

Tax measures implemented in Colombia during the health and economic emergency triggered by COVID-19

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ABSTRACT

After the outbreak of the COVID-19 pandemic, several Colombian entities enacted legislation intended to cope with negative effects triggered by this situation. The Colombian Ministry of Public Finance, the Colombian Tax Office, and local tax authorities issued different tax dispositions concerning income tax, value-added tax, compliance matters, and local taxes, among others, based on special powers arising from the state of economic, health, and social emergency.

KEYWORDS

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Introduction

By Resolution 385, dated March 12, 2020, the Colombian Ministry of Health declared a health emergency within Colombian territory until May 30, 2020, due to the outbreak of COVID-19. However, Resolution 844, dated May 16, 2020, extended the emergency until August 31, 2020, and Resolution 1462, dated August 25, 2020, further extended this emergency until November 30, 2020. This is significant, as several measures adopted during the health emergency remain in effect until the period defined by Resolution 1462 ends. On the other hand, the Colombian National Government enacted Executive Order 417, dated March 17, 2020, which declared a state of economic and social emergency in Colombia for one month, based on the powers granted by sections 212 and 213 of the Colombian Constitution. Nevertheless, Executive Order 637, dated May 6, 2020, then extended this state of emergency for a further month. Thus, the state of economic and social emergency was lifted on June 6, 2020.

Bearing in mind the above, Section 47 of Law 134, dated June 2, 1994, establishes that, during a state of economic and social emergency, the national executive branch is vested with exceptional powers, including those to create taxes or modify previous taxes, provided that these measures are needed to overcome the crisis. However, the legal effects of those tax measures cease in the following taxable year unless Congress adopts them permanently by law. Likewise, several local entities also declared a state of emergency in their territories to implement tax legislation intended to provide relief to taxpayers.

This paper provides a general description of the main and most relevant tax measures adopted in Colombia during the health crisis, considering national and local taxes, compliance, and procedural issues.

I. Income tax

The following lines provide a general insight into the main income tax measures implemented in Colombia during the health and economic emergency for both Colombian companies and individuals.

I.1. Companies

I.1.a. Executive Order 575, dated April 15, 2020

Executive Order 575 of 2020 adopted tax measures intended to grant relief to airline companies that were affected by the crisis as follows:

- **Large investment regime:** Section 235-3 of the Colombian Tax Code (CTC) was modified to include the provision that airlines can apply to the large investment regime if they make investments of at least 2 million Colombian tax units (COP 71,214.000,000 or USD 18,789,974¹) in the Colombian aeronautical sector before December 31, 2021. For completeness, local companies that qualify under the large investment regime are entitled to a 27% income tax rate rather than the ordinary 32% applicable for the fiscal year 2020² are not subject to either dividend tax or wealth taxes and can apply for the accelerated depreciation of fixed assets, among others.

I.1.b. Executive Order 766 dated May 29, 2020

The 2020 income tax prepayment was reduced by between 25% and 0% for certain taxpayers, depending on the activities they carry out according to their ISIC code (International Standard Industrial Classification). For completeness, this 2020 income tax prepayment should be settled when filing the 2019 income tax return.

- The 25% reduction was applicable to companies engaged in activities such as the extraction of crude oil and natural gas; the manufacture of tobacco products; the manufacture of fabricated metal products (except machinery and equipment); the manufacture of motor vehicles, trailers, and semi-trailers; the manufacture of furniture, mattresses, and box springs; building construction; manufacture of electric motors, generators, and transformers; and electrical energy distribution and control;
- The 0% reduction was applicable to companies engaged in activities such as air transportation; accommodation; food and beverage services; travel agency services, tour operation, reservation services, and related activities; libraries, archives, museums, and other cultural activities; and sports and recreational activities.

¹ Exchange rate of 1 USD = COP 3.790.

² The general income tax rate is going to be reduced to 31% for fiscal year 2021 and to 30% for fiscal year 2022 onwards.

I.2. Individuals

I.2.a. Executive Order 568 dated April 15, 2020

Executive Order 568 created a new tax called the “COVID-19 solidarity tax”³, funds from which were intended for use in social investment. Accordingly, starting on May 1, 2020, and until July 31, 2020, public servants and individuals hired by governmental and public entities and pensioners were liable for tax on any salary, wage, or pension exceeding COP 10,000,000 (USD 2,638⁴), although the first COP 1,800,000 (USD 475⁵) was excluded from the taxable base.

Furthermore, the executive order created, during the above-mentioned period, a voluntary solidarity contribution by which public servants and individuals hired by governmental entities were encouraged to make voluntary contributions to raise funds intended to address situations caused by COVID-19 in Colombia.

However, the Colombian Constitutional Court, in Judgement C-293, dated August 5, 2020, struck down this tax on the grounds that it violated the principle of equality in tax matters established in section 363 of the Colombian Constitution because it mainly targeted public servants and, therefore, private employees were not covered. According to the Constitutional Court, any previous payment made in consideration of the solidarity tax should be deemed as a prepayment of income tax liability for 2020.

II. Indirect Taxation

The Colombian government has taken various actions regarding indirect taxation in response to the COVID-19 pandemic. Chiefly, these actions concerned the Value Added Tax (VAT) and National Consumption Tax (NTC)⁶, both of which are taxes applicable at a national level.

II.1. Zero VAT rate and exemptions on medical equipment and services to secure food production

II.1.a. Executive Orders 438 dated March 19, 2020, and 551, dated April 15, 2020

Executive Order 438 established a zero VAT rate on the import and sale of 24 items that encompass medical equipment and devices (such as nebulizers, vital-sign monitors, ven-

³ In Spanish “*Impuesto solidario por el COVID-19*”.

⁴ Exchange rate of 1 USD = COP 3.790.

⁵ Exchange rate of 1 USD = COP 3.790.

⁶ In Spanish “*Impuesto Nacional al Consumo*”.

tilators, defibrillators, and hospital beds). This list was further extended by section 1 of Executive Order 551 to include 211 medical supplies and personal care products (including alcohol, sanitizing gel, soaps, laundry detergent, and alcohol wipes). Additionally, this measure permits the person liable for paying the VAT to deduct the input VAT but not to request the refund of or compensation for any credit balance.

The requirements to qualify for this measure, according to section 2 of the Executive Order, are as follows:

- The taxpayer must include the following notice on their invoices: “Exempted goods – Executive Order 417 of 2020”;
- According to Executive Order 438, to qualify for the zero VAT rate, the import, sale, and delivery of qualifying medical devices must have been performed within the time limit of the emergency period established by Executive Order 417 of 2020. However, Executive Order 551 further extended this limit for the term of the health emergency decreed by the Colombian Ministry of Health (currently extended until November 30, 2020);
- The taxpayer must submit a report by the last day of each month of the sales and returns of imported equipment that qualify for the zero VAT rate.

II.1.b. Executive Order 573 dated April 15, 2020

Executive Order 573 introduced a VAT exemption for commissions on financial guarantees granted by the National Financial Agrarian Guarantee Fund⁷. According to this measure, VAT constitutes an additional cost for the members of the agricultural sector to accessing the funds needed to maintain the normal food supply chain during the pandemic. Therefore, this exemption applies only to guarantees granted to face the adverse circumstances occasioned by the COVID-19 pandemic and until December 31, 2020.

II.1.c. Executive Order 789 dated June 4, 2020

This measure established a transitory VAT exemption for the acquisition of raw materials needed to produce medicines. These commodities are specified by the customs codes 29.36, 29.41, 30.01, 30.02, 30.03, 30.04, and 30.06, which include vitamins, antibiotics, organic chemicals, and pharmaceuticals. This measure is applicable for the duration of the health emergency decreed by the Colombian Ministry of Health.

⁷ In Spanish, *Fondo Agropecuario de Garantías*.

II.2. Measures to restart the economy and other kinds of measures involving indirect taxation

II.2.a. Executive Order 540 dated April 13, 2020

With Executive Order 540, the government established a zero VAT rate for mobile voice and Internet plans with monthly costs lower than COP 71,214, or approximately USD 18, for a period of four months from April 13, 2020. This measure was intended to lower the costs of communication services and help people and communities remain connected during the COVID-19 pandemic.

II.2.b. Executive Order 530 dated April 8, 2020

Executive Order 530 grants a VAT exemption for in-kind donations of goods for human or animal consumption, clothing, cleaning goods, human and veterinary medicines, construction materials, and medical devices. The benefit is granted exclusively for donations used to meet the effects of the COVID-19 crisis. Therefore, these donations are not considered sales for VAT purposes and are not subject to VAT unless the donation is concluded, directly or indirectly, between related parties. This measure will continue to apply as long as the conditions that motivated the state of emergency persist.

II.2.c. Executive Order 682 dated May 21, 2020

Executive Order 682 provided for several actions to restart the economy through indirect tax measures. First, it established a zero VAT rate on sales taking place within Colombian national territory on June 19, July 3, and July 19 of the following types of goods: (a) clothing for which the price per unit is equal to or less than 20 UVT (COP 712,000 or USD 188); (b) household appliances, computers, and communication equipment for which the price per unit is equal to or less than 80 UVT (COP 2,849,000 or USD 752); (c) clothing accessories for which the price per unit is equal to or less than 20 UVT (COP 712,000 or USD 188); (d) sporting goods for which the price per unit is equal to or less than 80 UVT (COP 2,849,000 or USD 752); (e) toys and games for which the price per unit is equal to or less than 10 UVT (COP 356,000 or USD 94); (f) agricultural goods and supplies for which the price per unit is equal to or less than 80 UVT (COP 2,849,000 or USD 752); and (g) school supplies for which the price per unit is equal to or less than 5 UVT (COP 178,000 or USD 47).

The requirements for this benefit to apply are as follows:

- The aforementioned goods must be located in Colombia for retail sale directly to a natural person who is the final consumer;
- The person liable for paying the VAT must issue an invoice with all the requirements established by the tax law and identifying the final customer;
- The payments cannot be made in cash; only debit or credit cards or other electronic means of payment are accepted;

- The final customer can purchase a maximum of 3 units of the same category of goods from a single seller. If the goods are sold in pairs (such as shoes), this is deemed a single purchase.

Second, Executive Order 682 adopted a zero rate for the National Consumption Tax on bars and restaurants until December 31, 2020.

Lastly, Executive Order 682 exempted from VAT the leasing for business purposes of commercial premises, although this measure was lifted on July 31, 2020.

II.2.d. Executive Order 789 dated June 4, 2020

In addition to the VAT exemption on the purchase of chemical commodities for the production of medicines, Executive Order 789 included other kinds of measures for restarting the economy. These measures remain in force until December 31, 2020, and are as follows:

- VAT exemption for franchise agreements⁸;
- Zero VAT rate on the import of new or used passenger or cargo transport vehicles for public or private use;
- VAT exemption for services in hotels and tourism.

II.2.e. Executive Order 575 dated April 15, 2020

On top of the income tax measures adopted by Executive Order 575, this ruling also introduced an indirect tax provision which consisted in the reduction of the VAT rate applicable for air-fuel (Jet A1) and airfare from 19% to 5% until December 31, 2020.

III. Banking tax

Executive Order 530, dated April 8, 2020, established that withdrawals from current and savings accounts made by non-profit entities belonging to the special tax regime would be exempted from the banking tax (known as “GMF”⁹), provided that the following requirements were met: (a) the non-profit entity requested that the financial institution mark the current or savings account, (b) the non-profit entity affirmed that the withdrawals were to be used exclusively to benefit the most vulnerable Colombian populations, (c) the non-profit entity submitted the relevant documents to the Colombian Tax Office (DIAN) within 15 days after marking the accounts, and (d) at the end of the health emergency, all information related to the total withdrawals made and the destinations and identifications of the beneficiaries of these financial movements were submitted to the relevant authorities.

⁸ According to the grounds of this measure, food and drink services will decrease in 37% on average due to the pandemic COVID-19 in 2020.

⁹ In Spanish “*Gravamen a los Movimientos Financieros*”.

IV. Electrical surcharge

Executive Order 799 of 2020, dated June 4, 2020, temporarily suspended (until December 31, 2020) the surcharge applicable to electric public utilities established in section 211 of the CTC for tourism companies registered with the Colombian Tourism Registry and engaged in the following activities: hotels, holiday centers, country hotels, other hotels, amusement parks, and other recreational activities.

V. Local taxes

Some local tax authorities in Colombia have implemented tax measures to alleviate the negative impacts of the health emergency. These measures generally entail the suspension of the terms of administrative tax procedures and the extensions of deadlines for filing local tax returns, such as the Industry and Trade Tax (ITT)¹⁰ or the Real Estate Tax (RET). For example, in the case of Bogotá, Resolution SDH-000177, dated March 24, 2020, suspended the terms for administrative tax procedures in Bogotá between March 20 and May 4, 2020. This measure was further extended on various occasions and, according to Resolution SDH-000314, dated July 31, 2020, it would apply until August 31, 2020, or until the end of the health emergency declared by the National Government.

Furthermore, the Colombian National Government has issued Executive Orders 461, dated March 22, 2020, and 678, dated May 20, 2020, which are intended to provide local authorities with normative tools to address the negative effects of the health emergency. Executive Order 461 permits mayors and governors to implement tax-rate reductions for local taxes within the threshold established by the law, a measure deemed to be in accordance with the Colombian Constitution as determined by the Constitutional Court in Judgement C-169, dated June 10, 2020.

On the other hand, Executive Order 678 provides for measures concerning subnational taxation in sections 6 and 7. In section 6, it provides the option for local authorities to defer up to 12 monthly installments of local taxes, the last installment not being due for payment until June 2021. Additionally, section 7 orders a tax and penalty amnesty for local taxes as follows:

- The taxpayer would pay 80% of the principal without interest if the payment were made before October 31, 2020;
- The taxpayer would pay 90% of the principal without interest if the payment were made between November 1, 2020, and December 31, 2020;

¹⁰ In Spanish “Impuesto de Industria y Comercio” (ICA)

- The taxpayer would pay 100% of the principal without interest if the payment is made between January 1, 2021, and May 31, 2021.

These specific measures provided by section 7 of Executive Order 678 have been explicitly implemented and regulated by some local tax authorities, for example, those of Bogotá, Medellín, and Rionegro.

VI. Tax compliance

Below is a brief description of the most important tax compliance measures adopted in Colombia concerning national taxes during the health and social emergency. It is worth pointing out that several Colombian local tax authorities also provided deadline extensions for filing local tax returns (such as the industry and trade tax or the real estate tax) and submitting local magnetic media.

VI.1. Executive Order 401 dated March 13, 2020

VI.1.a. *Income tax return and VAT – Commercial airlines, hotels, and entertainment activities*

The deadline for filing the 2019 income tax return was extended until July 31, 2020, for commercial airlines, hotels, and taxpayers, whether deemed as large or small taxpayers, engaged in the following economic activities: “theatrical activities”, “activities of live music shows”, and “other live entertainment activities”.

Furthermore, large taxpayers engaged in the aforementioned activities had until July 31, 2020, to pay the second installment and until August 31, 2020, to pay the third installment, whereas regular companies had until July 31, 2020, to pay the first installment and until August 31, 2020, to pay the second installment.

Likewise, the VAT deadline for bi-monthly returns due during the first semester of the year was also extended for such taxpayers until June 30, 2020.

VI.1.b. *Income tax return – Works for taxes*

The deadline for filing the 2019 income tax return for taxpayers within the “works for taxes”¹¹ mechanism in accordance with section 238 of Law 1819 of 2016, which had been March 31, 2020, was extended as follows: regular companies and companies deemed as large taxpayers were permitted until May 29, 2020, to file their income tax return and pay the first installment. However, such taxpayers were obliged to contribute the funds to the trust no later than May 29, 2020.

¹¹ A mechanism by which taxpayers can pay up to 50% of their income tax by building local infrastructure in the most vulnerable Colombian municipalities.

VI.1.c. Wealth tax return

The deadline for filing the 2020 wealth-tax return was extended to between September 29, 2020, and October 9, 2020. Liable taxpayers were obliged to pay the tax in two equal installments (in May and in September-October).

VI.2. Resolution 23 dated March 18, 2020, issued by the DIAN

The deadline for filing the 2019 tax conciliation report for individuals deemed as large taxpayers was extended until August 9, 2020.

VI.3. Executive Order 434 dated March 19, 2020

VI.3.a. Income tax return

The deadline for filing the 2019 income tax return for large taxpayers was extended until between April 21, 2020, and May 5, 2020, and for regular companies until between April 21, 2020, and May 19, 2020. For financial institutions deemed as large taxpayers, the deadline for the payment of the first 50% installment of the income tax surcharge for the banking sector for the taxable year 2019 was also extended until between April 21 and May 5, 2020.

VI.3.b. Assets held abroad tax return

The assets-held-abroad tax return deadline for 2020 was extended only for large taxpayers and companies but not for liable individuals. For large taxpayers, the deadline was extended until between April 21 and May 5, and for regular companies until between April 21 and May 5.

VI.3.c. VAT and National Consumption Tax (NCT)

The deadline for filing VAT and NCT tax returns due during the first semester of the year 2020 was extended until June 30, 2020, for taxpayers engaged in activities listed in Resolution 139 of 2012 (sale of prepared meals, sale of alcoholic beverages within an establishment, travel agencies, tour operators).

VI.4. Resolution 27 dated March 25, 2020, issued by the DIAN

The deadline for submitting the 2019 national magnetic media for any kind of taxpayer liable to submit this type of report to the DIAN was extended. For large taxpayers, the deadline was extended until between May 15, 2020, and May 29, 2020, and for other taxpayers (regular companies and individuals), until between June 1, 2020, and July 1, 2020.

VI.5. Executive Order 520 dated April 3, 2020

VI.5.a. Income tax

The deadline for filing and paying the second and third installment of the 2019 income tax return for large taxpayers was extended again until between June 9, 2020, and June 24, 2020. Likewise, the deadline for filing and paying the first and second installments of the

2019 income tax return for regular companies was extended again until between April 21, 2020, and July 1, 2020.

VI.5.b. Assets held abroad tax return

The deadline for filing the 2020 assets-held-abroad tax return was again extended only for large taxpayers until between June 9, 2020, and June 24, 2020, and for regular companies until between June 1, 2020, and July 1, 2020.

VI.6. Resolution 46 dated May 7, 2020, issued by the DIAN

Again, the deadline for submitting the national magnetic media was extended by the DIAN between June 9, 2020, and June 24, 2020.

VI.7. Executive Order 655 dated May 13, 2020

The deadline for the payment of the second installment of the 2019 income tax for taxpayers deemed as micro, small, and medium businesses is extended until between November 9, 2020, and December 7, 2020.

VII. Procedural measures

Below is a brief description of the most important procedural measures adopted in Colombia concerning national taxes during the COVID-19 crisis, which aimed at halting some tax procedures and reinforcing the use of digital tools for tax purposes.

VII.1. Suspension of judicial deadlines and home-based work in the judicial branch

The Superior Council of the Judiciary¹² (SCJ) issued agreements PCSJA20-11517, PCSJA20-11521, and PCSJA-11526, whereby it suspended judicial deadlines from March 16 to April 12, 2020. This suspension was further extended by the SCJ on various occasions, and agreement PCSJA20-11567 extended the aforementioned suspension for a final time up to June 30, 2020 and provided for this measure to be lifted starting on July 1, 2020.

The suspension of judicial deadlines applied to all the judiciary authorities in Colombia¹³, including courts that hear tax cases in the first and second tiers and the Supreme Administrative Court. Furthermore, the staff of the judiciary branch was encouraged to work from

¹² In Spanish “*Consejo Superior de la Judicatura*”.

¹³ This measure did not apply in the case of criminal matters, protection of fundamental rights, and functions of the Constitutional Court related to the control of constitutionality over executive orders issued by the Government under the state of emergency. Neither it applied in respect of functions of the second-tier Administrative Court and Supreme Administrative Court related to the legality control over administrative measures issued by the government and based on the executive orders.

home whenever possible and, given that their physical presence is needed in courthouses, to limit their presence to 20% of the total of judicial employees for each office.

VII.2. Suspension of administrative terms for tax, customs, and foreign exchange audits

Through Resolution 22, dated March 18, 2020, the Colombian Tax Office suspended the administrative terms for ongoing tax, customs, and foreign exchange audits between March 19 and April 3, 2020. This measure was further extended by Resolution 30, dated March 29, 2020, until the day after the end of the health emergency decreed by the Colombian Ministry of Health. This suspension does not encompass (i) filing and payment of tax returns, (ii) tax refunds and compensation requests submitted through the Computer Service Electronic (SIE) and/or authorized electronic mailboxes, (iii) payment facilities requested through authorized electronic mailboxes, (iv) management of judicial deposit securities, or (v) lifting of attachments requested through authorized electronic mailboxes.

Although section 8 of Resolution 30, dated March 29, 2020, had established that the suspension would apply until the end of the health emergency declared by the Ministry of Health, Resolution 55, dated May 29, 2020, order the lifting of the suspension from June 2, 2020, with the exception of some administrative terms that would continue to be suspended until the day after the end of the declared emergency.

VII.3. Use of electronic means and home-based work for public sector employees

Executive Order 491, dated March 28, 2020, adopted several measures to ensure continuity of the provision of services in charge of governmental authorities during the health emergency. Accordingly, it is established in section 3 that public servants should work from home whenever possible unless their work is essential for the adequate operation of the State. Furthermore, the executive order also established the notification of administrative proceedings through electronic means. To this end, taxpayers must provide their e-mail addresses in their interactions with governmental authorities. Although this system of notification was already foreseen by the CTC, its implementation took place through Resolution 38, dated April 30, 2020.

Furthermore, through Resolution 00058 of 2020, the DIAN adopted actions to provide services to the public during the economic emergency. Amongst other measures, the Tax Authority provided for the signing of official documents with digital or scanned signatures and the notification of tax summons by email.

Subsequently, Executive Order 807, dated June 04, 2020, established possibilities for the tax administration to carry out virtual tax and accounting inspections during the health emergency. These virtual processes, which could lead to a tax assessment, were regulated by Resolution 79, dated July 24, 2020, whereby the DIAN detailed how these virtual audits would be performed.

However, the Colombian Constitutional Court, through press release no. 141, dated September 10, 2020, following the pending Judgement C-379, struck down Executive Order

807 on the grounds that the Government did not provide an adequate justification for the measures adopted within the Executive Order. As a consequence, Resolution 79 issued by the DIAN, which had been based upon the aforementioned Executive Order, lost its validity.

VIII. Other issues

VIII.1. Tax payment facilities

Circular No. 0003, dated April 14, 2020, establishes the procedures to request a tax payment facility with the DIAN in accordance with Law 2010 of 2019 and sections 590 and 814 of the CTC. However, default interest was still accrued. Likewise, terms for termination by mutual agreement of tax audits were extended until June 30, 2020.

VIII.2. Expedite tax refunds

Executive Order 535, dated April 10, 2020, implemented an expedited tax refund mechanism for taxpayers (other than those deemed high-risk taxpayers) in which those applications were processed for refunds within 15 days after the date of submission (down from the regular 30 and 50 working days). The deadline for applying to this Covid-19 expedite mechanism was set until June 19, 2020 by Executive Order 807 of 2020, albeit this deadline was declared unconstitutional by the Colombian Constitutional Court in Judgment C-394 of 2020.

IX. Concluding remarks

This article provides a comprehensive description of the tax measures adopted by the Colombian government in response to the Covid-19 pandemic. First, it analyzed the income tax measures adopted regarding companies and individuals, in the former regarding the relief granted to airline companies and the reduction of income tax prepayment for certain taxpayers depending on the activities carry out by them, in the latter concerning the adoption of a solidarity tax which was considered as unconstitutional by the Colombian Constitutional Court as it breached the equality principle enshrined in article 365 of the Constitution. This decision reiterates the importance for respecting the constitutional principles even during a state of economic and social emergency.

The article next studied the indirect taxation measures, some of them which were specially targeted at reducing the VAT burden for goods consisting of medical equipment and medicines, and others which aimed to alleviate the negative economic consequences brought about by the Covid-19 crisis and stimulate the economy.

Then, the article examined tax reliefs regarding other fiscal obligations for certain taxpayers and under certain conditions (banking tax, electrical surcharge, local taxes, deadlines

extensions for filing tax returns, etc.), adoption of procedural measures (suspension of judicial deadlines and administrative terms for audits) and the use of electronic means by the tax administration.

The government has already declared its purpose to adopt a new tax reform in 2021, which intends to increase the tax revenue and set off the public expenditure invested as a response to the Covid-19 pandemic. Some of the measures envisioned by the government consist of making more progressive the personal income tax increasing its tax rates, the taxation of pensions exceeding a certain amount, and the broadening of the VAT base. Arguably, this crisis has triggered various changes within the Colombian tax system, which certainly will remain after overcoming the pandemic, being perhaps one of the most important of them the increase in the use of technology in the processes carried out by the tax administration.