

*“It’s complicated,
that’s why we’re
bringing in BDO.”*

Penalty System

The Fundamentals

Aruba’s penalty system is quite strict and can be divided into three categories. Penalties for omissions are generally mild and increase as the number of occurrences increase. Penalties for gross negligence or intent, taking into account the circumstances, can go up to 100% of the tax due. Penalties for non-compliance with any information obligation or for not cooperating with the authorities can be imposed, which however needs to be done by the Public Prosecutor.

Omissions

The tax authorities can impose penalties for not filing your return (on time) and for not, not timely, or only partially paying the amounts due. These penalties can “cumulate”. The maximum penalties (which will depend on the number of omissions) are:

- Assessment taxes (e.g. individual income tax): not filing your return (on time): AWG 10,000
- Filed return or self-assessment taxes (e.g. payroll taxes, turnover tax and dividend withholding tax):
 - Not filing your return (on time): AWG 500
 - Not paying on time: AWG 5,000
 - Not or partially paying: AWG 10,000
- Filed return or self-assessment taxes (corporate income tax only):
 - Not filing your return (on time): AWG 500
 - Not paying on time: AWG 2,500
 - Not or partially paying: AWG 10,000
- If the withholding agent (i) does not provide the employee with a wage tax card or (ii) fails to have the proper employee documentation in his/her administration, a penalty with a maximum of AWG 10,000 can be imposed.
- Penalties may also be raised in case the wage tax summary or third party summary has not been filed (on time). These penalties depend on the number of employees/ third parties.

Gross negligence or intent

The penalty policy defines gross negligence as an omission, attributable to the tax payer.

- Gross negligence is deemed present if the tax payer should or could have known that his/her behavior could result in levying or paying less taxes than otherwise would have been the case. The penalty amounts to 25% of the additional tax due.
- Intent is defined as knowingly and deliberately doing or omitting something, resulting in not or not within the stipulated period levying or paying taxes. Conditional intent is defined as knowingly and deliberately accepting the chance that doing or omitting something results in not (timely) levying or paying taxes. The penalty amounts to 50% of the additional tax due.
- All penalties can be increased in case of e.g. repetition, fraud or substantial amounts not being levied or paid. The burden of proof for these penalty increasing circumstances lies at the tax authorities. On the other hand, penalty mitigating circumstances can also exist in the form of e.g. financial difficulties. The tax authorities have the burden to make sure the correct penalty is levied in connection with the penalized act committed.
- According to the Aruba penalty policy, no penalty will be levied in case of less than gross negligence or if an arguable position exists.



L.G. Smith Boulevard 26
Oranjestad
ARUBA

Office: +297 528 6336
Fax: +297 582 5256

www.bdoaruba.com
www.bdo.global

Penalties from the Public Prosecutors' Office

In case the tax payer fails to comply with information requests, or in case of certain non-filings (like forms for transparency due at the end of June of each year), the Public Prosecutor can decide to start procedures to levy monetary penalties with a maximum of AWG 100,000 (or, in case higher, twice the amount not paid), and/or maximum imprisonment of 6 years. The first verdicts from the Courts on non-compliance with tax obligations have been issued in 2018 and combine (conditional) imprisonment with monetary penalties.

The above is not intended to constitute, nor should it be relied upon, to replace any professional advice. No action should be taken without first consulting your tax advisor. The above reflects the law effective January 1, 2019.



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