

First of all, we wish you a happy, healthy, and successful 2011. We hope that the economy will continue to recover, and that you may reap the harvest thereof.



In our Newsletter of September 2010, we brought the Social Dialogue Protocol to your attention. Meanwhile, Parliament passed a number of legislative bills, which came into effect on January 1, 2011. In this Newsletter, we will discuss some topics in more detail. In addition, we will briefly discuss the administrative obligations and inform you of the consequences of the 'BBO' [*turnover tax*] on claims belonging to your operating assets for more than two years.

Investment allowance

In 2011 and 2012, an investment allowance can be claimed, in principle, if the investments meet the following criteria:

- the investment in operating assets must exceed Afl. 5,000;
- the operating asset must originate from (be purchased at) an enterprises domiciled in Aruba.

Even if the above conditions are met, it does not automatically mean that an investment allowance can be claimed. For a number of operating assets are excluded from this regulation. Thus, for example, no investment allowance can be claimed for the purchase of property mainly (70% or more) intended to be leased out.

The investment allowance amounts to 6% and can only be claimed in the year of making the investment.

Should you have specific questions about the application of the investment allowance, please contact Henri Rajan @ henri@catcaruba.com and/or Mireille de Miranda @ mireille@catcaruba.com of our Tax & Legal Department.

Gift allowance

The maximum gift allowance as per January 1, 2011 amounts to Afl. 50,000, providing that the gifts have been made to religious, charitable, cultural, scientific, and public service institutions domiciled in Aruba and designated by Ministerial Regulation. At present, it concerns the following institutions:

- Animal Rights Aruba
- Aruba Way Foundation
- Centro Juvenil Washington
- Aruban Olympic Committee
- Fundacion Arubano di Esnan Visualmente Incapacita
- Fundacion Arubano pa e Invalidonan

- Fundacion Centro pa nos Grandinan
- Fundacion Contra Abuso Sexual Di Menor Aruba
- Fundacion Diabetico Arubano
- Fundacion Guia Mi;
- Fundacion pa Hende Muhe den Dificultad
- Fundacion pa nos Muchanan
- The Netherlands Red Cross, Aruba division
- Kiwanis Club of Palm Beach
- Koningin Wilhelmina Fonds Aruba
- Mgr. A. v/d Veen Zeppenfeldt Stichting
- Quota International Aruba
- Stichting Adopt an Addict
- Stichting Algemene Bejaardenzorg Aruba
- Stichting Ambiente Feliz
- Stichting Arubaanse Kinder- en Jeugdtelefoon
- Stichting Ban Uni Man Pa Nos Muchanan
- Stichting Casa Cuna Progresá
- Stichting Kinderhuis Imeldahof
- Teen Challenge Foundation Aruba
- Union di Organisacionnan Cultural
- Wit Gele Kruis Aruba
- YMCA of Aruba

Moreover, an amendment was introduced during the parliamentary discussion of this topic to have the gift allowance also apply to sports associations. The Minister of Finance also indicated to designate more institutions to which the gift allowance will apply.

Small income allowance

We point out that, as per January 1, 2011, your payroll has changed in as far the incomes from the minimum wages up to Afl. 2,500 are concerned. For, on January 1, 2011, a small income allowance for the lower incomes was introduced. The maximum allowance amounts to Afl. 75.00 per month. The employer may set off the small income allowance paid against the wage tax to be paid. If the wage tax is insufficient, the small income allowance paid may be set off

against the 'AOW/AWW' [*General Old Age Insurance/General Widows' and Orphans' Insurance*] contributions, and, if still no complete setoff has taken place, the remainder may be set off against the 'AZV' [*General Health Insurance*] contributions. If the employer fails to comply with this, a penalty may be imposed.

The amount of the repair allowance can be determined as follows:

| Income per month | But less than | The repair allowance amounts to |
|------------------|---------------|---------------------------------|
| 1,542.90 | 1,550.00 | 75.00 |
| 1,550.00 | 1,650.00 | 70.00 |
| 1,650.00 | 1,750.00 | 65.00 |
| 1,750.00 | 1,850.00 | 60.00 |
| 1,850.00 | 1,950.00 | 55.00 |
| 1,950.00 | 2,050.00 | 50.00 |
| 2,050.00 | 2,150.00 | 45.00 |
| 2,150.00 | 2,250.00 | 40.00 |
| 2,250.00 | 2,350.00 | 35.00 |
| 2,350.00 | 2,450.00 | 30.00 |
| 2,450.00 | 2,500.01 | 25.00 |

You can rely on it that our Payroll Department will process the small income allowance correctly. Should you still have questions about the small income allowance, please contact Henri Rajan and/or Mireille de Miranda of the Tax & Legal Department. Of course, you may also contact Rachelle Maria, Angie Maduro, or Zulema Farro of the Payroll Department.

Import and excise duties

As per January 1, 2011, the import and excise duties on the following products have been adjusted:

- the excise duties on beer have been increased per hectoliter from Afl. 333 to Afl. 353;

- the excise duties on liquor have been increased per hectoliter from Afl. 1,500 to Afl. 1,844;
- the excise duties on cigarettes have been increased per 20 cigarettes from Afl. 3.25 to 4.44;
- the import duties on stout beer have been increased per hectoliter from Afl. 125 to Afl. 169;
- the excise duties on sparkling wines have been increased per hectoliter from Afl. 455 to Afl. 525;
- the excise duties on other wines have been increased per hectoliter from Afl. 350 to Afl. 400;
- the import duties on wind turbines, solar panels, and passenger vehicles propelled by an electromotor have been reduced to 2%;
- the import duties rate on "ordinary" passenger vehicles has been adjusted as follows:
 - for vehicles with a CIF value ranging between Afl. 10,000 and Afl. 20,000, the rate amounts to 30% instead of 40%;
 - for vehicles with a CIF value ranging between Afl. 20,000 and Afl. 30,000, the rate amounts to 40% instead of 50%;
 - for vehicles with a CIF value exceeding Afl. 30,000, the rate amounts to 50%;
- the import duties on hybrid vehicles amounts to 12%.

BBO

As you are aware, BBO becomes payable at the moment or moments at which the payment is received in whole or in part (cash-based system). In derogation hereof, the invoice-based system may also be opted for, meaning that BBO becomes payable at the moment at which the invoice is issued. We point out that, when applying the cash-based system, a claim arisen on account of the supply of a product or the provision of a service is deemed having been received, after it has belonged to the operating assets of an entrepreneur for more than 2 years. The following may serve as an example:

Example

On January 12, 2009, entrepreneur A sold office furniture for Afl. 1,500. The buyer would repay the purchase amount in 2 years. However, due to the economic crisis, the buyer still has not made any repayment, and, by the looks of it, this also is not likely to occur. The above leads to it that the claim belongs 2 years to the operating assets of entrepreneur A on January 12, 2011, so that he will have to pay BBO in respect of Afl. 1,500, or $1.5\% \times \text{Afl. } 1,500 = \text{Afl. } 22.50$. Entrepreneur A applies the cash-based system, for that matter.

BBO could be avoided, if the claim is written off on account of permanent uncollectibility. The entrepreneur will then have to prove which efforts he made to collect the amount. The claim will then be depreciated. If the invoice-based system had been applied, BBO would have been paid in 2009 already. If the claim becomes uncollectible in 2011, entrepreneur A may request the Inspector for a BBO refund. Once again, the entrepreneur will have to prove which efforts he made to collect the amount.

Therefore, you should take into account that, for BBO purposes, outstanding claims of two years or older are deemed having been received in the year 2011. If you still have claims dating from 2007 and/or 2008, we advise you to pay BBO as yet in respect of these claims, unless these claims can be considered uncollectible.

Tax audits

At the beginning of the New Year, it is wise to discuss briefly the requirements that can be set for your financial records, so that both you and others, such as the Tax Department, have a proper insight. For it regularly occurs that fraud is being committed, without the entrepreneur being directly aware thereof, whereas this signals could have been detected earlier, had there been question of reliable and updated financial records. In addition, correct financial records are of importance to an orderly course of an audit conducted by audit officers of the Tax Department. For it regularly occurs that these audit officers try to reject the financial records, because they are of the opinion that they do not meet the requirements that can be set.

This could have annoying consequences. Given the above, we will briefly discuss the requirements that can be set for your financial records.

Obligations relating to taxation

The General State Ordinance National Taxes (hereinafter: 'ALB') contains the obligations in relating to taxation. Below we will briefly discuss the obligation to provide information and the obligation to keep financial records.

Obligation to provide information

Article 45 of the ALB stipulates that each and everyone is obligated to provide the Inspector with data and information that can be important to taxation. The data carriers or the contents thereof, the inspection of which may be relevant to the determination of the facts, should also be provided to the Inspector.

This information provision is very broad, because it only requires that the data requested *can* be relevant to taxation. However, the Inspector must be able to make it plausible that a relationship exists between the information and the taxation. If questions are asked, and it is not immediately clear what the relationship with taxation is, it is advisable to ask the Inspector to specify the relevancy.

Obligation to keep financial records

Article 48 of the ALB contains obligations for persons obligated to keep financial records, including:

- natural persons conducting a business or exercising a profession;
- natural persons obligated to withhold;
- bodies (corporations, foundations, and the like).

The financial records must be accessible, so that all data that may be important to taxation, as well as rights and obligations can be derived from them (to make an audit within a reasonable period possible).

Therefore, it is important that each enterprise, in whatever form, disposes of proper financial records.

All information about your enterprise, which you or your consultant record in writing or electronically, belongs to your financial records. However, you do not have to submit tax advices from your consultant to the Inspector.

The following elements of your financial records are considered basic information:

- the cash and bank book;
- the general ledger/journal entries;
- the accounts receivable and accounts payable records;
- the inventory records;
- the purchase and sale records;
- the payroll records (payroll, wage statements, and summary statements of wages and salaries);
- the extended trial balances, including the underlying journal entries and the reconciliation with the annual report and accounts (bridging statements);
- the annual report and accounts with enclosures/auditor's reports.

If you conduct your enterprise in the form of a corporation ('N.V.'), the following documents also belong to your financial records:

- minutes of shareholders' meetings;
- minutes of board meetings;
- management letters.

Within the framework of the levy of wage tax, the Inspector may inquire after the identity of employees. By establishing the identity of the persons on the shop floor, the employer's payroll records can be audited. It mainly concerns the control of persons working for undeclared payment. Your payroll records must contain the following information about the employees:

- name, address, and domicile;
- tax registration number;
- identity as stated in the payroll records;
- salary/wage statement;

- allowances (in cash or in kind);
- signed employee statements;
- proof of identity (copy **valid** passport or driver's license).

Obligation to retain financial records

Each entrepreneur is legally obligated to retain his financial records for a period of 10 years. Retaining a file in printed form only is not in compliance with the obligation to retain financial records. All computer programs and files need to be retained. In principle, the Tax Department cannot request to be allowed inspection of information that has been retained for 10 years or more. The obligation to retain and keep financial records does apply to all legal entities and entrepreneurs, but not to natural persons not conducting an enterprise or exercising a profession.

Reversal burden of proof

Not complying with the administrative obligations leads to it, in principle, that the Inspector will take the standpoint that the financial records do not meet the requirements that may be set. Consequently, the financial records can be rejected, meaning that the financial records do not offer a solid basis for determining your fiscal position. The consequence hereof is that the burden of proof is reversed. When rejecting the financial records, the Inspector will make his own calculation of the profit, which, in its opinion, does justice to the actual situation. It will then be up to the taxpayer to prove that the Inspector's calculation is contrary to reality. You will understand that this is not an enviable position.

If a person obligated to keep financial records no longer disposes of information, he will have to make it plausible that this is due to an event of force majeure. We point out that an event of force majeure will not easily be accepted, as a person obligated to keep financial records may be expected to take every precaution necessary to avoid the loss of (part of) his financial records. Therefore, it is

advisable to make a backup of all information belonging to your financial records.

In the above, we have discussed a number of topics to be taken into account in the new year.

We advise you to consult with your tax consultant in case of a tax audit, in order to be prepared for any questions the audit officer may ask you. At the beginning of the audit, it is advisable to indicate precisely whom the audit officer may ask questions (for instance, your consultants and a competent staff member). For the audit officer has to respect this, and it will prevent the audit officer from unnecessarily bothering your staff members.

Guidance tax audit/verification financial records

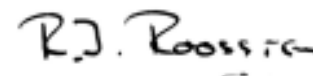
CATC has ample experience in guiding (tax) audits. If the Tax Department announces a tax audit, we advise you to contact our Tax & Legal Department.

CATC has the expertise to verify your financial records to determine whether they meet the requirements that can be set.

For this purpose, feel free to contact Sjamella Violenes @ sjamella@catcaruba.com (Accounting Department) and/or Henri Rajan @ henri@catcaruba.com (Tax & Legal).

We trust to have informed you sufficiently. Should you still have questions after reading this Newsletter, please do not hesitate to contact us at any time.

With kind regards,



Contacts:

Caribbean Accounting & Tax Consultants

J.E. Irausquin Boulevard 20-A

Postbus 98

Oranjestad, Aruba

Telefoon: (297) 527 5500

Fax: (297) 527 5555

Mail:

Algemeen: info@catcaruba.com

Tax and legal: taxandlegal@catcaruba.com

Accounting: reports@catcaruba.com

Payroll: payroll@catcaruba.com

Website: www.catcaruba.com or www.catcgroup.com

