

Tax Instant News February 2019

National Ordinance Tax Review 2018

On the 20th of December 2018, the draft National Ordinance Tax Review 2018 ("National Ordinance") was adopted by the Parliament of Curaçao. The National Ordinance elaborates on the legislative amendments adopted in June 2018 in which the tax regimes are aligned with international standards as recommended by the Organization of Economic Cooperation and Development (the "OECD"). Please refer to our website where you can find our 2018 publications on these subjects.

At the end of 2018, the amendments made to the E-zone regulations and the recently abolished export regime were reviewed. As of January 2019, the Innovation Box and the Curaçao Investment Company were reviewed and approved by the OECD's *Forum on Harmful Tax Practices* ("FHTP"). This means that the Curaçao regimes are in line with the OECD guidelines and recommendations. As a result, Curaçao meets the requirements of action point 5 of the *Base Erosion and Profit Shifting*-reports. At the end of January 2018 these conclusions were published in the 2018 *Progress Report on BEPS action 5*.

The amendments to the National Ordinance may have consequences for you. The National Ordinance enters into force with retroactive effect from July 1, 2018, except for the amendments that apply to the Master File / Local File that take effect retroactively from January 1, 2018 and the textual amendments to the Succession Tax Ordinance that came retroactively in effect as of October 17, 2018.

General Tax Ordinance (In Dutch: Algemene Landsverordening Landsbelastingen "ALL")

Transparent status offshore entities

Formerly it was not possible to request the transparent status as an offshore company. Meanwhile, the transitional arrangement of the offshore regime is coming to an end. In the ALL and the National Ordinance on International Assistance in Tax Matters ("LIBB"), new provisions have been introduced that ensure the exchange of information in international relations with respect to the transparent status. Therefore the application of the transparent status to former offshore entities can no longer be withheld, if the requirements are met.

Annual fee for the public treasury

Transparent companies with a foreign shareholder nowadays are subject to an annual fee to the benefit of the public treasury. This also applies to companies that opt for the foreign source income exemption (see below). The amount, time of payment as well as further rules concerning the aforementioned contribution will be further determined by National Decree.

UBO-registry

With the introduction of a semi-public registry for ultimate beneficial owners ("UBO registry"), taxpayers must provide information regarding the ultimate beneficial owners of entities to a designated institution by National Decree. The National Ordinance provides an extension of the term "senior managerial staff". This term concerns persons who are authorized to make binding decisions on behalf of the entity. Failure to comply with the provisions with regard to the UBO registry may result in criminal prosecution.

Profit tax

Foreign source income exemption

The exemption for profits realized abroad has been extended. The National Ordinance provides further clarification whereby profits of offshore banks, corporate financing companies, other entities that are granted an exemption based on the Foreign Exchange Regulations of Curaçao and Sint Maarten and companies that provide services to alternative investment institutions and related activities can apply for this foreign source income exemption. Companies that are active both locally as well as abroad could also apply for this exemption with respect to the foreign activities of the company.

The foreign source income exemption is not applicable for profits realized with immovable property located in Curaçao, as well as services rendered and deliveries of goods to tourists if the service or delivery is enjoyed or takes place in Curaçao.

However, by letter of February 1, 2019, which was circulated at the beginning of February 2019, it appears that the EU Code of Conduct Group regards the foreign source income exemption as harmful on various points. The EU Code of Conduct Group proposes to amend the aforementioned exemption or to abolish it as of December 31, 2019. A response from the Minister of Finance follows in the course of February 2019. For more information about this, we refer to our next Tax Instant News.

Innovation box

With the introduction of the innovation box, in which tax facilities are offered for the development and exploitation of intellectual property, a declaration for research and development ("R&D-declaration") must be submitted in order to qualify as an intangible asset. The National Ordinance codifies that such R&D-declarations will be issued by the Bureau Telecommunication, Post and Utilities. Qualifying benefits that can also be enjoyed in the innovation box are extended in the National Ordinance with the addition of royalties, sales proceeds and capital income (or capital gains).

Curaçao Investment Company

The name of the Exempt Company has been amended to Curaçao Investment Company as of July 1, 2018. The regime has been further adapted whereby the profits of the company remain exempt from profit tax, provided that these profits are realized with qualifying activities.

The National Ordinance determines that existing exempt companies that comply with the legal conditions on July 1, 2018, will automatically acquire the status of Curaçao Investment Company as of January 1, 2019. This means that the exempt status is retained if the company had the exempt status prior to July 1, 2019 provided that all requirements are met.

Substance requirements

In order to be eligible for the tax status and the corresponding tax treatment, Curaçao Investment Companies and Economic Zone Companies must comply with the substance requirements that were introduced on July 1, 2018. These requirements imply that, depending on the nature and extent of their activities, these companies must have an appropriate number of qualified full-time employees and must pay an appropriate amount of local annually recurring costs. The National Ordinance adds to the above that the employees should be local employees carrying out the core activities of the entity locally.

Master File and Local File

As of January 1, 2018, group entities that are liable to tax in Curaçao are subject to additional documentation requirements. The obligations include the inclusion of a group file and a local file for a specific fiscal year (the so-called Master File or Local File) in the administration of the relevant entity. When the legislation on additional documentation was introduced, this obligation applied to a threshold of NAf 100.000.000 in consolidated group revenue achieved by the group entities of a multinational group. By means of the National Ordinance, the threshold of NAf 100.000.000 was increased to NAf 1.500.000.000.

Turnover tax

To compensate for the loss of governmental income that would follow by limiting access to the E-zone for certain service companies, a turnover tax of 3% was introduced on the gross added value specifically for companies that make use of the foreign source income exemption. As a result, both domestic transactions and foreign transactions became subject to turnover tax. An option to offset the domestic turnover tax due with the foreign turnover tax was also introduced. However, the aforementioned provisions have not entered into force and have been abolished based on the National Ordinance.

Investment tax facilities

The National Ordinance provides more clarity regarding the tax facilities for investments. Construction of infrastructure, whether in combination with the construction of immovable property or not, is eligible for the tax facilities. Furthermore the National Ordinance clarifies that the tax facilities may apply to venues that offer accommodation and recreation promoting foreign visitors and social housing development. Previously, the tax facility only applied to venues that offer entertainment and recreation. Additionally the National Ordinance emphasizes that a request for the application of a tax facility with regard to an expansion is only applicable for that specific expansion.

In a Temporary National Decree on tax facilities for large projects, the minimum investment amount has been increased to NAf five million whereby the number of employees has been increased to at least ten local citizens. This National Decree will enter into force retroactively from June 18, 2018. In order to qualify for the facilities as they were prior to the introduction of this Temporary National Decree, a request for the application of the tax facilities investments must be submitted by April 30, 2019.

Contact

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