

Tax Instant News



Significant changes to the Curaçao Profit Tax regime

On December 30, 2019 the Curaçao Parliament approved the legislative amendments from the Minister of Finance, which include significant amendments to the Profit Tax Ordinance. The changes are a consequence of the comments made by the Code of Conduct Group from the Council of the European Union in January 2019; the Council considered the foreign profit exemption in the Curaçao Profit Tax Ordinance harmful.

Curaçao, January 2020

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BACKGROUND

Following the BEPS project of the OECD, Curaçao is taking measures to align its legislation with the international tax standards. As a first step, the National Ordinance Reparation of Preferential Tax Regimes was adopted in June 2018. Secondly, on December 20, 2018 the National Ordinance Tax Measures was adopted. For more information please refer to our earlier newflashes.

On January 29, 2019 during a meeting of the Code of Conduct Group of the Council of the European Union, it was concluded that the foreign profit exemption had similar harmful effects as the preferential tax regimes that it had replaced. To prevent Curaçao from appearing on the OECD list of non-cooperative jurisdictions, it was decided to abolish the foreign profit exemption without a grandfathering provision as of December 31, 2019.

In addition to abolishing the foreign profit exemption per yearend 2019, the Curaçao Profit Tax Ordinance has significantly been changed on several points in order to comply with the international standards for taxation.

Main change is the introduction of a so-called territorial tax basis (which we will explain in more detail in the next paragraph). In addition, the profit tax rate for certain qualifying

domestic activities is reduced to 3%.

TERRITORIAL PROFIT DETERMINATION

Before 2020, taxpayers in Curaçao were subject to profit tax on their worldwide income. To avoid double taxation, certain types of foreign income were tax exempt. Under the new rules, taxpayers are no longer subject to tax on their worldwide income. Instead, taxpayers are subject to tax only on their domestic income ("the territorial tax basis").

Since taxpayers in Curaçao are no longer taxed based on their worldwide income, the foreign profit exemption becomes useless.

The definition of domestic income and the costs related thereto is to be further defined in specific guidelines.

Based on the information currently available, domestic income is generated in Curaçao and finds its source in activities taken place in Curaçao or with assets associated with Curaçao. For example:

- Income from commercial, industrial, innovative and similar activities performed in Curaçao;
- Income from profession and income from services that are conducted, performed or exercised in Curaçao;
- Income from international transport services that take off or end on the territory of Curaçao;

- Income from assets used in Curaçao such as:
 - Renting out and making available movable and immovable property situated in Curaçao;
 - Making available intellectual property or other intangible assets for the usage in Curaçao;
 - Holding deposits with, or providing financing to Curaçao residents.

In addition, passive income - income flowing from passive activities such as interest, royalty, rent and dividend - is deemed to be domestic. This is also the case for passive income of financial institutions such as banks and insurance companies, and also applies to the passive income of foreign companies with a permanent establishment in Curaçao.

If a source of income contains domestic income as well as foreign source income, the income will in principle be deemed to be domestic. An exception applies if the taxpayer can demonstrate which part of the income should be considered foreign. To determine whether income can be considered foreign, the profit before indirect cost must be allocated based on the ratio of the direct expenses attributable to the foreign source, excluding the cost of materials.

The deduction of costs is limited to the costs allocable to the domestic income. This limitation applies to both direct and indirect costs. Costs with a mixed nature are deductible for the amount that can be attributed to the domestic profit in proportion to a revenue ratio.

We will elaborate on the details in a future TIN as soon as more information is available.

3% RATE FOR QUALIFYING ACTIVITIES

In addition to the introduction of the territoriality principle, a profit tax rate of 3% is introduced for the following activities/industries:

- i. Aircraft and shipbuilding industry, this includes repair and maintenance work on aircrafts and vessels with a minimum length of 10 meters and all machinery, installations and materials on board thereof;
- ii. Specialized business support activities such as call centers, shared service centers and IT centers, insofar this support is provided to companies with a group turnover of at least NAF 50 million;
- iii. Warehousing companies;
- iv. Services to unrelated investment institutions and portfolio managers of investment institutions.

Moreover, it has been explicitly mentioned that activities performed by trust companies, notaries,

accountants, tax advisors and all other types of related services, do not qualify for the reduced tax rate.

ECONOMIC SUBSTANCE

Taxpayers with qualifying activities wishing to benefit from the reduced tax rate, must have economic substance in Curaçao as described in Article 1C, Profit Tax Ordinance (the minimum substance requirements). We hereby refer to our newsflash of September 2019.

These substance requirements also apply to taxpayers receiving income other than domestic income. In case these substance requirements are not met by way of intent or gross negligence the tax inspector may levy a fine of NAf 500.00 up to a maximum of NAf 500.000.

This fine will not be applicable to entities that are incorporated in Curaçao, and have their place of effective management in a foreign country in which they are subject to a sufficient level of tax.

E-ZONE TAX RATE ABOLISHED

Before 2020, e-zone companies were subject to a profit tax rate of 2%. However, under pressure of the EU this rate is abolished as per January 1, 2020 rather than as per the previously announced date of January 1, 2026.

A two year grandfathering provision applies to taxpayers that were benefitting from the e-zone before

January 2020. Consequently, these taxpayers can still benefit from the 2% rate ultimately until December 31, 2022.

UPDATED DEFINITION OF PERMANENT ESTABLISHMENT

The definition of what is considered to be a permanent establishment for Curaçao tax purposes is updated in accordance with the OECD Model Convention and the tax agreement between The Netherlands and Curaçao.

This definition is used to determine if foreign non-resident companies with activities in Curaçao are subject to Profit Tax in Curaçao.

As a result of the new definition, Curaçao has broadened its basis to levy profit tax of foreign companies with business activities in Curaçao.



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Please do not hesitate to contact us if you have any questions and/or comments.

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