

NEWSFLASH

The Attorney General has provided his opinion regarding the Aruba ground tax court case on November 29, 2022

Effective January 1, 2019, the ground tax legislation was amended. One of the changes pertains to the increase of the tax rate for legal entities from 0.4% to 0.6% and the elimination of the tax-free amount of Afl. 60,000.

Grant Thornton Aruba took the position that these changes could not be implemented within the five-year period (2017-2021) stipulated in the ground tax legislation. Furthermore, Grant Thornton Aruba took the position that an additional assessment can only be imposed if a 'new fact' is present (in Dutch: 'nieuw feit'). A new fact is a condition to impose an additional assessment.

The introduction of a change in the law is, in the opinion of Grant Thornton Aruba, not a new fact. Therefore, it was not possible to impose an additional assessment. Several court cases were filed by Grant Thornton Aruba to receive a decision on these legal questions.

One of the above-mentioned ground tax cases is currently in cassation at the Supreme Court. In order for the Supreme Court to issue a decision, the Attorney General has provided a conclusion on the matter at hand which will be used by the Supreme Court as guidance for its decision.



Conclusion of the Attorney General

The Attorney General concluded on November 29, 2022, that an additional assessment is not possible because the Attorney General is of the opinion that the introduction of a law or, in this case, the amendment of a law cannot be considered a 'new fact'.

The ground tax legislation does not allow the increase of the rate from 0.4% to 0.6% and the elimination of the tax-free amount in the five-year period (2017-2021) for which the ground tax assessments were already determined. Therefore, in the opinion of the Attorney General the appeal letter of the Minister of Finance (read: Tax Authorities) should be dismissed. If the conclusion of the Attorney General is followed by the Supreme Court, the assessments for the years 2019, 2020 and 2021 should be completely nullified and new assessments for these years should be imposed against a rate of 0.4% and taking into account the taxfree amount of Afl. 60,000. If this conclusion is confirmed by the Supreme Court, it will only have consequences for the taxpayers who timely filed an objection against the 2019, 2020 and 2021 ground tax assessments.