

# Tax Newsflash

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## BBO at the border – Differentiation between restaurants and fast-food establishments?

Do you prefer a three-course meal in a charming restaurant or a quick bite in a fast-food establishment? Taste differs per person and taxation on these meals will now most likely differ too due to the new BBO law regarding imported goods. As explained in a previous newsflash concerning the [Tax Changes of 2023](#), entrepreneurs and non-entrepreneurs have to pay BBO on imported goods as of August 1, 2023. The tax authorities refer to this as BBO on import or, more informally, BBO at the border.



Entrepreneurs are allowed to deduct the paid BBO on imported goods if the BBO relates to trade goods, which is defined as unprocessed goods that are meant for resale. Although the government intended to modernize and simplify import duties by introducing the new law, this definition and its scope raised quite a few questions. Entrepreneurs active in the food and beverage sector were especially unsure whether they were allowed to deduct the BBO paid on imported goods. Therefore, the Aruba Food & Beverage Association (AFBA) and Aruba Hotel and Tourism Association (AHATA) requested clarification regarding the scope of trade goods and resale in relation to the activities of their members. On July 4, 2023 the Minister of Finance and Culture responded by providing a broader definition and giving multiple examples regarding (slightly) processed trade goods in a letter. She also promised restaurants the right of deduction through a Ministerial Decree if the imported goods are used to create a meal that is being sold to prevent unequal treatment and an increase in consumer prices. The example given in this context concerns the imported ingredients to create a taco for which the paid BBO on import is deductible.

In the Explanatory Notes with the Ministerial Decree published on September 13, 2023, which is two days before the BBO declarations of August were due, several of the examples already given in the abovementioned letter of July 4, 2023 regarding (slightly) processed trade goods were included. A further explanation regarding the food and beverage sector was included as well to provide additional clarification and guidance for this category of entrepreneurs. According to the Explanatory Notes, the provision of food and beverages qualifies as a trade good if the supply of it almost completely predominates and is not subordinate to the provision of a service. This is illustrated by giving the example of buying a hamburger menu. Although this can include napkins and packets of sauce, the food and drinks that are part of the menu are considered the main performance. Therefore, this can be qualified as a trade good and entrepreneurs are allowed to deduct the BBO paid on the relevant imported goods.



However, this is different when it concerns restaurants that additionally offer their guests services such as advising and serving guests food at their table and offering a pleasant atmosphere by having air conditioning and live music. According to the Explanatory Notes, this qualifies as a service as offering “restaurant infrastructure” dominates the sole provision of food and beverages. The paid BBO on imported goods will therefore not be deductible for entrepreneurs of this category of establishments. Considering the earlier statements of the Minister of Finance and Culture, this can be quite a surprise for entrepreneurs active in the food and beverages sector. The question can be raised if the highly regarded equality, which the Minister explicitly said to keep in mind, is truly harbored this way.