

Amendments to Curaçao tax legislation

The proposal to write the OECD's country-by-country reporting standards into Curaçao tax legislation was approved on June 7, 2018. This proposal includes multiple amendments regarding administrative obligations. Furthermore, the proposal on remediation of the Curaçao Preferential Tax Regimes was offered to the parliament of Curaçao on June 14, 2018 and amended on June 22, 2018. The proposal includes amendments to align the preferential tax regimes with the internationally accepted standards as recommended by the OECD.

This newsflash outlines both proposals, including the proposed amendments.

International Reporting Standards

All Inclusive Framework Members of the OECD (including Curaçao) have committed to implementing the minimum internationally accepted standards of the OECD. One part of the minimum standard is the transparency framework for compulsory spontaneous exchange on certain rulings which, in the absence of transparency, could give rise to Base Erosion and Profit Shifting ("BEPS") concerns. The transparency framework focuses on five key elements: i) information gathering process, ii) exchange of information, iii) confidentiality of the information received; iv) statistics on the exchanges of rulings; and v) transparency on certain aspect of intellectual property regimes.

Preferential tax regimes

Another part of the minimum internationally accepted standards relates to the so-called preferential tax regimes. A peer review of the OECD has been undertaken in Curaçao to identify features of such regimes that can facilitate BEPS and, hence, have a potentially unfair effect on the tax base of other jurisdictions. According to this peer review, three regimes in Curaçao have been designated to be preferential:

- The Tax Exempt Company for profit tax purposes;
- The E-zone Facility; and
- The Export Facility.

Curaçao has amended its tax legislation to align these regimes with the aforementioned standards and thus prevent differences with the other Inclusive Framework Members of the OECD.



Introduction of the international reporting standards

Documentation obligations

The new legislation includes documentation obligations for a multinational group of entities regarding the transfer prices within the group. The obligation to prepare the documentation starts retroactively from January 1, 2018 and, hence, it applies to the reporting year 2018.

Country-by-country reporting

Under the new legislation, the obligation to provide the Curaçao Tax Authorities with a country-by-country report arises in the following circumstances.

- The multinational group has a combined turnover in excess of ANG 1,500,000,000; and
- The Curaçao entity acts as a parent entity or a similar entity of a multinational group.

The Curaçao reporting entity must provide the country-by-country report to the Inspector of Taxes within twelve months after the last day of a financial year. It should include specific information regarding all countries in which the group operates. Not providing the country-by-country report to the Inspector of Taxes, or failing to do so within the permitted timeframe, or filing incomplete or incorrect documentation, due to willful misconduct or gross negligence, constitutes a failure to comply with the documentation obligation. If so, fines of ANG 100,000 up to ANG 250,000 may be imposed on the reporting entity.

Master file and local file

Under the new legislation, the obligation to provide the Curaçao Tax Authorities with a master file and local file encompasses the following circumstances.

- The multinational group has a combined turnover in excess of ANG 100,000,000 in the year directly prior to the related tax year; and
- At least one of the multinational group companies is a Curaçao entity.

A Curaçao entity is obliged to have a master file and a local file within the period set for the filing of the profit tax declaration. The master file and local file must contain specific information regarding the activities, cost and revenue allocation, and the transfer pricing analysis.

Obligation to file a tax return for a Private Foundation

As of fiscal year 2019, article 1 of the Profit Tax Ordinance will be amended. As a result, each Private Foundation (also referred to as 'Stichting Particulier Fonds' or 'SPF' in Dutch) must file a profit tax return every year. Please be informed that this declaration obligation applies whether profit tax is due or not. In addition, an appendix stating the beneficial owners should be attached to this profit tax return. A declaration obligation for profit tax already applies.

Please note, there are no changes for the Private Foundation in respect of the tax liability itself. If the Private Foundation does not carry on a business for profit tax purposes, the profit is basically exempted from profit tax under the applicable legislation.

As of the day following publication of the new text, the following amendments will enter into force and should be taken into account.

Administrative expansion

The group of taxpayers with administrative obligation has been expanded with:

- The liquidator;
- The person whom the court appoints for custody purposes, at the request of the liquidator.

Administrative amendments relating to ultimate beneficial owners

Taxpayers with an administrative obligation must register the ultimate beneficial owner of their equity in their records. The list of ultimate beneficial owners must be attached to the profit tax return. Depending on the legal form of the entity with the administrative obligation, specific requirements will apply in order to qualify as the ultimate beneficial owner of that legal entity.

Amendments relating to administrative fines

Please be informed that the legislation on administrative fines has been amended. It should be noted that in certain situations this change could result in higher fines.

Abolition of the notification in advance to taxpayers

As of the day following publication of the new text, the Minister of Finance is no longer required to inform a taxpayer in advance regarding its intention to provide information of the taxpayer to a foreign country due to an international information request. The notification requirement of the Minister of Finance is abolished under the applicable legislation. In this respect, taxpayers no

longer have the possibility to request the Minister of Finance to reconsider its intentions to provide the information.

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 exempt status. 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 a low 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.

Sale of goods to cruise tourists

The proposed legislation offers the possibility to sell goods to cruise tourists free of tax, provided that these goods are actually exported afterwards.

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 transparent company 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.

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