



## UPDATING OF THE PORTUGUESE TAX HAVEN BLACKLIST

Order in Council no. 292/2011, published on 8 November, updated the list of countries, territories and regions with clearly more favourable privileged tax regimes (known as 'tax havens') appearing in the earlier Order in Council no. 150/2004 of 13 February. It also excluded from the list two countries that are members of the European Union (EU): Cyprus and Luxembourg.

In relation to Luxembourg, it should be noted that, up to now, only holding companies set up under the Law of 31 July 1929 and by the Grand Ducal Decree of 17 December 1938, were considered included on the tax haven blacklist. These companies known as "Holding 1929" companies were exempt from income tax under the above legislation.

As the regime in question had been abolished in Luxembourg following the European Commission Decision no. 2006/940/EC, which held that the regime amounted to a state aid incompatible with the common market, it no longer made sense for the country to be included on the list of tax havens for the purposes of Portuguese tax legislation and the result is this change to the law.

The removal of Cyprus from the list of tax havens arises from recognition that, as an EU Member State, it is also subject to the EU system for exchange of information between tax authorities laid down in Directive 77/799/EEC and later repealed and

substituted by Directive 2011/16/EU (on administrative cooperation in the area of taxes and not yet been transposed into Portuguese law), and in Directive 2008/55/EC (on assistance in collecting taxes).

The removal of Cyprus and Luxembourg from the list of tax havens means that the special anti-abuse measures laid down in Portuguese law no longer apply to these two countries. These measures include the following requirements and restrictions:

- (i) A requirement to maintain a residence for tax purposes in Portugal imposed on persons with

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"Portuguese Law Firm of the Year"  
*Chambers European Excellence Awards, 2009; Shortlisted 2010, 2011/ Who's Who Legal Awards, 2006, 2008, 2009, 2010, 2011/The Lawyer European Awards-Shortlisted, 2010, 2011*

"Best Portuguese Law Firm for Client Service"  
*Clients Choice Award - International Law Office, 2008, 2010*

"5<sup>th</sup> Most Innovative Law Firm in Continental Europe"  
*Financial Times - Innovative Lawyers Awards, 2011*

"Corporate Law Firm of the Year - Southern Europe"  
*ACQ Finance Magazine, 2009*

"Best Portuguese Tax Firm of the Year"  
*International Tax Review - Tax Awards 2006, 2008*

Mind Leaders Awards <sup>TM</sup>  
*Human Resources Suppliers 2007*

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Portuguese nationality who move their residence for tax purposes to a country, territory or region appearing on the said list, either in the year in which the change of residence is confirmed or in the four subsequent years. There is an exception to this rule when the person in question can prove that the move is for justifiable reasons such as the carrying on of temporary activity in that territory for an employer domiciled in Portugal.

(ii) A ban on applying the exemption method in the elimination of international double taxation on category B (business and professional) income earned from the provision of high added value services of a scientific, artistic or technical character, from intellectual or industrial property, or from the provision of information relating to experience acquired in the industrial, commercial or scientific sectors, as well as income from categories E (income from capital), F (rental income) and G (increases in wealth) earned by non-habitual residents, in cases in which there is no convention to eliminate double taxation.

(iii) A ban on using the IRS (personal income tax) allowance of 30% of the interest and charges of repayment of debts contracted for the acquisition, construction or improvement of buildings for the taxpayer's own and permanent dwelling or for rental which is duly proved to be for the permanent dwelling of the tenant, up to the limit of EUR 591. This allowance applies to property situated in Portugal or in another Member State of the European Union or in the European Economic Area as long as, in the latter case, there is exchange of information, when the said charges are due to an entity resident in a country, territory or region that appears on the list of tax havens that does not have a permanent establishment in Portugal to which such income is imputable.

(iv) A ban on using the IRS allowance of 30% of the rent paid to the tenant of an urban building for the purposes of their permanent dwelling, up to a limit of EUR 591, in relation

to property situated in Portugal or in another Member State of the European Union or in the European Economic Area as long as, in the latter case, there is exchange of information, when the said charges are due to an entity resident in a country, territory or region that appears on the list of tax havens that does not have a permanent establishment in Portugal to which such income is imputable, except when the annual value of the rent is equal to or greater than the amount corresponding to 1/15 of the value for taxation purpose of the rented property.

(v) The non-application of the reinvestment system for IRC (corporate income tax) for the values involved, in cases in which the transfers and acquisitions for value of holdings in companies are made with entities resident in a country, territory or region appearing on the list of tax havens;

(vi) The non-application of the IRS and IRC exemption system that benefits capital gains made from the transfer for value of corporate holdings, other securities, autonomous warrants issued by entities resident in Portugal and traded on regulated stock markets and derivative financial instruments made in regulated stock markets, by entities or individuals that are not domiciled in Portugal and do not have a permanent establishment there to which the said income is imputable.

(vii) The presumption, in the area of transfer pricing, that there are special relations between an entity resident in Portugal or non-resident with a permanent establishment here and entities resident in one of the territories appearing on the said list of tax havens.

(viii) The non-deductibility, for the purpose of determining taxable profit for IRC, of amounts paid or due to individuals or companies resident in one of the territories appearing on the tax haven blacklist, except when it is proved that such charges correspond to operations that have, in fact, taken place and are not of

an unusual nature or for an excessive amount. These expenses are subject to rates of aggravated autonomous taxation.

(ix) The imputation of profits earned by companies resident in one of the territories included on the said list to their shareholders resident in Portugal, in proportion to their respective holding in the company and regardless of the actual distribution of those profits, as long as the legal requirements for the purpose are met.

(x) A ban, in respect of the rules on thin capitalisation in IRC, on demonstrating that the same level of indebtedness would have arisen in analogous conditions in an independent entity, when what is at issue is excessive indebtedness as against entities resident in countries, regions or territories appearing on the list of tax havens.

(xi) Real estate held by entities resident in countries, regions or territories appearing on the list of tax havens are subject to increased rates of municipal property tax (*Imposto Municipal sobre Imóveis - IMI*) (currently 5% and 7.5% in the 2012 State Budget Bill) and municipal property transfer tax (*Imposto Municipal sobre as Transmissões Onerosas de Imóveis - IMT*) (currently 8%, and 10% in the 2012 State Budget Bill).

The list of tax havens currently includes the following countries, regions or territories:

1. Andorra
2. Anguilla
3. Antigua and Barbuda
4. Netherlands Antilles
5. Aruba
6. Ascension
7. Bahamas
8. Bahrain
9. Barbados
10. Belize
11. The Bermudas
12. Bolivia

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13. Brunei
14. Channel Islands (Alderney, Guernsey, Jersey, Great Stark, Herm, Little Sark, Brechou, Jethou and Lihou)
15. Cayman Islands
16. Territory of the Cocos (Keeling) Islands
17. Cook Islands
18. Costa Rica
19. Djibouti
20. Dominica
21. United Arab Emirates
22. Falkland Islands
23. Republic of Fiji
24. Gambia
25. Grenada
26. Gibraltar
27. Guam
28. Guiana
29. Honduras
30. Hong Kong
31. Jamaica
32. Jordan
33. Qeshm Islands
34. Kiribati Island
35. Kuwait
36. Labuan
37. Lebanon
38. Liberia
39. Liechtenstein
40. The Maldives
41. Isle of Man
42. The Northern Mariana Islands
43. The Marshall Islands
44. Mauritius
45. Monaco
46. Montserrat
47. Nauru

48. Christmas Island
49. Niue Island
50. Norfolk Island
51. Sultanate of Oman
52. Pacific islands not mentioned specifically
53. Republic of Palau
54. Panama
55. The Pitcairn Islands
56. French Polynesia
57. Porto Rico
58. Qatar
59. Solomon Islands
60. American Samoa
61. Independent State of Samoa
62. Saint Helena
63. Saint Lucia
64. Saint Kitts and Nevis
65. San Marino
66. Saint Pierre and Miquelon
67. Saint Vincent and the Grenadines
68. Seychelles
69. Swaziland
70. Svalbard (Spitsbergen archipelago and Bear Island)
71. Tokelau
72. Tonga
73. Trinidad and Tobago
74. Tristan da Cunha
75. Turks and Caicos Islands
76. Tuvalu
77. Uruguay
78. Republic of Vanuatu
79. British Virgin Islands
80. American Virgin Islands
81. Republic of Yemen

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