

To: The members of Curaçao International Financial Services Association (CIFA), Vereniging Antilliaanse Belastingadviseurs (Association of Antillean Tax Advisers, “VAB”) and International Financial Group (IFG).

From: Sector Fiscal Affairs/Inspectorate of Taxes, Ministry of Finance

Date: April 17, 2020

Concerns: Position with respect to the consequences of the expiration of the Guarantee Ordinance on Profit Tax of 1993 (*Garantieverordening Winstbelasting 1993*)¹ and the enacting of the National Ordinance on the Revision of Taxes of 2019 (*Landsverordening belastingherziening 2019*)²

In connection with the expiration of the transitional regulation, introduced in connection with the end of the offshore regime at 31 December 2019 and no later than 1 July 2020, the private sector has requested that the Ministry of Finance give its opinion with regard to certain questions and/or address certain concerns. These are listed hereafter, followed by the position of the Ministry of Finance.

Questions and answers

Question 1:

Will the offshore entities become subject to profit tax at the regular tax rate by operation of law (hereafter called: onshore companies), unless they have elected to convert the offshore company into another entity or have requested that another fiscal regime be applicable?

Answer:

At the expiration of the offshore regime, offshore companies that remain in Curaçao *de jure* shall be considered to be “onshore companies”. Consequently, they shall be subject to the applicable National Ordinance on Profit Tax of 1940, (*Landsverordening winstbelasting 1940*)³. Depending on what regime they wish to be subject to, they shall be subject to profit tax at one of the rates listed in the National Ordinance on Profit Tax of 1940 (*Landsverordening winstbelasting 1940*). It is also possible that their profit is to be considered as derived from an enterprise, which is not established in the country and that they assert their right to be subject to tax accordingly.

Question 2:

Do the offshore companies keep their tax identification number, the so-called crib-nummer?

¹ P.B. (Official Gazette) 1995, no. 83

² P.B. 2019, no. 92

³ P.B. 2002, no 54

Answer:

Offshore entities maintain their current crib-number.

Question 3:

- a. Are the offshore companies' assets and liabilities to be valued at their fair market value in the last financial year of the offshore regime?
- b. Is it possible for the offshore company to file a request to maintain the value of certain assets (for instance real property) at their book value and at the end of the offshore regime when they transition to the onshore regime, to continue to carry these assets at that value?

Answer:

- a. In this case it can be said that there is a transition from one discipline to another. No transitional regulation was determined for the end of the offshore regime.

However, article VI, fifth paragraph, of the National Ordinance of December 29, 1999 with respect to the amendment of the National Ordinance on Profit Tax of 1940 (*Landsverordening winstbelasting 1940*) (P.B. 1965, no.58)⁴ (hereinafter to be called "transitional regulation 2001"), shall be applied analogously, thus resulting in the taxpayer being deemed to have been liquidated, its capital being deemed to have been paid to its shareholders and thereafter having been, once again, contributed. This means that a final balance shall be established when the company transitions to the onshore tax regime. Assets and liabilities shall have to be valued at fair market value in the last year that the company was subject to the offshore regime. Depending on the legal stipulations concerning the offshore regime, or the offshore company's valid ruling, the resulting capital gains/losses might be subject to tax.

- b. As appears from the above, in principle, it is not permitted to maintain the book value of certain assets when the company transitions from offshore to onshore status. An exception is made for offshore companies owning real property, who wish to maintain the book value of said property after they transition to the onshore regime. A request must be filed with the Inspectorate of Taxes to that end. The capital gains/losses shall be subject to tax when same are realized, at the rate applicable at that time.

Question 4:

Is it permitted to offset losses sustained while subject to the offshore regime against future profits of the onshore company?

⁴ P.B. 1999, no. 244

Answer:

The transitional regulation 2001 contains no provision concerning same. The losses sustained while the company was an offshore company shall lapse and cannot be offset against profits, which are made by the onshore company, after the last financial year under the offshore regime.

Question 5:

What is the date by which a company having become an onshore company in 2020 should file its provisional tax return?

Answer:

A tax return concerning the last year as an offshore company (we are assuming a financial year that ends no later than 30 June 2020) should be filed in 2020 as has been done until now. In addition, with respect to its first year as an onshore company, a provisional return must be filed in accordance with the General Ordinance on Tax Laws (*Algemene landsverordening Landsbelastingen*)⁵, three (3) months from the end of the financial year.

Question 6:

Will all offshore entities, including entities owning real property, be provided a reasonable transitional period to implement measures showing actual presence?

Answer:

Considering that the National Ordinance on Revision of the Tax Laws of 2019 (*Landsverordening belastingherziening 2019*) was published on 31 December 2019, and that, in article 1C, second paragraph, of the National Ordinance on Profit Tax of 1940 (*Landsverordening winstbelasting 1940*), new criteria to determine whether an entity has an actual presence were stipulated therein, it is not reasonable to expect that taxpayers could already satisfy these criteria of actual presence on 1 January 2020. In this context entities shall be allowed a period until 30 June 2020 to fulfill the necessary actual presence requirements. This term also takes into account the current worldwide consequences of the COVID-19 virus.

The former is applicable to all taxpayers (offshore and onshore) who are required to show an actual presence as stipulated in article 1C, second paragraph of the National Ordinance on Profit Tax of 1940 (*Landsverordening winstbelasting 1940*).

⁵ P.B. 2013, no. 53

Question 7:

Will every offshore entity, which filed the last offshore tax return on time, automatically be granted an extension of the period to file the first regular onshore profit tax return?

Answer:

All offshore entities shall NOT automatically get an extension of the period for filing of the final profit tax return for the first year that they have to file a profit tax return as onshore entity. It is not possible to extend the period for filing of the provisional tax return. Based on article 9 of the General Ordinance on Tax Laws (*Algemene landsverordening Landsbelastingen*) these entities are entitled to an extension to file the final tax return if the last final tax return as offshore entity and the provisional tax return for financial year 2020 were filed and paid.

Question 8:

Timing of the registration from offshore to onshore at the Inspectorate of Taxes – in other words, if the offshore company is registered as being an onshore company at 1 January 2020, no supplementary assessment (including a fine) will be levied if no provisional return is registered as having been filed on 31 March 2020 (the assessments are, generally, generated automatically by the system). Is 2020 to be considered as the first financial year?

Answer:

Financial year 2020 is indeed the first year concerning which an onshore tax return must be filed. It will not be possible to issue a supplementary assessment with a fine as the offshore company is not required to file a provisional return with respect to 2019, provided it has become “onshore” from 1 January 2020, or at the latest from 1 July 2020. Consequently, it also is not possible to assess a fine. Also see the answer to question 7.

Question 9:

Offshore entities with a non-calendar financial year, by operation of law should be able to continue with the non-calendar financial year as per the normal profit tax system;

Answer:

These offshore entities are subject to article 3, second paragraph, sub b, of the National Ordinance on Profit Tax 1940 (*Landsverordening op de winstbelasting 1940*) and as such it is permitted that they maintain their non-calendar financial year.

Question 10:

Is it possible to introduce an informal transitory regulation stating that it is possible to file a request to have the status of Curaçao Investment Company until 31 March 2020 and that the status will be

applicable retroactively to 1 January 2020 (similar to the system applicable for requests for flow-through status)?

Answer:

This informal transitory regulation until 31 March 2020 was already approved by the Inspector of Taxes in her letter of 19 December 2019. In joint consultation between the Inspector of Taxes and the Sector for Fiscal Affairs, it was decided to move the deadline of 31 March 2020 to 30 April 2020. This, however, does not mean that the status will be approved automatically. Every request will be evaluated individually.

Question 11:

Is it possible for the requests for flow-through status filed by 31 March 2020 to be granted in a single approval to all former offshore companies having had a non-calendar financial year, which ended before 31 December 2019, and which filed such a request.

Answer:

As concerns questions 10 and 11, the following was decided.

In joint consultation between the Inspector of Taxes and the Sector for Fiscal Affairs, it is approved that all companies, who wish to become either a Curaçao Investment Company or a flow-through company from 1 January 2020, may amend their articles of incorporation and file a request until 30 June 2020, provided that the following conditions are satisfied:

- The company shall satisfy all conditions as meant in article 1A, first paragraph, sub f, of the National Ordinance on Profit Tax (*Landsverordening op de winstbelasting 1940*), respectively article 3, first paragraph, sub c of the General Ordinance on Tax Laws (*Algemene landsverordening Landsbelastingen*); and
- The modified articles of incorporation are submitted together with the request, the shareholders' register, a chart showing the company holding structure and the ruling template no later than 30 June 2020 to the Inspector of Taxes; and
- At 30 April 2020 the profit tax returns of the offshore entities for all years through 2018 shall have been filed and paid and "onshore" entities shall have filed and paid the final profit tax return for 2018 and the provisional profit tax return for 2019.

This, however, does not mean that the status will be approved automatically. Every request will be evaluated individually.

(signed on 20 April 2020 by the Inspector of Taxes, Jamila Isenia LLM, and the Director of the Sector of Fiscal Affairs, Runela Sille LLM)