

Update Tax Reform 2023 - the Amendment of December 13, 2022

IT'S COMPLICATED
THAT'S WHY WE'RE
BRINGING IN BDO

On December 13, 2022, an Amendment 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) and the Amendment. Changes that are textual or have small practical impact are disregarded.

Turnover taxes (Consisting of BBO, BAVP and BAZV)

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.
- **Anti-cumulation of environmental levy (BBV) with turnover taxes:** Based on current policy executed by the Tax Authorities, if the turnover was subject to BBV, automatically the same amount was exempted from turnover taxes.
- **Fiscal representative:** For non-resident entrepreneurs without a permanent establishment on Aruba, the entrepreneur can appoint a fiscal representative on Aruba (via written declaration). The fiscal representative needs to notify the Tax Authorities of his/her appointment, and provide the written declaration). As of that moment, the fiscal representative can file the turnover tax returns, and pay the turnover taxes due, on behalf of the non-resident entrepreneur. This also implies the fiscal representative is liable for the turnover taxes (and penalties) of the non-resident entrepreneur!

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 turnover tax purposes.
- **Anti-cumulation of environmental levy (BBV) with turnover taxes:** The current tax exemption based on internal policy of the tax authorities is now included in the law.

Technical observations

- **Reverse charge rule:** All goods sold and services rendered by a foreign entrepreneur will, due to the reverse charge rule, be included in the taxable base of the local entrepreneur purchasing these goods or hiring these services. Services include management fees, administration fees, reservation fees, IT services, licenses and others. This will significantly expand the tax obligation of local entrepreneurs and increase the tax burden with an additional 7% when purchasing goods or services from foreign companies. Effectively, turnover taxes at the border will be introduced per January 1, 2023 without any offset!

An increase that will significantly impact the cost of doing business in Aruba. What strikes as odd however is that this significant change in the law (from “appointment of certain services” to “all non-resident entrepreneurs”) has not passed the Advisory Council but is introduced via an Amendment within 3 weeks before 2023 starts.

Transfer Tax

The proposed changes dated November 29, 2022

- **Transfer of shares in real estate companies:** Transferring shares of real estate companies will be subject to transfer tax (3% up to AWG 250,000 and 6% on the amount exceeding AWG 250,000). A real estate company is present if the companies' assets consist, **in whole or partially** ("in Dutch: "geheel of gedeeltelijk"), of real estate located in Aruba ("ownership criterion"). Furthermore, the real estate should be in whole or primarily (in Dutch: "geheel of hoofdzakelijk") contribute to generating, selling or exploiting the real estate ("function criterion"). Real estate includes the actual property, but also fictitious real estate such as shares in other real estate companies, economic ownership and other rights attached to the real estate or shares. The value of the shares equals at least the registered value of the Aruba properties of the real estate company. The seller of the shares, if not by notarial deed, needs to notify the tax inspector within two weeks after obtaining the economic ownership of this event. If the notification is late, a penalty with a maximum of AWG 100,000, or, if the value of the property is higher than AWG 100,000, a maximum penalty of 10% of that value can be imposed.

The Amendment of December 13, 2022

- **Transfer of shares in real estate companies:** Transferring shares of real estate companies will be subject to transfer tax (3% up to AWG 250,000 and 6% on the amount exceeding AWG 250,000). A real estate company is present if the companies' assets consist **for at least 30%** of real estate located in Aruba ("ownership criterion"). Furthermore, the real estate should, in whole or primarily (in Dutch: "geheel of hoofdzakelijk", i.e. 70% or more), contribute to generating, selling or exploiting the real estate ("function criterion"). Real estate includes the actual property, but also fictitious real estate such as shares in other real estate companies, economic ownership and other rights attached to the real estate or shares. The value of the shares equals at least the registered value of the Aruba properties of the real estate company. The seller of the shares, if not by notarial deed, needs to notify the tax inspector within two weeks after obtaining the economic ownership of this event. If the notification is late, a penalty with a maximum of AWG 100,000, or, if the value of the property is higher than AWG 100,000, a maximum penalty of 10% of that value can be imposed.

Technical observations

- **Transfer of shares in real estate companies:**
 - The assets of a company should consist *for at least 30%* of real estate situated in Aruba (ownership criterion). This not only clarifies the proposed changes but also mitigates the tax exposure a little.
 - It is still not clear if the market value or the book values, either commercially or fiscally, should be used to determine if the ownership criterion is met. It seems reasonable to assume that it will be the market value (with as a minimum the registered value), but some explanation or definition would have been preferred.

General tax act

The proposed changes dated November 29th 2022

- No changes was originally proposed .
- The current rule and legislation read as follows: The annual wage tax summary (in Dutch: "verzamelloonstaat") and third party summary (in Dutch: "verzamelstaat opgaaf derden") need to be filed in January of every year.

The Amendment of December 13, 2022

- The annual wage tax summary (in Dutch: "verzamelloonstaat") and third party summary (in Dutch: "verzamelstaat opgaaf derden") need to be filed in March of every year.

Technical observations

- This implies all entrepreneurs will have more time to comply with this annual obligation (starting 2023 over 2022).

Tourist Levy and environmental levy

The proposed changes dated November 29, 2022

- **Agent:** If a third party acts on behalf of an owner and collects the remuneration for the stay in a hotel, timeshare or other accommodation, this third party will become the withholding agent for the tourist levy and environmental levy.
- **Fiscal representative:** For non-resident owners or agents without a permanent establishment on Aruba, the owner or agent can appoint a fiscal representative on Aruba (via written declaration). The fiscal representative needs to notify the Tax Authorities of his/her appointment, and provide the written declaration). As of that moment, the fiscal representative can file the tax returns, and pay the taxes due, on behalf of the non-resident owner or agent. This also implies the fiscal representative is liable for the taxes (and penalties) of the non-resident owner or agent.

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Technical observation

- **Agent:** Based on the proposed changes and wordings applied in the Amendment, instead of a mandatory appointment it is now made optional for the agent to become the withholding agent for the tourist levy and environmental levy as well.

Personal income tax

The proposed changes dated November 29, 2022

- **Excessive borrowings by substantial interest holders from their companies:** All borrowing exceeding AWG 500,000 will be deemed excessive merely for tax purposes. This applies to entities in which the borrower or his/her spouse is a substantial interest holder. Any amount exceeding AWG 500,000 (nominal value) at the end of the calendar year (**starting 2023**) will be considered as disguised dividend distributed and taxed against the flat rate of 25% income tax. In the subsequent year, the amount of AWG 500,000 is increased with each amount that was treated as a disguised dividend in the prior year avoiding double taxation.

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Technical observations

- **Excessive borrowings:**

- The introduction of a transitional period of two years (till end of 2025) is well received and will allow any substantial interest holder (owner of at least 25 % of shares in an entity) some additional time to adopt and re-finance or reduce their borrowings with their companies.
- Still it is not clear why loans invited by a substantial interest holder that relate to their own dwelling house and are secured by a mortgage should fall under this excessive anti- abuse stipulation. The company receiving the interest proceeds of this loan will not only benefit of the interest income but also pay the corporate income tax on the interest to the Government of Aruba.

Finally

The above is based on the Amendment to the Amendment as submitted to Parliament on December 13, 2022. The final text of the law may be subject to changes. Please note that the Government of Aruba has conveyed a session starting today December 14th 2022 at 10.am to discuss the Tax Reform plans of 2023 and the Amendment.

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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