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# Colombia

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## COLOMBIA

*The following is a review of legal and economic developments in Colombia.*

### I. TAX REDUCTION FOR FOREIGN COMPANIES ESTABLISHED IN COLOMBIA

Foreign companies with a branch in Colombia were generally subject to triple taxation in the event that the branch was a shareholder of a Colombian corporation (*sociedad anónima*) or a partner of a Colombian limited liability company (*sociedad de responsabilidad limitada*). In effect, dividends or participations received by Colombian branches of foreign corporations from *sociedades anónimas* or *sociedades de responsabilidad limitada* were subject to a thirty percent income tax withheld at source by the payor; and double taxation resulted since the *sociedad anónima* or *sociedad de responsabilidad limitada* is also subject to a thirty percent income tax rate. If the branch in question decided to remit abroad the dividends or participations so received, it would also have to pay an additional twenty percent remittance tax.

Decree 2633 of December 23, 1988 calls for a gradual reduction in income taxes on dividends and participations received by Colombian branches of foreign companies as follows:

<u>Fiscal Year</u>	<u>Tax rate</u>
1989	25%
1990	20%
1991	15%
1992	10%
1993	5%
1994 <u>et seq.</u>	0%

This measure is intended to harmonize the income tax rates applied to foreign investors with respect to the recent changes made in the tax legislation of capital exporting countries, particularly the United States and Great Britain, the most important sources of foreign investment in Colombia.

## II. INFLATION ADJUSTMENT

Law 75 of 1986, which made fundamental changes in Colombian income tax, provided the Government with extraordinary measures (*facultades extraordinarias*) that allowed it, among other things, to specify further changes in law needed to eliminate the effects of inflation from the measurement of taxable income. By virtue of this power, the Government adopted Decree 2687 of December 26, 1988.

Decree 2687 provides systematic inflation adjustment for crucial items of income and expense, including interest, capital gains, depreciation and similar allowances, and cost of goods sold from inventories. Decree 2687 follows an integrated approach to inflation adjustment of the type employed in Chile. The result of this approach is expected to be an "inflation-adjusted" income tax in which only real income would be taxed. Consistent application of this approach would also produce a net wealth tax (and a measure of presumptive income) based on current values of assets and liabilities. This system of inflation adjustment is optional until 1991. As of fiscal year 1992, all taxpayers imposed with the obligation of keeping accounting records (110,000 enterprises and 40,000 merchants) must adopt the system.

## III. CONSUMER RIGHTS

The Superintendency of Industry and Trade ruled that the illegal use of a trademark does in fact violate the consumer's rights act (Decree 3466 of 1982). In a decision dated March 9, 1987 (Resolution 367, *Chesebrough Pond's v. Laboratorios Cero Limitada*), the office held that the use of the trademark CERO along with the letter "R" surrounded by a circle to distinguish a VASELINE preparation manufactured by Laboratorios Cero Ltda. was illegal as it violated Article 14 of Degree 3466 of 1982. Article 14 establishes that

[a]ll information provided to the consumer in connection with the components or attributes of any goods or services offered to the public must be truthful and sufficient. Thus, untruthful or misleading (inasmuch as the nature, origin, mode of fabrication, components, usefulness, volume, weight or amount, prices, mode of employment, traits, properties, quality, suitability or quantity of the goods or services are concerned) trademarks, inscriptions and publicity, are hereby banned.

The Superintendency found that all other legal requirements for the imposition of a penalty were met (such as the qualified use of the trademark, inscription or publicity) and thus proceeded to impose on Laboratorios Cero Ltda. a fine of COL\$250.000 (then about US\$1,100.00) and proceeded to order that the company stop employing the letter "R" in a circle along with the name of its product. Should this order be ignored, the Superintendency established that a fine equivalent to a seventh of the minimum legal monthly wage must be paid for each day of delay.

The defendant opposed this ruling on the grounds that the trademark, CERO, was in fact registered and belonged to Mr. Samuel Parra E., a major stockholder and CEO of Laboratorios Cero Ltda. and that Mr. Parra had authorized the use of the trademark by his company. The Superintendency rejected these arguments on the grounds that, according to Article 80 of Decision 85 of the Cartagena Agreement, any contracts relating to trademark rights must be registered in the trademark office in order to attain full validity, and that this registration had not been duly proven and therefore, the use of the trademark by the company was still illegal. In a decision dated September 17, 1988 (Resolution No. 1733) the Superintendency confirmed the earlier judgment. A challenge of these decisions before the Counsel of State was made by Laboratorios Cero Ltda., but to no avail; the Counsel rejected the plaintiff's arguments in a decision dated July 29, 1988.

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