

UPDATE **December 2018**

On December 20, 2018 Curacao Parliament has passed adaptations of the Preferential Tax Regimes Legislation which were adopted earlier this year.

With the adaption of these adjustments, Government aims to bring the tax legislation fully in line with the current OECD (Organisation for Economic Co-operation and Development) requirements.

For the sake of clarity we have included the most important changes per regime in a complete overview. The latest update is underlined.

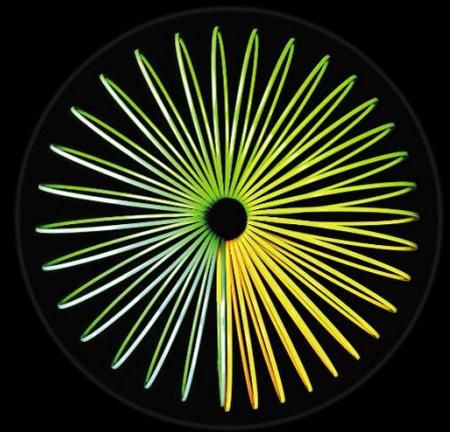
Adaption of the Curaçao deemed Preferential Tax Regimes

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 most relevant amendments as of July 1, 2018 and January 1, 2019.

The Curaçao deemed 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). Update: Based on the amendments, it is permitted to provide repair and maintenance services 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.

Update: Initially, it was proposed that the export of goods or services would be subject to 3% turnover tax as of 1 January 2019. However, due to the adjustments of December 2018, income which is exempted from profit tax based on the new regime is also fully exempt from Curaçao turnover tax.

The legislator did introduce the possibility to levy a fee when this regime applies or when the transparent status of an entity is applicable. The exact details are yet to be determined in a national decree. Finally it is possible to opt for a partial application of the exemption of the foreign source income.

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.

Update: In accordance with the adjustments of December 2018, the activities of a Curaçao investment institution, which can be qualified as international activities, will also be exempt from Curaçao Turnover Tax. Furthermore it is explicitly noted that the Tax Inspector has all the necessary powers test compliance with the requirements (activities and substance) when the annual returns are submitted. Non-compliance with any of the requirements will result in withdrawal of the status.

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 Update: The adjustments of December 2018 clarify that these employees must perform their employment locally
- 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.

Country by Country reporting

Curaçao tax legislation is amended in line with the OECD's country-by-country ("CbC") reporting standards. The Base Erosion and Profit Shifting ("BEPS") report on action 13 of the OECD includes administrative obligations that were introduced in Curaçao tax legislation as per July 1st, 2018. As such, the documentation obligation that was recently introduced in Curaçao applies to the reporting year 2018. However, please be informed that with regard to the years 2016 and 2017 this documentation obligation can be reported on a voluntary basis. The documentation obligation includes requirements based on international reporting standards for multinational enterprise groups ("MNE") regarding transfer prices within the group. The documentation obligations consist of:

- Country-by-country report,
- Master file, and
- Local file.

Update: Under the amended CbC legislation, a Curaçao MNE group entity is obliged to have a master file and a local file within the period set for the filing of the profit tax declaration if the MNE group has a combined turnover in excess of ANG 1,500,000,000 (was 100,000,000) in the year directly prior to the related tax year.

The master file and the local file must contain specific information regarding cost and revenue allocation and the transfer pricing analysis.

Please be informed that this publication is not a substitute for professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

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.



Legal Jurisdiction

Any dispute or other legal matter resulting from this correspondence shall be governed by the jurisdiction of the Common Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba.

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