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Tax Newsflash
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Profit Tax Reform

Is your company ready? Deloitte Dutch Caribbean is!

National Ordinance Tax Reform 2019

Introduction

Curaçao has a commitment to stand up against tax evasion and tax avoidance and to remove any harmful tax rules. As a result, the Curaçao profit tax has been adjusted in recent years, to align with all the international tax standards.

The legislative amendments that are currently proposed to enter into force as of January 1, 2020 are fully in line with the requirements of, and approved by, the European Union and the OECD. Following the proposed amendments, the Curaçao profit tax will meet all the international substance requirements and the requirements on the prevention of harmful tax practices. Anti-abuse provisions have also been included, to avoid potential abuse of these new rules.

As of 2020, the new tax regime will enter into force and will create quite some opportunities for companies in Curaçao. Depending on the type of business and the level of local real substance, the new tax regime offers low effective tax rates for international business in Curaçao, whilst at the same time all the international tax standards are met.

Domestic Profit

Based on the proposed changes, profit tax will only be levied on profit from domestic business. This encompasses the income generating activities insofar they take place in Curaçao and that the income is generated with assets linked to Curaçao.

To provide some insight into what will be considered domestic profit, the following situations can be considered:

- Business activities linked to property (immovable and otherwise) located in Curaçao or rights used in Curaçao, will almost always generate profits from a domestic business.
- In the context of an enterprise, borrowing money from or providing loans to residents and receiving premiums and capital in respect of risks located within Curaçao will also be regarded as part of a domestic business.
- Passive income is always considered as profit from a domestic business. This also applies to passive income from financial institutions such as banks and insurers.
- If domestic activities are undertaken by foreign entrepreneurs, the profit from these activities will be considered domestic profit, but in such case it must be assessed whether there is an actual tax liability, for example as a result of a local permanent establishment or in case of local real estate.

The following examples are situations that will generally not result in domestic profit:

- Maintenance and repair of machinery and other equipment located abroad.
- Banking activities with non-residents.
- Insurance of risks outside of Curaçao.

Permanent Establishment

The definition of what is considered a permanent establishment of a foreign entity that is subject to profit tax in Curaçao, is modernized to take into account international developments such as the amendments to the OECD Model Convention. Where there is a deviation from the OECD model convention, alignment is sought with the provisions of the current tax arrangement between the Netherlands and Curaçao ("Belastingregeling Nederland Curaçao").

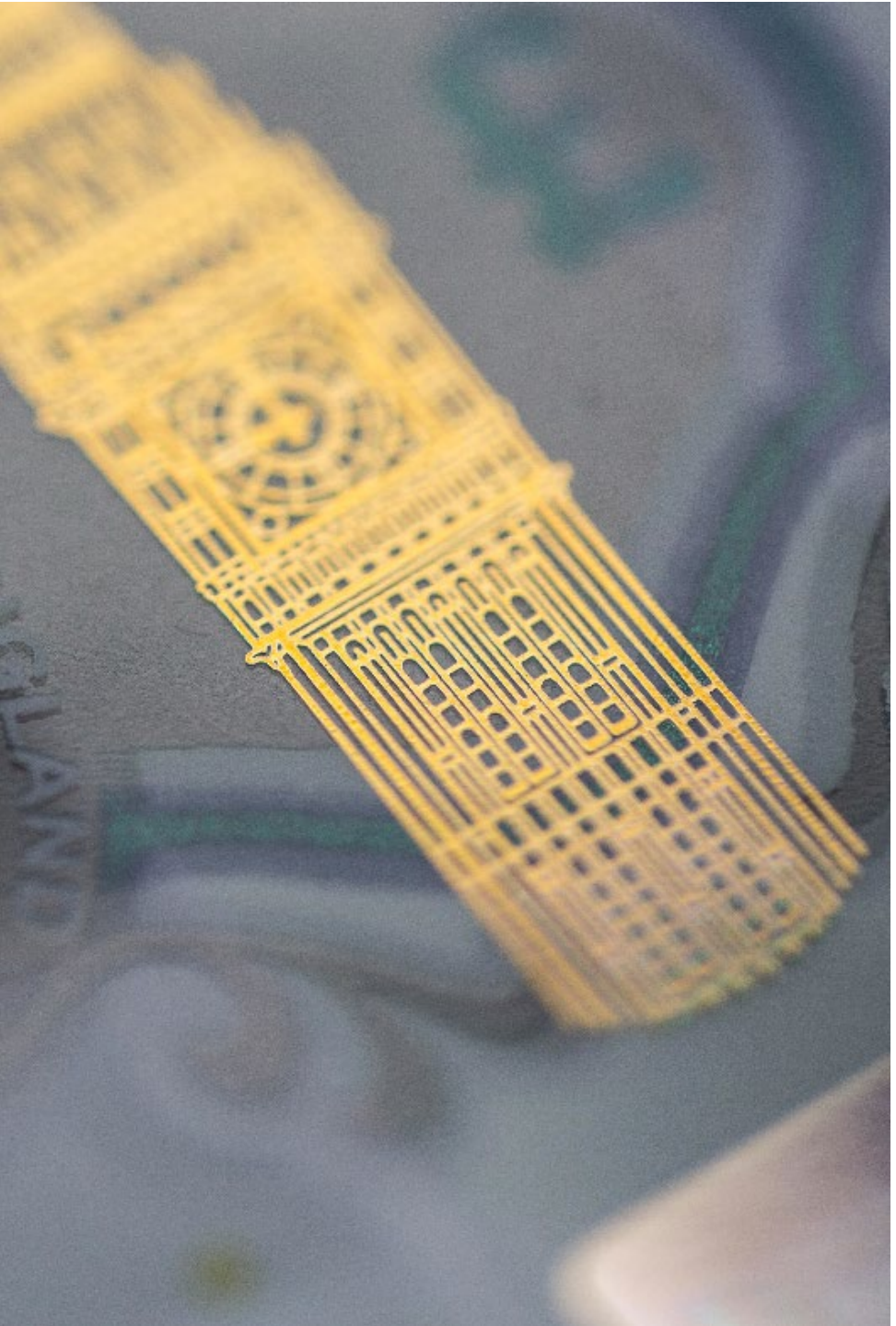
Deduction Restrictions

In line with the exclusion of non-domestic profit, foreign tax that does not relate to domestic profit is no longer considered deductible. A deduction will be allowed for the foreign tax that relates to profits from a domestic enterprise, but not more than the profit tax to be paid in Curaçao. Additionally, only costs relating to the generation of domestic profit can be deducted.

Real Presence

Entities generating profit, not originating from a domestic business, are required to have sufficient real presence ("substance") in Curaçao. This means that an entity must have sufficient direct or indirect employees to perform the core activities and have expenses commensurate with the type and size of the activities. At a minimum the substance needs to be comparable to what would be deemed a permanent establishment if the entity was a non-resident taxpayer. In case an entity fails to comply with this obligation due to intent or gross negligence, a fine of between ANG 50,000 and ANG 500,000 may be imposed.

If outsourcing takes place, it must always take place within Curaçao. The outsourcing entity must be able to demonstrate at all times that it has adequate supervision of the outsourced activities and that all services take place in Curaçao.



3% Profit Tax Rate

For certain qualifying domestic activities, the profit tax rate is reduced to 3%, provided that these activities are undertaken by an entity that has real presence in Curaçao. The following activities can be considered as “qualifying domestic activities”:

- The construction or improvement of aircrafts and vessels and the carrying out of repairs and maintenance on aircrafts and vessels of at least 10 meters in length, and machinery, installations and equipment, for use on board these aircrafts and vessels;
- Call, service, and data centers insofar as they perform supporting service activities to companies with a turnover of at least ANG 50 million;
- Warehousing;
- Services provided to unrelated investment institutions and managers of investment institutions.*

*This does not include services with regard to acting as a management board of companies whose registered office or actual management is based in Curaçao.

Contrary to the substance requirement mentioned under “Real Presence” on the previous page, only the activities of the entity itself will be taken into account here and not those of the group of companies. The substance requirements referred to here cannot be met by outsourcing certain activities to companies, within or outside the group. Core income generating activities must be performed by the entity itself.

E-zone

In line with guidelines from the European Union, the e-zone's profit tax rate will be abolished as of January 1, 2020. For taxpayers who qualified for the application of the current e-zone legislation on December 31, 2019, the application of the provisions as they applied on December 31, 2019 are grandfathered until December 31, 2022.

Should you have any questions regarding the implications and possibilities of these legislative amendments, please contact our office at the email addresses mentioned below.

We would be pleased to assist you with your questions.

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