Newsflash Tax and Legal Services

Fictitious employment, identification obligation and allowances to employees
Introduction
In this newsflash we will inform you about the changes made in the tax laws regarding the four following topics:

1. Fictitious employment.
2. Identification obligation.
3. Tax rate for non-identified employees.
4. Allowances paid to employees.

The changes were approved by the Aruban parliament on December 14, 2007 and have come into force as of January 1, 2008.

Fictitious employment
The Government of Aruba has made some changes in the wage tax legislation as per January 1, 2008. Regarding the fictitious employment the following changes have been made to the existing wage tax law in relation to what is regarded as a fictitious employment.

Commission basis
Based on the current text of the law, persons who only work on a commission basis are considered to have a fictitious employment with the company / entrepreneur who pays the commission. Based on this text, the Tax Appeal Court decided that, individuals who also received income in another form than the commissions were not considered to be fictitiously employed. Due to changes in the text of the law as of January 1, 2008, individuals performing activities who receive commissions as well as a fixed remuneration are considered to be fictitiously employed by the party paying for these services.

Please note that the above is not applicable if the person rendering the services on (partly) commission basis qualifies as an entrepreneur for Aruba income tax purposes.

Trainees
Trainees will be considered to have a fictitious employment with the companies and entrepreneurs they work for as of January 1, 2008. In practice there has been frequent debate on the question whether there was a relationship of authority between the company and the trainee. The relation of authority is one of the factors which determine whether or not there is a fiscal employment.

Contracting for work (in Dutch: aanneming van werk)
Contractors who do not qualify as an entrepreneur are also considered to be a fictitious employee under the new legislation in case of a contracting agreement with a physical nature. The client will have to withhold wage tax and social security premiums on the amount paid to these individuals. This article will also apply to individuals who assist aforementioned contractors.

The explanatory notes indicate that this provision is based on Dutch wage tax legislation. Also Dutch case law on wage tax is applicable unimpaired, according to the explanatory notes.

Identification obligation
Every withholding agent for wage tax purposes is obliged to record the identity of his employees in his payroll administration.

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Identification obligation
Every withholding agent for wage tax purposes is obliged to record the identity of his employees in his payroll administration. The withholding agent should receive the concerning information in the form of an employees statement (in Dutch: werknemersverklaring) and a copy of a valid passport or ID, from the employee.
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**Tax rate for non identified employees**

Based on the current text of the law, wage tax is levied at a progressive rate and is calculated for each employee individually. In order to determine the correct amount to be withheld, specific information related to the employees is necessary.

In order to avoid that due to this missing information incorrect amounts of wage tax are withheld, a so-called anonymous tax rate (anoniemtarief) will be introduced. This tax rate is equal to the highest marginal income tax rate mentioned in tariff group II (58.95%).

The anonymous tax rate is applicable if wages are paid and:

- the employee has not provided his name, address, city or personal number to the withholding agent (the employer);
- the employer does not have a copy of a valid ID of the employee in his payroll administration;
- the withholding agent knows or should have the suspicion that the employee has provided incomplete or incorrect personal details for tax purposes;
- the employer has paid wages to employees and did not include these wages in the payroll administration or
- the employer has no individual specification of the wages paid to the individual employees.

**Allowances paid to employees**

Allowances paid to employees are only free of taxation if the following conditions are met:

- the allowances are paid to reimburse costs of the employee;
- the abovementioned costs are caused by the employment;
- in the payroll administration of the employer is documented which costs are made by the employee and which reimbursements were paid to the employee in connection to these costs.
Contacts

Please note that the aforementioned has a general character and can only be used as guidance. If you need further assistance or if you have specific questions, please do not hesitate to contact:

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