

Brazil Desk Email Bulletin

This email bulletin is issued by the Brazil Desk of Loyens & Loeff. It is intended to provide you on an ad hoc basis with news flashes or background information on topical corporate, finance and tax law issues in the Benelux.

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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*".

Loyens & Loeff is an independent Benelux law firm with over 900 lawyers and offices in the main financial centres around the world. Loyens & Loeff combines an integrated corporate law, regulatory and tax practice.

In order to be able to give the best advice possible to our clients, Loyens & Loeff formed the Brazil Desk.

The members of the Brazil Desk strongly focus on Brazilian 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 Brazil. In many cross border (including cross Atlantic) transactions, benefits can be derived by investing through the Benelux (Belgium, Netherlands and Luxembourg).

The team comprises members from various Loyens & Loeff practice groups. Members of the Brazil Desk visit Brazil three to four times a year.

Members of the Brazil Desk speak the Portuguese language.

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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.

The Brazil Desk of 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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