
# Corporate income tax

## The Fundamentals

Corporate income tax is levied over the profit of an enterprise conducted in Aruba in the form of either an Aruba legal entity (via for example a corporation or a limited liability company) or a permanent establishment/ permanent representative of a foreign entity.

## Rate

The corporate income tax rate is set on 25% (2007-2015: 28%). The taxable base consists of the income minus expenses, taking into account the limitations in the deduction of certain payments.

## Permanent establishment

A permanent establishment is deemed present in case of (i) a permanent representative or (ii) a foreign enterprise which builds, installs, maintains, cleans or repairs capital assets (whether movable or immovable) on Aruba for more than 30 days. Included in these 30 days are e.g. the technical preparation and cleaning up of the site. If the fiction does not apply, the commentary to article 5, paragraph 3, OECD model convention will be used to determine if a permanent establishment is present.

## Transfer pricing

In case a corporate person or individual participates, directly or indirectly, in the management, supervision or the capital of two or more corporate entities, the conditions which are applicable to the supply of goods and the rendering of services between these entities must be arm's length, i.e. similar to the conditions that would have been closed with third, unrelated, parties. Documentation to substantiate the arm's length transactions should include – according to the explanatory notes – e.g. (i) the agreement, (ii) the transfer pricing method that was chosen, (iii) why this method was chosen and (iv) how the consideration has been determined.

## Fiscal unity (group tax relief)

Two or more Aruba entities, which are doing business in Aruba, can opt to form a fiscal unity if (i) the parent company owns at least 99% of the shares in the subsidiary at the beginning of the financial year, (ii) the financial years are equal, (iii) the fiscal regimes are equal and (iv) management is effectively performed from Aruba. For corporate income tax purposes the subsidiary is then disregarded and all assets and liabilities, including the profits or losses, are allocated to the parent company.

## Limitations in the deduction of payments

Even if, based on the transfer pricing documentation, the transaction can be deemed to be at arm's length, payments (including amongst others interest and all other compensations for the use of material and/or immaterial goods or rendered services, i.e. rent, royalty, management fee etc.) are not tax deductible unless the Aruba paying entity can make it credible that:

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- The receiving party is not (in)directly related to the Aruba company; or
- The receiving company pays an effective tax rate of at least 15%; or
- All the shares in the receiving company are held by an entity that is directly or indirectly, for at least 50% of the shares and voting rights, listed at a qualified Stock Exchange.

If the payment is arm's length, one of these exceptions is not applicable but the receiving party is subject to taxes, 75% of the payment can be deducted. In principle, this provision only applies to recipients situated in Aruba.

## Related entities

A relation with the taxpayer is deemed to exist if:

- The taxpayer has an interest of at least 1/3 in another entity; or
- An individual or entity has an interest of at least 1/3 in the taxpayer; or
- A third party has an interest of at least 1/3 in another entity, while this third party also has an interest of at least 1/3 in the taxpayer.

## Offset of losses

Losses generated in a year can be offset with profits generated in the following five years. After the five year period, the remaining losses evaporate.

## Participation exemption

If an enterprise situated in Aruba holds shares or similar rights in another Aruba entity, the dividends received and capital gains realized with the sale of these shares are exempt from corporate income tax. If an enterprise situated in Aruba holds shares or similar rights in a foreign entity, the participation exemption only applies if these shares in the foreign entity are not held as an investment and the foreign entity is subject to a tax over its profit.

All costs (e.g. administration costs, management costs and legal advisory costs) relating to participation however are not tax deductible (and should be charged to the participation), except for interest. For interest relating to the purchase of such a participation, the interest of the first two years may be deducted in three equal parts in years three through five. It is important to note that the normal regulations for the deduction of interest still apply, i.e. the interest and the loan need to meet the at arm's length criteria, and one of the exceptions needs to be made credible before the interest is tax deductible.

## Investment allowance

An investment allowance of 6% of the invested amount in company assets (hence not inventory) may be claimed under the following conditions:

- It regards a total investment of at least AWG 5,000 purchased via local entrepreneurs. Investments bought directly from abroad will not qualify for the investment allowance.
- Investment allowance cannot be claimed on the purchase of for example land, dwelling houses, goodwill, personal cars & boats, licenses, and assets that will mainly be put at the disposal of third parties;
- The investment allowance cannot be applied by imputation payment companies and free zone companies, nor on intercompany transfers.

If the asset on which investment allowance was claimed is disinvested within 6 years, a disinvestment recapture of 6% of the selling price (with a maximum of the amount in investment allowance claimed) needs to be added to the taxable income.

## Invoice requirements

All invoices will have to (i) be numbered consecutively, (ii) be dated, (iii) mention the date on which the goods are delivered or the service is performed, (iv) mention the name, address and personal identification number for tax purposes (“tax PIN”) of the administrative agent, (v) mention the name and address of the buyer of the goods or recipient of the services, (vi) contain a description of the goods sold and delivered and/or the services rendered, including quantities involved and (vii) mention the consideration owed. The same requirements are applicable to cash register receipts, with the exception of the listing of the name and address of the buyer.

## Others

- Gifts are only tax deductible if made to certain qualifying institutions, with a maximum of AWG 50,000 per financial year.
- Penalties paid are not tax deductible. As of the financial year 2014, the corporate income tax is a self-assessment system. That implies that upon filing the corporate income tax return, the corporate income tax due needs to be paid immediately. Up to and including the financial year 2013, the tax payer needed to file the return and wait for an assessment before paying the corporate income tax due.

*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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