

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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SUBJECT

BRAZIL UPDATE: DUTCH HOLDING COMPANIES NO LONGER EXCLUDED FROM GRAY LIST

DATE / TIMING

Effective December 21, 2015, when Declaratory Act 3/2015 was published in Brazil's official gazette.

AFFECTING

Taxpayers that own Brazilian entities that have transactions with Dutch holding companies.

DETAILS

On June 4, 2010, the Brazilian tax authorities issued Normative Instruction 1,037/2010, which designated a number of regimes as Privileged Tax Regimes (also known as gray list jurisdictions). On June 24, 2010, Normative Instruction 1,045/2010 amended the original list.

The gray list originally included Dutch holding companies that lacked substantial economic activities. This inclusion was suspended by Declaratory Act 10/2010 issued on June 24, 2010.

Gray list entities are subject to stricter thin capitalization and transfer pricing rules, even when the parties to the transaction are unrelated. For example, interest paid or credited by Brazilian entities to related or unrelated parties that reside in a gray list jurisdiction is subject to a 0.3:1 debt-to-equity ratio versus the standard ratio of 2:1. If the debt to equity ratio is not met, interest paid is not deductible for income and social contribution tax purposes. There are additional requirements to identify the effective beneficiary of a payment and proof of economic substance.

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Transfer pricing rules also apply to all transactions between Brazilian entities and gray list entities, treating the entities as if they were related.

Payments to gray list entities are generally not subject to higher withholding tax rates, which apply to payments to black list tax havens or low tax jurisdictions.

UPDATES

The Brazilian tax authorities have reversed the exclusion of Dutch holding companies that lack substantial economic activities from the gray list by issuing Declaratory Act 3/2015 which revokes Declaratory Act 10/2010.

BDO INSIGHTS

BDO can help you get a more in depth understanding as to how this change affects your business, evaluate alternatives with a practical perspective, and assist with cross-border restructuring as needed.

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