



## REVIEW OF THE LIST OF TAX HAVENS

Order of the Minister of Finance no. 345-A/2016 was published on 30 December 2016. This Ministerial Order amended the list of countries, territories and regions with privileged tax systems, usually known as the “list of tax havens”, provided for in article 63-D of the General Tax Law (GTL).

The amended list, which came into force on 1 January 2017, removed the British territories of Jersey and the Isle of Man, as well as Uruguay. As a result, the following territories are now considered to be tax havens:

1. American Samoa;
2. Andorra;
3. Anguilla;
4. Antigua and Barbuda;
5. Aruba;
6. Ascension;
7. The Bahamas;
8. Bahrain;
9. Barbados;
10. Belize;
11. Bermuda;
12. Bolivia;
13. The British Virgin Islands;
14. Brunei;
15. The Cayman Islands;
16. The Channel Islands (Alderney, Guernsey, Great Stark, Herm, Little Sark, Brechou, Jethou and Lihou)
17. The Cocos (Keeling) Islands;
18. (Repealed);
19. The Cook Islands;
20. Costa Rica;
21. Djibouti;
22. Dominica;
23. The Dutch Antilles;
24. The Falkland Islands;
25. Fiji;
26. French Polynesia;
27. Gambia
28. Grenada;
29. Gibraltar;
30. Guam;
31. Guyana;
32. Honduras;
33. Hong Kong;
34. Jamaica;
35. Jordan;
36. Kiribati;
37. Koweit;
38. Labuan;
39. Lebanon;
40. Liberia;
41. Liechtenstein;
42. (repealed);
43. The Maldives;
44. (repealed);
45. The Marshall Islands;
46. Mauritius;
47. Monaco;
48. Monserrate;
49. Natal Islands;
50. Nauru;
51. Niue;
52. Norfolk Island;
53. The Northern Mariana Islands;
54. Oman
55. Pacific islands not included in the other numbers;
56. Palau Islands;
57. Panama;
58. Pitcairn Island;
59. Puerto Rico;
60. Qatar;
61. Queshm Island;
62. Saint Christopher and Nevis;
63. Saint Helena;
64. Saint Lucia;
65. Saint Pierre and Miquelon;
66. Saint Vincent and the Grenadines;
67. San Marino;
68. The Seychelles;
69. The Solomon Islands;
70. Svalbard Islands (archipelago of Spitsbergen and Bear Island);
71. Swaziland;
72. Tokelau Island;
73. Tonga;
74. Trinidad and Tobago;
75. Tristan da Cunha;
76. The Turks and Caicos Islands;
77. Tuvalu Island;
78. (Repealed);
79. The United Arab Emirates;
80. The United States Virgin Islands;
81. Vanuatu;
82. Western Samoa;
83. Yemen.

The elimination of the express classification of these territories as “privileged tax systems” is justified in the preamble to the Ministerial Order. The changes take into account the developments that have taken place since the last revision of the list of tax havens in 2011 and the implementation of anti-abuse mechanisms at the level of international taxation, including:

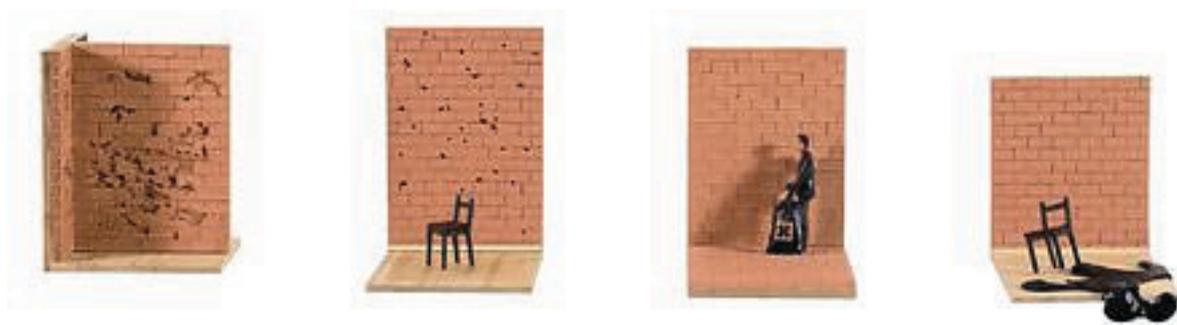
- i) The voluntary adhesion of these territories to binding legal instruments for automatic exchange of information in the area of taxation, both at the level of the European Union and of the Organisation for Economic Cooperation and Development (**OECD**);
- ii) The conclusion of a Convention to Avoid Double Taxation and Prevent Tax Evasion (**CDT**) with Uruguay and Agreements for Automatic Exchange of Information on Tax Matters (**AEOI**) with Jersey and the Isle of Man; and
- iii) The fact that these three territories are members of the Global Forum on Transparency and Exchange of Information for Tax Purposes and, according to the rating by this OECD body, have already been considered “largely compliant” or “compliant”.

Despite complying with the requirements referred to in the preamble to the Ministerial Order, it should be noted that the following jurisdictions have not yet been removed from the list of tax havens:

| Jurisdiction               | Existence of AEOI or CDT | Automatic exchange of information | Global Forum Rating |
|----------------------------|--------------------------|-----------------------------------|---------------------|
| Guernsey                   | AEOI*                    | 2017                              | Largely Compliant   |
| Gibraltar                  | AEOI                     | 2017                              | Largely Compliant   |
| The Cayman Islands         | AEOI                     | 2017                              | Largely Compliant   |
| The British Virgin Islands | AEOI*                    | 2017                              | Largely Compliant   |
| Santa Lucia                | AEOI                     | 2018                              | Largely Compliant   |
| Bermuda                    | AEOI                     | 2017                              | Largely Compliant   |
| Hong Kong                  | CDT                      | 2018                              | Largely Compliant   |
| San Marino                 | CDT                      | 2017                              | Largely Compliant   |

\*The above AEOIs are at the notification stage.

As they have complied with the criteria set out in the Ministerial Order, we expect that these jurisdictions may also be removed from the list of tax havens at the next revision, in the short term, namely upon a request from the respective tax authorities made to the Minister of Finance under the terms of article 63-D(3) of the GTL.



**BALTAZAR TORRES**

**Crying, 2003**

PVC, wood, ceramic, enamel painted tin, aluminium and leather  
 variable dimensions

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In practical terms, notwithstanding other cases provided for in Portuguese tax legislation, the changes now introduced to the list of tax havens has the following impact on operations carried out in the British territories of Jersey and the Isle of Man, and with Uruguay:

- Capital income paid by entities domiciled in these jurisdictions is no longer subject to the increased rate of personal income tax (IRS) and corporate income tax (IRC) of 35% applied to such income until now;
- The current restrictions on tax deduction of capital losses made with the disposal of shareholdings in entities located in these jurisdictions are eliminated;
- Amounts paid or due to be paid by IRS or IRC taxable persons, on any basis, to entities based in the jurisdictions in question are no longer subject to a special confirmation procedure;
- The increased rates of municipal property transfer tax (IMT), municipal property tax (IMI) and the municipal property tax surcharge (AIMI) cease to apply to properties held in Portugal by entities based in the jurisdictions in question;
- The rule on imputation of gross property income in an amount corresponding to 1/15 of the taxable value of the property ceases to apply to entities based in the jurisdictions in question that own urban properties located in Portugal that are not rented out and not allocated to an economic activity.

However, the removal of these jurisdictions from the list does not exclude the application of domestic rules on international tax transparency ("Controlled Foreign Company" or CFC rules). Nor does the removal imply that the participation exemption regime becomes applicable to entities located in these jurisdictions whenever those entities are exempt from or not subject there to income tax identical or similar to the Portuguese corporate income tax (IRC), or when the tax rate that applies to them is below 60% of the normal Portuguese IRC rate.

As a result of all this, the changes made may be very interesting to investors, in particular to those who hold non-traditional financial assets issued by vehicles based in Jersey and the Isle of Man, and to founders and/or beneficiaries of trust-type structures or other structures typical of Anglo-Saxon based legal systems, including alternative investment funds, limited partnerships and cell companies.

PLMJ Tax Team

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 Portuguese Law Firm of the Year  
*Who's Who Legal, 2016, 2015, 2011-2006*  
*Chambers European Excellence Awards, 2014, 2012, 2009*

 Iberian Law Firm of the Year  
*The Lawyer European Awards, 2015-2012*

 Top 50 - Most Innovative Law Firm in Continental Europe  
*Financial Times - Innovative Lawyers Awards, 2016-2011*