

NEWSFLASH: Tax legislation amendments per 1 January 2020

6 January 2020

On 31 December 2019, Parliament of Curaçao approved amendments proposed by the Minister of Finance to several Tax Ordinances. The main focus of the changes has been to bring the tax regimes of Curaçao in line with the standards developed by the European Union and the OECD.

Based on the amended legislation, the most impactful changes are connected to the profit tax and regard the following:

- Profit tax basis
- The territorial exemption
- Permanent establishment and permanent representative
- E-zone regime
- Substance

Additionally, important amendments have been made to the tax holiday legislation and the Minister of Finance announced that introduction of the General Expenditure Tax, which will replace the turnover tax, has been postponed until 1 April 2020.

I PROFIT TAX

New territorial tax basis

Based on the tax law applicable until 31 December 2019, Curaçao companies are in principle subject to profit tax on their worldwide income (including foreign income). Subsequently, for certain types of income an exemption can be applied (for example: income derived from a permanent establishment abroad). Based on the amended legislation, the tax basis has been changed from a global tax basis to a territorial tax basis. This

entails that only domestic profit will be taxable. Thus, non-domestic profit will no longer be included in the tax basis. In this regard passive income, such as dividend, interest, royalty and rental income which are not generated as the result of conducting an enterprise, will be qualified as domestic income. Furthermore, costs that are related to non-domestic profits will not be deductible for Curaçao profit tax purposes. For companies that receive domestic and non-domestic income, a distinction will be made between direct and indirect costs. It has been announced that a directive will be published shortly in which the definition of domestic income and the calculation of domestic profit will be clarified.

Territorial exemption regime for profit tax purposes no longer available

The territorial exemption regime came into force as per 1 July 2018 and provides an exemption for Curaçao companies that earn profit by providing services or goods to customers abroad. However, in 2019 the territorial exemption regime was reviewed by the Code of Conduct Group of the European Union and Curaçao was informed that the regime was considered a harmful tax regime and needed to be amended. As of 1 January 2020, the

territorial exemption regime has been abolished.

What to do? If your company receives income that qualified for the territorial exemption regime, it will need to be determined to what extent these profits can be considered non-domestic income.

Permanent establishment exemption no longer available

Although the permanent establishment exemption will no longer be available as per 1 January 2020, income derived from a permanent establishment abroad will in general not be considered domestic income and may remain tax exempt.

II TAX RATES AND SUBSTANCE

E-zone companies

E-zone companies were subject to a profit tax rate of 2%. As a result of the evaluation by the European Union the 2% profit tax rate will no longer be available for E-zone companies as per 1 January 2020. A grandfathering rule is applicable for companies that qualify for the E-zone regime on 31 December 2019. These companies may remain eligible for the lower profit tax rate of 2% up to and including 31 December 2022.

Introduction 3% profit tax rate

In order to stimulate certain sectors, a lower profit tax rate of 3% is introduced for companies that meet the substance requirements and conduct the following type of activities:

- the construction or improvement of aircrafts and vessels and the carrying out of repairs and maintenance on aircrafts and vessels;
- call-, service- or data centers insofar as they perform supportive servicing activities to companies with a turnover of at least Naf. 50 million;
- warehousing; and
- services provided in Curaçao to non-affiliated investment institutions and managers of investment institutions. Please note that no distinction is made between foreign and local investment institutions. Services that are excluded from this reduced profit tax rate are professional services, such as services by civil-law notaries, tax lawyers, accountants and trust office services to companies established in Curaçao.

What to do? Discuss with your tax advisor whether your activities qualify for the reduced 3% profit tax rate.

Substance requirements

Based on the tax legislation, which was applicable until 31 December 2019, substance requirements were only applicable to companies in the E-zone and to Curaçao Investment Companies. For these companies it was required to have employees and local business expenses in line with the size and type of activities of the company. Based on the amended legislation, the substance requirements will also be applicable to companies seeking to qualify for the reduced 3% profit tax rate and to companies receiving income that is not considered domestic income. Thus, a company that is currently receiving income that qualified for the territorial exemption (foreign source income) will need to have the appropriate substance in place as of 1 January 2020 for the income to qualify as non-domestic income.

Based on the amended legislation a fine of Naf. 50,000 up to a maximum of Naf. 500,000 can be imposed to companies that do not meet the substance requirements intentionally or resulting from gross negligence. However, no fine will be imposed to entities incorporated under Curaçao law which can prove they are actually established outside Curaçao and are subject to sufficient tax in the country of residence.

What to do? Analyze whether the substance requirements are applicable to your company and if these requirements are met.

III CHANGES IN DEFINITIONS

Definition of permanent establishment and permanent representative

The definition of permanent establishment and permanent representative has been amended in line with the definition as included in the OECD Model Convention and the Tax Arrangement between the Netherlands and Curaçao. One of the amendments includes the period of time activities can be performed before a place of construction, building or assembly constitutes a permanent establishment. Based on the legislation applicable until 31 December 2019, the activities are carried out through a permanent establishment if such activities exceed twelve months. Based on the amended legislation, this period is shortened to 183 days.

IV TAX HOLIDAY LEGISLATION

Based on the amended legislation, the Land Ordinance tax facilities Investments, better known as the tax holiday legislation, has as of 1 January 2020 been extended with 7 industrial branches which may qualify for a tax holiday if the applicable conditions are met. At the same time the conditions have become more stringent. The minimum amount which needs to be invested to qualify is increased to Naf. 5,000,000 and the number of qualifying employees is increased to at least 10. The profit tax rate is increased to 3% and the profit tax facility and real estate tax facility is limited to 5 years if the investment amounts to less than Naf. 10,000,000 and to 10 years if the

investment exceeds said amount.

Requests for a tax holiday filed before 1 January 2020 will still qualify under the conditions of the existing legislation if the tax holiday decree is granted after mentioned date.

V TURNOVER TAX AND THE GENERAL EXPENDITURE TAX (“algemene bestedingsbelasting”)

Replacement turnover tax by the General Expenditure Tax

The Government intends to replace the current turnover tax legislation by a so-called General Expenditure Tax (GET). Based on the GET provision of services and import of goods will be taxed. It is expected that the legislation will contain three tariffs. In the first place the general tariff of 12%, which will be applicable on import of goods. Services provided will in principle be subject to 9% GET and the rental of immovable property for a short stay will be subject to 7% GET. The tax exemption for import of goods which are considered basic necessities of life and medicines will remain applicable.

Initially it was proposed to introduce the GET per 1 January 2020. However, it has now been announced that the introduction will be postponed to 1 April 2020.

Abolishment of settlement of turnover tax on import of trade goods

The turnover tax legislation contains a provision whereby the 9% turnover tax paid on the import of trade goods may for 50% be offset against the turnover tax charged on the sale of these goods. Based on the legislation presented to Parliament, this facility would be abolished as of 1 January 2020. However, through a last-minute Letter of Rectification this amendment has been eliminated from the proposed legislation.

IF YOU WOULD LIKE TO KNOW MORE, OR HAVE QUESTIONS OR COMMENTS WITH REGARD TO THE CONTENT OF THIS NEWSFLASH, PLEASE CONTACT:

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