



NATIONAL ORDINANCE PROFIT TAX MEASURES PER 1 JANUARY 2020

1. Introduction

This memorandum sets out the most important changes to the Curaçao profit tax law as per 1 January 2020. The legislative amendment is set forth in the National Ordinance Tax Law Amendment 2019 (in Dutch: *Landsverordening Belastingherziening 2019*; hereinafter the “Ordinance”).

2. Changes in the profit tax legislation

From 1 January 2020, the exemption for foreign profit is abolished and only income from local enterprise is subject to profit taxation. Very shortly, income from local enterprise is revenue from income generating activities carried out in Curaçao and with assets effectively connected with Curaçao. Some examples are:

- commercial, industrial, innovation or similar activities or revenue from a profession or service provided, undertaken or exercised in Curaçao;
- international transportation services originating or ending in the taxable zone of Curaçao (except if otherwise exempted);
- lease and use of immovable property located in Curaçao;
- making available rights, know-how or other intangible assets for use in Curaçao; and
- maintaining deposit accounts at or providing financing to residents of Curaçao.

Revenue not generated by the material enterprise, so-called passive income, is always designated as income from local enterprise¹. The net income earned from local enterprise is subject to profit tax at the rate of 22%.

According to the Explanatory Memorandum which forms a part of the tax law amendment (in Dutch: *Memorie van Toelichting*; hereinafter the “MvT”), if the gross income of the company consists of both local and foreign revenue, the total income will be designated as being from local enterprise except if it can be demonstrated which portion thereof can be attributed to foreign enterprise. The proportion of local to

¹ Think of interest, royalty (except if from a qualifying intangible asset), rent and dividend income (unless it falls under the participation exemption).

foreign income is calculated based on the ratio of local to total expenses in so far as these have a causal link with the source of the income. In this context, these expenses do not include the material costs included in the product.

An example in NAf

Please note: no rights may be derived from this example!²

Revenue from local and foreign enterprise		100.000
Cost of materials		<u>20.000 -/-</u>
Turnover		80.000
Causal (direct) local expenses	40.000	
Causal (direct) foreign expenses	<u>10.000</u>	
Total causal (direct) expenses		<u>50.000 -/-</u>
Gross profit (before indirect expenses) from local and foreign enterprise		30.000

Calculation income from local enterprise:

Causal local expenses / total causal expenses x gross profit = Income from local enterprise (before deduction of local indirect expenses)

$$40.000 / 50.000 \times 30.000 = 24.000$$

Based on this calculation, NAf 6.000 of the NAf 30.000 of gross profit from local and foreign enterprise is designated as foreign income and is, therefore not subject to profit tax.

From the gross income from local enterprise (NAf 24.000) you may not deduct the indirect expenses that are allocable to the foreign income or foreign taxes that are not related to the income from local enterprise. The amount of deductible local indirect expenses is determined based on the causal expense ratio calculated above.

Further example in NAf

Total indirect (local and foreign) expenses	20.000
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Calculation deductible local indirect expenses:

Causal local expenses / total causal expenses x total indirect expenses = deductible local indirect expenses

$$40.000 / 50.000 \times 20.000 = 16.000$$

Gross profit (before deduction indirect expenses) from local enterprise	24.000
Deductible local indirect expenses	<u>16.000 -/-</u>
Taxable base for profit tax	8.000

The taxable base is subject to 22% profit tax.

² The Ordinance and the MvT state that the calculation of income from local enterprise and the non-deductibility of expenses or taxes will be further clarified in a National Decree (guidelines). This National Decree has not yet been published. The example serves only to illustrate what can be understood from the MvT but is subject to change depending on the guidelines still to be issued.

Curaçao entities subject to profit tax who obtain tax exempt profit from foreign enterprise, must fulfil the criteria to have a real presence (substance). Furthermore, it must be established that, if the entity were a foreign enterprise, it could be considered to have a permanent establishment in Curaçao. If a tax subject passes neither of the aforementioned tests due to intent or gross negligence, fines of NAf 50.000 to at most NAf 500.000 may be imposed.

For tax subjects who do not keep regular accounts nor have regular year-end closures of accounts, all revenue will be designated as income from local enterprise.

2.1 Specific sectors, qualifying activities and E-zone entities

2.1.1 Insurance companies

Premium income and capital that is connected with the insurance of risks located outside Curaçao do not qualify as income from local enterprise and are therefore not subject to profit taxation.

Premium income and capital that is connected with the insurance of risks located in Curaçao is divided into two categories: life and non-life insurance. The income from local enterprise from life insurance activities remains 10% of premium and capital received in a tax period and the income from local enterprise from non-life insurance activities remains 20% of the total premiums and capital received. This income is taxed at the rate of 22%.

2.1.2 Banks

Income from financial instruments that are offered by an active financial institution outside Curaçao such as fixed deposits, financing of or trade in securities or financial instruments with non-residents or non-resident enterprises as meant in the Foreign Exchange Regulation of Curaçao and Sint Maarten, will in general not be designated as income from local enterprise³. This is especially relevant for the so-called offshore banks.

2.1.3 Number of qualifying activities taxed at profit tax rate of 3%

A new profit tax rate of 3% is introduced for income from local enterprise of a number of qualifying activities that take place in or from Curaçao. These qualifying activities are:

- building and improving airplanes and ships, as well as repairing and maintaining airplanes and ships with a length of at least 10 meters and machines, installations and material located in and for use on board of these airplanes and ships;
- services provided by call-, service-, or datacenters in so far as they provide support activities to enterprises with an annual turnover of at least NAf 50 million (approximately USD 28 million);
- services provided by warehousing companies; and
- services⁴ provided in or from Curaçao to non-related investment companies⁵ and managers of investment companies⁶.

³ Charged transaction costs, commissions and other remunerations for financial transactions entered into by these parties can, in principle, not be qualified as income from local enterprise.

⁴ Not including providing management services to companies whose statutory seat or seat of effective management is located in Curaçao, as well as services provided by civil law notaries, attorneys, registered accountants, tax advisers and attendant services.

⁵ The services consist of: buying, holding or selling investment positions, calculating risks and reserves, taking decisions regarding foreign exchange or interest fluctuations and mitigating risks by entering into hedging contracts and providing assistance with financing of acquisitions and distributions.

⁶ The services consist of: administrative and accounting services, producing relevant reports for various stakeholders such as government entities, investors and financial authorities.

2.1.4 E-zone entities

Entities established in the E-zone (or Free-zone) are subject to the regular profit tax regime⁷. The 2% profit tax rate for E-zone companies was abolished. Presuming these E-zone companies only generate revenue from foreign enterprise, their profit should remain untaxed. For purposes of the turnover tax (in Dutch: *omzetbelasting*) nothing changes for these E-zone companies.

For more information, please contact:

Anjli Finessi, tax adviser, finessi@bakertillycuracao.com

Wilco van Oosten, tax adviser, vanoosten@bakertillycuracao.com

Arthur van Aalst, tax attorney, vanaalst@bakertillycuracao.com

⁷ E-zone entities that were subject to the E-zone legislation as in effect on 31 December 2019 may continue applying said legislation through 31 December 2022.