

CURAÇAO

Year-End Tips 2022

General tips for improving your overall tax position



Preface

With the end of the year approaching, we would like to take this opportunity to offer you some general information about possibilities for tax savings which may be implemented before the end of the year as well as some general tax advice to avoid any additional tax costs by preparing you for the end of the tax year.



Profit tax

Territorial profit tax regime As of January 1, 2020, Curaçao has changed its profit tax law, so that no longer a system of worldwide inclusion with exemptions would apply, but a territorial tax system in which only profits that are attributable to a domestic enterprise are included in the profit tax basis. However, passive income (i.e., income that does not derive from material business activities) is always attributable to the domestic (Curaçao) income. This includes dividends, interest, and royalties.

The attribution of profits to either Curaçao or an extra-territorial jurisdiction takes place, in principle*1 based on the division between domestic direct expenses and extra-territorial direct expenses.

Please ensure that all your documentation and cost allocation are up to date and show the division between domestic and extra-territorial expenses. It might also be advisable to change the cost structure of your company in such a way that more direct expenses can be attributed to an extra-territorial jurisdiction so that the profit tax burden in Curaçao can be reduced.

Furthermore, please consider that entities applying the territorial system should meet substance requirements in order to avoid penalties. These substance requirements consist of core income-generating activities (CIGAs), local employees, and annual recurring costs depending on the nature and size of the company. As these CIGAs differ per business sector, please consult your tax advisor for further details.

*1 Exceptions apply to certain type of businesses

Tax provisions

As a general rule, deductible costs should be attributed to the year in which they are incurred. With large projects, the payment of the costs may not align with the business activities in the fiscal year to which the costs apply. Under certain conditions, a tax allowable provision could be recognized for future expenses that originate from prior years.

If you expect any (large) expenses in future years (for example major maintenance expenses), it could be assessed whether a provision can be entered into the balance sheet for taxation purposes. This will lead to a lower taxable profit.

Recognizing a provision can also be helpful to support the liquidity position of the Company. If there is a reasonable level of certainty that the expenses will arise in the future, it may be beneficial to recognize a provision for – amongst others – the following items:

- Expenses for legal proceedings;
- Medical expenses and other employee benefits;
- Risk of irrecoverable loan receivables and claims.

Depreciation and revaluation of assets

Assets used within the company should be capitalized on the tax balance sheet and depreciated over time in accordance with the applicable rules. The depreciation rate depends on the life span of the assets and the remaining value.

Under certain circumstances, it is possible to revalue assets or increase the depreciation, for instance in case of bad debt or decreased prices. Such revaluation or depreciation may be deductible for tax purposes.

Optimizing the depreciation rates and valuation of your assets may lead to a lower taxable profit.

In times of economic crisis, for instance, the following write-offs could be considered:

- Review the financial position of your debtors. If it is likely that they will not be able to meet their (re)payment obligations, you may take into account the part that will presumably not be paid back when drawing up your financial statements (provided no provision has been recognized in connection therewith);
- Price declines in the market and/or the lapse of expiration dates of stock may give rise to write-offs on the balance sheet item stock.

Please do not hesitate to contact one of our tax advisers for the applicable conditions when considering such write-offs.

Postponement of profit reporting

If it is intended that sold inventory or business assets are to be replaced it is possible to postpone the reporting of profits on such sale in case certain conditions are met. In connection therewith, it is recommended that you timely seek advice so that no profit needs to be reported in the year of sale.

Investment Allowance

When a business invests more than NAf. 5,000 in qualifying assets in 2022, 10% of the qualifying investments is (additionally) deductible from taxable profit. If your qualifying investments in 2022 are below NAf. 5,000, it could be considered to make additional qualifying investments before the year-end to meet the threshold.

Disinvestments

Besides the aforementioned possibility of profit reporting postponement, it can be important to postpone the transfer or disposal of a business asset until after January 1, 2023. This particularly applies to investments made in 2017 and to real estate investments made in 2008 in light of a previously claimed investment deduction. The so-called disinvestment addition on the sales price will expire after 6 and 15 years respectively.

Carry-forward losses

A tax loss may be carried forward for ten subsequent years and deducted from taxable profits in those years. After ten years it is no longer possible to offset the losses against profits.

If you still have existing carry-forward losses, please review whether these can be carried forward to 2023. If not, it could be reviewed if (re)structuring options are available to prevent these tax losses from expiring.

Participation exemption

Income in relation to participations in other companies (e.g. dividends and capital gains) are exempt if the participation exemption is applicable. The participation exemption applies for certain qualifying participations in local entities. In case of foreign participations, the full participation exemption applies when the participation is not held as a passive investment and/ or is subject to tax over its profit. If the foreign participation is held as a passive investment and is not subject to tax over its profits, a partial participation exemption may apply on dividends received from such a foreign participation. For determining the profit in case of the partial participation exemption, only 10/T (T being the current profit tax rate) which applies in the year in which the dividends are received, are taken into account.

We advise to review annually before the end of the financial year whether the participation exemption applies.

Fiscal Unity

For related companies, consideration can be given to form a fiscal unity. By forming a fiscal unity, losses of one group company can be offset against profits of another group company. A fiscal unity can be requested with retroactive effect of up to 3 months. Thus, if there is a desire to form a fiscal unity as of January 1, 2023, the request should be made before April 1, 2023. Please note that various conditions apply.

Curaçao Investment Company

Under certain conditions, a Curaçao private limited liability company (“B.V.”) or a Curaçao public liability company (N.V.) can opt for the status of a Curaçao Investment Company (“CIC”, in Dutch: Curaçaose Beleggingsvennootschap, “CBV”), making its profits taxable at a rate of 0% for profit tax purposes. The conditions for a CIC are as follows:

- a. The board of the Company keeps a register in which the names and addresses of the ultimate beneficial owners of the Company are recorded.
- b. The (daily) management of the Company consists exclusively of one or more persons residing in Curaçao or certified trust companies established in Curaçao, or directors of certified trust companies and other persons employed by these trust companies.
- c. The Board of the Company shall prepare annual financial statements within twelve months of the end of the financial year, which are audited by an independent expert appointed by the Company's general meeting of shareholders as well as provided with a declaration of approval within twelve months after the end of the book year. This declaration of approval must also contain a confirmation that the Company has complied with the CIC requirements.
- d. The independent expert must issue a declaration if, in the financial year concerned, the Company received dividends that were distributed on shares in a company that is not domiciled in Curaçao, The Netherlands, Aruba, Sint Maarten, or Bonaire, Sint Eustatius and Saba, nor is it subject to a foreign tax regime. The aforementioned independent expert provides, at the time of his approval of the annual accounts, a statement for the Inspector of Taxes, to the effect that the company, which has distributed the dividends, is subject to tax levied on any form on profits of which the nominal rate is at least 10 percent or comparable to the Curaçao profit tax.

e. If the amount that the Company receives net in dividends for which the aforementioned declaration cannot be issued, exceeds five percent of the sum of the benefits obtained from its activities, the independent expert reports this to the Inspector of Taxes, whereby he also issues a declaration with regard to the taxation of the company or companies that distributed these dividends.

f. In accordance with the Company's statutory objective, its activities consist exclusively or almost exclusively of making credit investments, investing in securities and deposits, or developing and exploiting intellectual and industrial property rights and similar property rights or rights of use.

g. The Company is not a bank or similar credit institution, subject to the supervision of the Central Bank of Curaçao and Sint Maarten, or a provider of voucher credits to the public; and

h. The Company has a real presence as defined in Article 1C the National Ordinance on profit tax. Real presence is defined by the core income generating activities (CIGA's), a number of qualified full-time employees appropriate to the nature and scope of the Company's activities as well as local operating costs.

Country-by-Country Reporting

Entities located in Curaçao that are part of a multinational group with consolidated revenues of NAf. 1,5 billion or more must prepare annual Country-by-Country Reporting documentation that consists of a Master file and one or more Local files. In addition, a notification must be filed in advance of the financial year to the tax authorities and a Country-by-Country Report (CbCR) must be filed as well.

Please review whether your Country-by-Country documentation is up to date and if the required documents and notifications have been filed to avoid penalties.

Transfer Pricing

Please note that if a company is part of a group, its administration should include documentation that shows that the intercompany transactions are “at arm’s length”. The information that must be documented includes the transfer pricing method used, the reasons why that method was chosen, and substantiation of how the price was determined. This will provide the Tax Authorities with guidance to better determine whether the contractual terms and conditions are at arm’s length. The Transfer Pricing documentation must be included in the company’s records. Failure to comply with this recordkeeping obligation will cause the burden of proof to shift to the taxpayer.

Please ensure that all your Transfer Pricing documentation is up to date and shows all intercompany transactions to avoid additional assessments and penalties.

Gifts to charitable institutions

Gifts, that do not qualify as business expenses, are deductible to a maximum amount of 3% of the profit if made to religious, charitable, sport, cultural, scientific, and (registered) public benefit organizations and insofar the amount of the gift is at least 1% of the profit of the company and above NAf. 500.

If you made any deductible gifts, please keep the proof of payment to ensure the deduction of the gift from the taxable profit.

Wage tax

Cost Allowances

Under certain circumstances, it is possible to provide tax-free cost allowances to staff members.

Examples of these cost allowances include:

- phone allowance
- travel allowance
- car and representation costs

Optimizing the cost allowances within the conditions set in the tax law may lead to significant tax savings.

Benefits in kind valuation

When an employer provides benefits in kind, these benefits are considered taxable wages. However, under circumstances, the prescribed method to calculate the employee's economic benefit of the use of certain company assets, such as a car or a house, or even a company meal, can lead to tax savings for the employer and employee.

Optimizing the salary package with fringe benefits may lead to tax savings.

Expatriate ruling and administration

Additional tax-free allowances and other benefits are available for employees who have not worked in Curaçao for a period of at least 5 years and will earn at least NAf. 150,000 per year. The so-called expatriate status or ex-pat status. These benefits include:

- benefits in kind not exceeding NAf. 15,000 annually.
- tax-free allowance for school fees
- tax-free allowances for house rent

Also, the employer and employee can agree upon a net wage contract. The wage tax will then be calculated on the net wages and shall not be grossed up.

Applying for the ex-pat ruling can allow for a more competitive offering to potential overseas candidates.

Reduced tax rate for termination payouts

It often happens that an employee is entitled to a lump sum as part of the termination agreement. After year-end, when completing the employee's personal income tax return a lower personal income tax rate can be applied to this lump sum.

However, upon the actual moment of paying out this lump sum, the employer should consider obtaining a tax ruling from the Tax Authorities allowing the employer to apply the reduced rates when computing and withholding the payroll taxes due on this lump sum. In doing so, the employee and employer can benefit from the reduced rates at once, upon payment of the lump sum.

Furthermore, from an employer's perspective, it is recommended to determine what type(s) of remuneration to include in the termination payout if you opt to deviate from the court formula. Assess upfront if the total employers' costs involved fit the specific needs and requirements of your company.

Assignment agreements

When a current employee intends to become a third-party consultant through an assignment agreement, make sure that both the formal agreement and the factual activities carried out can be considered as third-party consulting services. Note that existing assignment agreements require continuous assessment to prevent disguised employment triggering unintended wage tax consequences.

Pensions

Review if additional contributions made to employee pension benefits are within the legally allowed thresholds and requirements. Be aware of the various decisions that may jeopardize pension entitlements and can possibly trigger unintended wage tax consequences.

Turnover tax

Services from foreigners

If you retained services from foreign services providers or any business established overseas, as a local entrepreneur established in Curaçao you could be held liable for the turnover tax (in Dutch: omzetbelasting or OB) due on these cross-border transactions. Considering, the penalties that can accumulate in these types of cases, it is highly recommended that you verify with the overseas services providers if they are duly registered with the Tax Authorities in Curaçao.

Allocation formula for shared costs

If you regularly conclude agreements for specific periods with other entrepreneurs with whom you cooperate regarding the mutual allocation of shared costs but are using a different allocation formula, we would like to draw your attention that the adjustment of the allocation formula is in principle only possible if the composition of the cooperating parties' changes.

Real Estate rental income

Real estate entrepreneurs are advised to closely monitor to which extent they are engaged in commercial rental of units and spaces versus long-term rental for residential purposes. It is advisable to make a distinction between these two types, because of the different turnover tax consequences resulting from each activity:

- Commercial lease is taxed with turnover tax;*
- In case of lease for habitation, it can be permanent habitation or short-term lease. If it concerns permanent habitation, i.e. habitation for at least one year, an exemption of turnover tax can be applicable. On the other hand, if it concerns short-term lease, the rental income will in principle be subject to turnover tax.*

Personal income tax

Private Entrepreneurs

If you are an entrepreneur for personal income tax purposes or if you have a Sole Proprietorship (in Dutch: eenmanszaak), please also consider some of the items in the above paragraph on Profit tax as these may also apply to you in your personal income tax position.

Deductions

It is possible to deduct certain expenses from the taxable income, resulting in a lower levy of personal income tax. Some examples are:

- Donations to certain organizations, such as cultural and religious institutions. These reduce your taxable income with a maximum of 3% of the income, provided the applicable requirements are met;*

- *Certain expenses related to your own home that may reduce your taxable income, such as financing costs (maximum of NAf. 27,500);*
- *Interest paid on personal loans which can reduce your taxable income for a maximum of NAf. 2,500;*
- *Interest paid and debt pay-off for loans taken out for the financing of studies.*

If you incurred any deductible costs and/or deductible gifts, please make sure to keep invoices and proof of payment, since this documentation is required.

Reduced or 0% tax rate If you are looking for possibilities to let your savings grow in a tax-friendly manner, you may consider:

- *Buying local Treasury Bonds on which the interest received is exempt from personal income tax;*
- *Investing your capital in financial products with the goal to realize tax-free capital gains instead of an annual income;*
- *Savings with a local bank, whereby the interest received on local savings deposits or life insurance premiums will be taxed at the low personal income tax rate of 8.5%;*
- *Expanding your pension contributions and future pension income by contributing to tax-friendly annuity premiums.*

National Decree preventing double taxation

On October 18, 2022, the National Decree preventing double taxation (in Dutch: Landsbesluit voorkoming van dubbele belasting) was published. This national decree, containing general measures, implements article 58 of the General National Ordinance National taxes (in Dutch: Algemene landsverordening Landsbelastingen) and establishes further rules regarding the prevention of double taxation. The national decree is a unilateral regulation for the avoidance of double taxation in situations where there is no provision for the avoidance of double taxation, for example through tax treaties. On the other hand, in double tax treaties reference is sometimes made to this national decree for the manner in which the tax relief is granted in Curaçao.

The National Decree applies to:

- a. personal income tax: for all years for which the assessment has not yet been irrevocably established;*
- b. wage tax: with effect as of January 1, 2023;*
- c. profit tax: for all financial years beginning on or after January 1, 2020;*
- d. inheritance tax: for all inheritances and gifts outstanding on or after the effective date of this decree and for all years for which the assessment has not yet been irrevocably determined.*

Personal income tax

The main rule of the decree is that a domestic taxpayer is exempt from personal income tax in respect of foreign income. The decree defines what qualifies as foreign income. It includes, in principle and among others;

- (i) net income derived from a permanent establishment located within the territory of another state;*

*(ii) net income derived from employment exercised within the territory of another state*2*

(iii) net income derived from the function of the director or supervisory director exercised within the territory of another state;

(iv) net income derived from immovable property located within the territory of another state;

(v) net income derived from shares of an enterprise whose management is located within the territory of another state;

(vi) net income derived from periodical payments and benefits in kind under a public law arrangement at the expense of the other state established under a public law legal entity or by such a legal entity established fund.

A condition for granting the exemptions is that the income is subject to a tax on profits or income in the other state. Subject to tax does not imply that the tax must have actually been paid. Labor performed for less than 30 days within the territory of another state will only be considered to be subject to a tax on income in that other state if it appears that the tax has actually been paid. The amount of the exemption is determined by the so-called proportionality fraction.

Dividends, interest, and royalties

The decree provides a credit mechanism for foreign (withholding) tax on dividends, interest, and royalties. Because the exemption method prevails over the credit method under the decree, no credit is given for foreign (withholding) tax on dividends, interest, and royalties if they are part of the revenues of a permanent establishment located within the territory of another state. These are already exempt under an earlier provision.

*2 There are various requirements and specifications for the employment to qualify as such. Please take these requirements and specifications into account.

Wage tax

A Curaçao-based employer must withhold wage tax from all wages paid, regardless of where the labor was performed. However, income from labor exercised within the territory of another state is exempt from personal income tax in Curaçao if it is subject to a tax on income in the other state. Withholding wage tax in this situation would result in the remittance of tax that would later have to be returned. The decree, therefore, provides that the employee is exempt from wage tax in the specific cases mentioned in the national decree.

Profit tax

Income from immovable property

The decree contains a provision under which a domestic taxpayer will be exempt from Curaçao profit tax in respect of income from immovable property, not held within the context of a material enterprise, located within the territory of another state provided that such income is subject to tax in that other state. The amount of the exemption is determined by the proportionality fraction. The exemption cannot exceed the amount of tax that would have been due without the application of the decree.

Income from domestic enterprise

The decree includes a provision under which domestic taxpayers will receive a credit for foreign (withholding) tax related to profits from domestic enterprises. Under the credit method, Curaçao fully includes the domestic profit components in the taxable amount. It then reduces the profit tax by the tax paid abroad (1st limit) or by the profit tax levied on the profit components taxed abroad, whichever is lower (2nd limit).

Inheritance tax

The decree contains a credit mechanism for the tax levied in another state on inheritances or gifts acquired from a Curaçao resident. The credit only applies to so-called situs goods. Which goods qualify as situs goods is restrictively defined. The credit amounts the tax paid abroad (1st limit) or the tax levied on the components of the acquisition taxed abroad (2nd limit), whichever is lower. The credit cannot exceed the amount of tax that would have been due without the application of the decree.

Learn More

We trust that this information is useful to you. If you need more information or guidance, do not hesitate to contact us.



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