

Proposal remediation of the Curaçao Preferential Tax Regimes has been approved

The proposal on remediation of the Curaçao Preferential Tax Regimes was approved on June 28, 2018. The proposal includes amendments to align the preferential tax regimes with the internationally accepted standards as recommended by the OECD.

Why these amendments?

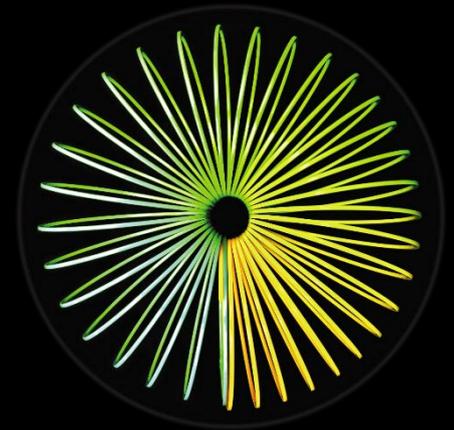
A set of coordinated actions by governments and unilateral measures designed by individual countries have brought about a rapid change of the international tax system. They are intended to both tackle concerns over base erosion and profit shifting ("BEPS") and perceived international tax avoidance techniques of high-profile multinationals. The recommendations of the BEPS Project led by the Organization for Economic Cooperation and Development (OECD) and published in October 2015 are at the root of much of the coordinated activity.

The Action Plan on Base Erosion and Profit Shifting ("BEPS Action Plan") of the OECD has identified 15 actions to address BEPS in a comprehensive manner. The G20 Finance Ministers endorsed the BEPS package in October 2015. It includes the report on Action 5: Countering Harmful Tax Practice More Effectively, Taking into Account Transparency and Substance. The Action 5 Report is one of the four BEPS minimum standards. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation and thus safeguard the level playing field. All members of the Inclusive Framework, including Curaçao, commit to implementing the Action 5 minimum standard into their local tax legislation and commit to participating in the peer review.

The minimum standard of the Action 5 Report consists of amongst others the preferential tax regimes, where a peer review is undertaken to identify features of such regimes that can facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions.

As a consequence of the peer review in Curaçao, the proposal on remediation of the Curaçao Preferential Tax Regimes was approved on June 28, 2018.

This newsflash outlines the amendments.



Remediation of the Curaçao Preferential Tax Regimes

The OECD peer review considered the following preferential tax regimes in Curaçao tax legislation to be harmful. The OECD recommended adjustments to align the tax regimes with the internationally accepted standards to avoid base erosion and profit shifting.

E-zone company

As of July 1, 2018, the e-zone is limited to goods only. The e-zone facility allows goods to enter the Economic Zone without being subject to import duties and turnover tax. As of July 1, 2018, companies that no longer meet the requirements to stay in the e-zone can apply the new tax regime for services provided to customers outside Curaçao (the tax regime designed to replace the export facility). Please be informed that under certain circumstances certain repair and maintenance services can be provided within the e-zone.

Furthermore, the former distinction between local or foreign supply of goods (and services) is eliminated as of July 1, 2018. Under the new legislation, the tax rate applicable to all supplies of goods of a company within the Economic Zone is 2%, regardless of the place where the customers reside. Finally, the e-zone company must meet the new substance requirements.

The amendment of the e-zone has several sales tax consequences. First, once the goods leave the Economic Zone to be imported in Curaçao, the goods will be subject to a 9% sales tax rate. Furthermore, the exemption of Curaçao sales tax no longer applies to the supply of goods from the e-zone to a warehouse. In addition, the exemption of Curaçao sales tax no longer applies to the export of goods (or services) either.

It should be noted that a transitional arrangement applies to existing e-zone companies from June 30, 2018 through December 31, 2018.

Export facility company

As of 1 July 2018, the export facility will be replaced by a new tax regime in which a distinction is made between income derived from local sources and foreign sources. Income derived from local sources is taxed. Foreign source income is excluded from the taxable base for profit tax purposes in Curaçao.

Under the new tax regime the provision of licenses of an export facility company will no longer be considered as qualifying activities.

As mentioned above, the exemption of Curaçao sales tax no longer applies to the export of goods or services. Such supplies are basically subject to sales tax.

It should be noted that a transitional arrangement applies to existing export facility companies from June 30, 2018 through December 31, 2018. In this respect, an existing export facility company must restructure its licensing activities before January 1, 2019.

Tax exempt company

As of July 1, 2018 tax exempt companies will be considered to be Curaçao investment institutions. Curaçao investment institutions are subject to a 0% profit tax rate, except for the income from IP that fails to meet the nexus approach. It should be noted that Curaçao investment institutions have the obligation to file profit tax returns.

The statutory purpose or actual activities of an investment institution are no longer permitted to include the licensing of intellectual and industrial property rights and similar property rights or rights of use, as of July 1, 2018. Tax exempt companies receiving such income will no longer have the status of a investment institution. Please note, in this respect licensing companies can restructure before January 1, 2019.

A transitional arrangement through December 31, 2018 applies for tax exempt companies existing on June 30, 2018.

Substance requirements

In addition to the three aforementioned special regimes, as of July 1, 2018, substance requirements will be introduced. Please note, for Curaçao profit tax purposes real presence will be deemed to exist if a corporate entity carries out activities and generates income that meet the following two cumulative requirements:

- The company (in)directly employs a number of qualified employees commensurate with the nature and extent of the activities of the company or the group of related entities; and
- The company has annually recurring expenses, commensurate with the nature and the extent of the activities of the company or the group of related entities.

Nexus approach

According to the OECD's nexus approach, income from IP in Curaçao may only be taxed at 0% rate if it regards income obtained with an intangible asset for which actual research and development work is performed in Curaçao or for which a taxable person has instructed the development of such an intangible asset to a foreign company not belonging to the group of the taxpayer in Curaçao. Detailed legislation is introduced specifying the IP falling within the scope of the tax facilities and to what extent. Please be informed that the nexus approach legislation will be in force as of July 1, 2018.

Offshore companies may opt for transparent company status

Companies that have the "offshore status" based on the offshore profit tax regime, which will expire in 2019, may opt for the transparency status at the beginning of a new financial year, provided that all other requirements are met.

Fiscal unity regime

Based on the proposed legislation a fiscal unity may be formed during a year, as of the day indicated in the request to apply for a fiscal unity. However, the application of the fiscal unity regime cannot take effect earlier than 3 months prior to the moment of submitting the request.

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Should you have additional questions on the amendments or if you need additional information, please feel free to contact our office at the e-mail addresses stated below. We will be glad to assist you.

CONTACTS

**For more information
please contact:**

Julian Lopez Ramirez

Managing Partner Tax Advisory
Services

Office phone: +5999 433 3346

Mobile phone: +5999 690 8622

jlopezramirez@deloitte.cw

Monique Dap

Senior Manager Tax Advisory
Services

Office phone: +5999 433 3343

Mobile phone: +5999 690 8624

mdap@deloitte.cw

Vivian Pieters

Senior Manager Tax Accounting
and Compliance Services

Office phone: +5999 433 3312

Mobile phone: +5999 670 6571

vpieters@deloitte.cw

Claire Godschalk

Manager Tax Advisory Services

Office phone: +5999 433 3319

Mobile phone: +5999 685 0078

cgodschalk@deloitte.cw

Sharon Eliazer

Junior Manager Tax Accounting
Services

Office phone: +5999 433 3325

Mobile phone: +5999 690 8614

sameliazer@deloitte.cw

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