Doing business in the Dutch Caribbean

A compilation of insider knowledge and advice, whether entering the market for the first time or growing your existing business

2013
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Foreword

This guide has been designed for those who may be considering the establishment of a business in the Dutch Caribbean. It concisely describes the investment climate and business conditions on the islands.

We sincerely hope the information contained in this guide will provide a general understanding for investors in assessing the advantages of doing business in the Dutch Caribbean.

All changes to the law and tax rates are acknowledged.

This guide is not intended to describe comprehensively business conditions in the Dutch Caribbean. Consequently, it is recommended that those seriously interested in further pursuing business opportunities seek qualified professional advice before making any decision.

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We feel that with the modernization of their tax regimes the Dutch Caribbean islands have created a strong basis for a successful financial service center new style.

General Information

The Dutch Caribbean islands consist of the Leeward Islands of Aruba, Bonaire and Curaçao near the coast of Venezuela and the Windward Islands of St. Maarten, Saba and St. Eustatius, about 100 miles east of Puerto Rico.

Since 1954 the islands formed an autonomous part of the Kingdom of the Netherlands as the Netherlands Antilles. In 1986 Aruba left the constellation of the Netherlands Antilles and became an autonomous part of the Kingdom of the Netherlands.

In 2010, the Netherlands Antilles were dissolved. The islands Curaçao and St. Maarten each acquired the status of autonomous country within the Kingdom of the Netherlands, comparable to the status of Aruba. The islands Bonaire, St. Eustatius and Saba have become a public body of the Netherlands. These islands are now known as the Caribbean Netherlands or the BES Islands.

The islands Aruba, Curaçao and St. Maarten each have their own democratically elected parliament. A governor, appointed by the Queen, represents the Crown.

The islands not only differ in size but also in economic structure. The main sources of income are from the oil refinery, transshipment, tourism, ship repair, international trade and distribution, and financial activities.

Due to the high service standards as well as special tax regulations, quite a large number of investment, holding, finance, royalty, real estate and shipping companies, and branches of reputable international banks and accounting firms have been established, mostly in Curaçao, but also in Aruba and St. Maarten. On November 30, 2000, the (former) Netherlands Antilles and Aruba have made a "first level commitment" to cooperate with the OECD to eliminate harmful tax practices.

In 2001 the (former) Netherlands Antilles revised its tax regime to part with the tax haven image and to revitalize its financial services industry. It was however of high importance to honor justified expectations of those companies already using the former offshore regime. For this reason a guarantee-ordinance confirms the offshore tax rates for qualifying companies in Curaçao and St. Maarten through the year 2019.

The tax regime of the islands is now characterized by a flat rate profit tax for all taxpayers, and incentives well known in OECD and EU countries such as a participation exemption, fiscal unity and merger. The islands have also complied with the OECD Global Forum requirements in implementing its international tax standard and as a result have been white listed.

The Court of First Instance and the Joint High Court still hear cases on the BES islands, even though they have become a public body of the Netherlands.

Political and Legal System

Political system

Aruba, Curaçao and St. Maarten form part of the Kingdom of the Netherlands. The form of government is a parliamentary democracy based on such underlying premises as freedom of association, right to form political parties, freedom of the press and freedom of speech.

The islands are politically stable entities in the Caribbean region, each island forming an autonomous state within the Dutch Kingdom.

Aruba, Curaçao and St. Maarten are fully responsible for the conduct of their domestic affairs. Defense and foreign affairs are within the province of the Government of the Kingdom of the Netherlands.

Bonaire, Saba and St. Eustatius, also known as the BES islands, each have an island council. The Island Governments are responsible for local affairs in each territory, and the Netherlands is responsible for areas such as taxation.

Legal system

The Judiciary system forms an integral part of the Kingdom of the Netherlands. Judges appointed by the Dutch sovereign serve the Court of First Instance, and the Joint High Court hears civil cases as well as criminal cases. All cases can ultimately be appealed to the Supreme Court of the Kingdom of the Netherlands, in The Hague. Numerous offices of reputable, world renowned law firms have been established on the Dutch Caribbean islands.
Money, banking and finance

General
The Dutch Caribbean islands have a well-developed banking system that plays a vital role in both local and international business on the islands. Most of these banks have international links, while branches of well-known European and American banks are established in Curaçao and/or Aruba. In our banking sector we identify local and international credit institutions.

Particularly noteworthy is that the financial services sector has sanctioned the efforts, both local and international, to prevent the banking system from being used for funds of criminal origin and has adopted the Statement of Principles, recommendations made by the International Committee on Banking Regulations and Supervisory Practices (The Basel Committee).

Anti-Money Laundering
In a further attempt to safeguard the integrity of the financial system of the Dutch Caribbean islands a series of new ordinances came into force with regard to penalization of money laundering, identification when rendering financial services and the reporting of unusual transactions. The islands each have a Reporting Center where any unusual transaction which is contemplated or has taken place must be reported by anyone who renders financial services as well as specific other businesses.

Investment institutions
The Central Bank of Aruba, the Central Bank of Curaçao and St. Maarten as well as the Central Bank of the Netherlands (with regard to the BES islands) (the Central Banks) have supervision authority over investment funds and any (legal) person who is an administrator of an investment fund on each island.

Trust service providers
The three Central Banks each have also the supervision authority over entities which provide trust services on each respective island.

Central bank
The ‘Bank van de Nederlandse Antillen’, now the Central Bank of Curaçao and St. Maarten, was established in 1828. The Central Bank of Aruba was established when Aruba became an autonomous country within the Kingdom. The Central Bank of the Netherlands became responsible with regard to the BES islands after the dissolution of the Netherlands Antilles. These Central Banks are responsible for control and regulation of the banking and insurance businesses on the respective islands. One of the most important objectives of the Central Bank of Aruba and the Central Bank of Curaçao and St. Maarten is to maintain the external stability of the Aruban and the Antillean guilder (for Curaçao and St. Maarten) and to take care of the efficient functioning of the financial system on the islands.

Local banking sector
The local credit institutions on each island, more specifically in Curaçao and Aruba, are well equipped with trust, insurance, and investment departments that provide local and international service. In the local banking sector operate the following types of credit institutions:
- Local general banks;
- Subsidiaries of foreign banks; and
- Branches of foreign banks.

Bank NV
The leading local credit institutions include:
- Aruba Bank NV
- Banco di Caribe NV
- Caribbean Mercantile Bank NV
- Giro Bank NV
- Maduro & Curiel’s Bank NV
- Orco Bank NV
- RBC Bank NV
- First Caribbean International Bank NV
- SFT Bank
- The Windward Islands Bank Ltd.
- The Bank of Nova Scotia

International banking sector
In the international banking sector operates the following types of credit institutions:
- Consolidated; and
- Non-consolidated

Consolidated international banks are international credit institutions which are established on one or more of the islands and, through their parent company, are subject to adequate consolidated supervision by a foreign supervisory authority.

The Central Banks act as the primary supervisory authority for the non-consolidated international banks.

The leading international credit institutions include:
- Banco Provincial S.A.
- Citibank Aruba NV
- Citco Banking Corporation NV
- DVB Bank America NV
- Exprinter International Bank NV
- ING Bank NV
- LAAD Americas NV
- MeesPierson (Curaçao) NV
- Mercantile Bank (Curaçao) NV
- NIB Capital Bank (NA) NV
- Rabobank Curaçao NV

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Aruba

Geography
The island of Aruba lies in the Southern Caribbean sea about 27 km (17 miles) north of Venezuela. The island’s total area is 179 square km (69 square miles). It is generally flat and is widely known for its sandy beaches.

History
Aruba was discovered by a Spanish navigator, Alonso de Ojeda, in 1499. In 1642 the island was captured by the Dutch. For a short period of time, between 1799 and 1816 the British Empire gained control. Since then the island again remained in the hands of the Dutch. After WWII Aruba, Curaçao, Bonaire, St. Maarten, Saba and St. Eustatius, together the (former) Netherlands Antilles, became an autonomous country of the Kingdom of the Netherlands. In 1986, Aruba seceded from the Netherlands Antilles and became a separate, autonomous member of the Kingdom of the Netherlands, under the Dutch crown.

Population
Aruba’s total population is approximately 102,000 from many nationalities. About 30% of the population is younger than age 20. Dutch is the official language, while English and Spanish are widely understood and spoken. The vernacular is Papiamento, a mixture of Portuguese, Spanish, Dutch and French.

The education system in Aruba, as in the other Dutch Caribbean islands, is based on the Dutch system, and the high standards applicable to institutions in the Netherlands are met by local schools. Literacy hovers around 98%.

Monetary system and currency
The monetary unit of Aruba is the Aruban guilder (AWG). Coin and currency are issued by the Central Government and circulated by the Central Bank of Aruba. The Central Bank is entrusted with the issuance of bank notes. The exchange rate for the Aruban guilder has been pegged to the U.S. dollar since December 12, 1971. That rate is at AWG 1.79 per U.S. dollar (USD). A foreign exchange commission of 1.3% is levied on certain payments by residents to non-residents. The official selling rates for other currencies are set daily on the basis of their rate of exchange with the U.S. dollar abroad.

Economy
Aruba enjoys one of the highest standards of living in the Caribbean region. About three quarters of the Aruban gross national product is earned through tourism or related activities. Most tourists are from Venezuela and the United States.

Aircraft registration
Aruba is a category 1 country for the registration of aircraft’s, since there are high standards in place which operators must comply with when it comes to evaluation of the aircraft airworthiness, and flight crew. When an aircraft is registered under the Aruban nationality it has the luxury of landing virtually anywhere. This is why the registration of aircraft under Aruban nationality is very favorable, especially for companies that lease aircraft to third parties as well as for financiers.

Besides the favorable aspects that the Aruban nationality offers, Aruba has also a favorable tax regime in place for this type of business. The Aruba Exempt Corporation (AVV) and/or the transparent company is commonly used as a special purpose vehicle for the ownership or lease of aircraft’s and subsequently the registration thereof in the Aruban Nationality Register.

Transport and Communication

Port facilities
Aruba receives on average 550,000 tourists visiting on between 300 and 350 cruise ships. The cruise terminal is attractively located close to the city center.

Airport
Aruba has a modern and international airport which can handle all types of aircraft, including Boeing 747’s. The airport receives almost one million passengers, including tourists, per year. There are daily flights to and from Europe, the U.S., South and Central America and the other Caribbean islands. Various airlines maintain extensive air transportation facilities, both for passengers and air freight.

Telecommunications
Aruba has an efficient and reliable communications infrastructure including direct satellite connections. Additional services include mobile communications (gsm), digital leased lines and ISDN.
Business organization and reporting requirements

Legal form of enterprise
Corporate law is based on Dutch corporate law.

The (public limited liability) corporation (in the Dutch language: ‘de Naamloze Vennootschap’, abbreviated as ‘NV’) is a corporate body with shareholders, and is governed by the corporate law and its articles of association. The NV is the most common legal vehicle for business operations. In 2008, Aruba introduced a limited liability company (Vennootschap met beperkte aansprakelijkheid or VBA). Although the VBA is a flexible and modern legal entity it is still not popular for business establishment in Aruba.

Procedure
A corporation is established by the execution of a notarial deed. Two founders are required to incorporate an NV. For the VBA, only one founder is required.

Characteristics of the NV and VBA

Founders
Non residents can establish an NV by proxy.

A corporation must have one or more ‘managing directors’, who can be either an individual or a legal entity. At least one managing director must be a resident of, or domiciled in, the island where the corporation is established.

The powers of the management board are set out in the law and in the articles of incorporation. A corporation may issue non voting shares.

In practice a corporation in the international financial services industry is incorporated by a local trust office. After incorporation the shares will be transferred to the beneficial owner.

Capital requirements
The corporation has to issue at least one share with any nominal value. The equity is not allowed to be negative during the period of existence.

Shares
Different classes of shares may be issued, for variations in voting rights, participation in profit distributions and in entitlement to a balance after liquidation. Only registered shares may be issued.

Registered shares
As of February 1, 2012, Aruban corporate entities (NV’s, AVV’s and VBA’s) can only have registered shares. Entities incorporated prior to this date and who have bearer shares should convert these into registered shares prior to February 1, 2015.

Board
The Board may be structured on the two-tier civil law model. In the two-tier model the Managing Board may be supervised by a separate Supervisory Board.

Transforming into another legal entity
It is possible for a foreign entity to be transformed into an NV if the law governing that entity does not oppose this. The reverse is also possible.

Licenses
The most important licenses required are the following:

- Business license from the Executive Council of the respective islands permitting the corporation to act on the island;
- Director’s license for each managing director (the law does not limit the number of managing directors); in addition, managing directors need a residence and a working permit to work. This requirement applies to all expatriates.
- Foreign exchange license, which exempts the corporation from foreign exchange control. This license is issued by the Central Banks.

Time required and costs
The time required to complete the incorporation and to obtain the necessary permit licenses varies. Depending on the complexity of the legal institution of the entity, an NV or VBA can be incorporated in about two weeks. The costs of incorporation, including licenses range between USD 5,000 and USD 6,000.

Accounting requirements
There are no specific accounting requirements. It is general practice that when the accounts for international corporations are set up, the requirements that are utilized by accountants are those that are normally applied in the country of the parent corporation. There are however certain standards for the compilation of the financial statements.

Reporting requirements
As of February 1, 2012 strict requirements on the compilation of financial statements of Aruban corporate entities (NV’s, AVV’s and VBA’s) have been implemented. For VBA these requirements already existed prior to abovementioned date.

Each shareholder is entitled to inspect the financial statements within a period of two years.
Employment regulations

General considerations
The labor force on Aruba is estimated at approximately 55,000. There are statutory minimum wages for workers aged 18 years and older. The present monthly entry level minimum wages, by category (not including benefits) in 2013, based on a 40 hour workweek is:

<table>
<thead>
<tr>
<th>In AWG</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aruba</td>
<td>1,636.70</td>
</tr>
</tbody>
</table>

Actual wages paid are often higher than the minimum. The standard legal working hours are normally 8 per day and 40 per week. At least 15 working days’ annual vacation must be given with pay, and 10 paid public holidays are also granted.

Social security’s premiums vary between 25% and 28% (including health insurance, old age benefits, accident insurance, widows and orphans insurance), of which the employee pays approx. 6% and the employer pays up to 22%.

Organizations
Labor organization
Labor unions are generally well established and can be found in most companies. They are organized mainly on a basis of individual enterprises. Most unions are members of a local federation, while many are affiliated with international federations as well. Most workers belong to a union, although closed shops or enforced membership are prohibited by law. It is not common for representatives of workers to participate in the management of companies.

Employers’ organization
Several organizations serve the interest of local businesses:
- Aruba Trade and Industry Association (ATIA);
- Aruba Hotel and Tourism Association (AHTA).

Labor legislation
Collective labor agreements usually cover a period of two to three years, after which new terms are agreed upon for a similar period of time. The reliability provided by these contracts benefits both the employer and employee. In most cases there is a clause which provides for no strikes or lockouts during the contract period. All labor disputes where parties do not reach an agreement must be subjected to mediation. Parties may request intervention, or the mediator can ex-officio compel parties to accept mediation. The government has the authority to impose a ‘cooking off’ period.

Work permits
A residence permit is required for every foreigner who wants to become a resident of Aruba. An applicant for admission as a resident must, among other things, provide information on his application form on how he will support himself and accompanying dependents.

In addition to an admission permit, a foreigner who wants to exercise a profession or take up employment must also have a work permit. The work permit will only be granted if there are no suitable qualified persons available. Generally, a request for a work permit will only be taken into consideration if it is filed through a local employer who is willing to accept full responsibility for any possible expenses related to the employee.

Taxation

Introduction
Aruba, has the following taxes and levies:
- Profit tax (corporate income tax)
- Income tax (personal income tax)
- Wage tax (pay as you earn income tax)
- Dividend withholding tax
- Turnover tax (no VAT)
- Import duties
- Excise tax (on liquor, tobacco, perfume)
- Real property tax
- Stamp tax
- Inheritance and gift tax
- Property transfer tax
- Foreign exchange commission
- Tourist levy
- Travel promotion levy

Aruba does not have:
- Net wealth tax
- Withholding tax on interest
- Withholding tax on royalty payments
- Capital tax.

Between Aruba, Curacao, St. Maarten and the Netherlands exists a tax arrangement, the so called ‘Tax Regulation for the Kingdom’, the Belastingregeling voor het Koninkrijk or, abbreviated, the ‘BRK’. TIEAs have been signed with several countries, including Australia, Canada, Denmark, Mexico, Spain, Sweden, New Zealand and the United States. As a result, Aruba has been moved to the white list of the OECD Global Forum. The administration of tax law is carried out by inspectors of taxes, who are responsible to a director of taxes whose duty is to ensure the efficient functioning of the entire tax office. The basic law concerning corporate income tax is referred to as the Profit Tax Ordinance.

Profit tax
The following types of companies are subject to profit tax:
- (private) limited liability companies, limited partnerships meeting certain requirements, and other corporate bodies;
- Companies established abroad, of which its profits are derived from:
  - a permanent establishment;
  - real property;
  - and non commercial claims secured by a mortgage on real property.

The fiscal residence of a corporation is normally established where the effective management of a corporation is located, but if the legal form of a corporation is governed by the Aruban law, then its place of residency will be considered continuously to be in Aruba.

The profit tax rate is 28%. Losses may be carried forward for five years. The tax law does not provide for:
- Carry back of losses; or
- An unlimited carry forward of start up losses (except for a certain special regime).

For profits realized from the sale of assets, it is possible to create a so called ‘replacement reserve’. Replacements should in principle occur within four years.

Contributions to retirement or pension funds are tax deductible.

Profits generated by a permanent establishment in a foreign country are exempt.

Income derived from foreign real estate is also exempt.

Shipping and aviation companies are subject to a different and generally quite favorable tax treatment. The normal profit tax rate for international shipping and aviation activities for example is approximately 8%.
Doing business in the Dutch Caribbean

Participation exemption
Profits and losses derived from a qualifying participation are not included in the tax base (participation exemption).
A qualifying participation exists in case of shareholding or a holding of participation certificates in companies, associations, or foundations which carry on a business. If shares or participation certificates are held in a foreign entity, the participation exemption only applies if they are not held as an investment and the foreign entity is subject to a tax on profits. The exemption applies to dividends as well as to capital gains.

Fiscal unity
It is possible to form a fiscal unity. The fiscal unity article shows similarities to the current fiscal unity adhered to in the Netherlands. Advantages of this facility are that the recognition of inter company profits may be deferred and losses may be offset with profits of other companies within the fiscal unity. Aruban resident NVs holding at least 99% of the shares in other Aruban resident NVs can file a consolidated tax return (i.e. fiscal unity). In order to apply for this facility, a request must be filed with the Aruban Tax Authorities. Certain conditions must be met for the application of this regime, for instance the companies in the fiscal unity must be of the same tax regime. Standard conditions applicable to a fiscal unity have been published.

Dividend tax
A dividend withholding tax is levied on all (formal and non-formal) dividend distributions of Aruba-resident entities. The tax rate is 10%. The tax rate is reduced to 5% in case of dividends distributed to residents of another country within the Kingdom of the Netherlands who are subject to a profit tax rate of at least 5.5% or in case the shares of the distributing or the receiving company are for at least 50% listed at a qualified stock exchange. The tax rate is 0% in case the participation exemption applies.

Income tax
The following individuals are subject to income tax:
- Residents; and
- Non residents whom receive certain source income, such as:
  - Salary as managing director or member of a supervisory board of a resident company;
  - Income from real property located on Aruba, or
  - Dividend, and profits realized on the sale of shares, if the shareholder holds a substantial participation in the capital of a resident company.
A substantial participation exists if an individual holds, directly or indirectly, at least: 25% alone or together with spouse, children or brothers and sisters. Dividends and profits on the sale of shares forming a substantial participation are taxed at a flat rate of 25%.
The income tax rate is progressive. The maximum tax rate is 58.95%. For certain types of one time income, a special tax rate of 15% or 25% is available.
Interest received from savings accounts from local and international credit institutions are tax free.

Other significant taxes
Sales tax
In Aruba a sales tax is levied on the sale of products and services of 1.5%. Import and exports are exempt from sales tax. Import duties are levied on import of goods. The tariffs vary between 0%-57%.

Real property tax (land tax)
Real property tax is levied from a person who at the beginning of a year has the use of real property by virtue of any contractual right. The tax rate is 0.4% of the the registered value of the real estate minus a general exemption of AWG 60,000. If a real estate is not used or empty for more than 6 months in a year, a reduction in the ground tax due can be requested at the Tax Authorities.

Inheritance and gift tax
A tax is levied over:
- The increase in net wealth obtained as heir or legatee of a resident (Inheritance tax);
- The increase in net wealth obtained as a gift from a resident (Gift tax); and
- The value of local real property obtained as an heir or legatee or as a gift from a non resident. The tax rate is 8%.
The rate of the inheritance and gift tax is progressive and ranges from 2% to 24%, depending on the degree of kinship and the value obtained. For example, for the spouse, the children and grandchildren of the deceased, the maximum rate is 6.0%.

Property transfer tax
This tax is levied on the transfer of real property on Aruba. The transfer of shares in a company holding real property is not taxable. The rate is 3% or 6% and is levied on the fair market value.

Investment incentives
A number of investment incentives have been devised to stimulate prospective investors to start new business ventures. For all businesses the following fiscal incentives are available:
- Accelerated depreciation of business assets;
- Investment allowance of 6% for one year on all investments.
The investment allowance cannot be applied to certain investments (e.g. in land).
However, if the investments are alienated within 6 years after the year of the investment, a disinvestment addition should be included to the taxable income of the year of the disinvestment and the following year.

Access to foreign markets
Aruba’s participation in the Caribbean Basin Initiative (CBI) and its associate membership in the EC provide important benefits to South American and U.S. manufacturers, and their European and Far East counterparts. The trade agreement of the Overseas Countries and Territories (OCTs) with the EC offers prospects for a range of products which can be manufactured on Aruba using imported materials and subsequently exported duty free to the EC. Similarly, for the movement of products from Latin America to the EC through Aruba, this trade regulation provides new possibilities for trade companies.
Special Tax regimes

**Imputation Payment Company**

The Imputation Payment Company (IPC) is a public limited company (naamloze vennootschap, abbreviated as NV) or a limited liability company (vennootschap met beperkte aansprakelijkheid, abbreviated as B.V.) that pays the regular corporate income tax rate of 28%. However, when certain stringent conditions are met, the shareholder of the IPC can request an imputation payment of 26/72 of the (formal) dividend distributed. Provided that the 0% dividend withholding tax is applicable, the effective tax rate can be lowered to 2%.

In order to qualify for the IPC status the following requirements must be met:
- The IPC must perform qualifying activities (see below) in Aruba;
- An Aruba resident individual must be a member of the board of managing directors of the IPC;
- The articles of association state that the shares of the IPC are registered and that the directors keep a shareholders registry in which all shareholders are registered;
- The articles of association state that the financial statements are drawn up according to internationally accepted principles (like IAS or GAAP) and an audit by a qualified (group of) independent certified public accountant(s) is necessary;
- The board of managing directors must notify the Tax Authorities within a restricted period and after the dividend has been distributed, that the shareholder will claim the imputation payment.

An independent certified public accountant must provide an opinion regarding the compliance of the abovementioned first three requirements for the IPC status.

The shareholder must also meet certain requirements before the imputation payment can be granted, including:
- The shareholder must hold the (economic and legal ownership of the) shares for an uninterrupted period of at least twelve months to be eligible for the imputation payment;
- The shareholder must file a request (with several enclosures) with the Tax Authorities to receive the imputation payment.
- The IPC company is not allowed to conduct non qualified activities no matter how small. The following activities are regarded as qualified activities:
  - Exploitation of quality hotels. A quality hotel exists when the average revenue per available room (RevPar) amounts at least Afl 354 (USD 200), the hotel has a hotel license and is operated at its own risk and account. Note, that the RevPar can be changed annually.
  - The execution of maintenance and repair work to machinery and other goods stored in the zone.
  - The execution of maintenance and repair work to machinery and other equipment located abroad with warranty.
  - The execution of ancillary trades and other servicing activities new to the international marketplace that can be carried out using electronic communications and information technology options.
  - Developing, acquiring, holding, maintaining and licensing of intellectual and industrial ownership rights.
  - Insuring special entrepreneurial risks (captive insurance).

**Transparent company**

It is possible to request a transparent status. An NV, B.V.A or Aruba Exempt company (A.V.V.) may opt, if certain conditions are met, to be treated as a partnership (fiscal transparent company). The fiscal transparent company is not subject to corporate income tax, unless the fiscal transparent company carries on a business on Aruba through a permanent establishment. The shareholder could then be subject to corporate income tax with regard to this permanent establishment. Dividends distributed by the fiscal transparent company to its shareholder would not be subject to dividend withholding tax, since due to its transparency, all income and asset and liabilities would be deemed to be attributed to its shareholder.

The main requirements for this status is that all the company’s shares must be registered and a notification for the application for this status must be filed with the Tax Authorities within 1 month after the company has been incorporated.

**Aruba exempt company**

The Aruba exempt company, in Dutch ‘Aruba Vrijgestelde Vennootschap’ (abbreviated as ‘A.V.V.’), is a particular form of a limited liability company (NV) and is often used for international tax planning purposes. The A.V.V. is in principle subject to corporate income tax rate against the normal corporate income tax rate and the dividend withholding tax. However, the profit of the A.V.V. (and also the VBA) may be exempted from corporate income tax and dividend withholding tax if its activities are limited to one or more of the following qualified activities:
- Holding of shares or other participation certificates. (The IPC may not hold more than 5% of low taxed shares or other participation certificates in foreign companies. The aforementioned are low taxed if they are subject to a ‘profit’ tax rate of at least 14%);
- Financing (not being a credit institution) of other enterprises or companies whether or not intra-group; Investing of funds, except in real estate;
- Licensing of intellectual and industrial ownership rights.

As mentioned above, the A.V.V. may, if certain conditions are met, also opt for the fiscal transparency regime for which it will not be subject to corporate income tax and dividend withholding tax. In that case the A.V.V. is not required to perform the abovementioned qualified activities in order to enjoy the fiscal transparency status.

**Free Zone**

Companies operating in the Free Zone are exempt from customs duties and enjoy a reduced tax rate of 2% on profits earned from sales. Goods sold or services rendered to the domestic market from the Free Zone, however, are subject to the normal profit tax rate.

The following forms of service are permitted:
- carrying out maintenance and repair work in the zone to the goods of businesses that operate abroad;
- the execution of maintenance and repair work to machinery and other equipment located abroad with goods stored in the zone;
- other forms of services aimed at foreign clients, including the warehousing business, and new commercial enterprises and ancillary trades and other servicing activities new to the international marketplace that can be carried out using electronic communications and information technology options, for as far as these do not involve the so-called financial services sector (such as investment companies, banks, insurance companies, etc.).

In order to qualify for the Free Zone facilities a number of conditions must be met, including that the activities should be carried out from an area designated as a Free Zone.

**San Nicolas economic zone company**

The GOA proposes to create a special taxation zone in San Nicolas (the so-called ‘economic zone’) in order to stimulate business in San Nicolas. Certain incentives will apply to stimulate certain business activities. The GOA will assign a committee in order to introduce the economic zone. The requirements (to be established in the economic zone) will be further elaborated. The advice by aforementioned committee will be introduced by means of favourable policy (in Dutch: ‘begunstigend beleid’).

**Oil refinery or oil terminal regime**

Oil refineries and oil terminals are subject to a tax rate of 12%. However, under certain conditions, oil refineries or -terminals whose shares are all held directly or indirectly by a company listed on a stock exchange recognized by the Minister, are subject to a 7% corporate income tax rate.

As per January 1, 2010 an unlimited carry forward loss compensation has also been introduced for companies operating an oil refinery or oil terminal. Moreover a 0% dividend tax rate applies for distributions from profits from the operation of an oil refinery or oil terminal.
Curaçao

**Geography**
The island of Curaçao lies in the Southern Caribbean about 70 km (44 miles) north of Venezuela. Curaçao is the largest of five islands in the Caribbean that together constitute the Netherlands Antilles. The island’s total area is 444 square km (171 square miles). It is generally flat, with a small hilly area in the western part.

**History**
Curaçao was discovered by a Spanish navigator, Alonso de Ojeda, in 1499. In 1634 the island was captured by the Dutch. From 1666 into early 19th century, the English and French alternately tried to take over Curaçao. In 1815, by the Treaty of Paris, the Dutch finally regained the island and kept it thereafter.

**Population**
Curaçao’s total population is approximately 145,000 from 40 or 50 nationalities. About 28% of the population is younger than age 20. Dutch is the official language, while English and Spanish are widely understood and spoken. The vernacular is Papiamentu, a mixture of Portuguese, Spanish, Dutch and French. The education system in Curaçao, as in the other islands of the Dutch Caribbean, is based on the Dutch system, and the high standards applicable to institutions in the Netherlands are met by local schools. Literacy hovers around 98%. Curaçao has a reputation for religious and racial tolerance. Catholics, Protestants, Jews and Muslims have long had their respective houses of worship.

**Money system and currency**
The monetary unit of Curaçao and St. Maarten still is the (former) Netherlands Antillean guilder (ANG). Coin and currency are issued by the Central Government and circulated by the Central Bank of Curaçao and St. Maarten. The Central Bank is entrusted with the issuance of bank notes. The exchange rate for the Antillean guilder has been pegged to the U.S. dollar since December 12, 1971. That rate is at ANG 1.78 per U.S. dollar (USD). A license fee of 1% is levied on certain transactions. The official selling rates for other currencies are set daily on the basis of their rate of exchange with the U.S. dollar abroad.

**Economy**
Due to its strategic location between the Americas and its safe natural harbors with deep waters, Curaçao has always been a center of commerce and business. The 1914 discovery of oil in Venezuela gave impetus for the island’s choice as the location for one of the largest oil refineries in the world. Curaçao’s good infrastructure and skilled labor force are accountable for the rise in the international financial services sector, which began in the 1950’s. Besides oil refining and transshipment, the international financial industry and tourism, Curaçao continues to seek diversification of its economy into international trade and distribution, ship repair and manufacturing.

Transport and communication

**Port facilities**
Due to the extensive port facilities and Curaçao’s geographic location, the island’s port is considered to be a major center for oil transshipment, ship repair and bunkering. A number of important services for shipments into Curaçao and transshipment worldwide are concentrated here, namely for refinery, dry-dock, economic zone, container port and bulk cargo facilities, and for cruise terminals. Curaçao receives on average 400,000 tourists visiting on cruise ships, 50% over the number of cruise passengers 10 years before. The number of cruise ships has not increased much, which clearly shows that as a result of the new cruise pier Curaçao is attractive to the new generation of mega cruise ships.

**Airport**
Curaçao has a modern and international airport which can handle all types of aircraft, including Boeing 747’s. The airport handles 23,000 flights and more than 1.6 million passengers, including tourists, per year. 13,000 tons of cargo passes through the airport annually. There are daily flights to and from Europe, the U.S., South and Central America and the other Caribbean islands. Various airlines maintain extensive air transportation facilities, both for passengers and air freight.

**Telecommunications**
Curaçao has an efficient and reliable communications infrastructure including direct satellite connections and three submarine cables.
Business organization and reporting requirements

Legal form of enterprise
The corporate law of the Dutch Caribbean islands is based on Dutch corporate law.
The (public limited liability) corporation (in the Dutch language: 'de Naamloze Vennootschap', abbreviated as ‘NV’) is a corporate body with shareholders, and is governed by the corporate law and its articles of association. The NV used to be the most common legal vehicle for business operations. However, since the introduction of the private limited liability corporation (in the Dutch language: ‘Besloten Vennootschap’, abbreviated as BV), this has become the most popular.

Procedure
A corporation is established by the execution of a notarial deed. At least one shareholder is required to form the corporation.

Characteristics of the NV and BV
Founders
At least one founder is necessary, either an individual or a legal entity. Non residents can establish an NV by proxy.
A corporation must have one or more ‘managing directors’, who can be either an individual or a legal entity. At least one managing director must be a resident of, or domiciled in, the island where the corporation is established.
The powers of the management board are set out in the law and in the articles of incorporation.
A corporation may issue non voting shares.
In practice a corporation in the international financial services industry is incorporated by a local trust office.
After incorporation the shares will be transferred to the beneficial owner.

Capital requirements
The public as well as the private limited liability corporation has to issue at least one share with any nominal value. The equity is not allowed to be negative during the period of existence.

Shares
Different classes of shares may be issued, for variations in voting rights, participation in profit distributions and in entitlement to a balance after liquidation. Shares may be bearer shares or registered shares. A BV may only issue registered shares.

Board
The Board may be structured on the one-tier Anglo-Saxon model or the two-tier civil law model. In the one-tier model one or more members of the Board of Directors (as long as they are a minority) may also be member of the Executive Board that represents the private limited liability corporation. In the two-tier model the Managing Board is supervised by a separate Supervisory Board.
For a BV it is also possible to be managed directly by the shareholders. In that case the BV does not have a separate board of directors; the shareholders combined operate as directors. This has the advantage of simplifying formalities such as appointing, suspending or discharging of directors, and there is also no difference between shareholder meetings and board meetings.

Publication
A so-called large NV must publish its financial statements, thus enabling inspection by parties concerned such as creditors, employees or business partners. An NV is deemed to be a large NV depending on three cumulative criteria, namely the number of employees, the total balance sheet value of assets and the net turnover. NV’s that do not meet these criteria as well as BV’s, even those that are comparable in size to the so-called large NV, do not have the obligation to publish their financial statements.

Transforming into another legal entity
If required, an NV may be transformed into a BV and vice versa. It is also possible for a foreign entity to be transformed into an NV or BV if the law governing that entity does not oppose this. The reverse is also possible.

Purpose and use of the BV
BV’s have been used in structures where the actual management of a Dutch cash company (kasgeldvennootschap) is transferred to one of the Dutch Caribbean islands. It may also be advantageous to use the BV as a vehicle for mutual funds, in particular because of the large degree of corporate flexibility (including the ability to rapidly set up a private limited liability corporation with no requirement for a minimum level of capital, the conversion to a corporation or NV and the flexibility with regard to the management structure) and the possibility of a tax exempted status.

Licenses
The most important licenses required are the following:
• Business license from the Executive Council of Curacao permitting the corporation to act on the island.
• Director’s license for each managing director (the law does not limit the number of managing directors); in addition, managing directors need a residence and a working permit to work in Curacao. This requirement applies to all expatriates. Expatriates with a Netherlands passport no longer need a working permit.
• Foreign exchange license, which exempts the corporation from foreign exchange control. This license is issued by the Central Bank.

Transparent company
It is possible to request a transparent status. A BV, or an NV may opt, if certain conditions are met, to be treated as a partnership (fiscal transparent company). The fiscal transparent company is not subject to corporate income tax. However, if it carries on a business in Curacao through a permanent establishment, the shareholder could be subject to corporate income tax with regard to this permanent establishment.
The main requirements for this status is that all the company’s shares must be registered and a notification for the application of this status must be filed with the Tax Authorities.

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Time required and costs
The time required to complete the incorporation and to obtain the necessary licenses varies. Depending on the complexity of the legal institution of the entity, an NV or BV can be incorporated in one day. The costs of incorporation range between $850 and $1,600.

Accounting requirements
There are no specific accounting requirements. It is general practice that when the accounts for international corporations are set up, the requirements that are utilized by accountants are those that are normally applied in the country of the parent corporation.

Reporting requirements
The reporting requirements for the large NV are more specific than for the regular NV or BV. According to law, anyone who conducts a business must:

- Administer their affairs in accordance with the standards of the business in such a way that it will always be possible to know one’s rights and obligations;
- Prepare annual financial statements; and
- Keep all books and documents, including balance-sheets, correspondence received and copies of outgoing correspondence for a period of ten years.

For the small NV and the BV, financial statements must be prepared within eight months after the end of the financial year. Each shareholder is entitled to inspect the financial statements within a period of two years.

For the large NV, some stricter rules apply:

- The financial statement must be prepared within six months after the end of the financial year;
- The financial statement must be prepared according to standards set by the International Accounting Standards Board (‘IASB’); and
- An external qualifying expert, such as a chartered accountant or a certified public accountant must be appointed to report on the financial statement.

Private Foundation

The private foundation is a distinctive form of the entity foundation. The founder enjoys a great deal of latitude to set up a private foundation in the way that he sees fit. Very specific and requisite instructions may be put to management by the founding party on how to make disbursements from the equity of the private foundation. The private foundation is not subject to the disbursement restrictions which a “normal” foundation is subject to.

Private foundation and fiscal transparency
If there is no clear segregation between the equity of the private foundation and the founder, then the private foundation may be regarded as fiscally transparent. No clear segregation exists when it is established that the founder of the private foundation has actual control over the equity of the private foundation as if it were his/her personal equity. Transparency means that the private foundation will be deemed non-existent, resulting in all legal and fiscal acts of the private foundation being attributed to the founder.

Purpose and use of the private foundation

Estate planning
The private foundation may be used in situations where it is desirable to keep private equity separately protected in an entity that is subject to a favorable tax regime.

Alternative to the trust
An advantage of a private foundation is that it qualifies as a legal entity. In addition to this, the private foundation is also a form of a foundation, a legal entity that exists in many jurisdictions.

Investment in new activities
If the new activities prove profitable, then the increase in value will be attributed tax free to the private foundation.
Doing business in the Dutch Caribbean

Holding company
Holding shares in companies is not classified as conducting an enterprise. In principle the receipt of dividends is not subject to profit tax.

Investment (group) company
A considerable advantage is that the private foundation is exempt from local profit tax.

Asset protection
A private foundation may be employed to protect family – and corporate assets. Capital may for example be protected against political interference or expropriation, criminal risks such as kidnapping and economic risks such as product liability or other risks such as the squandering of assets by family members.

Trustee
A private foundation can exercise all rights and powers of the Trustee.

Procedure
The private foundation has to be established by notarial deed by a qualified Notary at law. The private foundation must have a local administrator or authorized representative. The deed of incorporation of the private foundation should include the by-laws of the foundation. These should include: the name of the foundation, with the word institution or private foundation forming part of said official name, the objective of the foundation and the method of appointing directors. The private foundation should be registered in the register of foundations at the Chamber of Commerce.

In 2011, the Curaçao trust was introduced. The Curaçao trust regime is comparable to other trusts in Anglo-Saxon jurisdictions.

Beneficiary and protector
When setting up the trust at least one beneficiary must be designated and the trust assets must be defined. The settler may appoint himself as trustee. He can also designate himself as beneficiary. It is not permissible that a trustee is the sole recipient. In this case someone else should be appointed as trustee.

The deed of establishment of the trust may appoint a protector. The protector may also be designated as beneficiary, but like the trustee may not be the sole beneficiary.

Procedure
A Curaçao trust must be established in Curaçao by a notarial deed, and cannot be established without the assistance of a qualified Notary.

When setting up a trust, at least one trustee must be appointed and one or more beneficiaries. It is mandatory for a trust established in Curaçao that at least one trustee must live here or is located here.

The trust will cease to exist in case the trustee becomes the sole beneficiary, the trust has no assets anymore or, if the trust has been set up for a set period, after that period.

The trust must be registered at the register of the Chamber of Commerce. Amendments to the trust deed must also be recorded in these registers.
Employment regulations

General considerations
The labor force is estimated at approximately 65,000. There are statutory minimum wages for workers aged 21 years and older. The present monthly entry level minimum wages, by category (not including benefits) in 2013, based on a 40 hour workweek, is:

<table>
<thead>
<tr>
<th>In</th>
<th>ANG</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curaçao</td>
<td>1,374</td>
<td>767</td>
</tr>
</tbody>
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Actual wages paid are often higher than the minimum. The standard legal working hours are normally 8 per day and 40 per week. At least 15 working days’ annual vacation must be given with pay, and 10 paid public holidays are also granted. Social security’s premiums vary between 25% and 30% (including health insurance, old age benefits, accident insurance, widows and orphans insurance).

Organisations
Labor organization
Labor unions are generally well established and can be found in most companies. They are organized mainly on a basis of individual enterprises. Most unions are members of a local federation, while many are affiliated with international federations as well. Most workers belong to a union, although closed shops or enforced membership are prohibited by law. It is not common for representatives of workers to participate in the management of companies.

Employers’ organization
Several organizations serve the interest of local businesses. Vereniging Bedrijfsleven Curaçao (VBC) for trade and industry; Association of Netherlands Antillean Industries (ASINA) represents local industries, in particular import substituting industries. Curaçao Hotel and Tourism Association (GHATA)

Labor legislation
Collective labor agreements usually cover a period of two to three years, after which new terms are agreed upon for a similar period of time. The reliability provided by these contracts benefits both the employer and employee. In most cases there is a clause which provides for no strikes or lockouts during the contract period. All labor disputes where parties do not reach an agreement must be subjected to mediation. Parties may request intervention, or the mediator can ex officio compel parties to accept mediation. The government has the authority to impose a ‘cooling off’ period.

Work permits
A residence permit is required for every foreigner who wants to become a resident. An applicant for admission as a resident must, among other things, provide information on his application form on how he will support himself and accompanying dependents. In addition to an admission permit, a foreigner who wants to exercise a profession or take up employment must also have a work permit. The work permit will only be granted if there are no suitable local qualified persons available. Generally, a request for a work permit will only be taken into consideration if it is filed through a local employer who is willing to accept full responsibility for any possible expenses related to the employee.

Taxation

Introduction
Curaçao has the following taxes:
- Profit tax (corporate income tax)
- Income tax (personal income tax)
- Wage tax (pay as you earn income tax)
- Sales tax (no VAT)
- Import duties
- Excise tax (on liquor, tobacco, perfume)
- Real property tax
- Stamp tax
- Inheritance and gift tax
- Property transfer tax
- Foreign exchange commission

Curaçao does not have:
- Net wealth tax
- Withholding tax on interest or dividend
- Withholding tax on royalty payments
- Capital tax

Between Aruba, Curaçao, St. Maarten and the Netherlands exists a tax arrangement, the so called ‘Tax Regulation for the Kingdom’, the ‘Belastingregeling voor het Koninkrijk’ or, abbreviated, the ‘BRK’. The (former) Netherlands Antilles concluded a tax treaty with Norway, which is still applicable to the 5 islands that formed part of the Netherlands Antilles. Furthermore, Tax Information Exchange Agreements (TIEAs) have been signed with several countries, including Australia, Canada, Denmark, Mexico, Spain, Sweden, New Zealand and the United States. As a result, Curaçao has been moved to the white list of the OECD Global Forum. Hereafter we describe the current tax regulation.

The administration of tax law is carried out by inspectors of taxes, who are responsible to a director of taxes whose duty is to ensure the efficient functioning of the entire tax office.

Profit tax
The basic law concerning corporate income tax is referred to as the Profit Tax Ordinance. The following types of companies are subject to profit tax:
- (private) limited liability companies, limited partnerships meeting certain requirements, and other corporate bodies;
- Companies established abroad, of which its profits are derived from:
  - a permanent establishment;
  - real property located in Curaçao;
  - non commercial claims secured by a mortgage on real property located in Curaçao.

The fiscal residence of a corporation is normally established where the effective management of a corporation is located, but if a corporation has been incorporated under the laws of Curaçao, the seat of incorporation is in principle decisive.

The profit tax rate (as of January 1, 2012) is 27.5%.

Losses may be carried forward for ten years.

The fiscal laws do not provide for:
- Carry back of losses; or
- An unlimited carry forward of start up losses (there are some exceptions).

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For profits realized from the sale of assets, it is possible to create a so called ‘replacement reserve’. Replacements originally held in principle occur within four years. Contributions to retirement or pension funds are tax deductible. Profits generated by a permanent establishment in a foreign country are exempt. Foreign losses are not deductible.

Income derived from foreign real estate is also exempt. Shipping and aviation companies are subject to a different and generally quite favorable tax treatment. The normal profit tax rate for international shipping and aviation activities for example is approximately 8%.

Participation exemption

Profits and losses derived from a qualifying participation are not included in the taxable base (participation exemption). A qualifying participation exists in case of a shareholding, or a holding of profit-sharing notes or voting rights of at least 5%. A qualifying participation also exists in case of a cost price for shares, profit-sharing notes or voting rights of at least USD 500,000.

The exemption applies to dividends as well as to capital gains. However, with regard to dividends it is required that these are derived from an active participation (non-portfolio investment) or a participation that is subject to tax.

Non-portfolio investment clause and subject to tax clause

A participation is deemed to be active if the gross income of that participation consists for not more than 50% of dividends, interest, or royalties received other than from an enterprise of that participation (non-portfolio investment clause). A participation is deemed to be subject to tax in case it is subject to a tax rate of at least 10% (subject to tax clause).

If at least one of these clauses is met, the participation exemption applies for 100%. If none of these clauses are met, the participation exemption will be limited to 63%. Consequently, the dividends will then be subject to an effective tax rate of 10.2%.

These clauses do not apply to dividends from a participation that (almost) exclusively (directly or indirectly) holds immovable property, so that the 100% participation exemption always applies to these dividends. The 100% exemption also applies to income other than dividends, such as capital gains derived from qualifying participations.

Definition of dividend

Dividend is defined as a distribution of profit on shares or profit-sharing notes, paid from statutory profit or profit reserves. As dividends shall not be considered: payments for the purchase of own shares or profit-sharing notes; distribution on shares upon liquidation; repayment of paid-up capital; and the distribution of bonus shares.

Fiscal unity

It is possible to form a fiscal unity. The fiscal unity article shows similarities to the current fiscal unity adhered to in the Netherlands. Advantages of this facility are that the recognition of inter company profits may be deferred and losses may be offset with profits of other companies within the fiscal unity. Fiscal unity relief is confined to companies organized under the laws of Curacao, the Netherlands, Aruba, or St. Maarten. The companies which invoke this relief must all have their place of management in Curacao.

Standard conditions applicable to a fiscal unity have been published.

Facility for merger

It is possible to achieve a profit tax-free merger, which shows great similarities to the merger arrangement in the Netherlands. Under this arrangement any shares acquired in the course of such a merger may not be disposed of within three years of transfer and the same conditions should apply to both taxpaying parties when profits are determined. Any fixed assets transferred should be included for the same amount in the balance sheet of the receiving party for tax purposes.

Self-assessment

Profit tax is levied based on a system of self-assessment. Before the 1st of April of the year following the tax year (or within three months of the end of the book year), a provisional return must be filed and an amount equal to the profit tax of the preceding year must be paid in full, unless a documented request is filed to be allowed to pay a lower estimated amount of profit tax.

The final profit tax return must be filed before the 1st of July of the year following the tax year (or within six months after the end of the book year). At that time, the tax due minus the amount paid on the provisional return must be paid in full to the Tax Receiver.

Dividend withholding tax

A dividend withholding tax has been approved by parliament. However, it has not come into force and is not expected to come into force in the (near) future either. If the dividend withholding tax does come into force, a transitional period of 12 months will apply within which dividends may be paid without dividend withholding tax being levied.

Income tax

The following individuals are subject to income tax:

- Residents; and
- Non residents whom receive certain source income, such as:
  - Salary as managing director or member of a supervisory board of a resident company;
  - Income from real property located in Curacao; or
  - Dividend, and profits realized on the sale of shares, if the shareholder holds a substantial participation in the capital of a resident company.

A substantial participation exists if an individual holds, directly or indirectly, at least 5% of the nominal paid up capital, either alone or together with his spouse, of a resident company. Dividends and profits on the sale of shares forming a substantial participation are taxed against a flat rate of 19.5%.

The income tax rate is progressive. The maximum tax rate is 49%. For certain types of one time income, a special tax rate is available. This is a variable rate of 36.9% to 33.8%. Interest received from local banks and financial institutions is taxed against a rate of 6.5%.
Penshonado regulation
For foreign nationals who earn pension income or who live from capital returns and take up residence in Curacao, a special tax regime is available, the so-called Penshonado arrangement. To be eligible for the advantages offered by this law one must:

- Have lived abroad for at least five years;
- Have reached the age of 50;
- Be legally admitted for residency for an indefinite period of time;
- Be entitled either to a foreign pension or other income from sources abroad;
- Own a residence on the island with a value of at least ANG 450,000 (approx. USD 250,000).

There is no requirement as to nationality and no stipulation of a minimum period of residency.

The legislation provides for two income tax options, namely:

- Income from foreign sources is taxed at 10%; or
- Foreign income is fixed at ANG 500,000 (USD 280,000) and the corresponding income tax due amounts to approx. ANG 220,000 (USD 120,000).

Other significant taxes
Sales tax
This tax is levied on the import and sale of products or services. The tariff is 6%. Exports are tax exempt.

Import duties are levied on import of goods. The tariffs vary between 0% - 57%.

Real property tax (land tax)
Real property tax is levied from a person who at the beginning of a year has the use of real property by virtue of any contractual right. The tax rate is 0.345%.

Inheritance and gift tax
A tax is levied over:
- The increase in net wealth obtained as heir or legatee of a resident (Inheritance tax);
- The increase in net wealth obtained as a gift from a resident (Gift tax); and
- The value of local real property obtained as an heir or legatee or as a gift from a non resident. The tax rate is 8%.

The rate of the inheritance and gift tax is progressive and ranges from 2% to 24% depending on the degree of kinship and the value obtained. For example, for the spouse, the children and grandchildren of the deceased, the maximum rate is 6%.

Property transfer tax
This tax is levied on the transfer of real property. The transfer of shares in a company holding real property is not taxable. The rate is 4% and is levied on the fair market value.

Investment incentives
Investment incentives for prospective investors
A number of investment incentives have been devised to stimulate prospective investors to start new business ventures. For all businesses the following fiscal incentives are available:

- Accelerated depreciation of business assets.
- Investment allowance of 8% of the total investments (new buildings and expansion renovations 12%) annually for the first two fiscal years. The investment allowance cannot be applied to certain investments (e.g. in land).

However, if the investments are alienated within 6 years (15 years for new buildings, expansions and renovations) after the year of the investment, a disinvestment addition should be included to the taxable income of the year of the disinvestment and the following year.

A special tax incentive is available for newly incorporated companies that contribute to broadening the local economic base. This so-called ‘tax holiday’ consists of an exemption from import duties and income tax on dividends, while a profit tax rate of at least 2% will be applicable. Under circumstances the rate may be up to 15%. The tax holiday is granted for a period of 5 years to 11 years.

For the development of hotels and similar recreational businesses a tax holiday may be obtained if the minimum investment (not including the investment in land) amounts to at least ANG 1 million (USD 555,000). Similar tax incentives are also available for companies whose activities concentrate on development of uncultivated land.

Furthermore it is possible to obtain an exemption from the license fee, which ordinarily is levied on foreign currency transactions against 1%.
International financial and trade industry

The old offshore regime
In 2001 the so-called offshore regime was abolished. A transitional period applies until the year 2019. Until then the old regime will be applicable for those companies that qualified as international companies before January 1, 2002. Entitlement to the old regime may end if (nearly) all the shares in the company are sold to a third party and the company has ceased its operations. Entitlement may also end on request of the company itself.

Offshore companies are companies whose shares are held by non residents of Curaçao and which perform most of their activities abroad. Offshore companies may also engage in transactions with other offshore companies.

One of the main conditions to qualify as an offshore company is that the company should have a foreign exchange license, based on which it is regarded as a non resident for foreign exchange purposes.

Financial services
Introduction
Curaçao has been a true financial center since 1954. Its reputation as a financial center emerged as a result of opportunities created by favorable tax treaties. Due to its long time activity in this area, the island has developed an infrastructure well suited for international finance, investment banking, shipping registration, mutual funds and others alike.

Because Curaçao is part of the Kingdom of the Netherlands, the island’s legal system is linked to the Dutch Supreme Court in The Hague. The tax system, including treaty eligibility, is also linked to that of the Netherlands. In addition, supervision of the financial system by the Bank of Curaçao and St. Maarten and an environment of strict confidentiality provide complete security and stability.

Offshore banking
Offshore companies conduct a wide range of international banking transactions for individual, institutional and corporate clients throughout the world. In addition, the international banks operating on Curaçao offer a broad range of commercial banking services.

The banks that are represented in the international financial sector represent various countries, among them the Netherlands, Venezuela, France, Italy, Switzerland, the United Kingdom, Germany, Canada, Saudi Arabia and the United States.

International trade and distribution
Introduction
Curaçao’s strength lies in its location at the crossroads of important trade routes and proximity to attractive markets. Companies either operate in the economic zone to service export markets or in the World Trade Center to promote their goods and services to the U.S., Europe and other parts of the world.

Curaçao can provide a good complement to U.S. or European companies with operations in South America and the Caribbean Basin, as a regional warehousing/ distribution center, or for distribution through intermediaries. Under intermediary arrangements, Curaçao trading companies manage the product for the investor in the region.

The Curaçao economic zone
Curaçao has various economic zones. The oldest is located in the harbor area and directly adjacent to Curaçao’s modern container terminal. Another is located next to the airport. Beside these two economic zones, a number of office buildings with special facilities geared to internet access and telecommunication have been assigned as an economic zone for E-commerce purposes.

The economic zone is a separate enclosed area where goods can be stored, packed, assembled, manufactured, serviced, exhibited and released from bond under special regulations different from the normal legal requirements covering import, export, transit and duties. Special tax incentives are available to economic zone companies, while import, export and transit are duty free. In the economic zone, land can be leased on a long term basis, and showrooms and storage area for warehouses can be obtained at competitive prices.

The World Trade Center Curaçao (WTC)
The 150,000 square foot complex offers American, European and other businesses and institutions the possibility of further penetration into South America and the Caribbean region.

Located a short ride from the airport, downtown Willemstad and the economic zone, the WTC includes a spacious exhibition hall, a very modern auditorium, separate meeting rooms, a trade mart where approximately 80 companies can have their permanent showrooms, a representative office building where international companies can rent space for their executive offices, temporary business units, a trade information center and a spacious reception room. The room is equipped with all facilities appropriate to the status of a world trade center.

Manufacturing
European Community
Curaçao has preferential access to the to the European Community. Products manufactured in Curaçao obtain preferential duties when imported into the EC. Goods to be transported to the EC, however, should have the ‘Curaçao origin’ specified.

United States
Curaçao is also included under the Caribbean Basin Initiative (CBI). Goods that are manufactured in Curaçao can be imported duty free into the U.S., provided that there is 35% value added in Curaçao (including 15% for U.S. components) and the product has undergone ‘substantial transformation’.

As a result of earlier mentioned programs, several industries have been established both by local and foreign investors that are successfully producing for the export as well as the domestic markets.

The refinery and the dry-dock
The refinery and the dry-dock are two major industries that significantly contribute to the island’s economy. Other examples of foreign industrial operations located in Curaçao include:

- pharmaceutical products, plastics and electronic devices.

Industrial Park Brievengat
There are attractive tax incentives to manufacturing companies that engage in export oriented industries and want to locate in the Industrial Park. The fully serviced industrial park is located only 15 minutes from Willemstad, the harbor and the international airport. Industrial sites can be obtained on long leases, and multipurpose industrial buildings are available for rent at competitive rates.

European Community.
Special Tax regimes

Exempt Company
The BV can obtain an exempted status for profit tax. To qualify for the exempted status, the BV must meet the following conditions:

• The statutory objective and actual activities of the BV consist entirely or almost entirely (90% or more) of financing activities and/or investments in shares and deposits.
• The management of an exempt BV may only consist of one or more resident individuals or local certified trust companies, or employees of such certified trust companies.
• Management maintains a register that includes the names and addresses of all ultimate beneficiaries that hold, directly or indirectly, an interest of at least 10% in the BV.
• Management prepares annual accounts that are audited by an independent expert (i.e. certified for public or chartered accountant) appointed by the general meeting of shareholders, who issues an unqualified auditor’s report within twelve months of the end of the financial year.
• The BV is not subject to supervision by the Central Bank of Curacao and St. Maarten as a bank or other financial institution.

The activities of the transparant company are directly attributable to the shareholders. If these activities are passive they are also treated as such for the shareholder. The shareholder (legal entity) which, based on the Profit Tax Ordinance, has a qualifying holding may rely on the participation exemption.

Private Foundation
An SPF is widely used for investment purposes or for management of family assets. If the SPF does not carry on a business, it is exempt from income tax. It is now possible to request that the SPF is regarded as a taxable entity, a funding capital or doelvermogen. The corporate tax rate will be 10% on regular income as well as capital gains.

If opted for the status of funding capital, this will apply for a minimum period of three years. After that period the SPF may, upon request, return to the exempt status.

In case the private foundation does operate a business, the profit from that business will be subject to the general profit tax rate of 27.5%.

Curacao Trust
The same options apply for the Curacao Trust as for the Private Foundation. If the trust does not operate a business, it will be tax exempt, unless it requests the status of Special Purpose Fund with a corporate tax rate of 10%. In case the trust does operate a business, a corporate tax rate of 27.5% applies.

Economic Zone
Companies operating in an Economic Zone are exempt from customs duties and enjoy a reduced tax rate of 2% on profits earned from sales. Goods sold or services rendered to the domestic market from the Economic Zone, however, are subject to the normal profit tax rate of 27.5%.

The following forms of service are permitted:
• Carrying out maintenance and repair work in the zone to the goods of businesses that operate abroad;
• The execution of maintenance and repair work to machinery and other equipment located abroad with goods stored in the zone;
• Other forms of services aimed at foreign clients, including the warehousing business, and new commercial enterprises and ancillary trades and other servicing activities new to the international marketplace that can be carried out using electronic communications and information technology options, for as far as these do not involve the financial services sector (such as investment companies, patents, royalties etc.).

For the Economic Zone facilities to apply a number of conditions must be met, including that the activities should be carried out from an area or building designated as an Economic Zone.

Shipping Company
Shipping companies can apply for a different and generally quite favorable tax treatment. Companies that solely conduct an ocean shipping trade may register all their ships in the register of taxable ships. In that case, instead of the actual profit, the profit is calculated based on a fixed profit starting at ANG 2.00 and going down to ANG 0.60 per net ton. The profit thus calculated is then taxed against the general profit tax rate. The user/non-owner of the registered ships can also be assessed on the tonnage, provided that the user/non-owner is a company established in Curacao.
St. Maarten

Geography
St. Maarten is, together with Saba and St. Eustatius, also known as the Windward Islands. St. Maarten, the largest of the Windward islands group is half French and half Dutch, and is located about 500 miles northeast of Curacao and 144 miles east of Puerto Rico. St. Maarten occupies the southern part of the island’s 96 square km (37 square miles), while the northern part is occupied by St. Martin, a French dependency.

History
In prehistoric times the Windward Islands were occupied and inhabited by the Arawak and Carib Indians. Columbus, on his second voyage to the Antilles, sighted the islands for the first time.
St. Maarten changed hands 16 times before the Dutch and French signed a treaty called ‘Mont des Accords’ on March 23, 1648. By this treaty, the island was divided between the two countries, creating a relationship that continues to the present day.

Population
The population of St. Maarten is about 40,000. The statistics of the Central Bureau indicate that 30% of the population is under age 20. The official language is Dutch, but because of the rapid growth of business activities and the location of the island (English speaking Caribbean), English is generally accepted as the mother tongue of St. Maarten.

Economy
The main economic pillars for St. Maarten are tourism, trade and business and other services. In St. Maarten, the number of stay over tourists is ca 500,000, and about 1.3 million cruise passengers are registered. Island authorities estimate that 75% of all employment is directly related to this industry.

Monetary system and currency
The monetary unit of St. Maarten remains the (former) Netherlands Antillean guilder (ANG). Coin and currency are issued by the Central Government and circulated by the Central Bank of Curaçao and St. Maarten. The Central Bank is entrusted with the issuance of bank notes. The exchange rate for the Antillean guilder has been pegged to the U.S. dollar since December 12, 1971. That rate is at ANG 1.79 per U.S. dollar (USD). A license fee of 1% applies on certain transactions. The official selling rates for other currencies are set daily on the basis of their rate of exchange with the U.S. dollar abroad.

Port facilities
St. Maarten’s capital, Philipsburg, is its principal seaport. It receives more than 90% of all ocean traffic coming to the island.

Airport
The airport of St. Maarten is located on the South Western side of the island. The runway can accommodate DC 9 and Boeing 727 and 747 type aircraft. The Princess Juliana International Airport is home to Windward Island Airways (Winair), the local Windward Island carrier, and is second only to the San Juan, Puerto Rico airport in Caribbean Basin passenger volume.

Transport and communication

There are daily flights to and from Europe, the U.S., South and Central America and other parts of the world. Various airlines maintain facilities, both for passengers and air freight.
Doing business in the Dutch Caribbean

Business organization and reporting requirements

Legal form of enterprise
The corporate law of the Dutch Caribbean islands is based on Dutch corporate law. The (public limited liability) corporation (in the Dutch language: ‘de Naamloze Vennootschap’, abbreviated as ‘NV’) is a corporate body with shareholders, and is governed by the corporate law and its articles of association. The NV used to be the most common legal vehicle for business operations. However, since the introduction of the private limited liability corporation (Besloten Vennootschap or BV), this has become the more popular.

Procedure
A corporation is established by the execution of a notarial deed. Only one shareholder is required to form the corporation.

Characteristics of the NV and BV
Founders
Only one founder is necessary, either an individual or a legal entity. Non residents can establish an NV by proxy. A corporation must have one or more ‘managing directors’, who can be either an individual or a legal entity. At least one managing director must be a resident of, or domiciled in, the island where the corporation is established. The powers of the management board are set out in the law and in the articles of incorporation. A corporation may issue non voting shares. In practice a corporation in the international financial services industry is incorporated by a local trust office. After incorporation the shares will be transferred to the beneficial owner.

Capital requirements
The public as well as the private limited liability corporation has to issue at least one share with any nominal value. The equity is not allowed to be negative during the period of existence.

Shares
Different classes of shares may be issued, for variations in voting rights, participation in profit distributions and in entitlement to a balance after liquidation. Shares may be bearer shares or registered shares. A BV may only issue registered shares.

Board
The Board may be structured on the one-tier Anglo-Saxon model or the two-tier civil law model. In the one-tier model one or more members of the Board of Directors (as long as they are a minority) may also be member of the Executive Board that represents the private limited liability corporation.

In the two-tier model the Managing Board is supervised by a separate Supervisory Board. For a BV it is also possible to be managed directly by the shareholders. In that case the BV does not have a separate board of directors. The shareholders combined operate as directors. This has the advantage of simplifying formalities such as appointing, suspending or discharging of directors, and there is also no difference between shareholder meetings and board meetings.

Publication
A so-called large NV must publish its financial statements, thus enabling inspection by parties concerned such as creditors, employees or business partners. An NV is deemed to be a large NV depending on three cumulative criteria, namely the number of employees, the total balance sheet value of assets and the net turnover. An NV that does not meet these criteria as well as the BV, even those that are comparable in size to the so-called large NV, does not have the obligation to publish its financial statements.

Transforming into another legal entity
If required, an NV may be transformed into a BV and vice versa. It is also possible for a foreign entity to be transformed into an NV or BV if the law governing that entity does not oppose this. The reverse is also possible.

Purpose and use of the BV
BV’s have been used in structures where the actual management of a Dutch cash company (Koopgeldvennootschap) is transferred to one of the Dutch Caribbean islands. It may also be advantageous to use the BV as a vehicle for mutual funds, in particular because of the large degree of corporate flexibility (including the ability to rapidly set up a private limited liability corporation with no requirement for a minimum level of capital, the conversion to a corporation or NV and the flexibility with regard to the management structure) and the possibility of a tax exempted status.

Time required and costs
The time required to complete the incorporation and to obtain the necessary permit licenses varies. Depending on the complexity of the legal institution of the entity, an NV or BV can be incorporated in one day. The costs of incorporation range between $850 and $1,600.

Licenses
The most important licenses required are the following:
• Business license from the Executive Council permitting the corporation to act;
• Director’s license for each managing director (the law does not limit the number of managing directors); in addition, managing directors need a residence and a working permit to work. This requirement applies to all expatriates. However, expatriates with a Netherlands passport no longer need a working permit;
• Foreign exchange license, which exempts the corporation from foreign exchange control. This license is issued by the Central Bank.

Accounting requirements
There are no specific accounting requirements. It is general practice that when the accounts for international corporations are set up, the requirements that are utilized by accountants are those that are normally applied in the country of the parent corporation.

Reporting requirements
The reporting requirements for the large NV are more specific than for the regular NV and the BV. According to law, anyone who conducts a business must:
• Administer their affairs in accordance with the standards of the business in such a way that it will always be possible to know one’s rights and obligations;
• Prepare annual financial statements; and
• Keep all books and documents, including balance-sheets, correspondence received and copies of outgoing correspondence for a period of ten years.

For the small NV and the BV, financial statements must be prepared within eight months after the end of the financial year. Each shareholder is entitled to inspect the financial statements within a period of two years.

For the large NV, some stricter rules apply:
• The financial statement must be prepared within six months of the end of the financial year;
• The financial statement must be prepared according to standards set by the International Accounting Standards Board (‘IASB’); and
• An external qualifying expert, such as a chartered accountant or a certified public accountant must be appointed to report on the financial statements.
Private Foundation

The private foundation is a distinctive form of the entity foundation. The founder enjoys a great deal of latitude in the way that he sees fit. Very specific and requisite instructions may be put to management by the founding party on how to make disbursements from the equity of the private foundation. The private foundation is not subject to the disbursement restrictions which a "normal" foundation is subject to.

Private foundation and fiscal transparency

If there is no clear segregation between the equity of the private foundation and the founder, then the private foundation may be regarded as fiscally transparent. No clear segregation exists when it is established that the founder of the private foundation has actual control over the equity of the private foundation as if it were his/her personal equity. Transparency means that the private foundation will be deemed non-existent, resulting in all legal and fiscal acts of the private foundation being attributed to the founder.

Purpose and use of the private foundation

Estate planning

The private foundation may be used in situations where it is desirable to keep private equity separately protected in an entity that is subject to a favorable tax regime.

Alternative to the trust

An advantage of a private foundation is that it qualifies as a legal entity. In addition to this the private foundation is also a form of the foundation, a legal entity that exists in many jurisdictions.

Investment in new activities

If the new activities prove profitable, then the increase in value will be attributed tax free to the private foundation.

Holding company

Holding shares in companies is not classified as conducting an enterprise. In principle the receipt of dividends is not subject to profit tax.

Investment (group) company:

A considerable advantage is that the private foundation is exempt from local profit tax.

Asset protection

A private foundation may be employed to protect family – and corporate assets. Capital may for example be protected against political interference or expropriation, criminal risks such as kidnapping and economic risks such as product liability or other risks such as the squandering of assets by family members.

Trustee

A private foundation can exercise all rights and powers of the Trustee.

Procedure

The private foundation has to be established by notarial deed by a qualified Notary at law recognized on the island where it will be established. The private foundation must have an administrator or authorized representative based on that island. The deed of incorporation of the private foundation should include the by-laws of the foundation. These should include: the name of the foundation, with the word institution or private foundation forming part of said official name, the objective of the foundation and the method of appointing directors. The private foundation should be registered in the register of foundations at the Chamber of Commerce.

Employment regulations

General considerations

The labor force in St. Maarten is estimated at approximately 25,000. There are statutory minimum wages for workers aged 21 years and older. The present monthly entry level minimum wages, by category (not including benefits) in 2013, based on a 40 hour workweek is:

<table>
<thead>
<tr>
<th>In</th>
<th>ANG</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Maarten</td>
<td>1,379</td>
<td>775</td>
</tr>
</tbody>
</table>

Actual wages paid are often higher than the minimum. The standard legal working hours are normally 8 per day and 40 per week. At least 15 working days' annual vacation must be given with pay, and 10 paid public holidays are also granted. Social security's premiums vary between 20% and 25% (including health insurance, old age benefits, accident insurance, widows and orphans insurance).

Organisations

Labor organization

Labor unions are generally well established and can be found in most companies. They are organized mainly on a basis of individual enterprises. Most unions are members of a local federation, while many are affiliated to the international federations as well. Most workers belong to a union, although closed shops or enforced membership are prohibited by law. It is not common for representatives of workers to participate in the management of companies.

Employers’ organization

The St. Maarten Hospitality and Trade Association (SHTA) serves the interest of local businesses.

Work permits

A residence permit is required for every foreigner who wants to become a resident. An applicant for admission as a resident must, among other things, provide information on his application form on how he will support himself and accompanying dependents. In addition to an admission permit, a foreigner who wants to exercise a profession or take up employment must also have a work permit. The work permit will only be granted if there are no suitable qualified persons available on the island. Generally, a request for a work permit will only be taken into consideration if it is filed through a local employer who is willing to accept full responsibility for any possible expenses related to the employee. A work permit is no longer necessary for expatriates with a Dutch passport (European Dutch individuals).
Taxation

Introduction
St. Maarten has the following taxes:
- Profit tax (corporate income tax)
- Income tax (personal income tax)
- Wage tax (pay as you earn income)
- Sales tax (no VAT)
- Inheritance and gift tax
- Property transfer tax
- Foreign exchange commission

St. Maarten does not have:
- Net wealth tax
- Withholding tax on interest
- Dividend withholding tax
- Withholding tax on royalty payments
- Capital tax
- Import duties
- Excise tax

Between Aruba, Curaçao, St. Maarten and the Netherlands exists a tax arrangement, the so-called ‘Tax Regulation for the Kingdom’, the Belastingregeling voor het Koninkrijk or, abbreviated, ‘BRK’. The (former) Netherlands Antilles concluded a tax treaty with Norway, which is still applicable to the 5 islands that formed part of the Netherlands Antilles. Furthermore, TIEAs have been signed with several countries, including Australia, Canada, Denmark, Mexico, Spain, Sweden, New Zealand and the United States. As a result, the Dutch Caribbean islands have been moved to the white list of the OECD Global Forum. Hereafter we describe the current tax regulation of St. Maarten.

The administration of tax law is carried out by inspectors of taxes, who are responsible to a director of taxes whose duty is to ensure the efficient functioning of the entire tax office. The basic law concerning corporate income tax is referred to as the Profit Tax Ordinance.

Profit tax
The following types of companies are subject to profit tax:
- (private) limited liability companies,
- limited partnerships meeting certain requirements, and other corporate bodies, established in St. Maarten;
- Companies established abroad, of which its profits are derived from:
  - a permanent establishment;
  - real property; and
  - non-commercial claims secured by a mortgage on real property.

The fiscal residence of a corporation is normally established where the effective management of a corporation is located, but if a corporation has been incorporated under the laws of St. Maarten, the seat of incorporation is in principle decisive. The profit tax rate amounts to 34.5%. Losses may be carried forward for ten years.

The fiscal laws do not provide for:
- Carry back of losses; or
- An unlimited carry forward of start up losses (there are some exceptions).

For profits realized from the sale of assets, it is possible to create a so-called ‘replacement reserve’. Replacements should in principle occur within four years.

Contributions to retirement or pension funds are tax deductible. Profits generated by a permanent establishment in a foreign country are exempt. Foreign losses are not deductible.

Income derived from foreign real estate is also exempt. Shipping and aviation companies are subject to a different and generally quite favorable tax treatment. The normal profit tax rate for international shipping and aviation activities for example is approximately 9%.

Participation exemption
Profits and losses derived from a qualifying participation are not included in the taxable base (participation exemption). A qualifying participation exists in case of a shareholding, or a holding of profit-sharing notes or voting rights of at least 5%. A qualifying participation also exists in case of a cost price for shares, profit-sharing notes or voting rights of at least USD 500,000. The exemption applies to dividends as well as to capital gains. However, with regard to dividends it is required that these are derived from an active participation (non-portfolio investment) or a participation that is subject to tax.

Non-portfolio investment clause and subject to tax clause
A participation is deemed to be active if the gross income of that participation consists for not more than 50% of dividends, interest, or royalties received other than from an enterprise of that participation (non-portfolio investment clause). A participation is deemed to be subject to tax in case it is subject to a tax rate of at least 10% (subject to tax clause).

If at least one of these clauses is met, the participation exemption applies for 100%. If none of these clauses is met, the participation exemption will be limited to 70%. Consequently, the dividends will then be subject to an effective tax rate of 10.35%.

Facility for merger
It is possible to achieve a profit tax-free merger under the terms of the NFR. This arrangement shows great similarities to the current fiscal unity adhered to in the Netherlands. Advantages of this facility are that the recognition of inter company profits may be deferred and losses may be offset with profits of other companies within the fiscal unity.

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Definition of dividend
Dividend is defined as a distribution of profit on shares or profit-sharing notes, paid from statutory profit or profit reserves. As dividends shall not be considered; payments for the purchase of own shares or profit-sharing notes; distribution on shares upon liquidation; repayment of paid-up capital; and the distribution of bonus shares.

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Self-assessment

Profit tax is levied based on a system of self-assessment. Before the 1st of April of the year following the tax year (or within three months of the end of the book year), as a provisional return, an amount equal to the profit tax of the preceding year must be paid in full, unless a documented request is filed to be allowed to pay a lower estimated amount of profit tax. The final profit tax return must be filed before the 1st of July of the year following the tax year (or within six months after the end of the book year). At that time, the tax due minus the amount paid on the provisional return must be paid in full to the Tax Receiver.

Dividend tax not in force

A dividend tax has been approved by parliament. However, it has not come into force and is not expected to come into force in the (near) future either. If the dividend tax does come into force, a transitional period of 12 months will apply within which dividends may be paid without dividend tax being levied.

Income tax

The following individuals are subject to income tax:
- Residents; and
- Non residents whom receive certain source income, such as:
  - Salary as managing director or member of supervisory board of a resident company;
  - Income from real property; or
  - Dividend, and profits realized on the sale of shares, if the shareholder holds a substantial participation in the capital of a resident company.

A substantial participation exists if an individual holds, directly or indirectly, at least 5% of the nominal paid up capital, either alone or together with his spouse, of a resident company. Dividends and profits on the sale of shares forming a substantial participation are taxed at a flat rate of 18.75%.

The income tax rate is progressive. The maximum tax rate is 47.5%.

For certain types of one time income, a special tax rate is available. This is a variable rate of 16.9% to 33.8%.

Interest received from local banks and financial institutions is taxed against a rate of 6.25%.

Penshonado regulation

For foreign nationals who earn pension income or who live from capital returns and take up residence, a special tax regime is available, the so called Penshonado arrangement.

To be eligible for the advantages offered by this law one must:
- Have lived abroad for at least five years,
- Have reached the age of 50,
- Be legally admitted for residency for an indefinite period of time,
- Be entitled either to a foreign pension or other income from sources abroad,
- Own a residence with a value of at least ANG 450,000 (approx. USD 250,000).

There is no requirement as to nationality and no stipulation of a minimum period of residency.

The legislation provides for two income tax options, namely:
- Income from foreign sources is taxed at 10%; or
- Foreign income is fixed at ANG 500,000
  - (USD 280,000) and the corresponding income tax due amounts to approx. ANG 220,000
  - (USD 120,000)

Other significant taxes

Sales tax

This tax is levied on the sale of products and services of 5%. Import and export are exempt from sales tax.

Inheritance and gift tax

A tax is levied over:
- The increase in net wealth obtained as heir or legatee of a resident (Inheritance tax);
- The increase in net wealth obtained as a gift from a resident (Gift tax); and
- The value of local real property obtained as an heir or legatee or as a gift from a non resident. The tax rate is 8%.

The rate of the inheritance and gift tax is progressive and ranges from 2% to 24% depending on the degree of kinship and the value obtained. For example, for the spouse, the children and grandchildren of the deceased, the maximum rate is 6%.

Property transfer tax

This tax is levied on the transfer of real property. The transfer of shares in a company holding real property is not taxable. The rate is 4% and is levied on the fair market value.
Investment Incentives

A number of investment incentives have been devised to stimulate prospective investors to start new business ventures. For all businesses the following fiscal incentives are available:

- Accelerated depreciation of business assets.
- Investment allowance of 8% of the total investments (new buildings and expansion renovations 12%) annually for the first two fiscal years.

The investment allowance cannot be applied to certain investments (e.g. in land).

However, if the investments are alienated within 6 years (15 years for new buildings, expansions and renovations) after the year of the investment, a disinvestment addition should be included to the taxable income of the year of the disinvestment and the following year.

A special tax incentive is available for newly incorporated companies that contribute to broadening the local economic base. This so called ‘tax holiday’ consists of an exemption from income tax on dividends, while a profit tax rate of at least 2% will be applicable. Under circumstances the rate may be up to 15%. The tax holiday is granted for a period of 5 years to 11 years.

Tax holiday exemptions may be obtained with an investment of at least ANG 250,000 (approximately USD 140,000). For an industry, the minimum investment amounts to ANG 150,000 (USD 83,000).

For the development of hotels and similar recreational businesses a tax holiday may be obtained if the minimum investment (not including the investment in land) amounts to at least ANG 1 million (USD 555,000). Similar tax incentives are also available for companies whose activities concentrate on development of uncultivated land.

Furthermore it is possible to obtain an exemption from the license fee, which ordinarily is levied on foreign currency transactions against 1%.

Access to foreign markets

Foreign companies manufacturing in St. Maarten have preferential access to U.S. and European markets due to the countries’ Associate Member status in the European Economic Community (EC). They are also eligible to qualify for the Caribbean Basin Initiative (CBI) program.

The trade agreement of the Overseas Countries and Territories (OCTs) with the EC offers prospects for a range of products which can be manufactured in St. Maarten using imported materials and subsequently exported duty free to the EC. Similarly, for the movement of products from Latin America to the EC through St. Maarten, this trade regulation provides new possibilities for trade companies.

International financial and trade industry

The old offshore regime

In 2001 the so-called offshore regime was abolished. A transitional period applies until the year 2019. Until then the old regime will be applicable for those companies that qualified as offshore companies before January 1, 2002.

Entitlement to the old regime may end if (nearly) all the shares in the company are sold to a third party and the company has ceased its operations. Entitlement may also end on request of the company itself.

Offshore companies are companies whose shares are held by non residents and which perform most of their activities abroad. Offshore companies may also engage in transactions with other offshore companies.

One of the main conditions to qualify as an offshore company is that the company should have a foreign exchange license, based on which it is regarded as a non resident for foreign exchange purposes.

The new financial service industry regime

The new regime is not limited to certain groups of investors. Instead, the incentives apply to everyone equally. The most important aspects of the new regime have already been discussed above, such as:

- Participation exemption;
- Exempt company;
- Private Foundation;
- Tonnage tax regime
- Economic Zone.
Special Tax regimes

Exempt Company
The BV can obtain an exempted status for profit tax. To qualify for the exempted status, the BV must meet the following conditions:
• The statutory objective and actual activities of the BV consist entirely or almost entirely (90% or more) of financing activities and/or investments in shares and deposits;
• The management of an exempted BV may only consist of one or more resident individuals or certified local trust companies, or employees of such certified trust companies;
• Management maintains a register that includes the names and addresses of all ultimate beneficiaries that hold direct or indirect an interest of at least 10% in the BV
• Management prepares annual accounts that are audited by an independent expert (i.e. certified public or chartered accountant) appointed by the general meeting of shareholders, who issues an unqualified auditor’s report within twelve months of the end of the financial year.
• The BV is not subject to supervision by the Central Bank of Curacao and St. Maarten as a bank or other financial institution.

Shipping Company
Shipping companies can apply for a different and generally quite favorable tax treatment. Companies that solely conduct an ocean shipping trade may register all their ships in the register of taxable ships. In that case, instead of the actual profit, the profit is calculated based on a fixed profit starting at ANG 2.00 and going down to ANG 0.60 per net ton. The profit thus calculated is then taxed against the general profit tax rate. The user/non-owner of the registered ships can also be assessed on the tonnage, provided that the user/non-owner is a company established in St. Maarten.

Bonaire, St. Eustatius and Saba (BES) islands

Geography
Bonaire is the easternmost of the Leeward Islands in the Caribbean Sea. It is approximately 52 km (32 miles) east of Curacao, 87 km (55 miles) off the coast of Venezuela. It is generally flat, with its southernmost portion lying below sea level, while its northern part is hilly. The island’s total area is 289 square km (about 109 square miles).
St. Eustatius and Saba, together with St. Maarten, are also known as the Windward Islands. St. Eustatius or Statia, as it is commonly referred to, lies 38 miles south of St. Maarten. Statia has an area of 21 square km (about 8 square miles). Saba, the smallest of the three, is located 28 miles south of St. Maarten and 17 miles northeast of St. Eustatius. Saba has an area of 13 square kilometers or about 5 square miles. Saba, in fact, is a verdant rainforest covered volcano rising to an altitude of 3,000 feet above the ocean waters.

History
Bonaire was discovered in 1499 by Amerigo Vespucci. In 1527 the Spanish began their colonization which took little more than a century, after which, in 1636, the island of Bonaire was captured by the Dutch. As in the case of Curacao, from 1800 through 1816, the British and the French tried alternately to conquer the island of Bonaire. Finally, in 1816, the Dutch regained the island. In prehistoric times the Windward Islands were occupied and inhabited by the Arawak and Carib Indians. Columbus, on his second voyage to the Antilles, sighted the islands for the first time.

Population
Bonaire’s population is around 13,000 inhabitants. Most of the inhabitants are concentrated around Kralendijk, the capital, in surrounding suburbs and in Rincon, the second largest urban agglomeration on the island. The population of Statia is about 3,000, and Saba with 2,000. About 30% of the population is age 20 or younger. The population has a variety of ethnic backgrounds. Dutch is the official language. However, Papiamentu is the vernacular on Bonaire, while English and Spanish are also widely spoken.

On Saba and Statia because of the rapid growth of business activities and the location of the islands (English speaking Caribbean), English is generally accepted as the mother tongue of the islands.
Monetary system and currency

The official currency for the BES islands is the U.S. dollar.

Economy

Bonaire

Bonaire has an open economy largely dependent on external factors outside of the island’s immediate control, such as tourism and related activities, oil transshipment, salt manufacturing and shipment and external transfers of development aid and investment capital. Tourism is an important sector within the island’s economy. The island is a favored destination for diving enthusiasts, while marine life flourishes in the waters off Bonaire. In addition, the island is stimulating expansion of industrial activities, especially light manufacturing. It is doing so through fiscal incentives and the availability of industrial parcels.

Saba and Statia

The main economic pillars for the Windward Islands are tourism, bunker oil and business services. In Statia, bunker oil from Nustar Terminals and tourism are the island’s principal economic activities. Saba’s principal economic activities are business services and tourism. A particular feature of Saba is its diving opportunities. Saba has no beaches, so diving is almost always done from boats.

Transport and Communication

Port facilities

Bonaire

Among the seaport facilities there are three into and out of which goods are transported by ship. Consumer goods pass through the port of Kralendijk, bulk petroleum products into and out of the Bonaire Petroleum Company (BOPEC) facilities, and bulk natural salt out of the Salt Company facilities in the southern part of the island. These facilities are within view of the island’s capital, facing an open bay on the southern part of the west coast.

Authority over the recently built and adequately maintained general cargo and cruise ship installations is vested in the Harbor Master. Bonaire receives an average of 90 cruise ships, with more than 150,000 passengers per year. Regular commercial maritime routes to Bonaire are established from Curaçao, United States and Venezuela.

The BOPEC Terminal, located in the northwestern part of the island, is a cargo facility used exclusively for the transfer of petroleum products. The Salt Company (Salina) terminal is located on the southeast coast of the island and is used exclusively for the transport of natural salt in bulk.

Another facility, the Jachthaven (Yacht Harbor Marina), provides weather protected facilities for pleasure yachts with gas, diesel, water and electricity, deep 5 meters marina, bathrooms, restaurant and bar on premises.

Saba and Statia

The ports of Statia and Saba are mostly used for arrival and departure of tourists and for diving purposes.

Airport

Bonaire

The Flamingo International Airport, the only airport facility on the island, is located on the southern outskirts of downtown Kralendijk. The runway can accommodate DC 9 and Boeing 727 and 747 type aircraft. Regular air access to Bonaire is provided by regional and international airlines.

Saba and Statia

Saba and Statia have regular flights to and from St. Maarten, which is home to Windward Island Airways (Winair), the local Windward Island carrier, and is second only to the San Juan, Puerto Rico airport in Caribbean Basin passenger volume. From St. Maarten are daily flights to and from Europe, the U.S., South and Central America and other parts of the world. Various airlines maintain facilities, both for passengers and air freight.

Telecommunications

Bonaire provides adequate state-of-the-art communications infrastructure.

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Doing business in the Dutch Caribbean

Business organization and reporting requirements

Legal form of enterprise
The corporate law of the Dutch Caribbean islands is based on Dutch corporate law. The (public limited liability) corporation (in the Dutch language: ‘de Naamloze Vennootschap’, abbreviated as ‘NV’) is a corporate body with shareholders, and is governed by the corporate law and its articles of association. The NV used to be the most common legal vehicle for business operations. However, since the introduction of the private limited liability corporation (Besloten Vennootschap or BV), this has become the more popular.

Procedure
A corporation is established by the execution of a notarial deed. At least one shareholder is required to form the corporation.

Founders
At least one founder is necessary, either an individual or a legal entity. Non residents can establish an NV by proxy. A corporation must have one or more ‘managing directors’, who can be either an individual or a legal entity. At least one managing director must be a resident of, or domiciled in, the island where the corporation is established. The powers of the management board are set out in the law and in the articles of incorporation. A corporation may issue non voting shares. In practice a corporation in the international financial services industry is incorporated by a local trust office. After incorporation the shares will be transferred to the beneficial owner.

Capital requirements
The public as well as the private limited liability corporation has to issue at least one share with any nominal value. The equity is not allowed to be negative during the period of existence.

Shares
Different classes of shares may be issued, for variations in voting rights, participation in profit distributions and in entitlement to a balance after liquidation. Shares may be bearer shares or registered shares. A BV may only issue registered shares.

Board
The Board may be structured on the one-tier Anglo-Saxon model or the two-tier civil law model. In the one-tier model one or more members of the Board of Directors (as long as they are a minority) may also be member of the Executive Board that represents the private limited liability corporation. In the two-tier model the Managing Board is supervised by a separate Supervisory Board.

For a BV it is also possible to be managed directly by the shareholders. In that case the BV does not have a separate board of directors. The shareholders combined operate as directors. This has the advantage of simplifying formalities such as appointing, suspending or discharging of directors, and there is also no difference between shareholder meetings and board meetings.

Publication
A so-called large NV must publish its financial statements, thus enabling inspection by parties concerned such as creditors, employees or business partners. An NV is deemed to be a large NV depending on three cumulative criteria, namely the number of employees, the total balance sheet value of assets and the net turnover.

NV’s that do not meet these criteria as well as BV’s, even those that are comparable in size to the so-called large NV, do not have the obligation to publish their financial statements.

Transforming into another legal entity
If required, an NV may be transformed into a BV and vice versa. It is also possible for a foreign entity to be transformed into an NV or BV if the law governing that entity does not oppose this. The reverse is also possible.

License
The most important license required is: • Business license from the Executive Council permitting the corporation to act.

Reporting requirements
The reporting requirements for the large NV are more specific than for the regular NV and the BV. According to law, anyone who conducts a business must:

• Administer their affairs in accordance with the standards of the business in such a way that it will always be possible to know one’s rights and obligations;
• Prepare annual financial statements; and
• Keep all books and documents, including balance-sheets, correspondence received and copies of outgoing correspondence for a period of ten years.

The most important license required is:

• Business license from the Executive Council permitting the corporation to act.

The time required to complete the incorporation and to obtain the necessary permit licenses varies. Depending on the complexity of the legal institution of the entity, an NV or BV can be incorporated in one day. The costs of incorporation range between $ 850 and $ 1,600.

For the small NV and the BV, financial statements must be prepared within eight months after the end of the financial year. Each shareholder is entitled to inspect the financial statements within a period of two years. For the large NV, some stricter rules apply.

• The financial statement must be prepared within six months after the end of the financial year;
• The financial statement must be prepared according to standards set by the International Accounting Standards Board (‘IASB’); and
• An external qualifying expert, such as a chartered accountant or a certified public accountant must be appointed to report on the financial statement.
**Private Foundation**

The private foundation is a distinctive form of the entity foundation. The founder enjoys a great deal of latitude to set up a private foundation in the way that he sees fit. Very specific and requisite instructions may be put to management by the founding party on how to make disbursements from the equity of the private foundation. The private foundation is not subject to the disbursement restrictions which a “normal” foundation is subject to.

**Private foundation and tax**

The BES islands do not have a gift or inheritance tax, therefore the transfer of capital into a private foundation or a disbursement by a private foundation is not subject to such tax.

The disbursement of a private foundation to a resident of one of the BES islands will be subject to income tax if the disbursement forms part of an annuity. A lump-sum payment will not be subject to income tax.

The disbursement of a private foundation will be subject to the 5% Revenue tax. In case the disbursement is subject to income tax, the revenue tax will be counted against income tax due.

**Purpose and use of the private foundation**

**Estate planning:**

The private foundation may be used in situations where it is desirable to keep private equity separately protected in a separate entity.

**Alternative to the trust:**

An advantage of a private foundation is that it qualifies as a legal entity. In addition to this the private foundation is also a form of the foundation, a legal entity that exists in many jurisdictions.

**Asset protection:**

A private foundation may be employed to protect family – and corporate assets. Capital may for example be protected against political interference or expropriation, criminal risks such as kidnapping and economic risks such as product liability or other risks such as the squandering of assets by family members.

**Trustee:**

A private foundation can exercise all rights and powers of the Trustee.

**Procedure**

The private foundation has to be established by notarial deed by a qualified Notary at law. The private foundation must have a local administrator or authorized representative. The deed of incorporation of the private foundation should include the by-laws of the foundation. These should include: the name of the foundation, with the word institution or private foundation forming part of said official name, the objective of the foundation and the method of appointing directors. The private foundation should be registered in the register of foundations at the Chamber of Commerce.

**Employment regulations**

**General considerations**

The labor force is estimated at approximately 7,000 on the BES islands. There are statutory minimum wages for workers aged 21 years and older. The present monthly entry level minimum wages, by category (not including benefits) in 2013, based on a 40 hour workweek, are:

<table>
<thead>
<tr>
<th>Island</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonaire</td>
<td>788</td>
</tr>
<tr>
<td>Statia</td>
<td>849</td>
</tr>
<tr>
<td>Saba</td>
<td>798</td>
</tr>
</tbody>
</table>

Actual wages paid are often higher than the minimum. The standard legal working hours are normally 8 per day and 40 per week. At least 15 working days’ annual vacation must be given with pay, and 10 paid public holidays are also granted.

Employers pay 18.4% in social security’s premiums (including health insurance, old age benefits, accident insurance, widows and orphans insurance). Employees as well as other residents pay social security premiums, but these are already included in the all-inclusive income tax rate of 30.4%.
**Employers’ organization**

Several organizations serve the interest of local businesses.

**Bonaire:**
Vereniging Bedrijfshanden Bonaire (VBB) for trade and industry; Bonaire Hotel and Tourism Association (BONHATA).

**Saba:**
Saba Business Association (SBA).

**St. Eustatius:**
St. Eustatius Business Association (STeba).

**Labor legislation**

Collective labor agreements usually cover a period of two to three years, after which new terms are agreed upon for a similar period of time. The reliability provided by these contracts benefits both the employer and employee. In most cases there is a clause which provides for no strikes or lockouts during the contract period. All labor disputes where parties do not reach an agreement must be subjected to mediation. Parties may request intervention, or the mediator can ex-officio compel parties to accept mediation. The government has the authority to impose a ‘cooling off’ period.

**Work permits**

A residence permit is required for every foreigner who wants to become a resident of one of the BES islands. An applicant for admission as a resident must, among other things, provide information on his application form on how he will support himself and accompanying dependents. In addition to an admission permit, a foreigner who wants to exercise a profession or take up employment must also have a work permit. The work permit will only be granted if there are no suitable qualified persons available on the islands. Generally, a request for a work permit will only be taken into consideration if it is filed through a local employer who is willing to accept full responsibility for any possible expenses related to the employee.

**Organizations**

**Labor organization**

Labor unions are generally well established and can be found in most companies. They are organized mainly on a basis of individual enterprises. Most unions are members of a local federation, while many are affiliated with international federations as well. Most workers belong to a union, although closed shops or enforced membership are prohibited by law. It is not common for representatives of workers to participate in the management of companies.

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**Taxation**

**Introduction**

The BES islands have the following taxes:
- Real estate tax (instead of a corporate income tax)
- Income tax (personal income tax)
- Wage tax (pay as you earn income tax)
- Revenue tax (5% on all payments from legal entities)
- Sales tax (no VAT)
- Excise tax (on liquor, tobacco, perfume)
- Real property tax
- Property transfer tax

The BES islands do not have:
- Profit tax (corporate income tax)
- Inheritance and gift tax
- Net wealth tax
- Withholding tax on interest
- Withholding tax on royalty payments
- Capital tax
- Import duties.

The BES islands have no profit tax. Instead they have a Revenue (Withholding) Tax and a Real Estate Tax.

Hereafter we describe the current tax regulation of the BES islands.

**Revenue tax**

The revenue tax is levied over the revenues on shares and profit-sharing certificates, as well as over distributions from foundations, special purpose funds, or a closed-end common fund. The rate of the revenue tax is 5%.

The revenue tax applies to entities established in the BES. To avoid that the BES will hold great attraction for offshore businesses to thwart the tax basis of other countries (such as the Netherlands, Aruba, Curaçao, and St. Maarten) by means of profit transfer, each entity is deemed to be established in the Netherlands, unless specific criteria have been met, the purpose of which is to guarantee commercial ties with the BES.

An entity is deemed not to be established in the Netherlands based on the following criteria:
1. it has been admitted to a bonded warehouse for commerce and services;
2. it obtained a declaration of the Inspector of Taxes that one of the following conditions applies:
   a. it is not active in financial services or insurance, turnover is not more than USD 80,000 and assets are not more than USD 200,000;
   b. the assets usually consist for less than 50% of investments, participations, liquidities, assets that are made available for use to persons outside the BES, as well as assets, directly or indirectly, used for financing persons outside the BES;
   c. it usually provides permanent work to at least 3 persons living in the BES islands, who engage independently in activities relating to the assets mentioned above under 1, and whose responsibility is in line with their job position; and it has at its disposal real estate situated in the BES, for a period of at least 24 months, with a value of at least USD 50,000 for the activities, and this real estate is used as an office with facilities that are customary in the financial sector;
   d. it participates for at a minimum of 95% in the shares of an entity as mentioned above.

Entities that do not meet these criteria are deemed to be established in the Netherlands, which causes them to be subject to the Dutch corporate income and dividend taxes.
**Income tax**
The following individuals are subject to income tax:
- Residents; and
- Non residents whom receive certain source income, such as:
  - Salary as managing director or member of a supervisory board of a resident company;
  - Income from real property located on the BES islands; or
  - Dividend, and profits realized on the sale of shares, if the shareholder holds a substantial participation in the capital of a resident company.

A substantial participation exists if an individual holds, directly or indirectly, at least 5% of the nominal paid up capital, either alone or together with his spouse, of a resident company. Dividends and profits on the sale of shares forming a substantial participation are taxed at a flat rate of 5%.

The income tax is progressive with a maximum of 35.4%. However, the first bracket of 30.4% applies to income up to USD 250,000 above a basic exempt income of USD 11,387.

An exemption of USD 5,000 applies to interest received as well as to dividends.

**Other significant taxes**

**Sales tax**
A sales tax is levied on the import of products and the sale of products that have been produced by a local company (8%) or on services performed (6%). The rate for Saba and St Eustatius is 6% and 4% respectively.

**Real property tax (land tax) and real estate tax**
Real estate tax is levied from owners of land and real estate located on the BES islands. These properties are taxed at an effective tax rate of 0.8%. The tax rate for the hotel sector is 0.4%. There are several exemptions, among others for real estate which functions as a principal residence.

Each BES island can also levy real property tax by means of a surplus on the real estate tax. Bonaire levies a surtax of 15%, resulting in a effective tax rate of 0.92% in general and 0.46% for the hotel sector.

**Property transfer tax**
This tax is levied on the transfer of real property situated on the islands. The transfer of shares in a company holding real property is not taxable. The rate is 5% and is levied on the fair market value.