



The Brazilian Approach to Tax Havens

Preserving the tax base

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Size of the problem

12 trillion

US\$12,000,000,000,000



from developing countries alone



Tax Havens





Tax Havens



SHUTTERSTOCK/IGNHONEY



A tax haven is a territory or a state with a legal or tax system that provides anonymous, confidential and safe treatment to capital ownership.

- ‘ It is usually a small territory that has adopted an attractive tax policy for foreign investments in order to compensate the lack of natural resources.



- Forum on Harmful Tax Practices (1998 Report)
 - Is the regime within the scope of work of the FHTP and is it preferential?
 - Is the preferential regime potentially harmful? (4 key factors and 8 other factors)
 - Economic effects: is the potentially harmful regime actually harmful?
- Concerning tax practices, licit activities may also be harmful.



- Different approaches:
 - Tax evasion lists
 - National lists
 - Regional lists
 - Political lists
- Different criteria:
 - No or low taxation
 - Lack of fiscal transparency (opacity)
 - Non-cooperative jurisdictions
- Different colors:
 - Blacklist
 - Greylist
 - Whitelist



Brazilian Approach

- Law No. 9.430/1996
 - Tax havens
- Normative Instruction (IN) SRF No. 33/2001
 - The first list
- IN SRF No. 188/2002
 - New inclusions
- Law No. 11.727/2008
 - Preferential tax regimes
- IN RFB 1.037/2010
 - Present List: tax havens and preferential tax regimes
- IN RFB 1.658/2016
 - New inclusions
 - Substantial economic activity

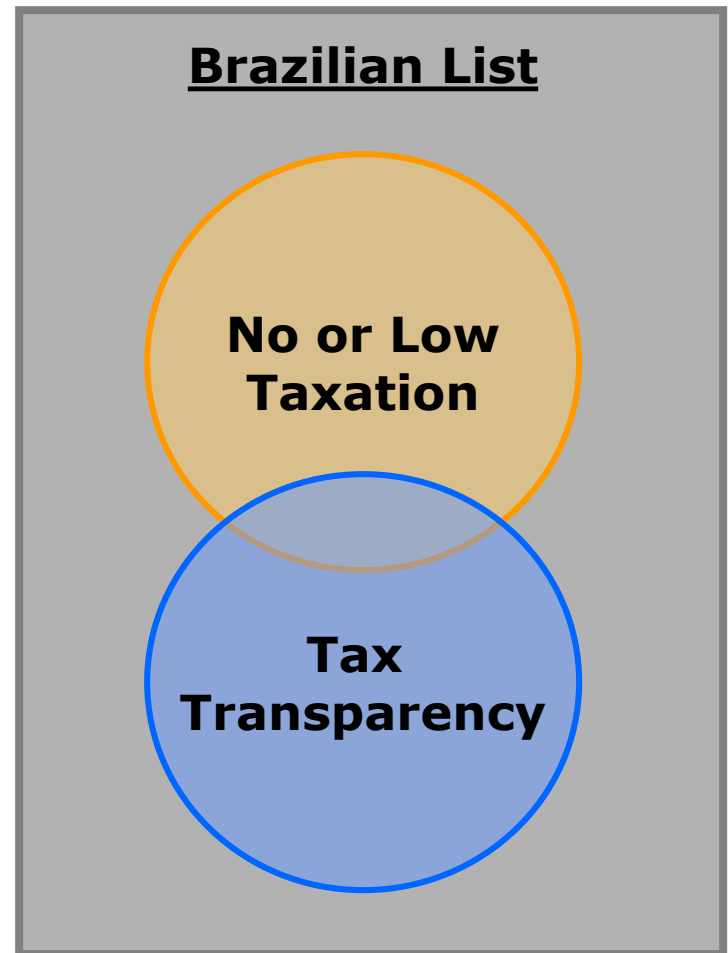




Effects for Listed Jurisdictions

1. Automatic application of withholding tax rate at 25%
2. Automatic application of transfer pricing rules
3. Automatic application of thin capitalization rules
4. Additional restrictions to deduct expenses
5. Worldwide income taxation

- **Law No. 9,430/1996**
 - Definition of tax havens and preferential tax regimes
- **Normative Instruction RFB 1,037/2010**
 - Article 1: Tax Havens
 - Article 2: Preferential Tax Regimes
- **Ministerial Act MF 488/2014**
 - Conditional reduction of the threshold rate (not automatically)
- **Normative Instruction RFB 1,530/2014**
 - International Tax Transparency Standards
 - Requirements for Review





- Law No. 9.430/1996 – Article 24
 - It does not tax income or taxes it at a maximum rate **lower than 20%** (twenty percent).
 - It does not provide **access to information** related to shareholding composition, ownership of goods or rights, or the economic transactions carried out



Corporation Tax

71.—(1) Section 21 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (1):

“(1) Corporation tax shall be charged on the profits of companies at the rate of—

(a) 32 per cent for the financial year 1998,

(b) 28 per cent for the financial year 1999,

(c) 24 per cent for the financial year 2000,

(d) 20 per cent for the financial year 2001,

(e) 16 per cent for the financial year 2002,

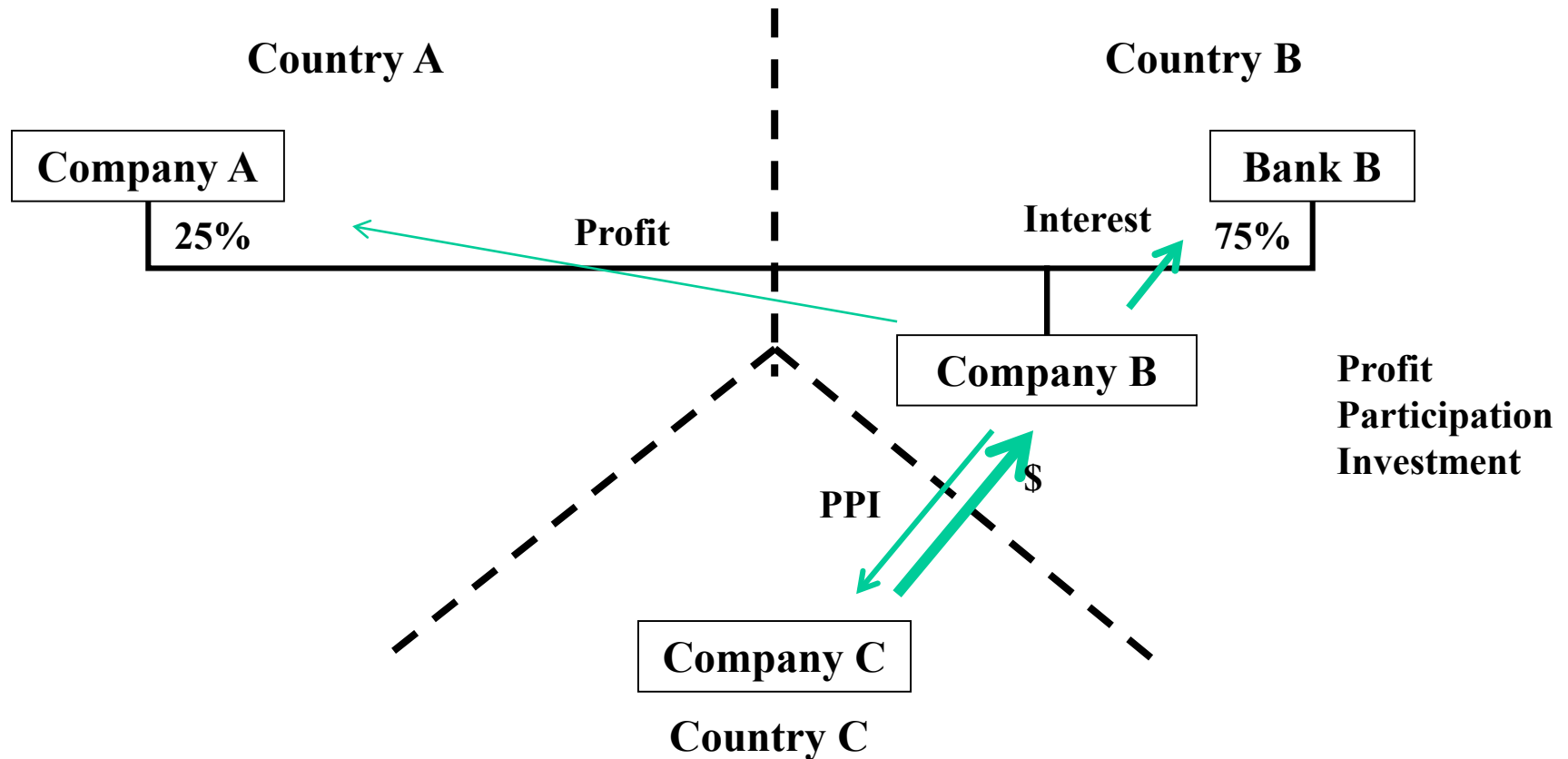
(f) 12½ per cent for the financial year 2003 and each subsequent financial year.”.



Preferential Tax Regime

- Law No. 9,430/1996 – Article 24-A
 - It does not tax income or taxes it at a maximum rate **lower than 20%** (twenty percent).
 - It grants **tax benefits** to a non-resident individual or legal entity:
 - *without requiring substantial economic activity to be carried in the country or dependency; or*
 - *contingent upon no substantial economic activity being carried out in the country or dependency.*
 - It does not tax, or taxes at a maximum rate lower than 20% (twenty percent), **income earned outside its territory.**
 - It does not provide **access to information** related to shareholding composition, ownership of goods or rights, or the economic transactions carried out.

DTA: if Company A holds a participation of at least 25% in Company B, the dividends paid by Company B shall not be taxed in Country A.





- Ministerial Act MF 488/2014
 - Conditional reduction of threshold corporate tax rate from 20% to 17% for tax havens and preferential regimes
 - Condition: compliance with international standards of tax transparency.
- International Efforts
 - Interamerican Center of Tax Administrations - CIAT
 - Global Forum on Tax Transparency
 - Fatca
 - Multilateral Competent Authority Agreement



Application for Review

- IN RFB 1.530/2014 - Requirements
 - Official requirement by a Government Representative
 - Addressed to the Federal Revenue Secretariat (RFB)
 - With proof of legislation in place
 - May suspend the effects of the list
- The review may result in the reduction of threshold rate according to Ministerial Act MF 488/2014.
 - Proof of compliance with international standards of tax transparency



Substantial Economic Activity

- Public Consultation
- A holding company is deemed to perform substantial economic activity when it has, at its residence jurisdiction, appropriate operational capacity to fulfill its objectives.
- Among other factors, the appropriateness is evidenced by:
 - *Suitable number of qualified employees*
 - *Physical installations for effective management and decision making related to the profitable use of its assets or to the earnings of passive income (profit distributions and capital gains).*



Lessons Learned

- A tax haven list should be considered as part of a broader tax policy, tailored to national needs.
- Sovereignty is not just making rules but also enforcing them.
- An open dialog with taxpayers might enhance compliance and enforcement.
- Getting involved in international discussions usually improves solutions.
- Multilateral instruments and recommendations might need a local adjustment.



Thank you!

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