MACEDO VITORINO & ASSOCIADOS
Sociedade de Advogados, RL

Tax

Portugal excludes Cyprus and Luxembourg of this list of countries subject to a clearly more favourable tax regime.

Contacts

João de Macedo Vitorino

jvitorino@macedovitorino.com

André Dias

adias@macedovitorino.com

Updated list of countries subject to a clearly more favourable tax regime

As part of the compliance with administrative cooperation policy adopted within the European Union in the field of taxation, the Portuguese Government has updated its list of countries, territories and regions subject to a clearly more favourable tax regime through the approval of the Ministerial Order number 292/2011, of 8 November.

This Ministerial Order changed the Ministerial Order number 150/2004, of 13 February, which approves the list of countries, territories or regions subject to a clearly more favourable tax regime, following the implementation of the mechanisms provided not only by the Council Directive 77/779/EEC, of 19 December, but also by the Council Directive number 2008/55/EC, of 26 May.

Both of these Directives aim to strengthen the mutual assistance by the competent authorities of the Member States, especially in what is concerned with direct taxation, taxes on insurance premiums, recovery of claims relating to certain contributions, rights, taxes and other measures.

The main point of the updated list of countries, territories or regions subject to a clearly more favourable tax regime is the exclusion of the Republic of Cyprus and the Grand Duchy of Luxembourg.

Formerly, holding companies towards the Luxembourg Law (Law of July 31, 1929 and Grand Ducal Decision of 17 December 1939, nowadays repealed) were covered by the initial list of countries subject to a clearly more favourable tax regime.

The scope of this measure will be increased if the provisions contained in the Proposal for 2012 Budget Law – which sets a general worsening of the applicable regime to relations between resident companies and companies with headquarters in the so called "tax heavens": (i) there will be not possible to deduct the expenses with the payments to entities subject to a preferential tax regime when the taxpayer knows their destination, especially in case of special relationships between the taxpayer and the beneficiary or the intermediate entity, and, (ii) the corporate tax rate applicable to the income obtained or arising from these entities will increase to 30%; (iii) personal Income tax rate shall be of 30% on the investment income paid to, or received from, offshore-entities.

In this context, we should also mention Council Directive 2011/16/EU, of 15 February, on administrative cooperation in the field of taxation which provides the reinforcement of the mutual assistance obligations between tax administrations of all member states of the European Union. Portugal shall bring this Directive into force through the laws, regulations and administrative provisions from 1 January 2013.