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"Federal Revenue discloses new List of territories considered Tax Haven and creates a List of territories with Privileged Tax Regime"

Brazilian Federal Revenue Service enacted on June 07, 2010, the Normative Ruling N. 1,037 of June 04, 2010, revoking and replacing the Normative Ruling N. 188 of August 06, 2002, that brought a list of countries and territories that: **(i)** do not tax income or tax it at a maximum rate lower than 20% (concept introduced by Law N. 9,430 of December 27, 1996, repeated in subsequent legislation) – **"tax favorable jurisdictions"**; or **(ii)** do not provide access to information related to legal entities' corporate structure or ownership (concept introduced by Law N. 10,451 of May 10, 2002) – commonly and herein collectively referred to as **"Tax Havens"**.

The new Normative Ruling N. 1,037/10 aimed to regulate the changes introduced by Law N. 11,727 of June 23, 2008, which: **(a)** *extended* the concept of tax favorable jurisdictions by *incorporating* in Law N. 9,430/96 (via the inclusion of a 4th paragraph to the Article 24) countries or territories that do not provide access to information related to legal entities' corporate structure or ownership, as well as *adding* (new concept) jurisdictions having internal laws not allowing access to the identification of the ultimate beneficial owner of non-residents' income; and **(b)** *introduced* the concept of a privileged tax regime ("**PTR**"), by including Article 24-A into Law N. 9,430/96 (amended by Law N. 11,941 of May 27, 2009)¹.

With the purpose of regulating the changes introduced by Law N. 11,727/08 commented above, the new Normative Ruling N. 1,037/10: **(i)** *modified*, in its Article 1, the formerly existing black list (under the revoked Normative Ruling N. 188/02) by *including* new countries and territories to it and *excluding* others (commented below); **(ii)** *introduced*, in its Article 2, the new list of countries and territories deemed to have PTR ("**New PTR List**" or "**Grey List**"). However, the new Normative Ruling N. 1,037/10 did not mention into the text of its Article 1 the concept of "identification of income's ultimate beneficial owner", which was *added* (as mentioned above) by the inclusion of a 4th paragraph into Law N. 11,727/08.

The new **Tax Haven List** brought by Normative Ruling N. 1,037/10 brought the following changes to the list (if compared to the previous list): **(a)** excluded Malta and the *holding companies* ruled by Luxembourg's July 31st, 1929 Law; and **(b)** included the following countries/territories:

New Countries / Territories under the Tax Haven List (or Black List)	
Ascension Island	Saint Helena Island
Brunei	Saint Pierre and Miquelon Island
Kiribati	Solomon Islands
Norfolk Island	Saint Kitts e Nevis
Pitcairn Island	Swaziland
French Polynesia	Switzerland
Qeshm Island	Tristan da Cunha

Relating to the **New PTR List**, Normative Ruling N. 1,037/10 listed the following entities or vehicles existing in accordance to the laws of the following foreign countries:

The New PTR List (Grey List)	
Countries or Territories	Constitution Form of Legal Entity
Malta	<i>International Trading Company ("ITC") International Holding Company ("IHC")</i>
Luxembourg	<i>Holding Company</i>
Uruguay	Sociedades Financeiras de Inversão ("Safis") until December 31, 2010
Denmark	<i>Holding Company</i>
Netherlands	<i>Holding Company</i>
Iceland	ITC
Hungary	<i>Offshore KFT</i>
United States of America	<i>State Limited Liability Company ("LLC"), whose membership is composed of nonresidents, not subject to federal income tax</i>
Spain	<i>Entidad de Tenencia de Valores Extranjeros ("ETVEs")</i>

The applicability of either the Tax Haven List or the New PTR List – whether together or just isolated – will depend upon the nature of the transaction and on the tax laws applicable to it (which should be examined on a case-by-case basis). For instance, provided there is no future changes to the legislation / regulation pertaining to the New PTR List, we are of the opinion that such New PTR List should only reach and be applied for the purposes of: transfer pricing rules (provided under Articles 18-22 of Law N. 9,430/96) and for tax deductible expenses' rules enclosed into Articles 25 and 26 of Provisional Measure N. 472 of December 15, 2009. Therefore the New PTR List is not to be applied to foreign investors who hold their investments in the financial and capital market by CMN Resolution N. 2,689 of January 26, 2000.

Normative Ruling N. 1,037/10 shall enter into force upon its publication.

1. Such legislative changes were subject matter of our VGL News Special Edition N. 11, published on June 25, 2008.

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