



Apuntes del Cenes

ISSN: 0120-3053

ISSN: 2256-5779

Universidad Pedagógica y Tecnológica de Colombia
(UPTC)

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Social Investment Law or tax reform?
Apuntes del Cenes, vol. 41, no. 73, 2022, January-June, pp. 11-13
Universidad Pedagógica y Tecnológica de Colombia (UPTC)

DOI: <https://doi.org/10.19053/01203053.v41.n73.2022.13949>

Available in: <https://www.redalyc.org/articulo.oa?id=479575008001>

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Editorial

Social Investment Law or tax reform?

Law 2155 of 2021, called Law of Social Investment and sanctioned by the President of the Republic on September 14 of that year, is the last tax reform of the four presented in his government. The first one was overturned by the Constitutional Court due to procedural defects; the second one, which replaced the previous one, did become law, and the third was withdrawn by the President due to the pressure caused by the national strike. The different tax reform proposals of the Duque administration have had flashy names, perhaps to try to neutralize social rejection, but, even if he wants to sweeten their content and repercussions, they are basically tax reforms and that is how they should be named.

The recent tax reform consists of 6 titles and 65 articles, but due to time and space limitations, the analysis will focus on the most relevant issues of the different titles. In the first one, where income measures are proposed, the tax normalization articles are included, which consist of raising the tax from 15 to 17%; such tax may be filed until February 28, 2022, and “is caused by the possession of omitted assets or non-existent liabilities as of January 1, 2022” (art. 2). The income rate for legal entities was raised from 30% to 35% and that of the financial sector from 30% to 38%, that is, three more points, but only for the years 2022, 2023 and 2024, to then be leveled to the rate of the entire business sector. This section also includes the discount of the industry and commerce tax to the income tax, which in 2022 was 100% and now will be reduced to 50%. Likewise, it is important to highlight that, for postal mail imports of less than US\$200, which did not pay VAT or tariffs, in the new tax reform they will do so according to the nature of the goods, provided that these are not traded but for consumption purposes; in addition, VAT will not be charged when the exported goods come from countries with which Colombia has signed free trade agreements.

The second title is dedicated to the mechanisms to combat evasion, where the central point is the strengthening of the Taxes and National Customs Office (DIAN by its acronym in Spanish) efficiency. Specific issues are also included, such as a stronger electronic invoicing system that allows the consultation and traceability of transactions. To combat evasion, the Minister of Finance states that although until

2021 some taxpayers received a draft income statement, “Now there is an additional element, we are going to reach the evader with the prepared income statement so that he pays”, and in the event that a person does not comply his obligation, a legal process is opened to collect the money, which takes 5 to 8 months, when before it was 5 to 8 years. According to him, this reduction of time to collect the resources is due to the fact that “the income tax return is a debt instrument, it can be collected in a tax lien foreclosure”.

The third title refers to austerity and efficiency and determines that in order to reduce public spending during the following 10 years recorded from the Law 2155 enactment, “the national government will annually regulate by decree a plan of spending austerity for each fiscal year applicable to the entities that are part of the nation’s general budget” (art. 19). The spending austerity and efficiency plan must be oriented to limit the annual growth of spending.

The fourth chapter, which refers to the strengthening of social spending and economic reactivation, highlights the solidarity income with a basic emergency income, in addition to the gratuity for 695,000 undergraduate students from strata 1, 2 and 3, in institutions of higher education, defined as state policy.

The fiscal rule as a mechanism for the sustainability of public finances is the central theme of the penultimate chapter. It also establishes the replacement of the advisory committee by an autonomous committee, made up of five commissioners, of which each government may change two and will have a technical team independent of the Ministry of Finance.

The last chapter contains the final provisions, among them, the addition to the budget of income and capital resources of the general budget of the nation, for the fiscal period of 2021 for an amount of 10,954,365,878,880 Colombian pesos; additionally, it lists the activities and entities to which these resources are destined.

The President boastfully estates that “the social investment law is the most important law that has been approved in this century”, and the Minister of Finance is not far behind when he says that “From the Congress of the Republic, the presidents of the economic commissions coordinated four forums with the national government, academic experts, unions and students, among others”.

It is possible that the proposed law has been disclosed in different spaces; but what must be asked is which observations, comments and suggestions were taken into account and included in the final version presented by the government so that congressmen could read it, analyze it and discuss it in the plenary sessions of both the House and the Senate.

For many analysts, such as Kalmanovitz, Suárez, Sarmiento, among others, Congress did not discuss it, instead it was used expedited approval, without taking into account the opposition; many articles were approved *en bloc*, since there was no time for reasoned reflection. For this reason, the representative Germán Navas Talero, of the Polo Democrático Party, filed a claim of unconstitutionality before the Constitutional Court, since, according to him, for the second debate in the plenary session of the House, the congressmen did not have enough time to examine the amendments before voting, because the document was delivered to them at 7:30 p.m. on September 6, and the debate took place the next day at 9:00 a.m.; hence, other parliamentarians such as those from the Green Party opted to withdraw, since it was impossible to carry out a reasoned discussion in such a short time.

Law 2155 has many controversial aspects, and although there may be opinions in favor or against this, there is unanimity that such reform is insufficient to meet the country's fiscal needs. So, in conclusion, the next government will have to present a new proposal, which is expected to be truly structural and not a temporary palliative to solve fiscal contingencies.

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How to cite:

Vallejo Zamudio, L. E. (2022). ¿Ley de inversión social o reforma tributaria?. *Apuntes del Cenes*, 41(73). Págs. 11 - 13.
<https://doi.org/10.19053/01203053.v41.n73.2022.13949>