

# Tax Instant News

## July 2018

### National Ordinance reparation preferential tax regimes - approved



In this Tax Instant News we will discuss the National Ordinance on reparation of preferential tax regimes that was approved by the Parliament of Curaçao on June 28, 2018. With this National Ordinance amendments to the Curaçao tax legislation are proposed that may be of importance to you. The new legislation will enter into force the day after publication, but with retroactive effect from July 1, 2018. The aforementioned applies with the exception of the amendments for turnover tax and the formal tax legislation (in the General Tax Ordinance) – these will take effect on a later date. Limited transitional rules apply.

In 2015 the Organization for Economic Cooperation and Development (OECD) published the final reports in which the measures were presented to prevent base erosion and profit shifting, the so-called BEPS. The BEPS reports consist of 15 action points aiming to prevent multinationals from eroding the tax base of countries in which they operate. More than 100 countries, including Curaçao, have promised to (partially) implement these action points in their legislation. The report on action point 5 outlines a few measures that should be implemented to limit the impact of tax regimes that are deemed harmful. As a result, Curaçao is adapting various tax regimes and is thus meeting its commitment to review these regimes and, where necessary, to revise them. Below we discuss the various amendments.

#### **Profit tax – preferential regimes**

##### *E-zone*

The e-zone currently offers a profit tax rate of 2% on the profit realized from foreign trade and foreign services provided. Domestic profit realized with delivery of goods and / or services rendered is subject to tax at the statutory profit tax rate of 22%. The e-zone will amongst others be primarily reduced to a goods trade zone. It is required that goods are mainly traded abroad. Certain services, among others e-commerce, will no longer be permitted from the e-zone. It remains possible to perform certain services in an e-zone, such as repair of or maintenance of machines or equipment coming from outside Curaçao, or to provide services outside the e-zone, provided that goods stored in the e-zone are used. Warehousing services can also be rendered in an e-zone. Furthermore, the rate of 2% will now apply to the entire profit of an e-zone company, i.e. both domestic and foreign profit. Please note, the maximum of 25% of activities conducted on the domestic market of Curaçao still applies. Transitional rules will be introduced for existing e-zone companies, we refer to our comments below in the section “Transitional arrangement and alternative”.

##### *Export regime*

The export regime currently offers a reduced rate of 2.2% on 95% of the profit, as long as the taxpayer direct its activities for at least 90% on transactions abroad. The remaining 5% of the profit is taxed at the regular profit tax rate of 22%. As a result of the already adopted legislation regarding documentation requirements, it is no longer permitted for companies that make use of the export regime to grant licenses as of July 1, 2018. The export regime is abolished by means of the underlying adopted legislation, however, there will be a transitional arrangement for existing export companies, see below in the section “Transitional arrangement and alternative”.

##### *Transitional arrangement and alternative*

Existing companies in the e-zone or companies that invoke the export regulation (reference date June 30, 2018) can continue to use the existing regimes based on the transitional rules until the end of the current book year, but ultimately by December 31, 2018. As far as the export regime is concerned, the application of the transitional rules should be explicitly requested upon filing the profit tax return 2018.

Companies that no longer meet the conditions to stay in the e-zone or to use the export regime can consider – if they generate income from abroad – to opt for the new foreign source income exemption, see below section.

##### *Expansion of the foreign source income exemption*

The existing exemption for profit realized with a permanent establishment or a permanent representative abroad will be expanded. A company that generates profits from abroad, in connection with the delivery of goods or by rendering services to customers abroad will also be eligible for an exemption.

Profits realized with local assets which are utilized for the aforementioned activities, will also be deemed as foreign income, as long as the activities take place outside of Curaçao. The company's administration must be well-organized in order to determine the foreign profit including the revenues and related costs.

Please note, that a permanent establishment or permanent representative is not required in order to apply for this exemption.

However, this new exemption cannot be applied by insurance and reinsurance activities, management activities of companies whose registered office or de facto management is located in Curaçao and other services relating to the trust business, as well as services provided by notaries, lawyers, public accountants, tax consultants, income generated with intellectual property, associated services and shipping activities according to the tonnage regulation.

Additionally, profits realized with real estate located abroad are also tax-exempt. Further provisions may be set out by Ministerial Regulation.

#### *Profit tax exemption banks*

Furthermore, profits of banks that almost exclusively provide services to entities and individuals who are not established or reside in Curaçao, or who are established or reside within Curaçao, but based on the Foreign Exchange Regulations of Curaçao and Sint Maarten are deemed as non-residents, will be exempt from profit tax.

#### *Tax Exempt Company*

The regime of the Tax Exempt Company will be amended and the name of the regime will be changed into the Curaçao Investment Company (CIC). The CIC will no longer be exempt from profit tax, but will be subject to tax at 0%, unless it concerns non-qualifying IP revenues or if the conditions set for the CIC are not met. Such revenues or entities will be subject to tax at the regular profit tax rate (2018: 22%).

In order to verify whether the CIC meets the legal requirements and to be able to exchange information with foreign countries, CIC's should mandatory file a profit tax return on an annual basis.

Credit institutions under supervision of the Central Bank of Curaçao and Sint Maarten, such as banks and comparable credit institutions as well as providers of coupon credits to the public will be excluded from the CIC status.

CIC's must also submit a declaration from an independent expert which states that the annual figures have been approved as well as a confirmation that the company has complied with the

requirements of the CIC. It is also important that the CIC meets certain (new) substance requirements, see next section.

Based on a transitional rule, existing Tax Exempt Companies can benefit of the current regime until December 31, 2018. The transitional rule does not apply with respect to certain income from intellectual property.

#### *Income from intellectual property*

Intellectual property (IP) under the current legislation could be licensed favorably in the Tax Exempt Company or an entity in the export regime. The latter option will lapse due to the abolition of the export regime, however IP exploitation as well as its development will be possible in the CIC. This relates to a new profit tax facility that is very similar to the Dutch innovation box. Qualifying IP revenues are subject to tax at 0% in the CIC. This rate also applies to qualifying IP income enjoyed by regular entities.

These IP facilities may be used if and insofar as there is sufficient nexus with Curaçao. This means that the R&D activities for the development of a patent or other right should actually take place in Curaçao, or the assignment to research and develop such rights to an unaffiliated party is given from Curaçao which should be at the expense and risk of the Curaçao entity.

Furthermore, an entrepreneur must submit a statement from an institution designated by National Decree showing that there has been research and development work conducted (R & D statement).

Additionally, rules will be introduced regarding qualifying and non-qualifying IP activities as well as for the correct determination of the level of the tax facility.

Patent or other rights are not required for entrepreneurs who earn less than ANG 75 million gross benefits in the year and in the previous four years from these intangible assets and who in those years – whether or not together with other group entities – generate a net turnover of less than ANG 500 million. In these cases an R&D statement will suffice.

### ***Substance requirements***

In order to increase legal certainty and transparency, criteria are introduced for determining the minimum required relative substance. In this respect, taking into account the nature and scope of the activities of the entity or the group, requirements are set for the actual presence in Curaçao, in particular for entities that make use of a reduced rate, i.e. CICs, special purpose vehicles, entities in the e-zone or entities applying the new exemption for foreign profits.

The requirements are an appropriate number of qualified full-time employees irrespective if these employees are on payroll and an appropriate amount of annually recurring local operational costs. Holding at least 50% of the shares by residents of Curaçao, having a head office function in Curaçao or regular trading of the shares on the Dutch Caribbean Stock Exchange can further substantiate the substance requirements given the Explanatory Notes to the legislative proposal.

With regard to the substance requirements, certainty in advance can be requested from the Tax Inspector via a ruling. Such ruling will be exchanged with relevant jurisdictions in accordance with the OECD Guidelines.

### **Profit tax – other**

#### ***Transparency offshore companies***

At the moment it is not possible for a company that makes use of the transitional arrangement for the offshore profit tax regime or that has ever done so in the past, to opt for the transparent status. In view of the approaching end of the transitional arrangement for the offshore profit tax regime, it will become possible to opt for the transparent status at the start of a new financial year, provided that all other requirements are met and provided that the shareholders natural persons are Curaçao residents or that the activities form a permanent establishment in Curaçao.

### **Turnover tax**

A new turnover tax system is introduced with respect to the rendering of services and the delivering of goods to foreign parties. Based on the legislative proposal the rendering of services and delivery of goods to foreign parties will in principle be subject to turnover tax. As such, in principle it does not matter whether the delivery of goods or providing of services takes place with respect to a local or a foreign party.

Turnover tax due with respect to these foreign activities will however be calculated differently and

will be subject to tax at a lower rate. The added value will be crucial in this respect. Added value implies the compensation reduced by the direct and indirect costs relating to the transaction. For these foreign activities in principle a lower turnover tax rate of 3% will apply.

Lastly, there will be a possibility to settle turnover tax due on local activities with turnover tax due on foreign activities within the same period.

Furthermore, it is not considered desirable to maintain the exemption of turnover tax on import of goods for removal of merchandise from an e-zone to a warehouse. In short, entrepreneurs who move goods from an e-zone to a warehouse are no longer exempt from turnover tax. The import from an e-zone will be subject to tax at the highest rate of turnover tax, being 9%.

The turnover tax amendments are expected to enter into force at a time to be determined by National Decree.

### **Other – general**

#### ***UBO-register***

By means of a new amendment to the law, a UBO register was introduced on 1 July 2018. Entities should report information on the ultimate beneficial owners at an institution to be determined later on. By National Decree further rules will be given about the form and content of this UBO-register and how the information should be reported. Only the Public Prosecution Office, the Central Bank of Curaçao and Sint Maarten, the Financial Intelligence Unit Curaçao and the Inspector of Taxes will have access to the information provided in the UBO-register.

## Contact

If you have any questions and/or remarks about this tax alert, please do not hesitate to contact us via the contact details below.

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