



International Tax

Brazil Tax Alert

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Netherlands holding companies re-included on “grey list” of privileged tax regimes

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The Brazilian government issued guidance (Executive Declaratory Act 3/2015) on 18 December 2015 that revokes the 2010 guidance that removed the Netherlands holding companies from Brazil’s “grey list” of privileged tax regimes because the Dutch government was not able to provide evidence that domestic tax legislation existed to justify the non-inclusion of the Dutch holding company regime as a privileged tax regime. The new guidance is effective as from 21 December, the date it was published in the official gazette.

The Brazilian tax authorities published a ruling on 7 June 2010 that expanded the list of jurisdictions considered tax havens (black list jurisdictions) and introduced a new list of regimes designated as “privileged tax regimes” (grey list jurisdictions). The latter list included certain regimes in Denmark, Hungary, Iceland, Luxembourg, Malta, Netherlands, Spain and Uruguay, as well as limited liability companies in the US. That same month, the tax authorities introduced a procedure under which jurisdictions that are deemed to be black or grey list jurisdictions could request that the Brazilian government review the need for the jurisdiction’s inclusion on the relevant list. The ruling also established that holding companies incorporated in Denmark and the Netherlands would be considered to benefit from a privileged tax regime (and thus be included on the grey list) only if the holding company does *not* engage in “substantial economic activities.”

Following a formal request by the Dutch government, the Brazilian tax authorities “temporarily” suspended the tax effects of the grey list for the Netherlands as a privileged tax regime. This status now has been revoked by the new Executive Declaratory Act—a holding company incorporated in the Netherlands will be considered to benefit from a privileged tax regime (and thus be included on the grey list) if it does *not* engage in substantial economic activities.

The status of other countries that formally requested suspension or removal from Brazil’s grey list is as follows:

Types of regimes	Grey list status
Holding companies incorporated under Luxembourg law	Removed
Holding companies incorporated under Danish law that do not engage in substantial economic activities	Active
Holding companies incorporated under Dutch law that do not engage in substantial economic activities	Active
International trading companies incorporated under Iceland law	Active
Offshore companies incorporated under Hungarian law	Removed
LLCs incorporated under US state law, in which the equity interest is held by nonresidents not subject to US federal income tax	Active
<i>Entidad de Tenencia de Valores Extranjeros</i> incorporated under Spanish law	Suspended
International trading companies and international holding companies incorporated under Maltese law	Active
<i>Sociedad Anonima Financiera de Inversion</i> (Safis) incorporated under Uruguayan law until December 2010	Active
Swiss holding companies, domiciliary companies, auxiliary companies, mixed companies, administrative companies or in any "other corporate form via a ruling issued by the local authorities" and that are subject to a corporate income tax rate lower than 20% (combined federal, cantonal and municipal rate) (Switzerland was included on the tax haven list in 2010 when the Brazilian tax authorities expanded the list and introduced the privileged tax regime list. Its status as a tax haven was "suspended" and Switzerland was removed from the tax haven list, but certain Swiss structures that result in a lower taxation threshold of 20% were characterized as privileged tax regimes)	Active

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