

## Exclusion of Luxembourg from Brazilian Grey List

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On 28 March 2011, Brazilian Federal Revenue Department published an executive act which specifically removed Luxembourg from Brazil's so-called "Grey List" of privileged tax regimes.

The Brazilian Normative Instruction RFB N°1037/2010 of 4 June 2010 included Luxembourg Holding Companies in the Grey List, considering that Luxembourg holding companies - incorporated under the law of 1929 - benefited from a preferential tax regime. The direct consequence of this inclusion was the application of specific constraints for international transactions involving Brazilian companies, notably in terms of transfer pricing and thin capitalization rules.

Further to the study of a review request introduced by Luxembourg Government, Brazilian Federal Revenue Department adopted the Executive Declaratory Act 03/2011 which expressly revokes Item I of article 2 of Normative Instruction RFB N°1037/2010 on favorable tax treatment and preferential tax regimes.

Arguments for this revocation are based on the fact that Luxembourg Holding 1929 regime has been totally abolished as at 31 December 2010, leaving consequently no justification for any specific reference to Luxembourg holding companies in the Grey List.

It is to be noted that the Grey List's intention was to cover only Luxembourg holding 1929 companies. The Luxembourg Soparfi was never meant to be included in the List and is not at all considered as a harmful tax regime by Brazilian tax authorities.

Besides, unlike other countries, such as Switzerland, Spain, Denmark or the Netherlands, which review requests to be removed from the Grey List are apparently still pending, Luxembourg is the first country to be fully excluded from the List (and not merely suspended).

This decision will entail new structuring opportunities between Luxembourg and Brazil with the use of Luxembourg as a significant and reliable holding jurisdiction.

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