763 of 2015. Decision C-157 de 2016.	Free Trade Agreement with an investment chapter.
Pacific Alliance (Additional Protocol)	In force since May 1, 2016. Law 1721 of June 27 of 2014. Decision C-620 of 2015.	Commercial Protocol to the Agreement of the Pacific Alliance between Colombia, Chile, Mexico and Peru.
France	In force since October 14, 2020. Lay 1840 July 12, 2017. Decision C-252 of 2019.	Bilateral Investment Treaty.
Israel	In force since August 11, 2020. Law 1841 July 12, 2017. Decision C-254 of 2019.	Free Trade Agreement with an investment chapter.

1.4.1.2. Suscribed

COUNTRY	ENTRY INTO FORCE	KIND OF AGREEMENT
Panama	Signed on September 20, 2013. Pending internal approval.	Free Trade Agreement with an investment chapter.
Singapore	Signed on January 26, 2022. Pending internal approval by Colombian Constitutional Court.	Trade Agreement between Singapore and Pacific Alliance with an investment chapter.
United Emirates Arab	Signed on November 12 of 2017. Pending internal approval of the Colombian Congress.	Bilateral Investment Treaty.
Spain	Signed on September 16 of 2021. Pending internal approval of the Colombian Congress.	Bilateral Investment Treaty
		Interpretive statement of the Bilateral Investment Treaty currently in force.

1.4.1.2. Current IIA Negotiations

Colombia is negotiating BITs with:

- **Qatar.**
- **Kuwait: the negotiation with Kuwait is already closed; and**
- **Investment Chapter in the Pacific Alliance to incorporate Canada, Australia and New Zealand as new members.**

1.4.2. Double Taxation Agreements

In addition to the DTAs listed below, Colombia has signed agreements to avoid double taxation regarding income tax and equity tax in the transport and/or maritime navigation or air transportation with Germany, Argentina, Brazil, Chile, United States, Italy, Panama and Venezuela.

DTA	STATUS	KIND OF AGREEMENT
Colombia, Chile, Peru, Mexico	Signed since October 14, 2017	Agreement to standardize the tax treatment provided in the agreements to avoid double taxation. Signed among the States parties to the Framework Agreement of the Pacific Alliance.
Netherlands	Signed on February 16, 2022. Pending of internal procedures for its approval	Double Taxation Agreement
Luxembourg	Signed on February 10 of 2022.	Double Taxation Agreement
Brazil	Signed on August 5th, 2022. Pending approval.	Double Taxation Agreement

1.4.3. Double Taxation Agreements in Force

DTA	STATUS	KIND OF AGREEMENT
Andean Community of Nations	In force since January 1st, 2005. Decision 578 of the Andean Community.	Double Taxation Agreement
Spain	In force since October 23, 2008. Law 1082 of 2006 Constitutionality ruling C-383 of 2008.	Double Taxation Agreement
Chile	In force since December 22, 2009. Law 1261 of 2008 Constitutionality ruling C-577 of 2009.	Double Taxation Agreement
Switzerland	In force since January 1, 2012. Law 1344 of 2009 Constitutionality ruling C-460 of 2010.	Double Taxation Agreement
Canada	In force since June 12, 2012. Law 1459 of 2011. Constitutionality ruling C-295 of 2012.	Double Taxation Agreement

DTA	STATUS	KIND OF AGREEMENT
Mexico	In force since August 1, 2013. Law 1568 of 2012 Constitutionality ruling C-221 of 2013.	Double Taxation Agreement
South Korea	In force since July 3, 2014. Law 1667 of 2013 Constitutionality ruling C-260 of 2014.	Double Taxation Agreement
Portugal	In force since January 30, 2015. Law 1693 of 2013 Constitutionality ruling C-667 of 2014. Signed	Double Taxation Agreement
India	In force since July 7, 2014. Law 1668 of 2013. Constitutionality ruling C-238 of 2014.	Double Taxation Agreement
Czech Republic	In force since January 30, 2015. Law 1690 of 2013 and decision C-049/15	Double Taxation Agreement
United Kingdom	In force since December 2019. Law 1939, 2018. Decision C- 491/19.	Double Taxation Agreement
Italy	In force since January 1st 2022. Law 2004, 2019. Decision C- 091/21.	Double Taxation Agreement
France	In force since January 1st 2022. Law 2061, 2020. Decision C- 443/21.	Double Taxation Agreement
Japan	In force since September 4th, 2022. Law 2095 of 2021.	Double Taxation Agreement

Colombia has also entered into Tax Information Exchange Agreements ("TIEA"). Colombia is part of the OECD's Convention on Mutual Administrative Assistance in Tax Matters, which currently covers approximately 108 jurisdictions. In addition, Colombia has a TIEA with the United States, and has negotiated some TIEAs with other jurisdictions (e.g., Curacao and Barbados). However, these former agreements are still being approved. In June 2017, Colombia entered the multilateral instrument to prevent the erosion of tax bases and the transfer of benefits promoted by the OECD (hereinafter "MLI"), which will modify most of the DTAs to which Colombia is party, establishing tougher requirements to access the benefits provided in these Agreements.

Brigard Urrutia

ADDRESS
Bogotá, D.C., Colombia
Calle 70 Bis No. 4 – 41

E-MAIL
info@bu.com.co

PHONE NUMBER
+57 (601) 346 2011

WEB PAGE
https://bu.com.co/es


PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND
Gobierno de
Colombia
COLOMBIA CO