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On October 7, 2013, the Colombian Government issued the long awaited list of **44** jurisdictions that for Colombian tax purposes are deemed as “tax havens” (Decree 2193 – 2013). Note that after much speculation about its inclusion, Panama was temporarily excluded from the list on the grounds of the current negotiations of a Tax Information Exchange treaty. In this issue, **Colombian Tax Flash®** brings our readership the Colombian list of “tax haven” jurisdictions, in addition to summarizing the main tax rules/effects involving these jurisdictions.

Please bear in mind that although already enacted, this regulation should be applicable only as of January 1<sup>st</sup>, 2014.

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## 1. “Tax Havens” List

Pursuant to the new regulation, the following **44** jurisdictions are deemed “tax havens” for Colombian tax purposes:

Andorra	Angola (Republic of)
Anguilla	Antigua and Barbuda
Bahamas	Bahrain
British Virgin Islands	Brunei
Cape Verde (Republic of)	Cayman Islands
Cook Islands	Cyprus (Republic of)
Dominica	Grenada
Guyana (Co-operative Republic of)	Hong Kong
Jersey (Bailiwick of)	Jordan (Hashemite Kingdom of)
Labuan	Lebanese Republic
Liberia (Republic of)	Liechtenstein (Principality of)
Macau	Maldives (Republic of the)
Man (Isle of)	Marshall Islands
Mauritius (Republic of)	Monaco (Principality of)
Nauru (Republic of)	Oman (Sultanate of)
Pitcairn Islands (Henderson, Ducie and Oeno)	Qeshm Island
Samoa (Western)	Seychelles (Republic of)
Solomon Islands	St. Helena, Ascension and Tristan da Cunha
St. Kitts & Nevis	St. Lucia
St. Pierre et Miquelon	St. Vincent and the Grenadines
Svalbard	Trinidad and Tobago (Republic of)
Vanuatu (Republic of)	Yemeni Republic

On the grounds of the current negotiations of a Tax Information Exchange treaty, the following **7** jurisdictions were temporarily excluded from this list:

Barbados	Bermuda
Guernsey (Bailiwick of)	Kuwait (State of)

Panama (Republic of)  
United Arab Emirates

Qatar (State of)

Beginning on the date of enactment of these newly issued regulations (Decree 2193 – 2013), this list is to be revised every year. The exclusion of any jurisdiction from this list will depend on the future execution of a Tax Information Exchange treaty.

## 2. Main Tax Rules/Effects

### 2.1. Tax Residency for Individuals

Colombian nationals resident in a “tax haven” jurisdiction, are deemed Colombian residents for all Colombian tax purposes (Colombian Tax Code §10).

### 2.2. Increased Withholding Tax Rate for Foreign Portfolio Investors

Foreign Portfolio Investors domiciled in a “tax haven” jurisdiction, are not entitled to the reduced **14%** withholding tax rate on their return. Instead, a **25%** withholding tax rate will be levied (CTC§ 18-1(4)(e)).

### 2.3. Increased 33% Withholding Tax Rate on Cross-Border Payments

All cross-border payments of (taxable income items) to beneficiaries that are resident, established, located, or functioning, in a “tax haven” jurisdiction and except as otherwise indicated in the applicable tax rules and regulations, are subject to an increased **33%** withholding tax rate (CTC§408). Not performing such withholding on these payments, will result in the loss of the right to deduct the same in the Colombian payor’s income tax assessment (CTC§124-2).

### 2.4. Transfer Pricing

In addition to a number of related consequences in the area of transfer pricing regulations, transactions between Colombian parties and parties that are resident, located or domiciled, in a “tax haven” jurisdiction are by default, subject to the Colombian transfer pricing rules, whether the parties are related or not (CTC§260-7).

### 2.5. GAAR

A transaction involving in any way or form the use of a “tax haven” jurisdiction is one of the five criteria required to trigger the statutory General Anti-Avoidance Rule (CTC§§869; 869-1).

Remember that the 2012 tax reform adopted an statutory GAAR requiring the presence of three out of five criteria to shift the burden of proof from the Colombian Tax Service (DIAN) to the taxpayer in a re-characterization challenge requiring from the taxpayer evidence to support a business purpose or that the prices or considerations related with the transaction meet Colombian transfer pricing rules.

The Criteria are: (i) the transaction involves related parties; (ii) the transaction involves a tax haven; (iii) the transaction involves an entity covered by a favorable tax regime; (iv) the price or consideration agreed differs in more than 25% from a fair market value; and (v) the transaction does not include a feature, an entity or an agreement common to similar transactions, with the purpose of obtaining a tax advantage in an abusive manner.

### *What can we do for you?*

We at Lewin & Wills can help you evaluate your involvement with the affected jurisdictions and assess the individual effects and implications for your specific case, and the alternatives available to address any concerns created by the new regulation. **LW**

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