

# Second update on reverse charge rule - the Amendment of December 14, 2022

On December 14, 2022, a second Amendment (after the December 13, 2022) to the 2023 Tax Reform plans was submitted to the Aruba Parliament. Below we will highlight the changes between the Original proposal (November 29, 2022), the Amendment (December 13, 2022) and the Second Amendment relating to the Reverse Charge Rule.

## Turnover taxes (Consisting of BBO, BAVP and BAZV, jointly called TOT)

### The proposed changes dated November 29, 2022

- **Reverse charge rule (in Dutch: “verleggingsregeling”)**: Originally, no changes were proposed; based on current legislation, this instrument could only be used after publishing of a Ministerial Regulation and for certain - to be appointed - services. No Ministerial Regulation was published to date however.

### The Amendment of December 13, 2022

- **Reverse charge rule (in Dutch: “verleggingsregeling”)**: A non-resident entrepreneur **supplying goods or providing services** to a resident entrepreneur will lead to the resident entrepreneur being considered as the tax payer for TOT purposes and also responsible for payment of the TOT due.

### The Second Amendment of December 14, 2022

- **Reverse charge rule (in Dutch: “verleggingsregeling”)**: A non-resident entrepreneur **providing specific services as mentioned in article 7, paragraph 2**, to a resident entrepreneur will lead to the resident entrepreneur being considered as the tax payer for TOT purposes and also responsible for payment of the TOT due.

### The reverse charge rule explained / “place” of rendering the services:

- **Main rule turnover tax:** If services are rendered, the taxable event is there where the entrepreneur is established or has a permanent establishment from which the services are provided.
- **Exceptions to the main rule:** The place of service is deemed there where the services are taking place or the object where the services are related to is located. In article 7, paragraph 2, these services are defined as:
  - a) immovable property, including construction, maintenance, cleaning or installation work, architects and other experts, as well as services aimed at the preparation or coordination of the execution of construction work, which is carried out where the property is located;
  - b) the transport of persons or goods, which are performed at the place where the actual act of transport is performed;
  - c) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, which are performed where the activities actually take place;
  - d) loading, unloading or similar activities related to transport, which are performed where the activities actually take place;

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- e) activities, including expert investigations, with regard to movable property, which are performed there where the work actually takes place;
- f) electronic, and telecommunication services;
  - o Electronic services include for example (a) designing and building of websites and software, (b) downloading images, written pieces or information, (c) access to databases, (d) access to downloading of music, films or games (including games of chance), and (e) broadcasting of manifestations relating to politics, culture, arts, sports, sciences or leisure. Not included are e.g. online exchange of information via e-mail, or delivery of goods ordered electronically (like software, clothes or books).
  - o Telecommunication services include transmitting, broadcasting or receipt of signals, images or sound per cable, fiber, radiofrequency or other electromagnetic means.
- **Reverse charge rule:** For all of the activities mentioned in article 7, paragraph 2, even though the services are provided by a non-resident entrepreneur (which, as per the law, is considered the tax payer for TOT purposes), the local entrepreneur as the recipient of the service becomes the “tax payer” (on behalf of the non-resident entrepreneur) and liable for payment of the TOT.
  - o This avoids the non-resident service-provider having to register at the Aruba Tax Authorities.
  - o There is however still uncertainty about what the foreign entrepreneur should do in these circumstances: invoicing with Aruba turnover taxes included in the price or without it.

#### Technical observation

- In order for the reverse charge rule to be applied, the current turnover tax return form should be re-designed allowing a specific line item for the turnover reported under the reverse charge rule. Otherwise, the turnover of the non-resident entrepreneur will be combined with the turnover of the resident entrepreneur, and monitoring and controlling this becomes practically almost impossible (for the tax authorities).

#### Finally

The above is based on the Second Amendment to the Original proposal submitted to Parliament on December 14, 2022. The final text of the law may be subject to changes. Please note that the Government of Aruba is still deliberating the Tax Reform plans of 2023 and the Amendments.

#### How can BDO assist?

BDO Aruba has a dedicated team of professionals that is at your service. Please do not hesitate to contact us should you have any questions relating to the above or how the proposed Tax Reform 2023 may be applied in your situation. You can reach BDO in Aruba at:



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