**New law liability taxes and social premiums in Aruba**

**Introduction**

On January 27, 2014 the Government of Aruba approved a law concerning the liability for taxes and social security premiums in Aruba (the so-called sequential liability law, hereinafter ‘SLL’). The SLL will come into force on a date to be announced, but no earlier than June 1, 2014. Aside from the sequential liability, the SLL also regulates the director’s and staff’s hirer liability as well as joint and several liabilities for other parties (e.g. employees). With the introduction of this law, the Government aims for a more effective manner for the collection of taxes and social security premiums.

In this newsflash we will highlight the different types of liabilities. A more in depth elaboration of the sequential-, the director’s, and staff’s hirer liability will be discussed in our following newsflashes.

**Director’s**

The current director’s liability provisions are regulated in the different tax- and social premium laws. The new director’s liability will be regulated in the SLL. Each (former) director of a legal entity is jointly and severally liable for the taxes (e.g. corporate tax, wage tax, turnover tax and ground tax), levies (e.g. tourist levy) and the social security premiums (general old age-, widows and orphans and health insurance) due by the legal entity. The director is jointly and severally liable for any penalty imposed or collection interest due in connection with the unpaid taxes.

Unlike the previous director’s liability provisions, the new director’s liability in the SLL has a notification duty of payment incapability.

When a legal entity is not capable of paying its taxes/levies or social premiums due, it must notify this to the Tax Collector by substantiated writing as soon as possible, but no later than two weeks following the payment due date of the taxes/levies or social premiums. A (correct) notification is important since this will influence the burden of proof of the director’s liability.

**Contractors and sub-contractors**

This type of liability is new in Aruba. According to the SLL contractors are jointly and severally liable for the wage taxes and social security premiums that their sub-contractors and each subsequent sub-contractors are due in connection with performing activities by their (hired) employees related to a work. The contractor is not jointly and severally liable for imposed penalties in this matter.

The (sub) contractor can avoid the liability by requesting a certificate of fiscal conduct every three months from the subcontractor within the duration of their agreement.

If it is plausible that the non-payment is not the fault of the contractor, sub-contractor nor any contractor in the ‘chain’, the contractors are not liable.
Staff’s hirer

This type of liability is also new in Aruba. A third party (the “hirer”) who hires staff employed by a withholding agent (the outsourcer) and instructs or supervises the staff, is jointly and severally liable for the wage taxes and social security premiums related to the activities assigned to the hired staff. The hirer is not jointly and severally liable for imposed penalties in this matter. The hirer is not jointly and severally liable if it is plausible that it was not his or a ‘sub’ hirers’ fault that the taxes or social security premiums due by the outsourcer were not paid. Hirers can avoid the liability by requesting a certificate of fiscal conduct every three months from the outsourcer during the term of their agreement.

Partners, managers permanent establishment, permanent representative and liquidator (not appointed by judge)

According to the SLL, partners in a partnership, managers of permanent establishments or the permanent representative (agent) of foreign corporations are jointly and severally liable for the taxes and social security premiums due by the entities concerned. Only if the aforementioned persons/entities can prove that the non-payment is not their fault, they are not jointly and severally liable. Each person/entity responsible for the liquidation of a dissolved company (except a liquidator appointed by a judge) may also be held jointly and severally liable insofar the non-payment is due to evident improper management attributable to this person/entity. The aforementioned liability expires five years after the dissolution of the entity.

Supervisory staff of permanent establishments and permanent representatives

Supervisory staff (resident or established in Aruba) of permanent establishments, permanent representatives of foreign entities or a person that is in charge of the activities performed in Aruba, are jointly and severally liable for the wage tax and social security premiums due by the foreign entity (withholding agent) or by the foreign (sub)contractor. The supervisory staff or the person in charge is not jointly and severally liable, if he proves that it is not his fault that the wage tax or premiums due by the foreign entity (withholding agent) or foreign contractor were not paid.

Organizers artistic and athletic events

The one that organizes, co-organizes or instructs to organize a performance or athletic event in Aruba, is jointly and severally liable for the wage tax due on the wage of the non-resident artist/athlete.

Employees

Currently and under certain conditions employees may also be held jointly and severally liable for the wage tax social security premiums. The new employee’s liability will be regulated in the SLL. Under the SLL, employees are jointly and severally liable for the not duly withheld wage tax and social security premiums unless the employee informs the Tax Inspector of the negligence of the withholding agent (employer) before the employee knew or should have known that the Tax Inspector was or would become aware of this negligence.

Formal aspects

A formal aspect among others is that the Tax Inspector has to issue an order for the notice of liability following the default of payment of the taxes or social security premiums. The one held liable can object and appeal against this order.

Before selling of the property of the one held liable, the Tax Inspector should do its utmost to collect the tax and premiums due from the tax payer itself.

Recovery possibility

The one that is held jointly and severally liable and pays the amount of taxes and social security premiums due can recover (part of) aforementioned amounts from others who are jointly and severally liable as well or the tax payer itself. Parties can agree to deviate from the aforementioned.

The one that pays the taxes and social security premiums can prosecute the other parties that are jointly and severally liable for the taxes and social security premiums due.
How PwC can help
If you would like to learn more or have questions or remarks in respect of the contents of this newsletter, you can contact:

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