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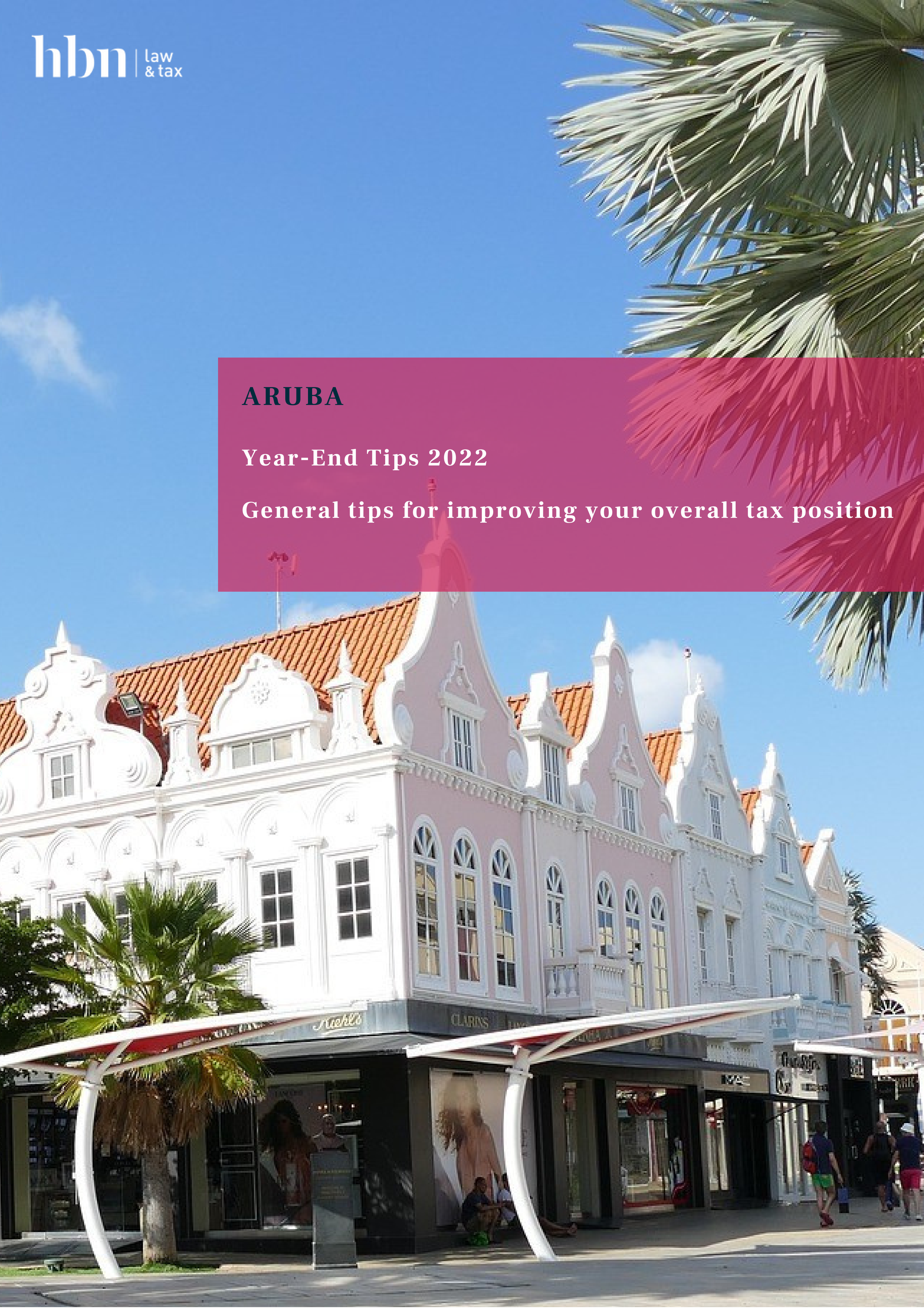


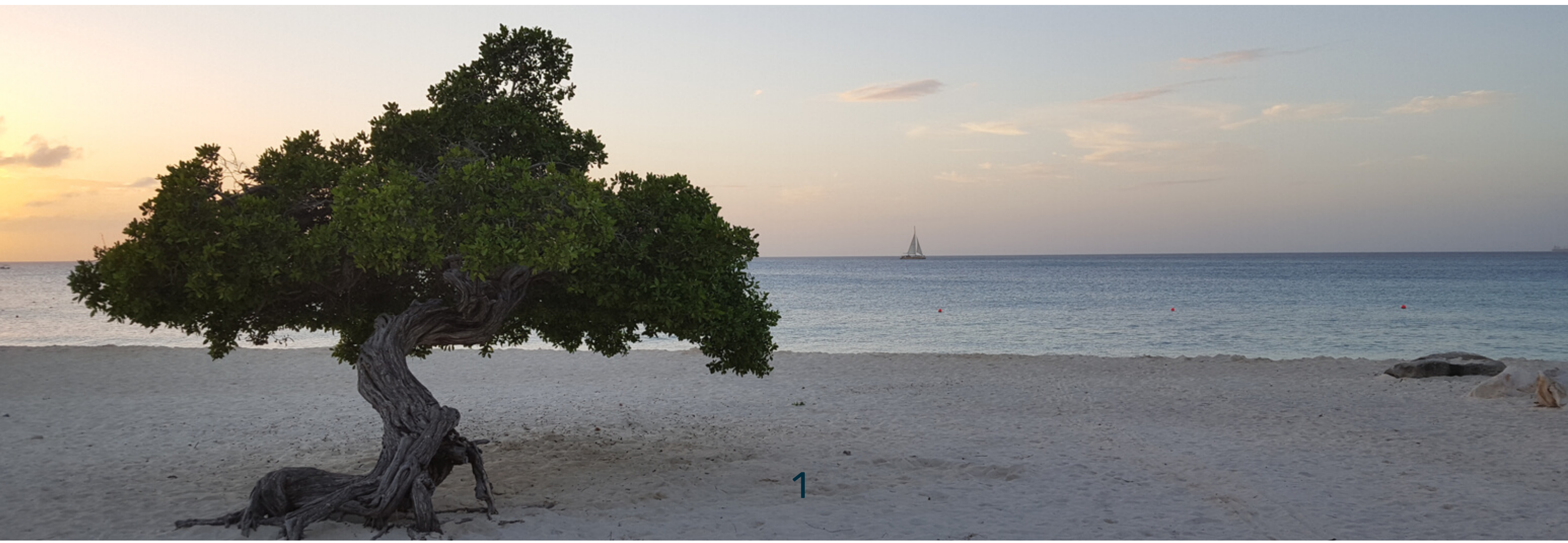
ARUBA

Year-End Tips 2022

General tips for improving your overall tax position

Preface

With the end of the year fast approaching, we would like to take this opportunity to provide you with some general information on potential tax savings that can be implemented before the end of the year.



Profit tax - Tax provisions

As a general rule, deductible expenses should be allocated to the year in which they are incurred. In the case of large projects or periodic not-annually returning costs, the costs incurred may not be in line with the business activities in the financial year to which the costs apply. Under certain conditions, a tax provision may be created for future expenditures arising from business activities in previous years for tax purposes.
If you expect expenses in the coming years (e.g. large maintenance costs), it can be examined whether a provision on the fiscal balance sheet can be created. This will lead to an allocation of costs in earlier years and therefore a lower taxable profit in those years.

Depreciation and revaluation of assets

Any assets used within the enterprise, excluding stock parts, should be capitalized on the tax balance sheet, and depreciated over time in accordance with the applicable rules. The depreciation rate depends on the (economic) life span of the assets and the residual value at the end of the life span.
Under certain circumstances, it is possible to revalue assets or increase depreciation, for example in the event of bad debts or lower prices. Such revaluation or depreciation may be tax deductible.
Optimizing depreciation rates and the valuation of your assets can lead to a lower taxable profit. The tax plan 2023 has proposed to limit the depreciation of real estate or buildings (including the ground and all appurtenances) to the base value of the property, which will be 50% of the value for ground tax purposes.

Investment deduction

When a company invests more than Afl 5,000 in assets in 2021, 6% (10% according to the tax plan 2023) of the eligible investments are (additionally) deductible from the taxable profit.
If your eligible investments in 2022 are below Afl 5,000, it may be considered to make additional qualifying investments before the end of the year to meet the threshold.

Carry forward losses

A tax loss can be carried forward over five consecutive years and deducted from taxable profit in those years. After five years, the losses are no longer deductible from the taxable profit.
If you still have existing carry-forward losses, see if they can be carried over to 2023. If not, you may need to examine whether (re)structuring options are available to prevent these tax losses from lapsing.
Please note that the carry-forward losses incurred in the tax years 2020 up to and including 2022 can be compensated for seven years.

Substance Requirements Special Purpose Vehicles

As of January 1, 2019, Aruba companies that have chosen the special tax regime for transparent companies, exempt companies, and IPC companies are subject to substance requirements. The substance requirements depend on the activities carried out and must be continuously complied with. From 1 January 2022, the transitional period for transparent companies that existed on 1 January 2019 will no longer apply, the grandfathering period for existing exempt companies has ended on 1 July 2021 and the grandfathering rule for IPC companies will end on 1 January 2023.

If your company has opted for a special tax regime, see what substance requirements apply and whether they are being met to avoid losing the tax status.

The tax plan 2023 proposed to abolish the special tax regime of the IPC companies with a grandfathering rule applicable until the last day of the financial year starting before January 1, 2026.

Introduction Book 2 of the Civil Code – abolition of the AVV

As of 1 January 2021, it is no longer possible to establish an Aruba Vrijgestelde Vennootschap ("AVV"). Any AVV that has not been dissolved or converted before 1 January 2024, will be dissolved by operation of law. Please note that the AVV is a specific legal entity and is fiscally different from the exempt company regime for tax purposes. A converted AVV can still apply for the exempt company status for tax purposes.
If you are a shareholder or director of an AVV, we advise you to ensure you have a plan to convert your entity before January 1, 2024.

Participation exemption

Income relating to subsidiaries (e.g. dividends and capital gains) is exempt if the participation exemption applies.
The participation exemption applies to all participations in local entities. In the case of foreign participations, the participation exemption applies when the participation (i) is not held as a passive investment and (ii) is subject to income tax.

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

Country-by-Country Reporting

Entities based in Aruba that are part of a multinational group with a consolidated revenue of Afl. 100 million or more must prepare annual Country-by-Country Reporting documentation consisting of a Master file and one or more Local Files. In addition, a notification must be submitted to the tax authorities prior to the financial year. A Country-by-Country Report (CbCR) must also be submitted if the consolidated income of the multinational group exceeds Afl. 1.5 billion. Check that your documentation is up to date by country and that the required documents and notices have been submitted to avoid fines of up to Afl 100.000.

Transfer Pricing

Keep in mind that if a company is part of a consolidated group, it must provide documentation showing that the intercompany transactions are handled on an "at arm's length" basis. Make sure all your transfer pricing documentation is up-to-date and shows all intercompany transactions to avoid additional reviews and penalties.

Gifts

Gifts, which do not qualify as business expenses, are deductible up to an amount of Afl. 50,000 if made to the church, charitable, sports, cultural, scientific, and (registered) public benefit organizations. If you have made deductible donations, keep the proof of payment to ensure that the gift is deducted from taxable profits.

Wage tax

Under certain circumstances, it is possible to provide tax-free expense allowances to employees. Examples of these expenses are:
– telephone allowance
– travel allowance
– car and representation expenses

For the tax years, 2020 up to and including 2022 any costs incurred by an employer for the study and education of their staff will allow for an additional study allowance deduction of 200% in the profit tax or income tax of the employer.

Optimizing the cost reimbursements within the conditions laid down in the tax law can lead to significant tax savings.

Benefits in kind Valuation

When an employer provides benefits in kind, these benefits are considered taxable wages.

However, under certain circumstances, the prescribed method of calculating the benefit of using certain business assets, such as a car or a house, or even a business meal, can lead to tax savings for the employer and employee.

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

Expat Ruling and Administration

Additional tax-free allowances and other benefits are available to employees who have not worked in Aruba for a period of at least 5 years and will earn at least Afl. 150,000 per year.

These benefits include:
– tax-free benefits in kind of up to Afl. 15,000 per year.
– tax-free allowance for school fees up to Afl. 25.000 per child per year.
– tax-free allowances for house rent up to Afl 2.500 per month.
The employer and employee can also agree on a net salary arrangement. The wage tax is then calculated on a net salary basis and not the gross salary.
Applying for the ex-pat ruling can enable a more competitive offer to potential candidates from abroad.

Wage Tax – Market Salary

The tax plan 2023 proposed to incorporate an obligation for any employer to provide an employee holding a major shareholding in their employer to take a market salary into account.

Income Tax - Deductible costs for the main residence

The cost of any interest on loans for the main residence is deductible for income tax purposes up to an amount of Afl 40,000 per year.

Cost Deduction for Student Finance

The interest, costs, and repayment of student loans are deductible up to an amount of Afl.10,000 per year for a period of 10 years.

BBO/BAVP/BAZV - Fiscal Unity Requests

On request, a subsidiary and parent company that are taxable entities for BBO/BAVP/BAZV purposes can be treated as a fiscal unity. Such a unit is treated as a single taxable entity and intercompany transactions are ignored for BBO/BAVP/BAZV purposes.
Opting for a fiscal unity for BBO/BAVP/BAZV purposes can lead to tax savings on intercompany transactions and lower compliance costs.

Refunds on BBO/BAVP/BAZV from bad debts and discounts

Keep in mind that the BBO/BAVP/BAZV can be refunded on invoices that have not been (fully) paid and that are not paid in full, as well as with regard to discounts on invoices.
It is important to check before the end of the year whether a refund has been requested for all discounted invoices and bad debts.

Rate increase of the BBO

The government of Aruba announced in 2022 they would implement a major tax reform as of 1 January 2023, which would include the introduction of the value-added tax (VAT). However, the government has more recently announced that the introduction of VAT has been postponed, and instead has proposed in the tax plan 2023 to increase the rate of the BBO will be increased by 1 percent as per January 1, 2023. Furthermore, they have announced that as per June 1, 2023 they will introduce a BBO/BAVP/BAZV on the import of goods with a refund of the tax imposed upon import by entrepreneurs of trade goods, albeit this introduction has yet to be incorporated in the tax plan 2023.

Please note that no legislation has yet been provided on these measures per January 1, 2023, and June 1, 2023, but we do advise you to take note of these measures and ensure your administration is able to comply with the proposed changes.

Request for the small business scheme for 2023

The small business scheme is regulated in Article 14a of the National Ordinance on business turnover and additional provisions for PPP projects and Article 15c of the National Ordinance on the zoning levy AZV and applies from 1 January 2019.

In short, the scheme means that the 'small entrepreneur' who is eligible for this scheme does not have to pay the BBO, BAVP, and BAZV in one year: the entrepreneur receives an exemption for this. In this case, the entrepreneur makes a declaration once a year about the turnover that he/she has achieved in the year for which the exemption has been granted.

To be eligible for the small business scheme, the following conditions must be met (in short):
-The entrepreneur is a natural person and lives in Aruba or is located in Aruba or has a permanent establishment in Aruba.
-The natural person in question is the owner of a company (sole proprietorship).
-The entrepreneur can plausibly demonstrate that his/her business turnover in the calendar year will be Afl. 84,000 or less (if the entrepreneur has more than one business or exercises more than one profession, the companies or professions will be taken into account jointly for the purposes of this regulation).
-The entrepreneur can prove that his/her business turnover in the past year was Afl. 84,000 or less (if the entrepreneur has more than one business or exercises more than one profession, the companies or professions are taken into account jointly for the purposes of this regulation).

The small business scheme is not granted if the conditions are not met and in the cases of exploiting an asset to derive income from it on a permanent basis (for example, renting out a property that does not serve as the tenant's main residence), as explained on the website of the tax authorities.

In the tax plan 2023, the government has proposed that the small business exemption will be allowed for entrepreneurs with a business turnover in the calendar year of less than Afl. 50.000.

Income Tax – Excessive Loans

The tax plan 2023 proposes that any Director of a company who is also a major shareholder as defined in article 11 of the National Ordinance Income Tax (more than 25% of the shares or profits sharing rights) will be deemed to have received a dividend from their shareholding if the total amount of outstanding loans received from the company by the director and spouse exceed the amount of Afl. 500,000. The excess amount is deemed to be a dividend and taxable income against a tax rate of 25%.

It is therefore important to ensure that as per January 1, 2023, the loans received from the company are less than Afl. 500.000 to avoid additional income tax assessments in 2023.

Profit Tax – Interest Deductions

The current limitation of deduction of interest is extended to include further limitations:
The limitation of deduction of interest is also extended to individuals and is no longer limited to interest payments made to entities;
Parties are deemed to be affiliated (and thus the interest deduction can be limited) when one party holds an interest, directly or indirectly, in another of at least 5% (currently 33.33%).

The affiliation through individuals includes also interests held by the spouse, children, and anyone related in the first or second degree;
The exemption of the limitation for interest paid to entities listed on a stock exchange will be abolished;
The possibility to deduct interest payments to the amount of 75% if payments are made to a company that is subject to at least 15% profit tax will be abolished.

Income Tax – Self-Administered Pension Plans

The tax plan 2023 proposes to abolish the possibility for self-administered pension plans as per January 1, 2023. Pension plans can only be insured by Collective Business Pension Fund or insurance companies either in Aruba or in the Kingdom of the Netherlands (when specifically approved by the Minister of Finance).

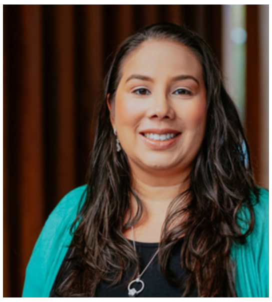
In anticipation of these changes, pension buy-outs will be taxed upon request at a special rate of 15% instead of the regular fixed rate in the personal income tax for pension buy-outs of 25%, therefore leading to a tax saving of 10%. The buy-out will have to be paid out and the taxes should be withheld and paid before the end of the year 2022. After January 1, 2023, any pension buy-out will be taxed against the regular progressive tax rates.

Learn More

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

Jorik Julsing
jorik.julsing@hbnlawtax.com

Caya Dr. J.E.M. Arends 13,
Unit 2
Oranjestad, Aruba
+(297) 588 60 60



Indrah Maduro
indrah.maduro@hbnlawtax.com

Caya Dr. J.E.M. Arends 13,
Unit 2
Oranjestad, Aruba
+(297) 588 60 60