



Informational Bulletin

Agreement between the United States and Colombia for implementing the Automatic Exchange of Information

Dear Clients,

Last May 20, 2015 the Colombian and the U.S. governments signed in the city of Bogotá D.C. an agreement whereby both countries have pledged to exchange automatically financial information through its tax authorities (DIAN and IRS) in connection with “Reportable Accounts” found in any financial entity of either country. The agreement signed by both countries was presented as a development of the agreement signed on March 30, 2001 between both countries, which had authorized automatic exchange of information but failed to implement the same. Due to the significance of this matter, we have prepared this bulletin which covers the most important aspects of the same, such as the cases and persons this new Agreement will be applicable to, the type of information to be exchanged and the procedure to be followed by the parties for this purpose.

1. ¿Who is it applied to?

According to the definitions provided under Article One (1) of the aforesaid Agreement, it is understood that “Reportable Accounts” are those that as suggested by its name are subject to reporting within the mechanisms of the Agreement.

In order to determine who the agreement is applicable to and what are “Reportable Accounts”, we provide below a brief explanation of the terms “Deposit Accounts”, “Financial Account”, “Accountholder”, “Account Reportable by the U.S. to Colombia” and “Account Reportable by Colombia to the U.S.”

1.1. Deposit Account and Financial Account

For purposes of the agreement “Deposit Account” is understood as:

1. Any commercial, checking, savings or termed account or an account documented under a certificate of deposit, savings, investment, debenture or the like maintained by any financial institution.
2. The amounts maintained by an insurance company by virtue of a guaranteed investment contract or similar agreement.



While “Financial Account” shall be understood as:

1. Any such account holding any interest in the capital or indebtedness in an investment entity and/or financial institution.
2. Any insurance contract having an effective value and any life annuity contract issued or maintained by a financial institution.

1.2 Accountholder:

For purposes of the agreement, the term “Accountholder” will mean any person registered or identified by the financial institution as holder of the account. According to the agreement, the denomination of “Accountholder” will not be applicable to any person maintaining an account for the benefit or on account of another person in the capacity of manager, custodian, representative, signatory, investment advisor or intermediary. In regard to effective value insurance contracts and life annuity contracts, accountholder will mean any person enabled to access the effective value or having the authority to change the beneficiary. In the event no person can access the effective value or change the beneficiary, the accountholder will be said individual who may have been previously designated as holder of the contract and/or one having the right to receive a payment under to the same.

1.3 Accounts Reportable by the U.S. to Colombia:

The financial accounts maintained in a U.S. Financial Institution will be reported and its information exchanged with DIAN when:

1. A Deposit Account is maintained by a natural person residing in Colombia and over US\$ 10 are paid in interests on such account in any given calendar year.
2. Revenues paid or credited whose source of wealth is located in the U.S. and the accountholder of a Financial Account other than a Deposit Account is a resident in Colombia, including even those Entities that certify to be Colombian residents for tax purposes.

1.4 Accounts Reportable by Colombia to the U.S.:



The financial accounts maintained in a Colombian Financial Institution will be reported and its information exchanged with the IRS when

1. A financial account is maintained by one or more U.S. Specified Persons or by a non-U.S. Entity having one or more persons exerting control over such entity that are U.S. Specified Persons.

Such Accounts Reportable by Colombia to the U.S. are not limited to those provided under the Agreement given that Annex 1 of the Agreement establishes certain specifications in connection with the procedures and due diligence duties that Colombian tax authorities and financial institutions must observe at the time of exchanging information with U.S. authorities in connection with reportable accounts. Annex 1 of the Agreement provides the following:

1. Applicable rules and procedures for identification of reportable accounts by the U.S. among pre-existing accounts maintained by natural persons.
2. Procedures for review of pre-existing individual accounts of natural persons having a balance or value as of June 30, 2014 in excess of US \$50,000 (US \$250,000 for insurance contracts having an effective value or life annuity contracts) but not exceeding \$ 1,000,000 (Low Value Account).
3. Procedures for the review of pre-existing individual accounts of natural persons having a balance or value as of June 30, 2014, December 31, 2015 or any subsequent year in excess of US \$1,000,000 (High value Account).
4. Rules and procedures applicable to reportable accounts of natural persons and opened after July 1, 2014. (New accounts of natural persons).

2. What is the type of information to be provided?

Article two of the agreement entered between the U.S. and Colombia establishes the information to be exchanged between both countries.

2.1 Information to be supplied by the U.S. to Colombia:



The IRS must report to DIAN, in connection with each reportable account, the following information:

1. Name, address and Taxpayer Identification Number in Colombia of any person residing in Colombia and being the holder of such account.
2. The account number.
3. The name and identification number of the U.S. financial institution.
4. The gross amount of interests paid on a deposit account.
5. The gross amount of dividends from a source of wealth in the U.S. paid or credit to the account.
6. The gross amount of other revenues having the U.S. as source of wealth paid or credited to the account, insofar as the same are subject to reporting.

2.2. Information to be provided by Colombia to the U.S.:

Regarding reportable accounts to the U.S. the DIAN must inform and report to the IRS the following information:

1. Name, address and U.S. Taxpayer Identification Number of each U.S. Specified Person being an accountholder.
2. The account number.
3. The name and identification number of Global Intermediary of the Colombian Financial Institution subject to reporting.
4. The balance or amount in the account at the end of the corresponding calendar year or any other reportable period, or in case the account was closed during such time period, the balance at the time of closing.
5. Regarding deposit accounts, the gross amount of interests paid or credited on the account during the calendar year or other adequate reporting period.
6. The gross amount of other revenues having the U.S. as source of wealth paid or credited to the account.

3. How will it be implemented? - Procedure

The agreement entered between the U.S. and Colombia for automatic exchange of financial information does not contain *per se* an exact procedure regarding the manner



how such parties to the agreement will exchange such information. The agreement provides that the competent authorities in Colombia and the U.S., that is, DIAN and IRS, respectively, will enter into an agreement establishing by mutual consent the procedure whereby the countries will exchange such information. The agreement reached by U.S. and Colombian tax authorities will have to follow the guidelines under the models of the "Tax Information Exchange Agreement" (TIEA) of the OECD. Likewise, it has also been provided that once such agreement enters into force, the competent authorities will send a notification whenever either party considers that there are suitable safeguards in the other jurisdiction to ensure that information received will be protected under confidentiality and will only be used for tax purposes. In addition, a notice will be sent whenever either party considers that there is an infrastructure in the other jurisdiction to carry out an effective, timely, accurate and confidential exchange of information. To this end, the agreement provides the authorities from both countries to meet before September 2015 in order to reach an agreement and establish whether in both jurisdictions there are guarantees to implement the exchange of such information. Notwithstanding the above, as stated in the agreement and Communication 40 from the Ministry of Finance, the IRS will provide automatically on every September 30th DIAN with the information on Colombian residents having accounts or being clients of financial institutions in the U.S. Finally and as stated in Communication 40 from the Ministry of Finance, announcing the signature of the aforesaid agreement, the arrangements reached by DIAN with the IRS in regard to the exchange of information and obligations to be met by the parties will be instrumentalized under a DIAN resolution.

We hope the above information will prove useful. We remain at your disposal to clarify any questions in this regard.

Sincerely yours,

SANCLEMENTE FERNÁNDEZ ABOGADOS S.A.



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