
INTERNAL REVENUE SERVICE PUBLISHED THE NEW BLACK LIST REGARDING TAX HAVENS AND FAVORABLE TAX REGIMES

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On June 7th 2010, Brazilian Internal Revenue Service (“RFB”) published the Rule RFB n° 1.037/2010 with a wider list of countries considered tax havens (the so called “Black List”) and, also, included a new list of partnerships associations with favorable tax regimes.

There are many years that Brazilian Law adopted international criterias to determine whether a jurisdiction is a tax haven¹, outstanding the charge of Income Tax at a rate lower than 20% (twenty percent) and the exchange of information regarding shareholders or quotaholders (which figures lack of transparency).

The new Black List included 14 (fourteen) countries, which are: Ascension Island, Brunei, French Polynesia, Kingdom of Swaziland, Kiribati, Norfolk Island, Pitcaim Island, Queshm Island, Saint Helena Island, Saint Kitts and Nevis, Saint Peter and Miquelon Island, Solomon Island, Switzerland and Tristan da Cunha Island.

The complete list now has 65 (sixty five) countries².

The highlighting of the new Black List regards Switzerland, for the first time mentioned as a tax haven by Brazilian Authorities. This should impact Brazilian tax planning and reorientate investments.

In a nutshell, the new Black List will force the adoption of a higher Tax Withholding rate over yields or capital gains, from 15% (fifteen percent) to 25% (twenty five percent), and the application of Brazilian transfer pricing rules.

In the new list, Malta Island was reclassified from tax haven to favorable tax regimes.

A favorable tax regime, in theory, is not a tax haven, since the country where the company is held usually has an appropriate tax rate. Nevertheless, since it is offered several benefits that reduce the total tax burden to less of 20% (twenty percent) and /or avoid the exchange of information for tax purposes.

It is also considered as favorable tax regime any company that may be established without the development of substantial economic activities, what suggests that the jurisdiction was tax driven.

Identified by their country, the favorable tax regimes included on the Black List are:

- a) Denmark: *holding company*;
- b) Spain: *Entidad de Tenencia de Valores Extranjeros* (E.T.V.Es.);
- c) United States of America: state *Limited Liability Company* (LLC) composed by non residents which does not collect personal Income Tax;
- d) Hungary: *offshore* KFT;

¹ Law n°9.430/96

² Please refer to the annex below.

- e) Iceland: *International Trading Company* (ITC);
- f) Luxemburg: *holding company*;
- g) Malta: *International Trading Company* (ITC) e de *International Holding Company* (IHC);
- h) Netherlands: *holding company*;
- i) Uruguay: *Sociedades Financeiras de Inversão* (Safis), until December 31st 2010.

From now on, the RFB has legal ground to perform a rigorous tax control over companies that remit values to favorable tax regimes, which should immediately adopt the transfer price rules. In spite of that, the Tax Withholding surtax should not apply to yields or capital gains since its applicability is restricted to countries with nil or only nominal taxes.

The applicability of international tax treaties should also remain the same.

Therefore, our opinion is that the new Rule increases the legal security and the right of due taxation, considering that RFB is now prevented from imposes tax assessment over remittance performed to favorable tax regimes based exclusively on general criterias. On the other land, as mentioned before, RFB should be adopted a more strict supervision.

The Almeida Advogados law firm remains at your disposal to any clarifications regarding this matter and to aid investments considering the new legislation

ANNEX

LIST OF COUNTRIES CONSIDERED TAX HAVEN

Regarding the Normative Act n° 1.037/2010, the following countries or jurisdictions are considered tax haven:

- I. American Samoa,
- II. American Virgin Islands,
- III. Andorra,
- IV. Anguilla,
- V. Antigua and Barbuda,
- VI. Aruba,
- VII. Ascension Island,
- VIII. Bahamas,
- IX. Bahrain,
- X. Barbados,
- XI. Belize,
- XII. Bermuda,
- XIII. British Virgin Islands,
- XIV. Brunei,
- XV. Campione D'Italia,
- XVI. Cayman Islands,
- XVII. Channel Islands (Jersey, Guernsey, Alderney and Sark),
- XVIII. Cook Islands,
- XIX. Costa Rica,
- XX. Cyprus,
- XXI. Djibouti,
- XXII. Dominica,
- XXIII. French Polynesia,
- XXIV. Gibraltar,
- XXV. Granada,
- XXVI. Hong Kong,
- XXVII. Isle of Man,
- XXVIII. Kingdom of Swaziland,
- XXIX. Kiribati,
- XXX. Labuan,
- XXXI. Lebanon,
- XXXII. Liberia,
- XXXIII. Liechtenstein,
- XXXIV. Macao,
- XXXV. Madeira Island,
- XXXVI. Maldives,

- XXXVII. Marshall Islands,
- XXXVIII. Mauritius Islands,
- XXXIX. Monaco,
- XL. Montserrat,
- XLI. Nauru,
- XLII. Netherlands Antilles,
- XLIII. Niue,
- XLIV. Norfolk Island,
- XLV. Oman,
- XLVI. Panama,
- XLVII. Pitcaim Island,
- XLVIII. Queshm Island,
- XLIX. Saint Helena Island,
- L. Saint Kitts and Nevis,
- LI. Saint Kitts and Nevis Federation,
- LII. Saint Lucia,
- LIII. Saint Peter and Miquelon Island,
- LIV. Saint Vincent,
- LV. Western Samoa,
- LVI. San Marino,
- LVII. Seychelles,
- LVIII. Singapore,
- LIX. Solomon Island,
- LX. Switzerland,
- LXI. Tonga,
- LXII. Tristan da Cunha Island,
- LXIII. Turks and Jaycees Islands,
- LXIV. United Arab Emirates
- LXV. Vanuatu.
