

# Summary of legal studies on mechanisms for paying Living Wage Differentials in Colombia, the Dominican Republic, and Ecuador



Hacia unos salarios e ingresos dignos en el sector bananero  
GRUPO DE TRABAJO DE MINORISTAS ALEMANES



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## INTRODUCTION

This document summarizes the findings of three consultancies conducted by the Latin American and Caribbean Network of Fair-Trade Small Producers and Workers (CLAC, as per its acronym in Spanish) in Colombia, the Dominican Republic, and Ecuador. The objective was to identify the most suitable modality of recognition and payment of the wage differential to workers in the context of hired labour plantations, (Fairtrade and non-Fairtrade), from a legal perspective and based on the local regulatory framework.

This summary outlines the legal and fiscal implications of three payment modalities identified: as part of the wage, as an extra-wage bonus, and as payment through the Fairtrade Premium Committee. Each of these forms of recognition and payment is analyzed in accordance with the applicable legislation, in order to determine the most viable option for each country.

The studies were funded by the project “Finding Integrated Approaches for Banana Living Wages and Workers’ Well-Being,” which is part of the overarching project “Towards Living Wages in the Banana Sector” by the German Retailers Working Group on Living Incomes and Living Wages (ALDI South Group, ALDI Nord, dm-drogerie markt, Kaufland, REWE Group) ([nachhaltige-agrarlieferketten.org](http://nachhaltige-agrarlieferketten.org)) in collaboration with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), GmbH.

## ACRONYMS

**COP:** Colombian peso

**CTS:** Colombian Tax Statute.

**DOP:** Dominican peso

**FTT:** Financial transaction tax.

**ICA:** Industry, commerce, and advertisement tax.

**ICBF:** Colombian Institute of Family Welfare.

**IESS:** Ecuadorian Institute of Social Security.

**INFOTEP:** National Institute of Technical and Professional Training (Dominican Republic).

**LCDR:** Labor Code of the Dominican Republic.

**NPO:** Nonprofit organization.

**OCPCI:** Organic Code of Production, Commerce, and Investment (Ecuador)

**SENA:** National Training Service (Colombia).

**SLC:** Substantive Labor Code (Colombia).

**TVU:** Tax value unit.

**USD:** United States dollar

**VAT:** Value-added tax.

## GLOSSARY

**Employee benefits:** Additional benefits that the company must pay to its employees, including mainly service bonus, termination of employment bonus and its interest, workwear, and social security.

**Employers' obligations:** Employers' responsibility to pay, in favor of their workers, certain concepts provided for in the law, including a series of particular provisions.

**Employment contract:** Legally binding agreement between an employer and a worker that establishes the terms and conditions of employment, including each party's rights and obligations.

**Family compensation fund:** Private, autonomous social enterprise in Colombia supervised by the state, whose aim is to improve the quality of life of workers and their families. <sup>1</sup>

**Labor relation:** Legal relationship between an employee who provides work or services for an employer under certain conditions in exchange for remuneration.

**Living wage:** Salary that provides workers with enough monetary resources to get food, medical care, education, and other essentials for themselves and their families, plus a little extra for savings or incidentals.

**Minimum wage:** Minimum amount of money that employers must pay their workers for their labor in a given country in accordance with an officially established law for a given work period (hour, day, or month).

**Parafiscal tax:** Mandatory contribution made by employers to family compensation funds, the ICBF, and SENA in Colombia.

**Social organization:** Organizational form of society through which individuals, communes, communities, peoples, nationalities, and collectives have the right to convene to constitute an organized, coordinated, and stable human grouping; its purpose is to interact among themselves and undertake lawful goals and objectives to satisfy human needs, for the common good of its members or society in general, with social responsibility and in harmony with nature; its will is expressed through a collective and voluntary deed of incorporation and is regulated by rules established for the fulfillment of its purposes (Ecuador).

**Wage:** Remuneration or profit, regardless of its denomination or method of calculation, provided that it can be evaluated in cash, fixed by agreement or by national legislation, and owed by an employer to a worker under an employment contract.

**Wage payment:** Part of the ordinary and permanent remuneration received by workers as direct consideration for their service.

**Workers' compensation debts:** Wages, employee benefits, sick notes and leaves, paid leaves, and indemnities that workers enjoy as consideration for their service; these compensation debts are effective from the beginning of the contract until its termination and may be subject to settlement.

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<sup>1</sup> <https://www.comfama.com/conoce-comfama/que-es-una-caja-de-compensacion/>

## EXECUTIVE SUMMARY

This document summarizes the results of three studies conducted in Colombia, the Dominican Republic, and Ecuador in order to identify, from a legal perspective and based on the local regulatory framework, the most suitable modality for the recognition and payment of the wage differential or voluntary contribution for workers in the context of banana plantations (Fairtrade and non-Fairtrade).

We analyzed three payment mechanisms. In the first two modalities, the buyer provides funds to the plantation so that they be paid to workers as part of the wage or as an extra-wage bonus. The third mechanism applies only when a plantation can make use of a non-profit organization (Foundation or Association) and consists of making the payment through the Fairtrade Premium Committee, which in turn is part of the Fairtrade Workers Association (incorporated as an NPO).

Based on the results of this analysis, we conclude, in general terms, that paying voluntary contributions as part of the wage or as an extra-wage bonus increases employee benefits, the tax base, and administrative processes, which in turn raises associated costs. Furthermore, incorporating these benefits into the labor relation may pose risks of labor litigation or disputes, since they become responsibilities that employers may not be able to sustain over time, given that they are non-guaranteed income for both the plantation and workers.

Since achieving a living wage is the ultimate goal, living wage differentials are only temporary measures to level workers' income. Therefore, definitive solutions to ensure that all workers receive at least a living wage require collective bargaining agreements or decisions by local authorities establishing wage improvements. Thus, in the case of plantations, the most advisable temporary distribution alternative—directly benefiting the worker and incurring the lowest wage, tax, and administrative costs for employers—is through a non-profit organization, which from its constitution has an aligned vision with contributing to sustainable livelihoods of workers. In the case of Fairtrade certified plantations, the Fairtrade Premium Committee and its legal corporation structure can be used for this. Nonetheless, employers should consider the recommendations detailed below in terms of denomination, application mechanism, and expected risks (such as those of litigation or labor disputes).

However, in the case of plantations that lack the support of a foundation of their own or from the region, the most feasible option is to make the payment as an extra-wage bonus. These plantations should follow the recommendations outlined in the section on this type of voluntary contributions, in order to prove their non-wage nature. They should define a clear agreement between the parties on the recognition of these benefits and bear in mind that by using this mechanism, there is still a risk of litigation or disputes over labor issues.

## I. FAIRTRADE TOOLS FOR BRIDGING GAPS AND CONTRIBUTING TO THE PAYMENT OF LIVING WAGES

Since its inception, Fairtrade has been committed to fostering decent living standards for producers and workers at a disadvantage employing tools such as the following:

- a) Minimum prices that cover current production costs.
- b) Reference prices to achieve specific goals such as living wages.
- c) Base wage to ensure that all workers receive at least 70% of the living wage benchmark in countries where minimum wages are very low.
- d) Living wage differentials that temporarily bridge the gap between the salary received and the living wage benchmark.
- e) Fairtrade premium aimed at improving incomes, living standards, and social investment.
- f) Standards that regulate compliance with price payments, working conditions and rights, and wage improvements.
- g) Services provided by producer networks that support compliance with standards and empower small-producers and worker organizations to negotiate better prices, wages, and trade and working conditions.

Fairtrade minimum prices cover production costs, including paid wages and statutory mandated contributions. An inclusive process is used to determine the costs of banana production each year. This process involves consultations with producers, exporters, importers, and buyers. Based on those costs, the minimum price for an 18.14-kilogram banana box from different origins, for both organic and conventional bananas, is defined. This price provides producers with the assurance they need to continue producing, especially when market prices are under constant pressure and do not always cover production costs, which has a negative impact on farm investments, working conditions, wages, and the producer's family income.

The Fairtrade standard provides for a mandatory contribution of up to 30% in cash or in kind of the Fairtrade premium. This premium is distributed equitably to bridge the living wage gap and contribute to better living standards for workers and their families. If the premium is distributed in kind, the categories that make up a decent life—such as health, education, food, and housing—qualify. Fairtrade calculates and publishes the living wage gaps identified in the different banana-producing countries and converts them into living wage differentials. Workers on Fairtrade-certified plantations have the option to distribute an additional 20% of the Fairtrade premium in cash or in kind if they so decide at their general assembly. This 20% is distributed equitably among all qualified workers (who may be unionized) on the plantation.

A Fairtrade base wage is equal to 70% of the living wage benchmark proposed by the Anker Research Institute, which is published and updated annually by the Global Living Wage Coalition for a country or region. The Fairtrade base wage is only relevant for countries with very low statutory minimum wages and collective bargaining agreements that do not exceed 70% of the living wage benchmark for all workers. In these countries, the payment of the base wage, published annually by Fairtrade, is mandatory on all Fairtrade-certified banana plantations, and the cost is covered by the Fairtrade minimum price for the country.

The Fairtrade living wage reference price is an additional component of the Fairtrade minimum price that covers the costs of wage supplements and corresponding legal contributions for plantation workers who are paid below this reference price. Fairtrade has published the living wage reference price for different

origins with the aim of supporting both producers and retailers to take shared responsibility for living wages in the banana sector. Living wage reference prices ensure that all workers on a plantation earn at least a living wage, provided that all boxes produced are sold under these conditions. Moreover, they cover the existing production costs, preventing any unintended consequences on productivity, quality, the environment, wages, and working conditions.

The distributed premium contributes to paying the differential. However, this premium is insufficient in some countries, giving Fairtrade buyers who are committed to living wages the option of supplementing wages with additional contributions to cover the remainder of the differential, which is called Fairtrade living wage differential. In these countries, the sum of the 30% of the Fairtrade premium and the Fairtrade living wage differential represents the living wage differential for a country or region. Buyers who do not adhere to Fairtrade conditions should still consider paying the minimum price, covering production costs and real wages plus the living wage differential for the country.

Fairtrade standards regulate mandatory and optional premium distributions among workers, minimum prices, and commercial contracts, thereby contributing to more decent living standards. Fairtrade standards require compliance with national laws—including payment of minimum wages, statutory benefits, and base wage if applicable—and promote collective bargaining to close wage gaps and ensure living wages over time.

Producer networks offer multiple services. Regarding the living wage goal, they provide services in standards compliance, capacity building in labor and human rights, human rights due diligence, collective bargaining, grievance mechanisms, conflict management, gender equity, occupational health and safety, and others.



## II. PAYMENT OF THE LIVING WAGE DIFFERENTIAL AS PART OF THE WAGE

In this modality, the buyer transfers the resources corresponding to the wage differential as a voluntary contribution to the plantation's management. Subsequently, the management pays the differential to the workers. This form of recognition is based on the idea that employers must make this payment to "decently" compensate workers for their service, considering that the labor relation is between those two parties and the purpose of the voluntary contribution is to achieve a living wage for workers.

Thus, the first step was to identify when a labor relation and an employment contract exists between the parties in accordance with the local legislation of each country under study. This also clarified the wage concept and how the contribution to achieve the living wage can be included in it. Finally, we analyzed the effects on the employer's obligations, fiscal burdens, and the rights to which workers are entitled under this modality.

### A. COLOMBIA

In accordance with Article 23 of the SLC, the following three conditions must be met to determine that there is a labor relation and a valid employment contract between two parties:

- a) The personal activity of the worker, that is, the worker should be rendering a service to the employer.
- b) The continuous subordination or dependence of the worker with respect to the employer, with the employer having the authority to give orders and instructions at any time concerning the manner, time, quantity, or quality of the work.
- c) A wage as a compensation to the worker for the services rendered.

With regard to this last item, *wage* in Colombia is understood as the remuneration paid by an employer to a worker for the services rendered in a specific period. This amount is legally protected, as it cannot be less than the minimum wage in force. The minimum wage is set annually by the Permanent Commission on the Harmonization of Wage and Labor Policies, a tripartite body comprising the government, employers, and workers. According to this definition, *wage* is different from *living wage*. The latter has implications and is a determining factor in general, and also in the specific context of Fairtrade, beyond the legal concepts of *wage* and *minimum wage* in Colombia.

The next step is to understand which payments made by employers to workers are considered part of their wage, that is, *wage payments*. This distinction is essential from a legal and economic perspective because only wage payments have an impact on the calculation of employers' obligations, such as employee benefits, vacations, contributions to social security systems, and parafiscal taxes. Therefore, if voluntary contributions are recognized as wage payments, employers would have additional charges in their obligations.

In accordance with Article 127 and Article 128 of the SLC, the following three criteria differentiate wage payments from non-wage payments:

- a) **Direct consideration for services.** Payments directly remunerating the service are, by their nature and by law, wage payments. Therefore, they cannot be the subject of agreements excluding wages, and any such agreement shall be null and void. These payments include the ordinary remuneration, the remuneration for working in shifts other than the ordinary one (overtime and night and Sunday surcharges), sales commissions, and in general any payment linked to the individual performance or results of the worker.

- b) **Frequency.** With regard to bonuses, the law establishes that they are not wage payments, provided that they are granted occasionally and as a purely discretionary benefit.
- c) **Legal definition.** Some payments are considered wage payments by the express will of the law, such as the usual per diem for food and lodging. There are other payments, such as the legal transportation allowance, that the law has deemed to be wage payments—without having that nature—for some specific purposes.

Likewise, the Labor Litigation Chamber of the Supreme Court of Justice, in Ruling SL5159-2018 and Ruling SL2228-2023, established the criteria for defining whether the sums recognized are wage payments or not. According to the Labor Litigation Chamber, wage payments are any economic benefit received by workers as a result of the service rendered, that is, anything that rewards their work.

An additional element to be analyzed is the nature of this voluntary contribution to the living wage, as it is the result of an agreement external to the labor relation. The funds for this contribution come from a business partner of the plantation, which wishes to transfer a sum of money to be distributed among the workers in order to contribute to closing the gap between the wage received and the living wage benchmark.

However, what happens if the plantation can no longer pay this voluntary contribution because the buyer stops the project and ceases to pay the differential to the plantation?

Including and paying the voluntary contribution as part of the workers' base wage entail wage modifications. Therefore, employers need the workers' prior consent to do so (especially in the event of wage reduction) to avoid legal claims on the grounds of unilateral deterioration of working conditions.

This means that paying this voluntary contribution as part of the wage improves the working conditions, which cannot be changed without the workers' consent. Accordingly, even if the plantation does not have the resources to comply with this payment, employers will be obliged to make it, unless the worker consents to this change. Otherwise, they may be exposed to legal claims for unilateral deterioration of working conditions.

In addition, when a benefit becomes part of the wage, that is, a wage payment, it also becomes part of the base wage, which is used to calculate other items of the total cost of labor and employers' obligations, especially employee benefits, vacations, parafiscal taxes, social security, and the fiscal burden on both workers and employers.

The following list details how each of these employers' obligations relates to wages and would be affected by a potential wage increase:

- a) **Contributions to the social security system.** In accordance with Law 1122 of 2007, Colombian workers must contribute 12.5% of their earned wages to health insurance, of which 8.5% is paid by the employer and 4% is deducted from the worker's payment. Similarly, workers must pay pension contributions amounting to 16% of their earned wages, of which 12% is paid by the employer and 4% is deducted from the worker's payment. Thus, the total wage deduction is 28.5%.
- b) **Parafiscal taxes.** There are other parafiscal contributions payable by employers based on workers' wages and vacations, such as 2% for the SENA, 3% for the ICBF, and 4% for the family compensation fund.

- c) **Employee benefits.** These include service bonuses (a 30-day wage per year), termination of employment bonuses (one monthly wage for each year worked), and interest on termination of employment bonuses (12% per year of the total value of termination of employment bonuses or proportional to the time worked).
- d) **Vacations.** Employers must give workers 15 working days of paid leave after one year of service.
- e) **Income tax.** In this case, both the worker as a natural person and the employer as a legal entity should be considered, since obligations are generated for both parties. In accordance with Article 103 of the CTS, all income is taxable for labor legislation purposes, regardless of whether it is considered as wage payment. However, workers are not required to file a tax return if their gross income is less than COP 59,376,800 (approximately USD 14,844). Similarly, a worker's monthly wage is not subject to withholding at source if it is less than COP 5,839,130 (approximately USD 1,459). In the case of legal entities, in accordance with Article 107 and Article 108 of the CTS, wage payments are deductible provided that parafiscal taxes are paid, as applicable, and the respective withholding at source is made. Pursuant to Article 383 of the CTS, this withholding depends on the amount of income received by each worker. Consequently, only payments that exceed a monthly amount of COP 4,029,140 (approximately USD 1,007) are subject to withholding. However, the tax effect could affect the plantation when it receives the funds from buyers to pay this benefit, since it increases its tax base. It is important to note that this analysis is made without knowing the exact amount of the voluntary contribution, considering only the amount established by the Colombian legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.
- f) **VAT.** In accordance with Article 1.3.1.1.2.1. of Decree 1625 of 2016, VAT is not levied on the provision of services under an employment contract, that is, as part of a wage.
- g) **ICA.** This is a territorial tax levied on the performance of industrial, commercial, or service activities carried out in the jurisdiction of a Colombian municipality. Pursuant to Article 345 of Law 1819 of 2016, income from labor relations is not subject to the industry and commerce tax.
- h) **FTT.** It is a national tax levied on, among others, the disposition of funds deposited in bank accounts of Colombian financial entities. The relevant regulations allow the application of certain exemptions that must be evaluated in each specific case, as in the case of transfers made between accounts of the same and sole holder, between accounts of the same financial entity, or by workers from their payroll accounts duly marked, up to a monthly limit of COP 14,844,000 (approximately USD 3,711) so that this tax would not be levied if these thresholds are not exceeded.

## Conclusion

Based on the above analysis, we can conclude the following:

- The voluntary contribution used to reach the living wage comes from a source other than the employer. Accordingly, including it as part of the wage would be atypical and not in accordance with the definition of wage established in the national legislation.
- The increase in the amount received as wage improves working conditions, which in turn establishes rights in favor of the worker, complicating the scenario for an employer who, for whatever reason, ceases to receive this voluntary contribution.

- If this voluntary contribution were part of the wage, the labor costs assumed by the worker and the employer to include this voluntary contribution would imply higher costs and administrative processes for the parties. Therefore, if the amounts paid are small and variable (depending on sales volumes, for example), these fiscal and administrative burdens and irrevocable rights in favor of the worker may not be proportional to the benefit granted.
- Considering that the funds for paying the voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

In conclusion, based on the above and in accordance with the provisions of the Colombian labor legislation, using the figure of wage to make the payment of the living wage differential to the worker is not recommended. Instead, we suggest exploring other mechanisms that do not entail additional labor and fiscal burdens. Ideally, this voluntary contribution should be paid outside the labor relation, since the nature of the benefit is different from the nature of the legal concept of wage.

## B. DOMINICAN REPUBLIC

Again, in order to analyze the living wage in the Dominican Republic, it is necessary to understand that a wage is paid as a result of a labor relation and an employment contract in force, which implies a remuneration paid by employers to workers for a service rendered.

In other words, there must be a labor relation between the parties for a living wage differential or voluntary contribution to be recognized as part of the wage. In accordance with Article 1 and Article 2 of the LCDR, an employment contract is a document that binds a person, in exchange for remuneration, to render a personal service to another, with the subordination of the former and the direct or delegated direction of the latter. Furthermore, a worker is any natural person who renders a material or intellectual service by virtue of an employment contract. Finally, an employer is any natural person or legal entity for whom the service is rendered. Based on these definitions, we can determine the existence of a labor relation.

Similarly, it is necessary to understand the concept of *wage* from the Dominican legal perspective. Pursuant to Article 192 of the LCDR, wage is the remuneration that the employer must pay to the worker as compensation for the work performed. The wage is made up of the cash that must be paid to workers per hour, per day, per week, per fortnight, or per month and any other benefit that workers obtain for their work. Article 193 of the LCDR establishes that the amount of the wage is the same as that agreed upon in the employment contract. It cannot be, in any case, less than the minimum wage established by law.

In order to pay other benefits as part of the wage, Article 214 and Article 215 of the LCDR can be used as a basis. These articles allow workers and employers to agree on a wage higher than that set in the minimum wage rates or, in the case of employers, to define one unilaterally (for all their workers or a group of them).

In this case, workers become entitled to keep receiving this higher wage. This is reflected in Article 217, which establishes that workers who enjoy a wage higher than the minimum wage must continue receiving the same higher wage. This means that once this higher wage is granted, employers cannot subsequently reduce it without exposing themselves to the risk of claims or labor litigation for deterioration of the working conditions.

Employers would be involved in a difficult situation if they cease receiving funds for the living wage differential or voluntary contribution from the buyer or if they lose the Fairtrade certification, as they would be obliged to continue paying this wage improvement regardless.

Finally, if the voluntary contribution is included as part of the wage, there are employee benefits that would be incrementally affected, such as the following:

- a) **Social security system.** Employers and employees must contribute to the three types of assistance in the system: health insurance (employer's contribution of 7.09% and worker's contribution of 3.04% for a total of 10.13%); old age, disability, and survival insurance or pension fund (employer's contribution of 7.10% and worker's contribution of 2.87% for a total 9.97%); labor risks insurance (employer's contribution of 1.2% of the variable wage); and contribution to the INFOTEP (employer's contribution of 1% of the total payroll of employees). Thus, labor costs amount to 21.03%.
- b) **Christmas bonus or thirteenth-month bonus.** Workers receive one twelfth of the ordinary wage earned by them in the calendar year.
- c) **Share in the company's profits or benefits.** The maximum limits for the calculation of this benefit are based on the worker's wage. Agricultural companies whose capital does not exceed one million Dominican pesos are exempt from paying this benefit.
- d) **Income tax.** If wages increase, taxable income also increases. Therefore, the impact of income tax on workers who earn a wage is as follows:
  - Income up to DOP 416,220.00 is exempt from income tax.
  - Income from DOP 416,220.01 to DOP 624,329.00 is taxed 15% on the surplus from DOP 416,220.01.
  - Income from DOP 624,329.01 to DOP 867,123.00 is taxed DOP 31,216.00 plus 20% on the surplus from DOP 624,329.01.
  - Income from DOP 867,123.01 onward is taxed DOP 79,776.00 plus 25% on the surplus from DOP 867,123.01.

In this sense, if the wage increases once the differential is applied—for example, if it increases from exempt to taxed at 15% on the surplus from DOP 416,220.01—workers' benefits are reduced by the taxes that they must pay and that are withheld prior to receiving their net wage. This would be similar for the plantation, since the plantation itself would receive the income from the buyer. It is important to note that this analysis is made without knowing the exact amount of the voluntary contribution, considering only the amount established in the Dominican Republic legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.

## Conclusion

Based on the above analysis, we can conclude the following:

- The living wage differential or the voluntary contribution comes from a source other than the employer. Accordingly, including it as part of the wage would be atypical and not in accordance with the legal definition of wage.
- An increase in the amount received as wage improves working conditions, which in turn confers rights on the worker. This complicates the scenario for an employer who for any reason ceases to receive this voluntary contribution.

- If this voluntary contribution were part of the wage, the labor costs assumed by the worker and the employer to include this voluntary contribution would result in higher costs and longer administrative processes for the parties. Therefore, if the amounts paid are low and variable (depending on sales volumes, for example), these fiscal and administrative burdens and irrevocable rights in favor of the worker may not be proportional to the benefit granted.
- Considering that the funds for paying the voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

In conclusion, based on the above and in accordance with the provisions of the Dominican Republic labor legislation, using the figure of wage to make the payment of the living wage differential to the worker is not recommended. Instead, we suggest exploring other mechanisms that do not entail additional labor and fiscal burdens. Ideally, this voluntary contribution should be paid outside the labor relation, since the nature of the benefit is different from the nature of the legal concept of wage.

### C. ECUADOR

In order to analyze the appropriateness of including the payment of the voluntary contribution as part of the workers' wage in Ecuador, we must start by defining the concept of wage in accordance with the Ecuadorian law.

Pursuant to Article 80 and following of the Ecuadorian Labor Code, salario (wage) is understood as the fee paid by the employer to the worker by virtue of the employment contract and sueldo (salary) is the remuneration that corresponds to the employee for the same concept. The salario is paid per workday, piece of work, or task. The sueldo is paid on a monthly basis, including non-working days. Moreover, basic wage is defined as the minimum financial compensation that people must receive from their employer for their work, which is part of the remuneration. Likewise, it is established that *salarios* and *sueldos* are freely defined by the parties, provided that they are not less than the legal minimum wage approved by the state.

In Ecuador, the payment of a living wage is a legal and constitutional requirement. Employers must adhere to the living wage policy, which requires the payment of a living wage to workers for a standard forty-hour workweek. The living wage covers the basic needs of workers and their families and is part of the right to fair remuneration established in Article 328 of the Constitution of Ecuador.

Articles 8, 9, and 10 of the OCPCI elaborate the concept of living wage, its components, and the mechanisms to make it effective. The OCPCI regulates natural persons, legal entities, and associations that carry out productive activities in the Ecuadorian territory. It regulates the exercise of constitutional rights and guarantees in multiple areas, including good living, decent work, and fair, democratic, productive, solidarity, and sustainable economy, which is based on an equitable distribution of benefits resulting from productive activities.

The current mandatory living wage established by the government of Ecuador exceeds the living wage suggested by the Global Living Wage Coalition and the Anker Research Institute (2023) for this country<sup>2</sup>. Ecuador has legal mechanisms that guarantee the payment of a living wage, as defined in Article 8 and

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<sup>2</sup> Pursuant to Ministerial Agreement No. MDT-2024-031 dated March 7, 2024, the Ministry of Labor set the value of the living wage for 2023 at USD 484.75 and the procedure for paying the monetary compensation.

Article 9 of the OCPCI. In addition, Article 10 of the OCPCI describes a compensation mechanism if, for any reason, companies fail to pay the living wage to their workers.

As from the 2023 fiscal year, employers must calculate and pay an additional mandatory monetary compensation in order to reach the living wage. This payment must be made to all their workers who, for whatever reason, received during that year a wage lower than that indicated in Article 9 of the OCPCI.

Employers must calculate the monetary compensation once a year and pay it to workers who did not receive the living wage during the previous fiscal year. Moreover, this compensation may consume, if necessary, up to 100% of the company's profits for that fiscal year.

This economic compensation is additional, is not an integral part of the remuneration, does not constitute taxable income for the social security system or the worker's income tax, and is strictly temporary until the living wage is reached.

According to the Association of Banana Exporters of Ecuador, the Ecuadorian Ministry of Labor could carry out an official verification of compliance with the living wage. This verification has been requested by the banana sector, but so far this service has not yet been confirmed by official channels of the Government

If, in the future, the living wage in Ecuador is lower than that set by the Global Living Wage Coalition, and a voluntary contribution is considered for payment, the following criteria must be met to contemplate such payment as part of the wage:

- a) The wage is paid in exchange for work performed by the worker.
- b) It must be paid in legal tender.
- c) The wage amount, pay frequency, and job duties must be freely agreed upon by both parties.
- d) The payment must be made in the context of an employer-worker relationship, properly documented through an employment contract.
- e) The wage cannot be reduced unless specified by law.
- f) Wage does not include extra earnings (in cash, kind, or service) such as bonuses for overtime, commissions, profit sharing, reserve funds, legal profit percentages, occasional allowances, additional remunerations, or any other conventional compensation defined by law.

Considering this, a voluntary contribution from a buyer, being an *additional and voluntary payment*, is not regarded as a wage by law. Therefore, recognizing it as such would contradict its legal nature, especially if the funds come from an agreement outside the labor relation.

Ecuadorian law clearly allows employers and workers to freely agree on wages, provided these are not below the minimum. Once agreed upon, wages can only be reduced as specified by law. The employer cannot unilaterally lower workers' wage without their consent, as doing so would expose the employer to labor litigation and claims. Consequently, any wage increase grants rights to workers that must be maintained over time, regardless of whether the employer fulfills the conditions to receive the funds for a buyer's differential.

When analyzing the most effective way to pay a voluntary contribution, it was found that, if included as part of the wage, it would impact the calculation of the following benefits:

- a) **Wage-related benefits.** Overtime pay, annual leave.

- b) **Employee benefits.** Affiliation with social security or to the IESS (with the worker contributing 9.45% and the employer contributing 11.15%, totaling 20.60% of the worker’s monthly wage), payment to the reserve fund after one year of employment.
- c) **Additional benefits.** Thirteenth-month pay (Christmas bonus), fourteenth-month pay (school bonus), retirement payment after twenty-five years of service with the same employer, ten days of paid paternity leave, twelve weeks of paid maternity leave.

The wage increase will also affect the tax base for **income tax** purposes. The following table shows the percentage of income tax on annual income:

Basic fraction (USD)	Surplus up to (USD)	Tax on basic fraction (USD)	Tax on surplus fraction (%)
0	11,902	-	0
11,902	15,159	-	5
15,159	19,682	163	10
19,682	26,031	615	12
26,031	34,255	1,377	15
34,255	45,407	2,611	20
45,407	60,450	4,841	25
60,450	80,605	8,602	30
80,605	107,199	14,648	35
107,199	Onward	23,956	37

As observed, if the tax base changes due to the voluntary contribution—such as moving from a tax-exempt wage to one taxed at 5% on the surplus between USD 11,902 and USD 15,159—the worker’s benefits will be reduced by the taxes that must be paid, which will be withheld prior to receiving the net wage. A similar effect would occur for the plantation, as it would receive the income from the buyer.

It is important to note that this analysis is made without knowing the exact amount of the voluntary contribution, considering only the amount established in the Ecuadorian legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.

### Conclusion

Based on the above analysis, we can conclude the following:

- The voluntary contribution comes from a source other than the employer. Accordingly, including it as part of the wage would be atypical and not in accordance with the legal definition of wage.



- An increase in the amount received as wage improves working conditions, which in turn confers rights on the worker. This complicates the scenario for an employer who for any reason ceases to receive this contribution.
- If this voluntary contribution were part of the wage, the labor costs assumed by the worker and the employer to include this voluntary contribution would result in higher costs and longer administrative processes for the parties. Therefore, if the amounts paid are low and variable (depending on sales volumes, for example), these fiscal and administrative burdens and irrevocable rights in favor of the worker may not be proportional to the benefit granted.
- Considering that the funds for paying the voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

In conclusion, based on the above and in accordance with the provisions of the Ecuadorian labor legislation, using the figure of wage to make the payment of the living wage differential to the worker is not recommended. Instead, we suggest exploring other mechanisms that do not entail additional labor and fiscal burdens. Ideally, this voluntary contribution should be paid outside the labor relation, since the nature of the benefit is different from the nature of the legal concept of wage.

### III. PAYMENT OF THE LIVING WAGE DIFFERENTIAL AS AN EXTRA-WAGE BONUS

As in the previous section, this payment mechanism operates under the understanding that the buyer transfers the funds for the voluntary contribution to the plantation, which then pays this contribution to the worker. This mechanism is based on the idea that, as a voluntary contribution, employers, having the labor relation with workers, should make this payment to compensate adequately for the services provided. However, the key difference is that the remuneration received by the employee is classified not as a wage, but as an extra-wage bonus. This prevents this payment from having the same effect as a wage in the calculation of employee benefits or taxes and in creating rights for the worker.

The following subsections will analyze, according to the legislation of the three countries under study, whether it is possible to classify this payment as an extra-wage bonus, the suitability of this payment mechanism given the nature and origin of the voluntary contribution, and the implications in terms of labor and tax costs for both the employer and the worker.

#### A. COLOMBIA

To analyze this payment mechanism in Colombia, it is important to reference Ruling SL5159-2018 and Ruling SL2228-2023 from the Labor Litigation Chamber of the Supreme Court of Justice. These rulings state that payments made by employers for reasons other than the performance of duties do not qualify as wage. These include (i) cash or in-kind payments provided not for personal benefit or enrichment but to facilitate job performance, such as representation expenses, transportation, work tools, and similar allowances; (ii) employee benefits; (iii) family allowances, indemnities, and incidental and permanent allowances (particularly those covering transportation and representation costs); and (iv) occasional payments made by the employer out of goodwill, explicitly not concealing a remunerative intent.

An essential aspect in this analysis, as per the Supreme Court's Ruling SL986-2021, is that the burden of proving the origin and purpose of this benefit lies with the employer. This means that the employer must demonstrate that this payment does not originate from work performed or does not intend wealth enrichment for the worker.

From this, we infer that the employer and the worker can mutually agree on additional payments not categorized as wage—such as the proposed bonus. However, they must consider that (1) this payment should not intend personal benefit or wealth enrichment for the worker and, (2) in the event of dispute, the employer must prove it is not wage-related.

The Colombian Supreme Court has clarified in its rulings that parties must clearly establish the purpose and justification of such payment. Also, it highlights that, even if parties can agree on such payments, this does not authorize them to deem what is inherently wage as non-wage. This is emphasized in rulings such as that of June 13, 2012 (file number 39475) and SL12220-2017.

Determining whether this is the most suitable payment mechanism for voluntary contributions may depend on how this criterion is interpreted. In the event of disputes or claims, the plantation must legally substantiate that such contribution does not derive from work performed or does not intend wealth enrichment for the worker. This may pose challenges, especially when the payer and the recipient have a labor relation and the benefit's name—living wage differential—is closely associated with work, remuneration, and workers' assets, making it difficult to distinguish it from what is essentially wage.

In light of this, there is a possibility to consider an extralegal benefit of a non-wage nature, potentially advantageous and cost-effective for employers, under the following conditions:

- a) Both the worker and the employer must explicitly agree through a formal agreement that this benefit is not wage-related, as it does not compensate for services provided.
- b) Such an agreement should clearly outline the purpose of the benefit. To comply with legal requirements, it is advisable to revise the term of living wage to a broader concept that clarifies it as an extralegal benefit aiming to improve workers' personal and family conditions, irrespective of their job functions or activities.

This possibility is viable only if the commercial agreement between the plantation and the buyer does not specify that additional payments are aimed to support the living wage or if clauses indicate that such sums are not remuneration for services provided by the worker.

The agreement between employer and worker regarding non-wage payments must specify clear terms and conditions. We recommend to include at least the following:

- a) Pay frequency, which can be monthly, quarterly, semi-annually, or annually. It can be agreed upon considering the plantation's administrative convenience or the worker's needs, since administrative and tax implications are calculated on annual base income.
- b) Pay period for the benefit, which may be tied to the commercial contract with the client(s) or for a specific duration (e.g., from January 1st to December 31st of the current year).
- c) Additional conditions for workers to qualify for this payment, such as having a commercial contract with clients who pay the additional percentage.
- d) It is important for the employer to state that this payment is purely discretionary and may be modified, eliminated, or replaced unilaterally at any time without it being seen as a detriment to workers' labor conditions.

Establishing these conditions ensures that if funds for the contribution cease or Fairtrade certification is lost (if applicable), workers will immediately forfeit their entitlement to the benefit.

Importantly, even with these conditions, the employer cannot unilaterally eliminate this benefit without the worker's consent (unless the recognition period has ended), as doing so will be seen as a detriment to working conditions and result in potential labor risks. This, as mentioned in the previous section, underscores that this voluntary contribution poses challenges for payment within the labor relation, as it originates from an external agreement.

Regarding fiscal burdens, non-wage payments do not factor into employers' obligations such as employee benefits, vacation pay, parafiscal taxes, or social security. However, if non-wage payments exceed 40% of a worker's total monthly remuneration, the excess amount must be included in the calculation of the social security contributions. In other words, such difference must be added to the worker's base income.

As explained in the second section, in accordance with Article 103 of the CTS, all income from a labor relation is taxable, regardless of designation and particularly if not considered wage payments under labor law. This has an effect on fiscal burdens, requiring tax return filing and increased withholding tax obligations for workers.

Nonetheless, if a worker's total annual gross income does not exceed the defined thresholds to file a tax return, which is COP 59,376,800 (approximately USD 14,844), or if monthly income is below the thresholds for withholding tax, that is, less than COP 5,839,130 (approximately USD 1,459), no income tax is applicable.

Non-wage payments also do not incur taxes like ICA and VAT, but like wage payments, they may affect FTTs for workers.

## **Conclusion**

Based on the above analysis, we can conclude the following:

- This benefit can be considered an extra-wage bonus. For this, the employer and the worker must sign an agreement outlining the benefit's purpose, terms, pay frequency, and conditions. These conditions might include maintaining a contract with the buyer providing the funds or holding Fairtrade certification (if applicable).
- This type of payment, even with agreed conditions, grants rights to the worker. It cannot be unilaterally eliminated without the worker's consent, as it would be seen as a detriment to working conditions and could lead to labor litigation or claims. This is particularly problematic when a resource originating from an external agreement is recognized within the labor relation, even as a bonus.
- Non-wage payments do not affect the calculation of employers' obligations such as employee benefits, vacation pay, parafiscal taxes, or others like ICA and VAT. They also do not impact social security contributions if the payment does not exceed 40% of the total monthly remuneration.
- Non-wage payments are not subject to income tax if the worker's annual income does not exceed approximately USD 14,844 or if the employer's withholding does not exceed approximately USD 1,459. However, the plantation may face tax implications when receiving funds from the buyer to pay this benefit, as it increases their taxable income. It is important to note that this analysis is made without knowing the exact amount of the voluntary contribution, considering only the amount established in the Colombian legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.
- In the event of disputes or claims, the plantation must legally substantiate that such contribution does not derive from work performed or does not intend wealth enrichment for the worker. This may pose challenges, especially when the payer and the recipient have a labor relation and the benefit's name—living wage differential—is closely associated with work, remuneration, and workers' assets, making it difficult to distinguish it from what is essentially wage.
- The funds for paying the living wage differential as a voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

Based on the above and considering Colombia's labor law, although it is possible to treat a voluntary contribution as a non-wage payment, a change in the terminology used to identify this benefit is necessary for its feasibility. This change should also be reflected in the agreement signed with the buyer to demonstrate that, from the outset, the benefit is not wage-related.

Despite this, the fact that the payer of this benefit has a labor relation with the worker could undermine this argument and expose the plantation to labor disputes or claims regarding the nature of this payment. Consequently, it is recommended to use a different payment mechanism that does not involve the labor relation between employer and worker.

## B. DOMINICAN REPUBLIC

The first point to analyze is whether this bonus can be classified as extra-wage under Dominican law. As per Article 192 of the LCDR, wage is defined as the remuneration that the employer must pay to the worker as compensation for the work performed. Wage includes cash payments per hour, day, week, fortnight, or month, and any other benefits received for work. From this definition, an extra-wage bonus is possible, provided it is clearly established that its payment is not compensation for work performed or services provided.

Unlike Colombian legislation, Dominican law does not explicitly allow non-wage bonuses between worker and employer. However, based on the principle of legality in private law, everything that is not forbidden is allowed, which makes such agreements essentially possible.

Again, in this case, an agreement separate from the employment contract must thus be signed to ensure that this bonus is not linked to the services provided by the worker. This agreement should include at least the following:

- a) Pay frequency, which can be monthly, quarterly, semi-annually, or annually. It can be agreed upon considering the plantation's administrative convenience or the worker's needs, since administrative and tax implications are calculated on annual base income.
- b) Pay period for the benefit, which may be tied to the commercial contract with the client(s) or for a specific duration (e.g., from January 1st to December 31st of the current year).
- c) Additional conditions for workers to qualify for this payment, such as having a commercial contract with clients who pay the additional percentage.
- d) It is important for the employer to state that this payment is purely discretionary and may be modified, eliminated, or replaced unilaterally at any time without it being seen as a detriment to workers' labor conditions.

Establishing these conditions ensures that if funds for the voluntary contribution cease (or in the case of Fairtrade, the Fairtrade certification is lost), workers will immediately forfeit their entitlement to the benefit. Moreover, to make this agreement feasible, a change in the terminology used to identify the benefit is recommended. This change should also be reflected in the agreement signed with the buyer to demonstrate that, from the outset, this benefit is not wage-related.

Importantly, even with these conditions, the employer cannot unilaterally eliminate this benefit without the worker's consent (unless the recognition period has ended), as doing so will be seen as a detriment to working conditions and result in potential labor risks. The reason for this is that, in case of labor disputes or claims, the employer could argue that this bonus is part of the worker's remuneration or wage, as it is a benefit received for work pursuant to Article 192 of the LCDR. Also, in accordance with Article 217, once this higher remuneration is defined, it must continue to be paid over time.

Furthermore, even if this payment is extra-wage, it is still considered income as per Article 268 of the LCDR. This article defines it as any profit or benefit derived from an asset or activity, including all benefits, profits, and increases in equity received or accrued by the taxpayer, regardless of their nature, origin, or denomination.

Thus, as mentioned in the previous section, if the worker's income increases due to the voluntary contribution—for example, if it increases from exempt to taxed at 15% on the surplus from DOP 416,220.01—workers' benefits are reduced by the taxes that they must pay and that are withheld

prior to receiving their net wage. This would be similar for the plantation, since the plantation itself would receive the income from the buyer.

It is important to note that this analysis is made without knowing the exact amount of the differential, considering only the amount established in the Dominican Republic legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.

## Conclusion

Based on the above analysis, we can conclude the following:

- This benefit can be considered an extra-wage bonus. For this, the employer and the worker must sign an agreement outlining the benefit's purpose, terms, pay frequency, and conditions. These conditions might include maintaining a contract with the buyer providing the funds or holding Fairtrade certification.
- A change in the terminology used to identify this benefit is recommended. This change should also be reflected in the agreement signed with the buyer to demonstrate that, from the outset, the benefit is not wage-related.
- Even if this payment is considered a bonus and not a wage, it improves working conditions and grants rights to the worker, which is particularly problematic when an employer, for any reason, stops receiving the funds for this voluntary contribution, exposing them to the risk of labor litigation or claims.
- Since these payments are potentially considered taxable income, including this voluntary contribution would result in higher costs and longer administrative processes for the parties. Therefore, if the amounts paid are low and variable (depending on sales volumes, for example), these fiscal and administrative burdens and irrevocable rights in favor of the worker may not be proportional to the benefit granted.
- The funds for paying the voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

In conclusion, based on the above and in accordance with the provisions of the Dominican Republic labor legislation, using the figure of extra-wage bonus to make the payment of the voluntary contribution to the worker is not recommended. Instead, we suggest exploring other mechanisms that do not entail additional labor and fiscal burdens. Ideally, this voluntary contribution should be paid outside the labor relation, since the nature of the benefit is different from the nature of the labor relation.

## C. ECUADOR

The analysis on the payment of the voluntary contribution as a bonus applies if the living wage, as defined in Article 8 and Article 9 of Ecuador's OCPCI (Organic Code of Production, Commerce, and Investment), falls below that set by the Global Living Wage Coalition.

The first point to consider is whether this bonus can be classified as extra-wage according to Ecuadorian law. As per Article 81 of the Ecuadorian Labor Code, wages shall be freely stipulated but must not be less than the legal minimums, as specified in Article 117 of this code. A basic wage is understood as the minimum economic remuneration that a person must receive from their employer for their work. This does not include income from overtime, commissions, profit sharing, reserve funds, legal profit

percentages, occasional travel allowances or subsidies, additional remuneration, or any other normal or conventional compensation as determined by law.

Thus, it is possible for an employer and employee to agree on this extra-wage bonus as additional remuneration. To ensure that this bonus is not linked to the services provided by the worker, an agreement separate from the employment contract must be signed. This agreement should include at least the following:

- a) Pay frequency, which can be monthly, quarterly, semi-annually, or annually. It can be agreed upon considering the plantation's administrative convenience or the worker's needs, since administrative and tax implications are calculated on annual base income.
- b) Pay period for the benefit, which may be tied to the commercial contract with the client(s) or for a specific duration (e.g., from January 1st to December 31st of the current year).
- c) Additional conditions for workers to qualify for this payment, such as having a commercial contract with clients who pay the additional percentage.
- d) It is important for the employer to state that this payment is purely discretionary and may be modified, eliminated, or replaced unilaterally at any time without it being seen as a detriment to workers' labor conditions.

Establishing these conditions ensures that if funds for the voluntary contribution cease (or, in the case of Fairtrade, Fairtrade certification is lost), workers will immediately forfeit their entitlement to the benefit. Moreover, to make this agreement feasible, a change in the terminology used to identify this benefit is recommended. This change should also be reflected in the agreement signed with the buyer to demonstrate that, from the outset, this benefit is not wage-related.

Regarding the effect of these bonuses on the calculation of employee benefits, Article 95 of Ecuadorian Labor Code specifies that for the payment of compensation to which the worker is entitled, remuneration includes everything the worker receives in cash, kind, or services—including what is received for overtime, piecework, commissions, profit sharing, the employer's contribution to the IESS, or any other regular compensation in the industry or service. Exclusions are the legal profit percentage, monthly payments to the reserve fund, occasional travel allowances or subsidies, the thirteenth- and fourteenth-month pays, economic compensation for the living wage, wage components in the process of being incorporated into remunerations, and benefits represented by social services.

The fact that for indemnity purposes a bonus must be taken into account proves that it generates an improvement in the working conditions, which once granted can hardly cease to be granted over time. Furthermore, the employer is exposed to the risk of labor litigation or claims.

From the foregoing, it is understood that even when agreed as a bonus, this amount is considered a component of the worker's remuneration for the calculation of indemnity payments. Consequently, it also increases the financial burden on the employer in terms of labor obligations.

Likewise, for income tax purposes, income is defined in accordance with Article 2 of the Ecuadorian Internal Tax Regime Law as income from Ecuadorian sources obtained for good and valuable consideration from labor, capital, or both sources, consisting of money, goods, or services. Therefore, an increase in the income received by workers will result in an increase in their tax burden, as detailed in the section on the payment of the differential as part of the wage.

For instance, if the taxable income varies in the wage scale once the bonus is applied (for example, from an exempt wage to a wage subject to a 5% tax on the surplus of USD 11,902.00 up to USD 15,159.00), the workers' benefit will be reduced by the taxes that they must pay and that will be withheld before they receive their net wage. A similar effect would occur for the plantation, since it is the plantation that would receive the income from the buyer.

It is important to note that this analysis is made without knowing the exact amount of the voluntary contribution, considering only the amount established in the Ecuadorian legal system. The total tax effect on the benefit received by the worker becomes known by defining whether the voluntary contribution is sufficient to exceed the thresholds established by law.

## **Conclusion**

Based on the above analysis, we can conclude the following:

- This benefit can be considered an extra-wage bonus. For this, the employer and the worker must sign an agreement outlining the benefit's purpose, terms, pay frequency, and conditions. These conditions might include maintaining a contract with the buyer providing the funds or holding Fairtrade certification.
- A change in the terminology used to identify this benefit is recommended. This change should also be reflected in the agreement signed with the buyer to demonstrate that, from the outset, the benefit is not wage-related.
- Even if this payment is considered a bonus and not a wage, it improves working conditions and grants rights to the worker, which is particularly problematic when an employer, for any reason, stops receiving the funds for this voluntary contribution, exposing them to the risk of labor litigation or claims.
- Since these payments are potentially considered taxable income, including this voluntary contribution would result in higher costs and longer administrative processes for the parties. Therefore, if the amounts paid are low and variable (depending on sales volumes, for example), these fiscal and administrative burdens and irrevocable rights in favor of the worker may not be proportional to the benefit granted.
- The funds for paying the voluntary contribution come from a source other than the employer, it is not appropriate that the employer pays this benefit.

In conclusion, based on the above and in accordance with the provisions of the Ecuadorian labor legislation, using the figure of extra-wage bonus to make the payment of the voluntary contribution to the worker is not recommended. Instead, we suggest exploring other mechanisms that do not entail additional labor and fiscal burdens. Ideally, this voluntary contribution should be paid outside the labor relation, since the nature of the benefit is different from the nature of the labor relation.



#### IV. PAYMENT OF THE LIVING WAGE DIFFERENTIAL THROUGH A NOT FOR PROFIT ORGANISATION (NPO)

As analyzed in the previous sections, there are several challenges associated with recognizing the benefit as part of the wage or as an extra-wage bonus. These include increased labor costs, administrative procedures to prove its non-wage nature, and the labor rights that such benefit generates for the worker. These conditions have their origin in the labor relation between the parties, which puts them in this regulatory situation in order to protect the worker's interests.

Therefore, the third option analyzed in this section to materialize the benefit of the voluntary living wage contribution has as a differentiating aspect who makes the payment. In this scenario, the buyer transfers the funds to a not for profit organization (in the case of Fairtrade, this can be the workers' association, which through the Fairtrade Premium Committee), recognizes this benefit to the workers as a donation.

The following assumptions were made to configure this option:

- a) A donation has been made by the buyers to a Foundation (or in the case of Fairtrade, to the workers' association) without a commercial relationship (and without this resource being considered as part of the Fairtrade premium). On this point, in the case of Fairtrade, it is important to distinguish between the living wage contribution that can be made from the Fairtrade premium—and that is regulated by the Fairtrade standard for the use of the premium—and the voluntary contribution that is the subject of this study, which comes from a different source. This again underscores the need to review the designation given to this benefit.
- b) For Fairtrade volumes, since they are not part of the Fairtrade premium, the funds are not subject to the rules established by Fairtrade and can be freely disposed of.
- c) The NPO is not restricted to make this type of distribution (donation) in accordance with its registered purpose. It is worth noting that, if the nature of the association permits, it can even receive donations to distribute the funds among the workers. For example, if the NPO's purpose is to enhance the living conditions of its members, it may be possible to receive funds designated for a program benefiting families. In such cases, the transfer of these funds would not be classified as a donation but as a project fulfilling the association's purpose. However, without knowing the bylaws of all the plantations that could receive this voluntary contribution, it is assumed that the most feasible option is a donation. This assumption could be validated through a more in-depth study, which would also involve analyzing the types of associations that could use this mechanism.

Having established these assumptions, it should also be noted that the funds delivered to the worker through the NPOs do not constitute part of the worker's wage because of the following reasons:

- a) They have not been fixed between the parties or by national legislation.
- b) They are not due to the worker based on an employment contract, that is, there is no labor relation between the parties.
- c) They are not provided as consideration for work or services rendered by the worker.

Given these points, the mechanism for distributing these funds in the countries under study will be evaluated below.

##### A. COLOMBIA

This study provides an overview of the Colombian regulations applicable to NPOs, which are legal entities with full capacity to exercise rights and assume obligations within the framework of their legal nature. Once incorporated, they constitute a distinct organization separate from the natural persons or legal

entities that compose them. However, they are limited by three aspects: they can only operate within the framework of their bylaws, which must be duly registered and approved by the competent authorities; they are expressly prohibited from distributing any surpluses they generate; and they are obligated solely through their duly registered legal representative. Particularly, NPOs cannot distribute any surpluses because they are not operated to generate profits or dividends that can be distributed. Instead, the objective of an NPO is to use its resources to address the needs or problems of general interest for the society, community, guild, or social purpose for which it was constituted.

Therefore, it is important to distinguish between surplus, profit, or dividend and donation. The former concepts are associated with activities whose objective is capital gain. In such cases, investments are made, and the return on the investment generates profits, surpluses, or dividends. In contrast, a voluntary contribution that is not received as payment for the sale of goods or services but as a donation for supporting family welfare is not considered a profit, surplus, or dividend. Consequently, distributing it would not contradict the legal nature of the NPO.

It is thus established that there are no restrictions on NPOs distributing funds received to workers, provided that such funds are invested in commendable activities as set forth in Article 359 of the CTS for NPOs, Special Tax Regime. The commendable activities outlined in this article are those related to health, education, culture, sports, scientific or technological research, and social development.

It is important that the distribution be authorized by the association's bylaws and comply with the relevant accounting regulations in terms of the identification of such funds under the heading of "income received for third parties," since the NPO will only act as an intermediary. Additionally, the distribution must comply with the applicable legal requirements according to the type of act determined to be used for delivering the funds to the worker. The delivery acts must be documented by means of internal or external supports, duly dated and authorized by those who intervene in or prepare them.

Moreover, to determine the mechanism to be used, the figure of *donation* was analyzed. According to Article 1443 of the Colombian Civil Code, a donation is understood as an act between living persons by which one person transfers, free of charge and irrevocably, a part of their assets to another person who accepts it.

Donations of less than fifty minimum wages do not require any type of legal formality such as a contract or agreement. However, it is advisable to document both the donation made by the NPO—indicating its intention to make a cash donation and specifying the amount and destination or cause of such donation—and the receipt of the donation by the worker via a letter crossing.

In Colombia, donations, whether in cash or in kind, are subject to taxation. Article 302 and Article 303 of the CTS establish that such operations generate income for the donee, who is liable to taxation under the occasional profit tax (15% for the year 2023). This implies that any donations received by the worker will be subject to a 15% tax on the amounts or goods received. In light of the above, and given that donations imply the voluntary delivery of funds by NPOs, it is necessary that they withhold tax at the source if the amounts exceed the thresholds established by law. As of the date of this analysis, 20% of the value of donations and other *inter vivos* legal acts up to 1,625 TVUs is exempted. For 2024, the value of a TVU is COP 47,065.

However, if the voluntary contribution is made in kind and not in cash, it could be argued that it is not a donation that generates taxable income for the workers, but rather an expense incurred by the NPO as

part of their activity. In other words, it would not be a payment by mere liberality but the execution of resources invested in the NPO's activity through the delivery of goods in favor of the worker.

## **Conclusion**

Based on the analysis, it can be concluded that there are no restrictions in Colombia on the delivery of the voluntary living wage contribution to workers through NPOs, provided that their bylaws allow donations. Donations, in this context, are more tax-efficient for workers compared to wages, as wages impose higher costs and longer administrative processes on employers without guaranteeing substantial income improvements for workers. Likewise, this type of donation does not confer any rights on the worker, as there is no labor relation involved. Finally, to avoid confusion regarding its nature and applicable legal framework, the name of this voluntary contribution should also be modified to prevent it from being associated with wages.

Donations for commendable activities fall under a special tax regime and are exempt from taxation. Therefore, it is advisable to distribute the voluntary contribution in the form of vouchers that can be used to cover health and education expenses or to implement a social program of common interest that benefits workers who do not earn a living wage. The total value of the vouchers would then be paid directly to the suppliers of services or goods.

## **B. DOMINICAN REPUBLIC**

In the case of the Dominican Republic, NPOs are institutions composed of at least five natural persons or legal entities dedicated to activities of social good or public interest, following the formalities required for their establishment. The fundamental characteristic of NPOs is the absence of pecuniary objectives in their activities, with their main source of funding being donations received from members or sympathizers. The following characteristics are noteworthy:

- a) Their objective is clearly defined in their bylaws.
- b) Their activities must align with their objective.
- c) This alignment between their objective and their activities must be maintained over time.

Importantly, NPOs cannot distribute any surpluses because they are not operated to generate profits or dividends that can be distributed. Instead, the objective of an NPO is to use its resources to address the needs or problems of general interest for the society, community, guild, or social purpose for which it was created.

Therefore, it is important to distinguish between surplus, profit, or dividend and donation. The former concepts are associated with activities whose objective is capital gain. In such cases, investments are made, and the return on the investment generates profits, surpluses, or dividends. In contrast, a voluntary contribution that is not received as payment for the sale of goods or services but as a donation for supporting family welfare is not considered a profit, surplus, or dividend. Consequently, distributing it would not contradict the legal nature of the NPO.

From the analysis of the regulatory framework, it has been determined that there are no restrictions on NPOs distributing funds designated for the voluntary contribution to their associated workers, provided that such distribution is permitted by their bylaws.

Like in the Colombian case, the possibility of using the figure of a donation to pay the voluntary living wage differential to workers was analyzed, concluding the following:

- a) The regulatory framework defines a donation as the act of giving funds or other material goods, typically for reasons of solidarity, affection, or charity.
- b) Donations are subject to tax applicable to any transfer of goods made between living persons free of charge. This tax must be paid by the donees unless otherwise specified in the donation act.
- c) The tax rate to be paid is the same as that for income tax on legal entities in effect at the time of the donation. From 2015 onward, the income tax rate is 27%.
- d) However, according to Article 41 of the Dominican Tax Reform Law 253-12, donations made to public establishments and charitable or public utility institutions recognized by the state are exempt from this 27% tax. To qualify for this exemption, these organizations must be duly registered and comply with all requirements established in Article 67 of Decree 40-0 of the Dominican Regulations for the Application of the Nonprofit Organizations Law for their incorporation, registration, and inscription before the competent authorities. Additionally, they must submit the annual informative affidavit referred to in Article 51 of Law 122-05 on the Regulation and Promotion of NPOs, detailing the use of resources for the purposes outlined in their objectives.

## Conclusion

The analysis indicates that there are no restrictions in the Dominican Republic that prevent the payment of the voluntary contribution to workers through NPOs, provided that their bylaws allow donations. Furthermore, donations are more tax-efficient for workers compared to wages and extra-wage bonuses, as the latter entail higher costs and longer administrative processes on employers without guaranteeing substantial income improvements for workers. In the case of the Dominican Republic, provided that the legal requirements are met, these donations would be tax-exempt. Moreover, this type of donation does not confer any rights on the worker because there is no labor relation involved. Finally, as in the Colombian case, the designation of this voluntary contribution should be modified to prevent it from being associated with wages and avoid any confusions as to its nature and applicable legal framework.

### C. ECUADOR

In Ecuador, NPOs, known as social organizations, have a social and altruistic purpose and are not established to obtain an economic benefit. They are granted legal status upon application to the competent state agency and are subject to the relevant statute and its reform.

Although social organizations do not seek profit due to their nature and purposes, they may acquire, own, and sell assets, as well as administer them, perform legal acts, and enter into contracts and agreements. However, these activities must be compatible with the organization's purposes and exclusively intended for their fulfillment.

Notably, social organizations cannot distribute any surpluses because they are not operated to generate profits or dividends that can be distributed. Instead, the objective of a social organization is to use its resources to address the needs or problems of general interest for the society, community, guild, or social purpose for which it was created.

Therefore, it is important to distinguish between surplus, profit, or dividend and donation. The former concepts are associated with activities whose objective is capital gain. In such cases, investments are made, and the return on the investment generates profits, surpluses, or dividends. In contrast, a voluntary contribution that is not received as payment for the sale of goods or services but as a donation for

supporting family welfare is not considered a profit, surplus, or dividend. Consequently, distributing it would not contradict the legal nature of the NPO.

According to the analysis of the regulatory framework of social organizations in Ecuador, no restrictions have been identified that prevent social organizations from distributing funds allocated to the payment of the living wage differential or voluntary contribution to their associated workers, as long as this activity is compatible with the organization’s purposes.

In this context, the figure of a donation was analyzed as the mechanism for the payment of the voluntary contribution, yielding the following insights:

- a) A donation is a contract through which an asset is transferred free of charge to another person who accepts the transfer. The parties to this agreement are called the donor and the donee, with the former being the one who transfers the property and the latter the one who receives it.
- b) Income tax is applied to the capital gain from donations of goods and rights existing in Ecuador.
- c) The tax applicable to donations ranges from 0% to a maximum of 35%, according to the table of rates of the taxable base established for each year. This tax must be paid by the donee.
- d) However, when the donation is in cash and the donor is a withholding agent (organizations and individuals obliged to keep accounting records), the total tax must be withheld before the donation is delivered to the beneficiary. This withholding must be in accordance with the withholding table issued by the Internal Revenue Service of Ecuador in 2024<sup>3</sup>.

Basic fraction (USD)	Surplus up to (USD)	Tax on basic fraction (USD)	Tax on surplus fraction (%)
0	76,558	-	0
76,558	153,115	-	5
153,115	306,231	3,828	10
306,231	459,379	19,139	15
459,379	612,515	42,112	20
612,515	765,630	72,739	25
765,630	918,725	111,018	30
918,725	Onward	156,946	35

## Conclusion

From the above, it can be concluded that there are no restrictions in Ecuador on the payment of the voluntary contribution through social organizations, provided that donations are compatible with their

<sup>3</sup>Retrieved from <https://www.sri.gob.ec/o/sri-portlet-biblioteca-alfresco-internet/descargar/16e4229d-283d-4bd8-810e-1f77611a55c0/BOLET%3%8DN%20067%20-%20ACTUALIZACI%3%93N%20DE%20LAS%20TABLAS%20DE%20IMPUESTO%20A%20LA%20RENTA%20PARA%202024.pdf>

purpose. Like in the cases of Colombia and the Dominican Republic, donations are more tax-efficient for workers compared to wages and extra-wage bonuses. Moreover, if the contribution aligns with the organization's mission, it is not obliged to pay taxes. In addition, this type of donation does not confer any rights on the worker because there is no labor relation involved. Finally, as in the previous cases, the designation of this voluntary contribution should be modified to prevent it from being associated with wages and avoid any confusions as to its nature.

## V. CONCLUSIONS

Based on the above analysis, and considering the similarities in the conclusions, it is recommended that the three countries studied (Colombia, Dominican Republic, and Ecuador) implement the following measures:

1. The benefit should be administered through a legal entity that does not have a labor relation with the worker. The existence of such a relation may grant the money received a wage character. In jurisdictions with judicial precedents, proving that a payment is not wage-related becomes difficult when there is an employment contract and the benefit is termed as a *living wage*.
2. If the voluntary contribution is paid as part of the wage or as an extra-wage bonus, it improves the worker's conditions. According to the laws of the three countries, this generates rights that cannot be unilaterally terminated without the worker's consent, exposing the employer to potential labor litigation or disputes.
3. Including the voluntary contribution as part of the wage or as an extra-wage bonus implies higher labor, administrative, and tax costs for both the worker and the employer. If the amounts paid are low and variable (depending on sales volumes, for example), the tax and administrative burdens and the irrevocable rights granted to the worker may not be proportional to the benefit provided.
4. To avoid associating this payment with an employment contract, which would give it a wage nature, it is recommended to change its designation or terminology. Although the contribution aims to bridge the gap between current wages and a living wage, its ultimate purpose is to improve conditions in the banana sector and raise the living standards of workers and their families within the context of Fairtrade. Therefore, this benefit should not be tied to a specific service provided by the worker in exchange for payment.
5. In the case of non-Fairtrade-certified plantations, the most feasible option would be to either channel the voluntary contribution via an NPO or to classify the payment as an extra-wage bonus, while being aware of the associated risks. To demonstrate that this bonus is not of a wage nature, it must be clearly established through an agreement between the parties, which should include at least the following:
  - a) Frequency of payment.
  - b) Time frame for the payment of the benefit.
  - c) Additional conditions for workers to be eligible for this payment, such as the existence of a commercial contract with the clients who pay such additional percentage.
  - d) Clause stating that the payment is made by mere liberality and, therefore, it may be modified, eliminated, or substituted unilaterally at any time, without it being considered a deterioration of the working conditions.
6. For Fairtrade-certified plantations, the most feasible option would be to first transfer the funds from the buyer to the association of Fairtrade workers (constituted as an NPO). This association, through the Fairtrade Premium Committee, would then distribute the funds to the workers. This mechanism is already in place for the transfer of the Fairtrade premium. However, as these funds are not part of the Fairtrade premium, they are not subject to Fairtrade rules. The committee is therefore free to dispose of them according to the country's regulations for this type of organization.

7. Any agreement with the Fairtrade Premium Committee for the distribution of the funds must clearly state that the amounts paid to the workers within the framework of this initiative are to be understood as donations, and not as wages or bonuses. Moreover, these amounts should not be considered payments for services rendered by the workers to prevent them from being associated with wages and avoid any confusions as to their nature and applicable regulatory framework. Again, the terminology change suggested in previous paragraphs is crucial in this context.
8. It is essential to thoroughly review the operations of each workers' association (Fairtrade Premium Committee) and the economic activities that they have registered with the tax authorities to ensure that these payments comply with all relevant regulations and to determine whether they constitute taxable income for the workers.
9. Each workers' association should set minimum conditions for workers to receive this benefit. This would allow associations to have a margin of maneuver in paying the voluntary contribution, particularly in terms of when it would be paid and under what terms. Defining these conditions ensures that if funds for the voluntary contribution cease, certification is lost, or a worker fails to meet the terms, there would be no grounds for a claim for non-payment. These conditions should consider at least the following:
  - a) Acknowledgment by the worker that this voluntary contribution does not constitute wage, as it does not remunerate in any way the service rendered.
  - b) Inclusion of the purpose of this voluntary contribution. To this end, it is advisable to change the term *living wage differential* to a broader concept that conveys it as an extra-legal benefit aimed at enhancing the personal and family conditions of workers, and that is not related to their job functions or activities.
  - c) Definition of the frequency of payment, aligned with the terms agreed upon by the Fairtrade Premium Committee.
  - d) Limitation of the validity of the voluntary contribution, specifying whether it depends on the validity of a commercial contract or a specific duration.
  - e) Additional criteria for workers to qualify for the benefit, such as the existence of commercial contracts that fund such additional voluntary contribution, the fulfillment of goals, or the maintenance of the Fairtrade certification.
  - f) Clarification that the voluntary contribution is granted out of the NPOs' generosity and, therefore, it may be modified, eliminated, or substituted unilaterally at any time, without it being considered a deterioration of the working conditions.