



ARUBA TRADE & INDUSTRY
ASSOCIATION

Reform Positions



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Position on Tax Reform

April 23, 2021

To the Minister of Finance, Economic Affairs and Culture
Her Excellency Mrs. mr. Xiomara J. Maduro
L.G. Smith Boulevard 76
Oranjestad, ARUBA

Subject: Recommendations for Value Added Tax (aka BTW)

Your Excellency,

In Aruba's "Landspakket" the shift from direct to indirect taxes and the introduction of a Value Added Tax (VAT) or a General Expenditure Tax ("Algemene Bestedingsbelasting", hereinafter: ABB) has been mentioned as one of the measures to be considered and discussed. Considering ATIA/AHATA/AVVB have not yet been invited to participate in the drafting of a tax reform plan, we hereby offer our suggestions.

VAT vs ABB

The IMF, in its working papers¹, has expressed its preference for a simple VAT system. And according to the "Uitvoeringsagenda Landenpakket", The Netherlands also seems to lean towards a VAT system for Aruba.

In this letter, we focus on the contours of a simple VAT system on Aruba since that is our preferred way for the future. However, proper development and implementation (including information campaign and digital integration between Tax office and Customs) is a requirement.

Goal of a VAT

The main goal of the Aruba VAT is tax revenue generation. The pitfalls of other Caribbean countries upon the introduction of a VAT should be avoided, being amongst others:

- VAT should not be used to shift the tax burden from one to another taxpayer (which should be done via e.g., individual income tax and subsidies);
- VAT should not influence consumer behavior (which should be done via import duties and excise taxes).

¹ IMF Working Paper Tax Administration Reforms in the Caribbean (WP/17/88) and IMF Country Report No. 18/363.

Benefits for Aruba of a simple VAT

The benefits of a VAT are numerous and include:

- High tax revenues generated for the Government, with which the Government can fund its activities.
- Compliance is increased because to claim a refund (deduction of VAT) on purchases, the entrepreneur will need to purchase from other registered entrepreneurs with supporting invoices. As such, the VAT is a self-regulatory system.
- The Tax Authorities can focus their attention on the provision of information and audits of the VAT taxpayers (which through the threshold are limited).
- Since a VAT is a non-cumulative system, taxpayers will no longer need to integrate the various steps in the process, which enhances economic activities.
- VAT compliance requires businesses to keep the records of all the accounts, taxes, and rest of the transactions. When these records are updated and free of any inaccuracies, the entrepreneur gets a chance to make projections and analyze the cash flows thoroughly.
- Prices do not increase because of a VAT (since it is a consumer tax, not an entrepreneurial tax).

Recommendations

The VAT should replace and assimilate a myriad of taxes/levies:

- BBO
- BAVP/BAZV
- Tourism levy;
- Environmental levy (“bijzondere belasting verblijf”)
- Car rental tax;
- Gaming tax;
- Import Duties;
- Transfer tax (on non-residential properties).
- Foreign exchange commission.

Assimilation of these taxes will simplify the Aruba tax system, lower the administrative burden of taxpayers, and increase compliance (the latter resulting in higher VAT revenues). We note that import duties can and should be levied only where local producers should be protected in accordance with WTO regulations.

Moreover, the first stage of VAT should be levied on import on all goods and services.

Contours of a VAT

The contours of a VAT for Aruba should be:

- Exemption for small businesses;
- Single rate;

- Broadest base possible (e.g., including utilities) and should include all chains in the (production) process, also imports;
- Tax authorities that can process and pay out a refund within 30 days after the filing of the return.

If any of these items are deviated from, the VAT may work distortionary, become complex and thus may lead to tax avoidance and creative invoicing. In the next paragraphs, we will examine each of these items in more detail.

Exemption for small businesses

Small entrepreneurs generally have a less cost-efficient structure due to scale. Auditing small entrepreneurs is time consuming and costly, while not generating a lot of additional tax revenues.

By including a turnover threshold before an entrepreneur becomes subject to VAT lessens the burden on the SME's and on the Tax Authorities. A turnover threshold of the current AWG 84,000 for BBO/BAVP/BAZV purposes is advised in our opinion.

One should keep in mind that such small entrepreneurs are not able to claim any VAT refunds on their purchases, i.e., the VAT charged to them is their contribution to the VAT revenues.

Single rate (except exports)

Administration is kept as simple as possible if only one rate is used. Furthermore, the advantage of a broad base and a single rate is that the rate can be kept lower. According to a recent publication by Professor Cnossen², and the prior mentioned IMF Report, a rate of 10% may suffice.

We explicitly note that having multiple rates for different goods and services greatly complicates a VAT by increasing the administrative burden of the taxpayers, lower compliance including tax avoidance, and increasing auditing difficulties for the Tax Authorities. As such, multiple rates should be avoided at all costs and any negative effects should be solved another way.

However, depending on the VAT rate for Aruba:

- VAT on hotel rooms should not exceed current level of taxation (tourism levy), so not to “over-tax” Aruba’s main source of income compared to the region. An increase from the current 9.5% to a 10% VAT is acceptable, if the environmental levy is abolished and included in the rate.
- Current gaming tax should be abolished and replaced with a 10% VAT for casinos on the “win” (the revenues after player pay-outs and before expenses).

² Modernizing General Consumption Taxes in the Caribbean, Tax Notes International, volume 100, December 14, 2020, pages 1291 through 1311).

Broadest base possible and in all stages of the process

All goods and services should be included in the tax base, whether sold domestically or imported. Furthermore, it should include all stages in the production and distribution process, therefore also the retail stage.

- An important – and politically sensitive – current exemption, being that of water- & electricity, should be abolished, implying these utilities will also be subject to VAT. Since the benefit of such an exemption is mainly for the larger consumers, there is no substantive reason to exempt these supplies. The lower income households can be compensated another way for their loss of spending power, e.g., by subsidies or lower payroll taxes.
- Sales proceeds of non-residential properties, should be included in the VAT.
- Politically sensitive: the current exemption on certain financial services should be abolished, implying these services will also be subject to VAT. It is a growing trend amongst other nations with a VAT-system to tax fee-based financial services.

As per the IMF, exemption should be limited to solely:

- Activities which only the Government can perform;
- Publicly financed health care and education, including health insurance premiums;
- Margin-based financial services, including life insurance;
- Rental and lease income, as well as sales proceeds of used residential properties to Aruban residents.

Refunds

As a prerequisite, the Tax Authorities should be able to refund/ offset all “negative” (VAT on purchases higher than VAT on sales) VAT returns filed by entrepreneurs within a maximum of 30 days after the date of filing the VAT return and be able to process the pay-out of the refund/ decree for offset within the same 30 days since otherwise it could result in cash-flow issues for the entrepreneur. In our opinion, this will be the biggest hurdle to take since the Tax Authorities have significant backlog that currently hinders economic development.

For certain projects (e.g., construction of a hotel) or branches (e.g. construction), a special provision should be included that deals with the “negative” VAT returns and the corresponding refunds (since VAT due on sales may be delayed, hence an offset may not be fully satisfactory).

Others

The VAT should be an invoice-based system, contrary to the current BBO/BAVP and BAZV. In addition, the VAT needs to be indicated on invoices and receipts.

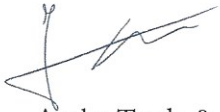
Another important consideration is that the implementation and subsequent transitional law should account for ample time (e.g. minimum one year) to allow both the entrepreneurs and tax authorities to adjust their administrations.

Finally

There are many more aspects to consider, however in our opinion, if the VAT is designed with all the above recommendations incorporated, the VAT is the optimal system for Aruba.

We look forward to your feedback and to being included in the tax reform decisions for Aruba.

Sincerely,



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Industry Association
Herrick Henriquez
Director



Aruba Hotel &
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Tisa LaSorte
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Association of
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Sandy van Thol
President

cc: H.E. Mrs. E. Wever-Croes, Prime Minister of Aruba
Mr. D. Abrahams, VNO
Mrs. L.E. Gomez-Pieters, DIMP

Position on Labor Reform



CHANGES RELATED TO THE ARUBA LABOR LAWS AND A DYNAMIC LABOR MARKET

December 2020

Benefits of Flexibilization

1. Job security is assured with job creation in a dynamic employment market.
2. Rigid labor laws that focus on protection of current jobs are old-fashioned and do not consider the future.
3. The intent of job security should not be to protect a person to maintain a certain position, but to offer more opportunity for employment.
4. Employees are also seeking flexibility.
5. What is needed is to have social support (unemployment benefits) and ability for unemployed to find a new job.
6. Social protection is only sustainable with a strong economy and dynamic business environment.
7. A proper business environment creates employment.
8. Productivity creates work.
9. With more pension age workers leaving the positions, more opportunity arises for younger generation.

Most Important Recommendations

1. Allow fixed-term contracts.
 - Similar to conditions in place in The Netherlands, St. Maarten and Curaçao.
 - Allow maximum of 3 fixed term contracts back-to-back.
2. Introduce mandatory pension at pension-age.

Currently, only labor agreements entered into before July 10th, 1992 or after April 1st, 2013 can end automatically when the employee reaches the AOV-age if it includes a clause in the agreement that states this. This clause is deemed invalid if included in labor agreements in the period between July 10, 1992 and April 1, 2013, since it is considered to be a fixed term contract which is prohibited as per article 1613x. Additionally, most labor agreements do not include this stipulation, and so even if article 1613x is removed,

ending of the labor agreement at AOV-age is not automatic.

A large number of employees do not retire once they reach the AOV-age. This has many reasons, amongst which that general pension was not introduced until only a few years back, so many companies did not offer a pension plan.

This creates a number of issues. Once an employee reaches a certain age, the tasks to be performed can no longer be performed optimally. Also, as older employees keep working, there are fewer opportunities for the younger generation. However, even more concerning, is that in the current crisis, companies that would like to reorganize, have to apply the principle of seniority (Last in, First out) for collective/individual dismissals, meaning that in most cases, the older workforce (including AOV-age employees) are the ones that have to stay in the company, rather than looking at factors such as expertise and productivity. (note: the "last in, first out" rule was eliminated in the Netherlands in 2006, and an Aruba court verdict ruled against it).

- Change article 1613x (if not removed fully) to the following:
 1. Een arbeidsovereenkomst voor bepaalde tijd wordt schriftelijk aangegaan.
 2. Indien een arbeidsovereenkomst voor bepaalde tijd is aangegaan zonder inachtneming van het eerste lid, zijn daarop de bepalingen inzake de beëindiging van een arbeidsovereenkomst voor onbepaalde tijd van toepassing.
 3. Een beding, inhoudende dat de arbeidsovereenkomst van rechtswege eindigt bij het bereiken door de werknemer van de in artikel 6 van de Landsverordening algemene ouderdomsverzekering bedoelde leeftijd is geldig indien voldaan is aan het bepaalde in lid 1.

or

De arbeidsovereenkomst eindigt van rechtswege bij het bereiken door de werknemer van de in artikel 6 van de Landsverordening algemene ouderdomsverzekering bedoelde leeftijd.

3. Flexible Working Hours

In 2013, the law was amended and art. 7A:1613aa paragraph 2 Civil Code was added. As a result, regardless of what parties agree upon, the employer must pay an employee in any given month a salary based on the average hours worked during the previous 3 months.

This agreement is disadvantageous to both parties, as the employer will be reluctant to hire an employee based on a flexible working hours contract, while on the other hand employees might favor more flexibility as to their working hours.

- Remove article 1633aa or replace the text with language that allows for individual agreements between employer and employee regarding flexible working hours and does not mandate pay based on the previous 3 months worked.

4. Unilateral Reduction of Working Hours

As of April 1st, 2013, the clause that provided the employer the right to unilaterally make changes was annulled. Aruban labor law protects the interests of employees well. The point of departure in the legal system is that when an employee has acquired a particular right, the employer cannot, in principle, amend or withdraw this right unilaterally. However, as this provision has already been recognized by the legislature in 2016, it must be possible for the employer (in special circumstances) to change the rights of the employee.

The employer may only rely on a written clause giving him the power to change a working condition prevailing in the employment contract if he has such a substantial interest in the change that the employee's interest, which would be adversely affected by the change, should be according to standards of reasonableness and fairness be modified.

- Revise Art. 1613h or implement Book 7 of the Civil Code (which was already approved by Parliament). In Book 7 of the Civil Code article 1613h is replaced by article 613, which allows unilateral changes if there is a substantial reason.
- This amendment is already being applied in the Kingdom.

5. Maximum Amount Due Employee Upon Termination or Dismissal

Transform the cessantia to a "transition allowance" of 1 week per year of employment, with a maximum cap of AFL 85,000. For employees with an annual income over AFL 85,000, the maximum is one year's salary.

Note that in the Netherlands a court can award an additional amount in damages if the Court finds that the employer acted in gross negligence.

6. Eliminate Mandatory Sick Leave Pay in first 3 days

- Reduce misuse of the current sick leave conditions.
- Amend Art 1614d to: "Indien de werknemer de overeengekomen arbeid niet heeft verricht omdat hij in verband met ongeschiktheid ten gevolge van ziekte of ongeval daartoe verhinderd was, behoudt hij vanaf de vierde dag van de ziektemelding zijn recht op het naar tijdruimte vastgestelde loon, ziekingeld genaamd, voor een betrekkelijk korte tijd, doch ten minste voor een periode van zes weken. "

7. Termination Law (Onstslagwet) Adjustment

- Elimination of the law
OR
- Duration of termination application process to be reduced to maximum 1 month.
- Termination decisions by the Termination Committee must be appropriately motivated and criteria well defined.

8. Accelerate Work Permit Process

- Implement an acceleration procedure for work permits for knowledge migrants (DIMAS response in 2 weeks).
- Permit of highly qualified knowledge workers valid for at least three (3) years.