

Tax Reform 2023 part II - tax on import & others



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

On May 26, 2023, the draft legislation for the 2023 Tax Reform part II was sent to Parliament. The proposed tax on import will increase tax revenues for the Government on short term, but in our opinion without sufficiently considering the long-term effects of these measures on the Aruban economy. All changes will enter into effect as per July 1, 2023, unless otherwise mentioned. Changes that are textual, incorporate policy into the law, or have little practical impact will be disregarded.

Tax on import (TOI)

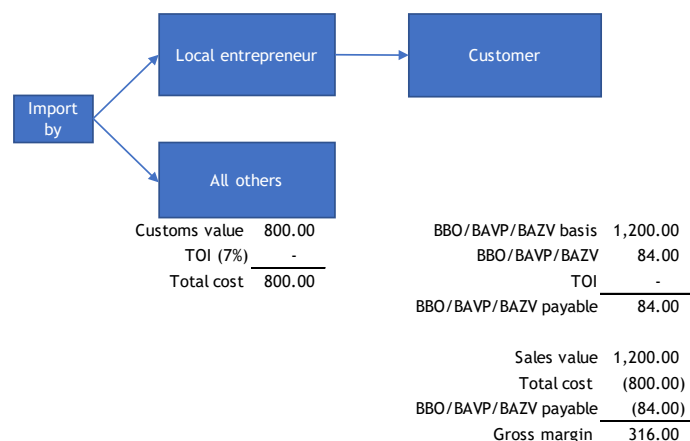
The changes

- A tax on import (TOI) will be charged at a combined rate of 7%.
- The taxable base of the TOI is the customs value as per the State Ordinance Import, Export and Transit.
- TOI is due at the moment the goods are brought into the economic exchanges. Or in other words, once the goods have left the supervision of customs.
- A deduction of TOI is available for entrepreneurs, but for the import of trade goods only.
- The TOI is automatically filled in on the monthly BBO/BAVP/BAZV returns. In Bolmpuesto (BOi), the entrepreneur needs to select from the import documents which goods are trade goods (TOI can be deducted) and which ones are not (TOI cannot be deducted).
- If in any month the TOI is greater than the BBO/BAVP/BAZV due, the DIMP will issue a refund decree. Any refund will however first be offset with any taxes owed. The remainder will be paid out.
- If an entrepreneur is exempt from import duties (article 128 State Ordinance Import, Export and Transit), or has an exemption (article 128c State Ordinance Import, Export and Transit), no TOI is due.
- Entrepreneurs that fall under the small entrepreneurs regulation (i.e. those with a turnover less than AWG 50,000 a year) have no right to deduct the TOI.
- No transitional regulation will be introduced.

Observations

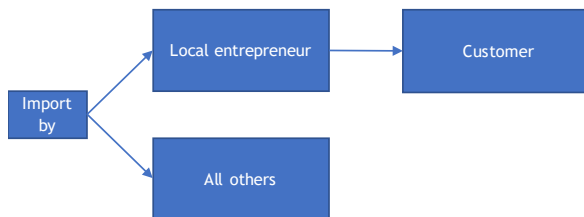
- **Trade goods:** In an illustration, the TOI would work as follows:

Before TOI





Trade goods

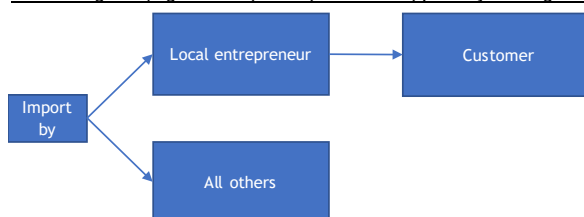


Customs value	800.00	BBO/BAVP/BAZV basis	1,200.00
TOI (7%)	56.00	BBO/BAVP/BAZV	84.00
Total cost	856.00	TOI	(56.00)
		BBO/BAVP/BAZV payable	28.00
		Sales value	1,200.00
		Total cost	(856.00)
		BBO/BAVP/BAZV payable	(28.00)
		Gross margin	316.00

As the above illustration clearly shows, for trade goods the TOI will only impact the timing of payment (cash flow), but may create additional financing expenses.

For non-trade goods however, the following happens:

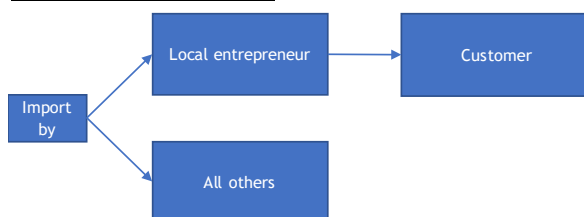
Non-trade goods (e.g. own use, hotels, restaurants, possibly mixed goods/ services)



Customs value	800.00	BBO/BAVP/BAZV basis	1,200.00
TOI (7%)	56.00	BBO/BAVP/BAZV	84.00
Total cost	856.00	TOI	-
		BBO/BAVP/BAZV payable	84.00
		Sales value	1,200.00
		Total cost	(856.00)
		BBO/BAVP/BAZV payable	(84.00)
		Gross margin	260.00

As a result, the gross margin of the entrepreneur significantly decreases from 316 to 260 (being 56, the TOI) in the event of non-trade goods (combined with services). If the entrepreneur would like to maintain his gross margin, in this example the price of the good/ service needs to be increased with at least 5%, as the following illustration shows:

Non-trade goods - increase prices



Customs value	800.00	BBO/BAVP/BAZV basis	1,260.22
TOI (7%)	56.00	BBO/BAVP/BAZV	88.22
Total cost	856.00	TOI	-
		BBO/BAVP/BAZV payable	88.22
		Sales value	1,260.22
		Total cost	(856.00)
		BBO/BAVP/BAZV payable	(88.22)
		Gross margin	316.00



It is therefore very important to know what trade goods are. In the current draft law, trade goods are defined as those goods intended for resale without further processing. Therefore when merchandise is purchased from abroad and “as is where is” sold on to the customers, a trade good is present.

The explanatory notes mention that hotels (when e.g. purchasing furniture) or restaurants (when purchasing “raw” food or drinks) have no right on deduction of TOI because they do not sell trade goods. Supermarkets however do seem to be considered to sell trade-goods? Whether or not that is correct is debatable when the following is considered:

- A supermarket imports lettuce, onions and radishes. At the supermarket, the lettuce, onions and radishes are cut and combined into a salad mix. The supermarket has therefore processed some of its goods, which strictly speaking implies the salad mix is no longer a trade good and as such, the TOI paid on the lettuce, onions and radishes cannot be deducted.
 - A directly related discussion is the packaging material; will that be eligible for deduction of TOI as well, since the packaging material is not sold “as is where is”?
- The reason behind the supermarkets being considered to sell trade-goods only may come from the example provided in the response of the Government relating to the advice of the Advisory Council relating to airco units. In the event an airco installation company purchases the units and resells them with installation services included, the airco is considered to remain qualifying as a trade good. We assume this implies that the purpose of import of the goods is decisive.
- But what is the difference between a supermarket selling a salad mix, or a restaurant selling the same salad mix to go or on its premises to be consumed directly by the guest? Or a supermarket that sells “food to go” versus a restaurant that sells the same concept as called “food to go”?

As a result of the above, discussions about the definition of trade goods are not excluded.

- **Minimal price increase?:** The Government is of the opinion that price increases due to the TOI will be minimal since trade goods get a full deduction of TOI (and inflation is expected to be 1.2% only). The Government does acknowledge that construction will become more expensive, but mentions that the effective price increase will only be 3% since the import duty rates on construction materials will be decreased from 10% to 6% (we refer to the next page).
- **Refunds:** The DIMP will “ex officio” issue the refund decrees in the event the TOI exceeds the BBO/BAVP/BAZV due on the sales. As per the response of the Government relating to the advice of the Advisory Council, it is the intention to issue such decrees within a maximum of 2 months. In the press conference of May 29, 2023 however, the period mentioned was 1 month. Looking at current practice with refund decrees for overpaid corporate income tax, where DIMP has 6 months but effectively takes years to issue the refund decrees, it can be questioned how this will work in practice.
 - Although the Advisory Council has requested that the (absence of, or in Dutch: “uitblijven van de beschikking”) refund decrees can be objected against, the Government feels this is not necessary.



- **Transitional regulation:** Again, the Government feels there is no need for a transitional regulation, since the people of Aruba already knew the TOI would be coming as of March 2020 and therefore could have planned for it. This implies that all goods that enter Aruba as of July 1, 2023 will be subject to 7% TOI.

Others

The changes

- **Investment allowance:** With retroactive effect as per January 1, 2023, the investment allowance of 10% is also applicable on foreign purchased assets (no longer on only locally purchased assets).
- **Fictitious employment:** Individuals that perform labor and have a substantial interest (25% or more of the shares, either themselves, with their spouse or other relatives until the second degree) in the employer (so called director major shareholders, or in Dutch: “directeur groot aandeelhouders”) will fictitiously be deemed to be an employee of that employer.
- **Related parties:** With retroactive effect to January 1, 2023, a related party is present as of an interest of at least 25% (it was mistakenly changed to 4% per January 1, 2023).
- **Import duties:** In the response of the Government relating to the advice of the Advisory Council, the Government refers to a decrease of import duty rates as summarized in the table below:

Current import duty rate	New import duty rate	Examples
0%	0%	Food
2%	0%	Energy efficient goods
3%	6%	Jewelry
6%	6%	
10%	6%	Building materials
12%	12%	
22%	22%	
30% / 40% / 50%	32%	Cars
57%	62%	Fireworks, tobacco

Finally

The above is based on the response of the Government relating to the advice of the Advisory Council, the draft text of the law and its explanatory notes named Tax Reform 2023 part II that was sent to Parliament on May 26, 2023.

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 Beneficial Policy may be applied in your situation. You can reach BDO in Aruba at:

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