

# Tax Instant News

## Real Property Tax Assessments Annulled by the Court

The Court of Justice has recently decided on a case regarding the Real Property Tax (Grondbelasting) in Aruba, deciding that the government has not complied with some of the formal requirements in the National Ordinance Real Property Tax when changing the tax rates on the assessments since 2019. In this Tax Instant News we will inform you about the impact of this decision for the Real Property Tax assessments over 2019 up to and including 2021.

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# Tax Instant News

## Introduction

The Court of Justice of Aruba has recently decided on a case regarding the Real Property Tax (Grondbelasting) in Aruba.<sup>1</sup> In 2019 the government of Aruba has changed the rates for the Real Property Tax from a fixed rate of 0.4% of the value of the property to a progressive rate between 0.2% and 0.6% for individuals with a 0% rate when the value of the property is below Afl. 120.000 and a 0.6% rate for non-individual owners. Also, the general tax-free amount of Afl. 60.000 was abolished.

## System of the Real Property Tax

The National Ordinance Real Property Tax states that the assessments are imposed for a period of 5 years (in this case the period 2017 up to and including 2021) and cannot be changed, with the exception of changes as a result of objection or appeal against the assessments and certain changes to the property over the course of the period, such as construction, renovation or demolition of the property.

It is clear that the National Ordinance Real Property Tax does not allow either the tax inspector to make changes in the value of the property or the tax payer to object against the value of the property. The question arose, whether the

National Ordinance Real Property Tax allows for changes in other parts of the assessment, including the tax rates and the tax-free amount.

## Court Decision

The courts decided that the system of the law states that all assessments have been fully imposed at the start of the 5-year period and cannot be changed afterwards. This includes all components of the assessments, including the tax rates and tax-free amounts.

Since all assessments for the years 2017 up to and including 2021 are prepared in 2017, the assessments 2019 and following, with the adjusted tax rates are considered to be following the original assessments that have never been sent out and thus need to be considered to be additional assessments.

The court then concluded that all information necessary to impose the assessments was available in the year 2017 (when the original assessments for the next 5 years were deemed to have been prepared), thus there is no “new fact” that would justify the additional assessments. Therefore, the additional assessments should be annulled and the government

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<sup>1</sup> Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, Sint Eustatius en Saba, ECLI:NL:OGHACMB:2021:223

should sent out the original assessments with the old tax rates.

### **Additional Assessments**

Following the court's decision the tax authorities in Aruba have announced that they will only annul the additional assessments against which the taxpayer has objected or appealed and replace these with the original assessment and a new additional assessment for the difference caused by the increase in tax rates. It is unclear whether the tax authorities will also include assessments against which no objection has been filed.

Further to the conclusion of the court that there was no "new fact" to justify the additional assessment, Dutch case law states that no additional assessment can be imposed unless it is clear which amount is due and which amount is originally imposed.<sup>2</sup>

Since no original assessment has been imposed, there is no legal basis for imposing the additional assessment, unless the original assessment has been imposed first.

Furthermore, The Court in First Instance of Curacao has concluded with regard to preliminary assessments that the lack of a legal basis for preliminary assessments on real estate tax meant that the assessments had to be annulled.

Therefore, we conclude that since there is no legal basis for the imposed assessments, since they should be considered additional assessments, the tax authorities should annul all assessments and impose the original assessments first, regardless of any objection or appeal against the assessments, since the additional assessments are deemed to be void.

### **Objection and Appeal**

We would advise to request the tax authorities to annul any Real Property tax assessments imposed over the years 2019 up to and including 2021 and request to impose the original assessments as prepared in 2017.

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<sup>2</sup> Rb. Breda 06-12-2012, ECLI:NL:RBBRE:2012:BZ2613



### Further information

We will update this TIN once more information is available. In case you require any assistance, please do not hesitate to contact one of our tax advisors.



Wendell Meriaan  
[wendell.meriaan@hbnlawtax.com](mailto:wendell.meriaan@hbnlawtax.com)



Jeanise Job  
[jeanise.job@hbnlawtax.com](mailto:jeanise.job@hbnlawtax.com)



François Simon  
[francois.simon@hbnlawtax.com](mailto:francois.simon@hbnlawtax.com)



Lelia Kelly-Dubero  
[lelia.kelly@hbnlawtax.com](mailto:lelia.kelly@hbnlawtax.com)

**Amsterdam**  
Concertgebouwplein 7  
1071 LL Amsterdam  
The Netherlands  
T. +31 20 303 3020  
E. [info@hbnlawtax.com](mailto:info@hbnlawtax.com)

**Aruba**  
Beatrixstraat 38  
Oranjestad, Aruba  
T. +297 588 6060  
E. [info@hbnlawtax.com](mailto:info@hbnlawtax.com)

**Bonaire**  
Bulevar Gob. N. Debrot 20  
Kralendijk, Bonaire  
Caribbean Netherlands  
T. +599 717 6944  
E. [info@hbnlawtax.com](mailto:info@hbnlawtax.com)

**Curaçao**  
L.B. Smithplein 3  
Willemstad, Curaçao  
T. +5999 4343300 (general)  
T. +5999 7325400 (tax)  
E. [info@hbnlawtax.com](mailto:info@hbnlawtax.com)

**Sint Maarten**  
W.G. Buncamper Road 33  
Philipsburg, St. Maarten  
T. +1 721 542 2272  
E. [info@hbnlawtax.com](mailto:info@hbnlawtax.com)

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