

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

Liability for taxes

The Fundamentals

In order to prevent non-payment of taxes due, several different types of liabilities for taxes have been introduced that specifically regard directors, contractors, principals of hired staff, dissolved entities, permanent establishments, foreign withholding agents and foreign contractors.

Liability for Directors

All members of the Board of Directors can be held liable for wage tax, corporate income tax, tourist levy, gaming tax, dividend withholding tax, turnover taxes (BBO/BAVP/BAZV) and social security premiums (AOV, AWW and AZV) of a tax payer. Please note a director cannot be held liable for debts the tax payer itself is held liable for.

In the event that the tax payer is not able to meet its tax and premium payment obligations, the tax payer should notify the tax collector thereof in writing within two weeks from the due date of the payment of those taxes. This notification should include an explanation of the reasons for non-compliance, while the tax collector may request additional information and documentation (if required). If the company fails to timely notify the tax collector, as meant before, mismanagement (“onbehoorlijk bestuur”) is presumed.

Liability for contractors

If a contractor (A) uses the services of (sub)contractor (B), than that contractor (A) might be held liable for unpaid wage taxes and/or social security contributions of the (sub)contractor (B). The liability occurs when work of a material nature, such as construction or repair of buildings, is outsourced to a third party. The one who can be held responsible for the contracting partners their wage taxes and social premiums are:

- The (main) contractor;
- The sub-contractor;
- The self-builder (in Dutch: “eigenbouwer”); The so-called self-builder can be described as “the company that is outsourcing work (of an material nature) which work normally belongs to the core business of that company and/or is normally executed by its employees”.

In principle two exceptions exists, one being when the subcontractor performs at least 50% of the work in his own business location, and the other being when an agreement is closed in which the supply of goods is decisive but some services are present.

Penalties assessed at the other party are excluded from the liability.

If research is done on the fiscal behavior (“fiscaal gedrag”) of the (sub) contractor, the liability can be mitigated. This research can be done by requesting the (sub) contractor to provide a so-called statement of fiscal behavior (to be obtained at the tax authorities), which statement in essence implies that the (sub) contractor has met its fiscal obligations. This statement is however only valid for three months, and must be renewed by the (sub) contractor every three months.



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Liability for employees hired from third party employers

The hired staff liability (in Dutch: “inlenersaansprakelijkheid”) is applicable for the individual or entity who/ which temporarily hires employees (“borrower”) under its management and/or supervision from a person or entity having a formal employment agreement with these employees (“lender”), e.g. an employment agency, cleaning agency or security services agency. The borrower will be held jointly and severally liable for all wage tax and social security premiums owed by the lender for the employees hired by the borrower and who are under his/her supervision or management. If the borrower in turn lends out the employees hired from the lender, the new borrower will also be jointly and severally liable. Penalties assessed from the lender are excluded from this liability.

No employee liability exists in case the work performed by the hired employee is part of a purchase and sale agreement between the lender and borrower regarding an existing object.

Employee liability will not be applicable in the event that not paying the wage tax and social security premiums owed, cannot be attributed to any fault of the borrower and/or the lender.

If research is done on the fiscal behavior (“fiscaal gedrag”) of the lender, the liability of the borrower can be mitigated. This research can be done by requesting the lender to provide a so-called statement of fiscal behavior (to be obtained at the tax authorities), which statement in essence implies that the lender has met its fiscal obligations. This statement is however only valid for three months, and must be renewed by the lender every three months.

Liability for non-legal entities, permanent establishments and dissolved entities

The following persons can be held jointly and severally liable for all taxes and premiums owed by (legal) entities:

- a) Every director of an entity, which is not a legal entity. This includes, for example, the fully liable partners of a partnership;
- b) The person in charge of a permanent establishment in Aruba of a foreign company;
- c) The permanent representative in Aruba of a foreign enterprise;
- d) The person in charge of liquidating a dissolved entity, insofar as this person is guilty of mismanagement and no more than 5 years have passed since the dissolution. An exception is the court appointed administrator.

The individuals mentioned under (a) through (c) are not liable in the event that it can be proven that not paying the wage tax and social security premiums due cannot be attributed to any fault of theirs.

Liability for foreign withholding agents and foreign contractors

The following individuals can be held jointly and severally liable for all wage tax and premiums due by foreign withholding agents and foreign contractors (whether or not these are entities or individuals):

- a) The person(s) in charge of a permanent establishment;
- b) Permanent representative on Aruba of a foreign enterprise;
- c) Person in charge of the activities performed in Aruba.

No liability exists in the event that it can be proven that not paying the wage tax and social security premiums due by the foreign withholding agent or foreign contractor cannot be attributed to any fault of theirs.

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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