

Tax changes 2023

In our previous newsflashes we have provided a high-level overview of the proposed changes as to the 2023 tax plan. In this newsletter we will provide you with an in-depth look at the upcoming changes as to the tax plan 2023 as published in the recent draft legislation.

BBO/BAZV

Rate

The BBO/BAZV rate will be increased with 1% to 7%.

Place of service

The place of service for telecommunication services, radio, TV and electronic services will be deemed to take place where the person receiving the service lives or is established.

Small entrepreneur

The small entrepreneur regulation applies up to an amount of Afl. 50,000 as of January 1, 2023. This implies that an entrepreneur with a business turnover of Afl. 50,000 is not subject to the BBO/BAZV. Please note that this will not apply to entrepreneurs who exploit real estate. For the years 2021 and 2022 this amount was Afl. 84,000.

Fiscal representative

The entrepreneur who does not live in Aruba or is not established in Aruba can appoint a fiscal representative in Aruba. The fiscal representative becomes responsible for the fiscal obligations of the foreign entrepreneur with respect to the BBO/BAZV. By Ministerial Decree situations can be mentioned in which it is mandatory to appoint a fiscal representative in Aruba.

Wage tax and premiums

AOV/AWW/AZV

Fictitious salary

If an employee holds a substantial interest in the company of the employer (at least 25% of the shares) a fictitious salary must be taken into account. This fictitious salary amounts to:

- A. 75% of the salary of the most comparable employment;
- B. The salary of the highest paid employee in that company or a related company;
- C. Afl. 48.000.

If under comparable circumstances, where the employee does not hold a substantial amount of the shares a lower salary is usual, this lower salary applies.

In derogation of the above, in the first 3 years of the company the fictitious salary should be at least set at the minimum wage set as of January 1, of the corresponding year.

If the employee holds a substantial interest in more than one company, the fictitious salary applies only one time.

The fictitious salary does not apply to the following situations:

- A. A company which applies the exempt regime;
- B. A company which does not participate in the Aruban market and has received an exemption based on the foreign exchange legislation;
- C. The director or supervisory director who does not live in Aruba.

Income tax

Pension

The possibility to build up a self-administered pension will be abolished as of January 1, 2023.

Pensions can be insured with the following pension funds:

1. A pension fund as meant in the State Ordinance Business Pension Fonds (“Landsverordening ondernemingspensioenfondsen”).
2. An insurance company with a license as meant in article 5 State Ordinance Supervision Insurance Company (“Landsverordening toezicht verzekeringsbedrijf”).
3. A pension fund established in another part of the Kingdom of the Netherlands or a pension fund abroad if appointed by the Minister of Finance.

As of January 1, 2023, pensions cannot be surrendered anymore against a tax rate of 25%. Surrender (“afkoop”) of a pension is taxable against the progressive income tax rate.

Depreciation buildings

Buildings can be depreciated to the so-called bottom value. Parts of the building that can be removed from the building without substantial damage will not be considered as part of the building.

The bottom value of the building is 50% of the value that is used for ground tax purposes.

In case of co-ownership of the building, the ownership of the building will be allocated to the owners on a pro-rated basis.

This also applies for the profit tax.

Excessive loans

Loans in excess of Afl. 500,000 form income for a substantial interest holder (at least 25% of the shares) or their spouse or the substantial shareholder together with the spouse, if the loan is granted by the company in which the substantial interest is held. The amount higher than Afl. 500,000 is considered as a fictitious dividend and taxable against a rate of 25%.

Rate

The income tax rate will be adjusted as follows as of January 1, 2023.

De volgens onderstaande tabel berekende belasting over het tabelinkomen dient naar beneden afgerond te worden op hele florins.

Bij een tabelinkomen van meer dan het bedrag vermeld in kolom I, maar niet meer dan het bedrag vermeld in kolom II		bedraagt de belasting voor het bedrag vermeld in kolom III, vermeerderd met het bedrag dat wordt berekend door het in kolom IV vermelde percentage te nemen van het gedeelte van het tabelinkomen, dat het bedrag vermeld in kolom I te boven gaat	
I	II	III	IV
-	34.930	-	10,00%
34.930	63.904	3.493,00	21,00%
63.904	135.527	9.577,50	42,00%
135.527	-	39.659,20	52,00%

Furthermore, the tax-free amount will be increased from Afl. 28,861 to Afl. 30,000.

Reduced rate dividend 2021 and 2022

For the years 2021 and 2022 a reduced income tax rate on dividends of 10% apply under the following conditions:

- 1.The dividends are distributed from a company established in Aruba or outside Aruba.
- 2.The dividends are distributed from reserves which are formed ultimately December 31, 2021.
- 3.The dividend is distributed in 2021, 2022 or 2023 and is paid out to the shareholder within 5 years.

Deduction repayment loan

For the years 2020, 2021 and 2022 also the repayment of a loan can be deducted in case of a company which is active in one of the so-called promising sectors. The deduction cannot be more than 50% of the profit with a maximum of Afl. 30,000. The following conditions apply:

- 1.The company is registered with the Chamber of Commerce on or after January 1, 2017.
- 2.The activities are in the following sectors:
 - A. Tourism.
 - B. Knowledge economy.
 - C. Logistics.
 - D. Agriculture.
 - E. Circular economy.
 - F. Creative industry.
3. In case of a fiscal unity, the deduction can only be applied once.

Training (“scholing”)

For the years 2020, 2021 and 2022 the costs of training can be deducted for 200%. As training is considered courses (“cursussen”), education (“opleidingen”), additional education (“bijscholing”), and studies for a profession (“studies voor een beroep”).

Marketing

For the years 2020, 2021 and 2022 the costs of marketing can be deducted for 300% to a maximum amount of Afl. 30,000.

Losses

For the years 2020, 2021 and 2022 the loss carry forward term will be extended with 2 additional years, from 5 years to 7 years.

Purchase power premium (“reparatietoeslag”)

The purchase power premium for pensioners will be increased from Afl. 125 to Afl. 170.

Profit tax

IPC regime new and old

The “new” IPC regime (10%/12%/15%) will be abolished as of January 1, 2023. The new IPC regime will be grandfathered until the last financial year that started before January 1, 2026.

The “old” IPC regime (effective rate 2%) was already abolished but will be grandfathered until the last financial year that started before January 1, 2026.

Investment allowance

The investment allowance will be increased from 6% to 10%.

Deduction of interest and other payments

The limitation in the deduction of payments of interest and other payments is adjusted as follows per January 1, 2023;

1. The limitation of the deduction of interest and other payments is not only applicable anymore if the payments are made to entities (“lichamen”), but also if the payments are made to natural persons.
2. The exception that the limitation does not apply if the shares of the receiving entity are directly or indirectly for at least 50% registered at a qualifying stock exchange will be abolished as of January 1, 2023.
3. The possibility to deduct 75% of the payment if the receiving entity is not subject to at least 15% profit tax is abolished as of January 1, 2023.
4. Companies are related for purposes of the limitation of the deduction of interest and other payments in case of an interest of at least 5% (this was at least 33 1/3%).

Rate

The profit tax rate will be reduced from 25% to 22%. For financial years which are not equal to the calendar year the rates will be applied pro-rated to 2022 and 2023.

Dividend tax

Stock exchange listed companies

The reduced dividend tax rate of 5% for companies of which at least 50% of the shares are, directly or indirectly, listed at a qualifying Stock Exchange will be abolished. These companies will be subject to the normal rate of 10%.

IPC companies

The 0% dividend tax rate for dividend distributions by new IPC companies (article 2a State Ordinance Profit Tax), will also be abolished. Profits which were subject to the reduced IPC profit tax rate of 10%/12%/15% can still be distributed against a dividend tax rate of 0% after January 1, 2023 if the distribution takes place before January 1, 2028.

Ground tax

The exemptions mentioned in articles 35 through 37 of the State Ordinance Ground Tax will be abolished.

These are the following exemptions:

1. Buildings which were unused or not rented for a period of at least 6 consecutive months are exempted for ground tax purposes.
2. A building that is (partially) destroyed in case of an unforeseen disaster will be exempted for ground tax purposes for the remaining year for the reduction in value.

Real estate transfer tax

Economic ownership and shares

The transfer of economic ownership of real estate will be taxable with real estate transfer tax. The party that transfers the economic ownership has to notify the tax authorities within 2 weeks after the transfer. A fine for violation thereof may apply up to a maximum of Afl. 100,000 or 10% of the value of the real estate.

Transfer of shares of an entity which owns real estate will also become taxable with real estate transfer tax. The real estate transfer tax will only apply on the transfer of shares if the main purpose of the real estate entity is to obtain, transfer or exploit real estate. If, for example, the real estate is used as a retail store to sell products, the transfer of shares is not taxable with real estate transfer tax.

Rate

The rate of the real estate transfer tax for residential and commercial real estate will be:

1. 3% on a value up to and including Afl. 250,000.
2. 6% on a value higher than Afl. 250,000.

Inheritance

The acquisition of real estate due to an inheritance will not be taxable anymore with real estate transfer tax.

General pension

The State Ordinance General Pension does not apply to the employee, if the employer is an entity established in Aruba and the employee or his/her spouse holds (directly or indirectly) at least 25% of the shares in this entity.

Tourist levy

Subject to the tourist levy is the entity or person exploiting a hotel or housing.

If a space in a hotel or housing is made available through a third party and the compensation is paid to the third party, the tourist levy is levied from this third party. If this third party is not established in Aruba, the third party may appoint a fiscal representative in Aruba. We note that if a fiscal representative is not appointed, the third party remains responsible for the filing and remittance. If appointed, this fiscal representative will become responsible for the fiscal obligations of the hotel/housing operator or the third party in Aruba and is required to inform the Tax Inspector of his/her appointment.

Rate

The tourist levy rate will be increased from 9.5% to 12.5%.

In case of timeshare units, the fixed room rates will be adjusted as follows as of January 1, 2023:

- Studio will be Afl. 197.26/USD 110.20 (was Afl. 179/USD 100) per day.
- One bedroom apartment Afl. 213.73/USD 119.40 (was Afl. 193.95/USD 108.35) per day.
- Other rooms Afl. 246.57/USD 137.75 (was Afl. 223.75/USD 125) per day.

The minimum room rate in case of all-inclusive rooms will be Afl. 178.52/USD 99.73 (was Afl. 162/USD 90.50).

Allocation Aruba Tourism Authority (“ATA”) and Tourism Product Enhancement Fund (“TPEF”)

Of the total tourist levy revenue 57% will be allocated to ATA and 2.2% to TPEF. The remaining amount will be allocated to the government of Aruba.

Special levy timeshare, housing and hotels

The special levy for timeshare, housing and hotels (“special levy”) will be withheld by the person or entity which exploits the timeshare, housing or hotel.

If a space in a timeshare resort, housing or hotel is made available through a third party and the compensation is paid to the third party, the special levy is levied from this third party. If this third party is not established in Aruba, the third party may appoint a fiscal representative in Aruba. This fiscal representative will become responsible for the fiscal obligations of the third party in Aruba and is required to inform the Tax Inspector of his/her appointment.

Tax holidays

The grandfathering rules for tax holiday companies are abolished as of January 1, 2023.

Special car rental levy

The special car rental levy will be retroactively abolished as of October 1, 2020. The law remains applicable solely for assessments and non-objectionable decisions issued as of October 1, 2020.