Sydney, 19 December 2022

Tax Treaties Branch
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Sent via e-mail: TaxTreatiesBranch@treasury.gov.au

RE: Tax treaty network expansion – Colombia

Tax Treaties Branch:

The Australia-Latin America Business Council (ALABC) welcomes the opportunity to make a submission to Treasury in relation to the expansion of Australia's tax treaty network which opened on 18 November 2022 (Consultation) in light of the announcement by the Assistant Minister for Competition, Charities and Treasury Treasurer, the Hon Dr Andrew Leigh MP.

ALABC's mission is to increase trade and investment between Australia and the Latin American region, and in this Colombia plays a critical role as one of the most dynamic economies in that region.

Where tax treaties exists, there are more opportunities for capital flowing into both directions, for the removal of tax obstacles to cross-border investment and the prevention of tax evasion. These facts normally provide clear benefits to both signing countries. Any reductions in source taxation are generally offset by increased residence- based taxation.

Furthermore, Australian investment can have many benefits for Colombia in addition to increased revenue, such as higher economic growth, transfer of knowledge and skills, infrastructure building, increased employment and higher living standards.

At ALABC, we strongly support the idea of a Double Tax Treaty between Australia and Colombia. Please refer to Appendix I for our comments on the key outcomes Australia should seek in negotiating a Tax Treaty with Colombia.

We look forward to supporting you on this initiative and its related activities. Do not hesitate to contact us anytime.

Sincerely yours,

Marcelo Salas

CEO

Appendix I

Please see below our input regarding the key outcomes Australia should seek in negotiating a Tax Treaty with Colombia.

Topic	Our input in respect of the provisions of the Tax Treaty
Non-discrimination clause	We strongly support the inclusion of a 'non-discrimination' clause (under the general terms of an OECD-model tax treaty), particularly given the Colombian rules that determine which are 'national' and which are 'foreign' companies, as well as relating to 'Effective place of engagement'. The suggested text is below: *"Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State, in similar circumstances, are or may be subjected. Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State, in similar circumstances, are or may be subjected".*
Residence – individuals	Given the different scenarios included in the Colombian legislation that could deem a Colombian national domiciled overseas as a Colombian resident for tax purposes, and also considering that tax residents in Australia (subject to temporary residence concessions) may not be subject to Australian taxation on foreign-sourced income, we strongly suggest <u>not to include</u> the text below at the Article of the Tax Treaty that deals with Tax Residence for individuals: (Article 4 of an OECD-based model Tax Treaty)

	"This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State."
Taxation for employees seconded temporarily	We strongly support the inclusion of provisions that encourage the creation of opportunities for the upskilling of workforce working in both locations, temporarily seconded by their employers. Therefore, we welcome the inclusion of provisions that exempt from taxation in the host locations for secondments under 183 days, if other general OECD-based model Tax Treaty conditions are met. (Article 14/15 of an OECD-based model Tax Treaty) *2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:* *a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the income year of that other State, and* *b. the remuneration is paid by, or on behalf of, a person being an employer who is not a resident of the other State, and* *c. the remuneration is not borne by a permanent establishment or a fixed base which that employer has in the other State.* *3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State."*
Taxation of fringe benefits	We strongly support the inclusion of provisions that address the taxation of fringe benefits in only one State, as different tax regimes (the Australian Fringe Benefit Tax legislation -which imposes taxation on the employer- and the Colombian Income tax legislation -which imposes taxation on the employee) and different tax years make difficult claiming credits to ensure double taxation does not occur. We therefore suggest the inclusion of the text below, as well as a definition of "Fringe Benefit" based on the general wording of an OECD-model tax treaty: (Continuation of the article mentioned in the section above) *"4. Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance*

with paragraphs 1, 2 or 3 of this Article in respect of salary or wages from the employment to which the benefit relates.

5. For the purposes of this Article:

a. "fringe benefit" includes a benefit provided to an employee or to an associate of an employee by:

(i) an employer;

(ii) an associate of an employer; or

(iii) a person under an arrangement between that person and the employer, associate of an employer or another person in respect of the employment of that employee,

and includes an accommodation allowance or housing benefit so provided but does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

b. a Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with paragraphs 1, 2 or 3 of this Article and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with paragraphs 1, 2 or 3 of this Article in respect of salary or wages from the employment to which the benefit relates."