

Israel Desk E-mail Bulletin

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Brazilian list of 'Privileged Tax Regimes' – Suspension of the inclusion of the Netherlands

On 4 June 2010, the Brazilian tax authorities published Normative Ruling No. 1037/10 (“**Ruling**”). The Ruling lists the countries and jurisdictions that the Brazilian tax authorities consider to qualify as a so called 'tax favourable jurisdiction' (i.e. 'tax haven jurisdiction'). In addition, the Ruling also includes the regimes considered to be 'privileged tax regimes'.

The Brazilian tax authorities do not consider the Netherlands and Luxembourg to be tax haven jurisdictions. However, the holding companies of both countries were included as 'privileged tax regimes'. The impact of the listing of the Dutch and Luxembourg holding companies would be actually limited to three situations:

- (i) transactions between Brazilian parties and the Dutch and Luxembourg holding companies will be subject to the Brazilian transfer pricing rules even if the parties are not related;
- (ii) a lower thin cap ratio will be applied on loans provided by the Dutch and Luxembourg holding companies to a Brazilian entity (even if not related parties);
- (iii) any payments made by Brazilian companies to the Dutch and Luxembourg holding companies will be subject to stricter substance requirements.

On 24 June 2010 the Brazilian tax authorities published, however, Normative Ruling No. 1045/10 amending the Ruling. Regarding the Netherlands, the Ruling was amended restricting the listing to “holding companies **not performing substantial economic activities**”.

The Normative Ruling No. 1045/10 also provided that countries listed in the Ruling may apply for revision of its classification as a country with favoured taxation or privileged tax regime. Using this faculty, the Government of the Netherlands submitted an application for revision of its classification as a country with a privileged tax regime. As a result thereof, the Brazilian tax authorities published Executive Declaratory Act No. 10/10 on 25 June 2010, granting **suspensive effect of the inclusion of the Netherlands** among the countries with privileged tax regime.

**E-mail bulletin number 19
1 July 2010**

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The members of the Israel Desk strongly focus on Israeli clients that invest or trade in Europe or other regions, as well as on international companies and financial institutions that want to expand their businesses to Israel. The team comprises members from various Loyens & Loeff practice groups.

The experience of the members as regards the Israeli market is combined with their extensive knowledge of international tax law, corporate structuring, banking and securities law, regulatory law, employment law. In addition to being part of the Israel Desk, the members also participate in Loyens & Loeff teams that focus on specific industries and sectors, such as energy, real estate, private equity, fund structuring, corporate finance, and financial products.

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Loyens & Loeff has provided significant support to the Government of the Netherlands in this matter and, consequently, has played an important role in the described suspension.

We trust to have fully informed you. Should you have any questions, please do not hesitate to contact us.

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