

Customs duties: are we sinning?



It might seem so simple; the way of taxing a product at the moment when it is imported into a country. However, in Aruba this has proven to have a lot more to it than the consumers might think. Considering that the Customs Legislation provides hundreds of classification tariffs for each imported product, this can easily be classified incorrectly. Or what if a product does not qualify under any of the classification tariffs? And of course, are these taxes fair? Let's get into it.

On 20 December 2018 the Parliament of Aruba approved the legislation regarding phase one of the Aruba tax reform which has entered into force as of 1 January 2019. Amongst the other relevant changes, excise duties have been increased on certain products which the Government of Aruba ('the Government') considers to be harmful to its citizens. The Prime Minister has referred to this tax as a 'sin tax' which is intended to increase Government revenue

while also discouraging consumption of these products being, alcohol and cigarettes.

The explanatory notes to this legislation mention that in addition to generating income for the Government it is expected that these changes can contribute to influencing consumer behavior.

As mentioned in the explanatory notes,

this increase concerns goods that are considered to be harmful to health and can lead to addiction, which can not only lead to accidents, but also entails costs for the society as a whole (such as health care). Therefore, according to the Government it is reasonable, fair and efficient for users to pay for the costs they impose on society.

It is also important to mention that the

import of (most) alcoholic beverages are subject to both excise duties and import duties. Import duties are mostly due on all imported products while excise duties are due on fewer products. However, the main difference between these two is that excise duties are in most cases also due when these types of goods are produced on-island, and thus not imported.

The tariff increase for the import duties has been imposed on the following products:

- Wine was Afl. 400 per hectoliter and has been increased with Afl. 33 per hectoliter, which amounts to Afl. 433 per hectoliter. This results in about Afl. 0.25 per 750ml wine bottle.
- Vermouth was Afl. 400 per hectoliter and has been increased with Afl. 33 per hectoliter, which amounts to Afl. 433 per hectoliter.
- Cider (pear, apple, pineapple, honey) was Afl. 100 per hectoliter and has been increased with Afl. 333 per hectoliter, which amount to Afl. 433 per hectoliter.
- Other ciders were Afl. 150 per hectoliter and have been increased with Afl. 283 per hectoliter, which amounts to Afl. 433 per hectoliter.
- Tobacco products have changed from being a percentage of 57% of the value to a levy per kilogram which amounts to Afl. 211.50 per kilogram.
- Lastly, an increase of Afl. 809 per hectoliter excise duties has been imposed for distilled spirits such as whiskey, rum, gin and vodka. This was Afl. 1,844 per hectoliter and has been increased to Afl. 2,653 per hectoliter.

A different change which took place without having to amend the current legislation is the interpretation and classification of stout beer. As we understand, the Customs Department of Aruba has erroneously not levied excise duties on stout beer in the past but have started doing this as of 1

January 2019. As of 1 January 2019, they have decided to levy excise duties on the import and production of stout beer considering that - in their opinion - stout beer should be considered as beer. Excise duties for beer amount to Afl. 353 per hectoliter and its import duties amount to Afl. 169 per hectoliter.

These high increases raise the question; how much is fair? We do notice that various countries worldwide, but also in the Caribbean, such as Barbados, have been introducing these types of 'sin taxes' on tobacco, alcohol and/or sugar; however it is still unclear if the desired effects as to consumer behavior are achieved.

Also, as we understand from certain importers of these products, that they have stopped or consider to stop importing certain products because of the costs, so this might also raise the question if the Government will actually reach their revenue targets. On another note, the Government has announced its intention to introduce a possible "sugar tax" which is rumored to be an increase on carbonated drinks, in Papiamentu, the "refresco". The introduction of this tax has been delayed till further notice.

Another issue that importers face are tariff classification discussions with the Customs Department of Aruba.

What happens if there is no consensus on the classification of one of these products? In a recent court case decision, the Court of First Instance of Aruba made an important decision with regards to alcoholic beverages and the excise and import duties. In a nutshell, the company concerned imports and sells various alcoholic beverages. The alcoholic beverages imported by this company are manufactured according to a specific beer brewing process after which the brew is filtered. Afterwards (margarita) flavorings, coloring additives and alcohol are added to this brew.

The issue arises as to whether these beverages are to be classified under the category "beer made from malt", subject to excise and import duties of Afl. 353 per hectoliter and Afl. 80 per hectoliter respectively or as "other distilled alcohol" subject to excise and import duties of Afl. 2,653 per hectoliter and Afl. 30 per hectoliter respectively. After these beverages have been examined, the findings from the laboratory showed that the brewed beverages lost the character of beer after filtration and the addition of flavorings, coloring additives and alcohol. The Court also noted that based on a sample of these alcoholic beverages, the drink lacks the characteristics of beer such as the color, odor, foaming and the specific (bitter) taste. Based on the above the Court decided that these alcoholic beverages do not qualify as "beer made from malt" and therefore should be classified as "other distilled alcohol" which has a higher tariff.

Our goal with this article is to inform you and also give you a different perspective on the difficulties which currently play a role with regards to the excise and import duties in Aruba for alcoholic beverages. Governments around the world are following the trend of taxing alcohol, tobacco and sugary products at a higher rate. The Government of Aruba - as mentioned above - has already taken certain steps to discourage consumption of alcohol and tobacco products by increasing the taxes on these products, however they have also mentioned their plans to tackle sugar goods in the second phase of their tax reform, which could have a lot of implication for certain businesses. Of course, we will remain pending of these changes in order to inform you accordingly and prepare you for any changes.

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