

TAX NEWSLETTER

EXTRA EDITION

ADDITIONAL CHANGES TO THE
DEFINITION OF "TAX HAVEN JURISDICTIONS"

Normative Ruling (*Instrução Normativa*) of the Brazilian Federal Revenue Service (RFB) No. 1,037, of June 4, 2010, that deals with the definition of "tax haven jurisdictions" for different Brazilian tax purposes and that was addressed in our Newsletter No. 41 (attached hereto for convenience), was modified by means of Normative Ruling of the RFB No. 1,045, of June 23, 2010, published in the Brazilian Official Gazette on June 24, 2010. We address below these modifications.

DENMARK AND THE NETHERLANDS – CHANGE TO QUALIFICATION AS "PRIVILEGED TAX REGIME"

According to the original wording of Normative Ruling No. 1,037/10, among other entities, entities incorporated in Denmark and in the Netherlands in the form of "holding companies" were listed as "privileged tax regimes". In connection with these two jurisdictions, Normative Ruling No. 1,045/10 restricted the qualification of "privileged tax regimes" to entities incorporated in the form of "holding companies", provided that these entities do not carry out "actual economic activity" ("atividade econômica substantiva"). The definition of "actual economic activity" is not provided by the new regulations.

No modification was made to the entities incorporated in jurisdictions other than Denmark and the Netherlands that were listed as "privileged tax regimes" by Normative Ruling No. 1,037/10.

POSSIBILITY OF REVIEWING THE LISTS OF "TAX FAVORABLE JURISDICTIONS"
AND "PRIVILEGED TAX REGIMES"

Normative Ruling No. 1,045/10 created the possibility of government officials of countries and locations listed as "tax favorable jurisdictions" and "privileged tax regimes" filing a request with the RFB with the purpose of reviewing each country and location's qualification under such concepts. In this request, it must be evidenced that the respective local legislation that is currently in force does not lead to the qualification of the country, location or entities incorporated therein as "tax favorable jurisdictions" or "privileged tax regimes", as the case may be.

The RFB's official response to such review requests will be made public by means of the enactment and publication of a particular act (*ato declaratório executivo*). While the RFB's final response is not rendered, it is possible that the definition of a country or location as a



"tax favorable jurisdiction" or "privileged tax regime" is temporarily not applied. This potential temporary non-application of such concepts to a certain country or location will also be made public by means of an *ato declaratório executivo* of the RFB.

This newsletter aims at commenting on the main changes recently occurred on the Tax Legislation. For further enlightenments, our professionals are at your disposal.

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