Colombia issues decree listing tax havens

On 7 October 2013, Colombia’s Ministry of Finance and Public Credit issued Decree 2193, listing the countries, jurisdictions, domains, associated states or territories that are considered tax havens for tax purposes.

The decree temporarily excludes the following jurisdictions: Barbados, Bermuda, United Arab Emirates, State of Kuwait, State of Qatar, Guernsey and Republic of Panama. These jurisdictions are excluded because Colombia is carrying out paperwork to sign treaties or agreements that permit the exchange of tax information. If the treaties and agreements are not completed by 7 October 2014, these jurisdictions will be added to the tax haven list.

Under Article 4 of the decree, the decree applies to the following tax period.

In accordance with this decree, taxpayers that do business with a company located, domiciled or resident in a tax haven and want to deduct income tax payments must document and show detail of the functions performed, assets used, risks assumed and all costs and expenses incurred by the beneficiary company in the tax haven. Additionally, to constitute a cost or deduction, the taxpayer must have withheld tax (except for financial transactions registered with Colombia’s Central Bank). If the payments constitute taxable income to the beneficiary company, the applicable tax rate is 33%, regardless of the nature of the payments.

Further, under the decree:

- The withholding tax rate for portfolio capital investors resident or domiciled in a tax haven will be 25%, instead of 14%.
- Transactions with persons, companies, firms or entities located, resident or domiciled in tax havens will be subject to the transfer pricing regime, requiring supporting documentation and an informative tax return to be filed.
- If the supporting documentation omits information related to transactions with persons, companies, firms or entities located, resident or domiciled in tax havens, as well as knowledge of costs and deductions arising from such transactions, a special penalty of 4% of the total value of the transactions will be applied. The penalty will not exceed COP$ 268,410,000 for tax year 2013.
• If the information related to the transactions also is omitted from the information statement, as well as knowledge of costs and deductions arising from such transactions, a penalty of 2.6% of the total value of the transactions will be generated. The penalty will not exceed COP$ 161,046,000 for tax year 2013.

• Citizen individuals that during the relevant tax year or period are tax resident in one of the jurisdictions classified as a tax haven will be considered residents in Colombia for tax purposes.

Article 1 of the decree lists the following tax havens:

1. Anguila
2. Antigua and Barbuda
3. Archipelago of Svalbard
4. Territorial Collectivity of San Pedro and Miguelón
5. Commonwealth of Dominica
6. Commonwealth of the Bahamas
7. Kingdom of Bahrain
8. State of Brunei Darussalam
9. Independent State of Western Samoa
10. Grenada
11. Hong Kong
12. Isle of Man
13. Queshm Island
14. Cayman Islands
15. Cook Islands
16. Pitcairn, Henderson, Ducie and Oeno
17. Solomon Islands
18. British Virgin Islands
19. Jersey
20. Labuan
21. Macao
22. Principality of Andorra
23. Principality of Liechtenstein
24. Principality of Monaco
25. Hashemite Kingdom of Jordan
26. Cooperative Republic of Guyana
27. Republic of Angola
28. Republic of Cabo Verde
29. Republic of Cyprus
30. Republic of the Marshall Islands
31. Republic of Liberia
32. Republic of Maldives
33. Republic of mauritius
34. Republic of Nauru
35. Republic of Seychelles
36. Republic of Trinidad and Tobago
37. Republic of Vanuatu
38. Republic of Yemen
39. Lebanese Republic
40. St. Kitts & Nevis
41. Saint Vincent and Grenadines
42. Saint Helena, Ascension and Tristan de Cunha
43. St. Lucia
44. Sultanate of Oman
For additional information with respect to this Alert, please contact the following:

**Ernst & Young Ltda., Bogotá, Colombia**
- Ximena Zuluaga  +57 1 484 7170  ximena.zuluaga@co.ey.com
- Maria Camila González  +57 1 401 4763  camila.gonzalez@co.ey.com
- Juan Sebastián Torres  +57 1 484 7658  juan.sebastian.torres@co.ey.com

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**Co-Directors of America’s Tax Center**
- Global Tax, **Eric Solomon**, Washington, DC
- Global Tax, **Michael Mundaca**, Washington, DC
- America’s Tax Center Chief Operating Officer  **Declan Gavin**, Washington, DC
- ATC - Customs  **William Methenitis**, Dallas
- ATC - Global Compliance and Reporting (GCR)  **Ken Brown**, Dallas
- ATC - Global Tax Desks  **Gerrit Groen**, New York
- ATC - Tax Controversy  **Rob Hanson (Interim)**, Washington, DC
- ATC - Tax Effective Supply Chain Management (TESCM)  **Lisa Lim**, New York
- ATC - Tax Performance Advisory (TPA)  **Gary Paice**, Chicago
- ATC - Tax Policy  **Michael Mundaca (Interim)**, Santiago, Chile
- ATC - Value Added Tax (VAT)  **Jean-Hugues Chabot**, Montreal, Canada
- ATC - Insurance  **Terry Jacobs**, Washington, DC
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