

# Changes to the Aruban Transparent company regime



*On April 4<sup>th</sup>, 2019, the Parliament of Aruba approved a bill that proposed amendments to the General State Ordinance Taxes and the State Ordinance Profit Tax which regard the Aruban transparent company regime.*

## **Background**

Aruba has joined the global efforts to combat profit shifting and base erosion of the corporate tax base by committing to the Organisation of Economic Cooperation and Development's ("OECD") inclusive framework on base erosion and profit shifting. After the OECD's peer review, Aruba was rated largely compliant with the international standard of transparency and exchange of information. The report concluded that Aruba's legal framework requires improvements to ensure that there are legal obligations to maintain the beneficial ownership information for all entities and legal arrangements. In connection herewith, Aruba recognised that it had to urgently implement effective supervision and enforcement to ensure availability of updated and accurate ownership and accounting information for all entities, in particular with regard to its transparent entities, to be in line with the international standard and was therefore given the deadline of January 1, 2019. As you might be aware, Aruba was recently placed on the EU's blacklist of states with non-cooperative jurisdictions for tax practices, the so called "tax havens" because it did not implement the amendments of this bill before the aforementioned deadline. However, with the approval of this bill Aruba should now be eligible to be removed from the EU's list of non-cooperative jurisdictions for tax practices.



## **Transparent company regime**

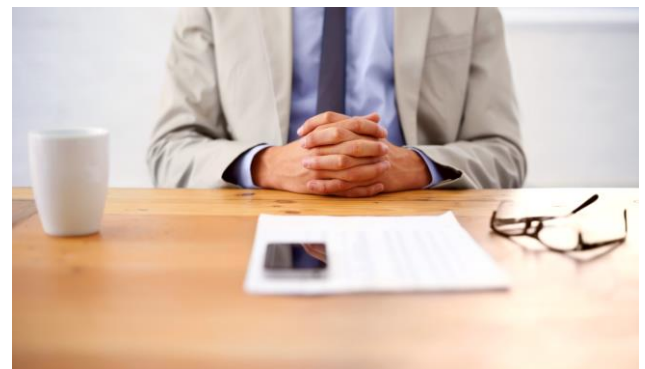
A company (N.V. or V.B.A.) can be treated as a transparent company for profit tax and dividend tax purposes by filing a written request to the tax inspector within one month of the incorporation of the company. With the application of the transparent status a company would be disregarded for profit tax and dividend tax purposes and as a result the profit

of the transparent company would be attributed to its shareholders.

## **New amendments on the transparent company regime**

As mentioned above, the Parliament of Aruba has approved the proposed amendments to the transparent company regime on April 4<sup>th</sup>, 2019. These amendments include:

- The introduction of new economic substance requirements insofar the company performs certain activities. The list of activities for which the real economic substance requirements will apply will be introduced by way of a National Decree.
- The introduction of new penalties for non-compliance of certain formalities.



## **Economic substance requirement**

In the event that a company performs certain activities it will have to meet the real economic substance requirements if it wants to apply the transparent status. Whether a company meets the real economic substance requirements will be evaluated by the tax inspector based on the following criteria:

- The core income generating business activities of the company;
- Number of employees directly and indirectly working for the company in Aruba
- Relevant knowledge or experience of the employees to carry out the responsibility for the company in Aruba

The result of this change is that once a company meets the real economic substance requirements and obtains the transparent status the company would constitute a permanent establishment in Aruba for the (foreign based) shareholder. As a result, the (foreign) shareholder will be subject to profit tax in Aruba over the profits realised by the permanent establishment.

The real economic substance requirement for the transparent company will come into effect retroactively as of January 1, 2019 for transparent companies incorporated



as of January 1, 2019. For companies that have obtained the transparent status before January 1, 2019 a transitional period has been introduced to comply with the real economic substance requirements until December 31<sup>st</sup>, 2021. As of January 1, 2022, all transparent companies have to meet the real economic substance requirements set by the introduction of this amendment.

### **Mandatory yearly requirements**

With the introduction of the economic substance requirement the mandatory yearly requirements for the transparent company are now:

- Continual real economic substance in Aruba;
- The identities of the shareholders have to be disclosed to the Aruba tax authorities within 6 months after the end of the financial year (this requirement already existed);
- File a balance sheet and profit and loss statement with the tax authorities within 6 months after the end of the financial year (this requirement already existed).

### **Loss of transparent status**

If the transparent entity does not comply with the aforementioned yearly compliance requirements, then it will lose its transparent status as of the beginning of the financial year in which it no longer complies. This is also applicable for compliance related to financial years ending on December 31, 2018, with exception to the compliance

regarding the real economic substance for which a grace period has been introduced through December 31, 2021 for transparent companies in existence before January 1, 2019.

### **Introduction new administrative penalties for non-compliance and expansion criminal offenses**

#### *Administrative penalty*

The bill approved by Parliament on April 4<sup>th</sup> also introduced the possibility to impose an administrative penalty in the event that the transparent company does not comply with the annual disclosure of the identities of the shareholders, the filing of the balance sheet and the profit and loss statements, within 6 months after the end of the financial year. In the case of non-compliance with the aforementioned the Tax Authorities can impose a penalty of up to Afl. 10,000.

This change has been introduced retroactively as of January 1, 2019 and does therefore apply for the annual compliance in connection with the financial year 2018.

#### *Criminal offense*

Lastly, with the approval of the changes to the transparent company regime, an expansion of the description of criminal offenses stated in article 68 of the General Ordinance Taxes has been introduced. If a transparent company does not comply with the filing of the identities of the shareholders, the balance sheet and profit and loss statement within 6 months after the end of the financial year this will constitute a criminal offense for which the perpetrator can be punished with imprisonment of up to 6 months or a monetary penalty of the 4<sup>th</sup> category as stated in Aruba's Penal Code.

With the introduction of these new penalties the old penalty of a 150% corporate income tax rate in the event that the company's shares are no longer registered by name has been abolished.

#### **What is next?**

Here at Grant Thornton, we have specialists dedicated in the field of transparent companies. We can assess your transparent company's current state of compliance and advise changes in order to fulfil the requirements necessary to maintain the transparency status in connection with these changes. If you have any questions, feel free to contact any of our tax advisors here at Grant Thornton in Aruba.



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# Contact

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If you would like to learn more or have questions or remarks in respect of the contents of this newsletter, you can contact:

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