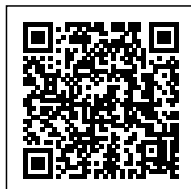


PORTUGAL'S UPDATED TAX HAVENS BLACKLIST - PLMJ

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Category: [Tax](#)



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to the EU system for exchange of information between tax authorities laid down in Directive 77/799/EEC and later repealed and substituted by Directive 2011/16/EU (on administrative cooperation in the area of taxes and not yet been transposed into Portuguese law), and in Directive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 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 (income from buildings) 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 (personal income tax) allowance of 30 percent of the rent paid the tenant of an urban building for the purposes of their permanent dwelling, up to a limit of €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 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 (corporate income tax), 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 percent and 7.5 percent 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	42. The Northern Mariana Islands
2. Anguilla	43. The Marshall Islands
3. Antigua and Barbuda	44. Mauritius
4. Netherlands Antilles	45. Monaco
5. Aruba	46. Montserrat
6. Ascension	47. Nauru
7. Bahamas	48. Christmas Island
8. Bahrain	49. Niue Island
9. Barbados	50. Norfolk Island
10. Belize	51. Sultanate of Oman
11. The Bermudas	52. Pacific islands not mentioned specifically
12. Bolivia	53. Republic of Palau
13. Brunei	54. Panama
14. Channel Islands (Alderney, Guernsey, Jersey, Great Stark, Herm, Little Sark, Brechou, Jethou and Lihou)	55. The Pitcairn Islands

15. Cayman Islands	56. French Polynesia
16. Territory of the Cocos (Keeling) Islands	57. Porto Rico
17. Cook Islands	58. Qatar
18. Costa Rica	59. Solomon Islands
19. Djibouti	60. American Samoa
20. Dominica	61. Independent State of Samoa
21. United Arab Emirates	62. Saint Helena
22. Falkland Islands	63. Saint Lucia
23. Republic of Fiji	64. Saint Kitts and Nevis
24. Gambia	65. San Marino
25. Grenada	66. Saint Pierre and Miquelon
26. Gibraltar	67. Saint Vincent and the Grenadines
27. Guam	68. Seychelles
28. Guiana	69. Swaziland
29. Honduras	70. Svalbard (Spitsbergen archipelago and Bear Island)
30. Hong Kong	71. Tokelau
31. Jamaica	72. Tonga
32. Jordan	73. Trinidad and Tobago
33. Qeshm Islands	74. Tristan da Cunha
34. Kiribati Island	75. Turks and Caicos Islands
35. Kuwait	76. Tuvalu
36. Labuan	77. Uruguay
37. Lebanon	78. Republic of Vanuatu
38. Liberia	79. British Virgin Islands
39. Liechtenstein	80. American Virgin Islands
40. The Maldives	81. Republic of Yemen
41. Isle of Man	

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26. Gibraltar
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28. Guiana
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34. Kiribati Island
35. Kuwait
36. Labuan
37. Lebanon
38. Liberia
39. Liechtenstein
40. The Maldives
41. Isle of Man