

Introduction of the tax law office of Jelle Folkeringa

"As the client, you determine the target. I will add my creativity, expertise and passion in my work in finding solutions for challenging tax affairs in order to realize referenced goals."

For Jelle it is the challenge to find for each unique situation optimal tax solutions. Jelle is amongst others involved with international tax structures, Dutch tax affairs and Aruba tax affairs.

Jelle Folkeringa (1970) studied tax law at the University of Groningen in the Netherlands. Since 1997 Jelle combined working both in the Netherlands and in Aruba where he was working as tax specialist for a big four accounting office.

Since 2011 he has been working as an independent tax consultant in Aruba. He is used to work with lawyers and accountants on the client's choice. You can benefit from the years of experience he has gained working for a big four office in Aruba and from his personal approach. You can expect top level knowledge of the tax system, creative solutions and enthusiasm.



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**FOLKERINGA
& PARTNERS**
INT. TAX CONSULTANTS

Overview of the Aruba tax system (2012)

We will elaborate on the following taxes:

- Personal income tax
- Wage tax
- Social security premiums
- Corporate income tax
- Turnover tax (BBO)
- Foreign exchange commission

INDIVIDUAL INCOME TAXES

Individuals are subject to income tax in Aruba on certain types of income. Also non residents could be subject to income tax in Aruba.

Resident taxpayers

Resident taxpayers are individuals residing in Aruba. The place of residence has to be determined based on actual circumstances. In that respect, the duration of stay in Aruba, the place of living of the family and the place of working are the most important facts. Resident tax payers are subject to income tax based on their total world-wide income even if this income is received abroad. For certain foreign income a tax relief of double taxation may be granted.

If this income is earned in for example the Netherlands or Curacao, the tax regulation for the Kingdom of the Netherlands can apply to avoid double taxation. For income received in other countries than those of the Kingdom of the Netherlands, the State Ordinance Avoiding Double Taxation could avoid double taxation for certain types of income.

Non-resident taxpayers

Non residents are subject to taxation in Aruba with respect to certain sources of income from Aruba. Non-resident taxpayers are individuals not residing in Aruba who receive income from Aruban sources, such as:

- Labor and employment income actually performed in Aruba.
- Income received from a position of managing director of a company in Aruba even if these activities are performed outside Aruba.
- Income from business activities in Aruba which will be considered as a permanent establishment.
- Income from real estate located in Aruba.
- Interest income loans which have been secured with a mortgage on real estate located in Aruba.
- Income from shares in a company located in Aruba which share interest can be considered as a substantial interest (more than 25% of the shares of the company).

Tax rate

The income tax rate is progressive. Individual income tax is due in Aruba on income exceeding approximately Afl. 20,000. The maximum rate amounts to 58.95%. This rate applies to income exceeding Afl. 317,000 per year.

Special tax rate

If conditions are met an individual can apply a special 25% rate on dividends and gains derived from the sale of shares which will qualify as a substantial interest. Also income received for indemnity payments, dismissal or other income substituting payments, like buying off a pension plan or a lump sum for the termination of a labor contract, can be subject to the special tax rate of 25%.

Deductions on the income

Certain amounts can be deducted on the income. The income may be decreased by certain deductible items, such as:

- An employee can deduct a standard amount of 3% of the gross income with a maximum of Afl. 1,500 (USD 843) as employment costs.
- Interest on a loan in connection with the purchase or construction of a house that constitutes the main residence of the tax payer.
- Interest on personal loans with a maximum of Afl. 5,000 (USD 2,809) per year.
- Payments in connection with illness of the tax payer or his family members.
- Premiums for life insurances or annuities (except for qualifying pension plans) can be deducted up to a maximum of Afl. 5,000 (USD 2,809).
- A maximum amount of Afl. 3,360 (USD 1,888) can be deducted for payments made to a qualified savings plan.
- Donations made to qualified institutions are deductible, with a maximum of Afl. 10,000 (USD 5,618) per financial year.
- Payments for a study for a profession.

Exempted income

The first Afl. 2,400 (USD 1,348) of the profit of enterprises, not being a corporate legal entity, are exempted in the individual income tax.

Also interest on savings received from qualifying financial institutions established in Aruba and similar financial institutions established abroad are exempted from individual income tax. Individuals are not subject to tax on capital gains unless the gain is realized within an enterprise or within the exercise of a profession.

Investment allowance

Entrepreneurs can also apply an additional investment deduction. Per January 1, 2011 the investment allowance of 6% on the amount of the investment has been reintroduced. The following conditions apply:

- In 2011 an entrepreneur should invest at least Afl. 5,000 in a year via local entrepreneurs. Investments bought directly from abroad will not qualify.
- The allowance can for example not be claimed on the purchase of for example:
- Land, houses, licenses, goodwill, personal cars, boats, assets that are rented out to third parties.

Within 6 years a capital disposal charge of 6% of the selling price (with a maximum of the purchase price) needs to be added to the taxable income.

Tax return

The tax will be calculated on the total taxable income minus the deductible costs in a year. The Tax Authorities will generally issue a tax return approximately 3 to 6 months after the end of the calendar year. Tax returns have to be filed within 2 months. The tax authorities can, at the request of the taxpayer, extend that period.

We would be pleased to assist you further with the individual income tax issues.

WAGE TAXES

General

Wage tax is an advance levy to the income tax. The tax rate is also similar as the income tax rates. Wage tax has to be withheld by the employer if there exist an employment relation. If it involves a foreign employer, the Tax Department may appoint a foreign employer as a withholding agent if persons are employed in Aruba (even if there is no permanent establishment).

Normally, an employment relation exists if there is from a legal point of view an employment agreement. However, the term employment will be interpreted broadly based on Aruban and Dutch case law. The decisive criterion is if the employee is obliged to follow instructions from an employer. Furthermore, the law also appoints certain fictitious employment relations for amongst other the following kind of work (if these persons are not considered as an entrepreneur): arits, construction work, a trainee.

Fringe benefits regulation

Furthermore the following fringe benefits can be reimbursed untaxed:

Company car

In case an employee, as a part of his remuneration, is provided with a company car, the taxable benefit of this wage in kind is currently determined at 15% of the catalogue value of the car.

Expatriates

An employer can reimburse the airline ticket of an expatriate and his/her family tax exempt, as well as the costs related to shipping the household of the employee. Furthermore, the employer can reimburse the hotel accommodation, lodging and car rental of the expatriate tax free for the first two months.

The employer can provide the expatriate with a refurbishment allowance of two times the monthly gross salary, with a maximum of AFL. 15,000 (USD 8,427), tax exempt. The employer can provide the expatriate and his/her family annually with one free ticket to the country of origin during the first 5 years of continuous residence on Aruba.

Other rules

- Meals are provided by the employer free of charge, the wage in kind amount to Afl. 5 for a warm meal and Afl. 2.50 for every other meal.
- If the employer provides the employee with free housing, the wage in kind is set at 8% of the fair market value of the house, with a maximum of 15% of the annual gross income of the employee. If the house is furnished, the percentage changes to 10% or 20%, depending on the circumstances.
- If an employee is supplied with products the employer produces, the integral cost of the product is considered to be wage in kind. The employee may however not consume more than is normal in his circumstances.
- If an employee has 10 (12.5), 25, 35 (or 40) years of service, the employer may provide ½ (in case of 10 or 12.5 years of service) or 1 (all other cases) monthly gross salary tax exempt to the employee.
- The employer is allowed to provide the employee with a tax free gift with a value of a maximum of Afl. 200 once per year.
- The employer can provide Afl. 1,680 to the employee per year for reimbursement of telephone costs, of which Afl. 480 will be considered taxable income. Any reimbursement exceeding Afl. 1,680 is taxable.

Car and representation allowance

If the employee uses his personal car for more than 25% for business purposes, the employer may opt to provide the employee with a fixed car allowance. Also a representative allowance could be granted in certain cases. The amount that can be reimbursed tax-free will depend on the position of the employee within the company. The following fixed car and representation allowances can be provided tax-free to the following category of employees:

	Monthly car allowance	Monthly representation allowance
Managing director (top management)	Afl. 250 (USD 140)	Afl. 250 (USD 140)
Manager (middle management)	Afl. 200 (USD 112)	Afl. 100 (USD 56)
Representative / sales person	Afl. 400 (USD 225)	Afl. 100 (USD 56)
Accountant / consultant	Afl. 300 (USD 169)	Afl. 100 (USD 56)
Other positions	Afl. 200 (USD 112)	Afl. 0 (USD 0)

Please note that each fixed allowance provided to the employee must be substantiated. According to the tax authorities the substantiation must meet the following conditions:

- The fixed allowance must reimburse the necessary costs made by the employee in connection with the employment.
- The employer must have the following information regarding the benefits in his administration:
 - An overview regarding the costs made by the employees relating to the employment, for which the employer provides the (tax exempt) benefit.
 - Granting the fringe benefits to (certain) employees must be documented.

Identification obligation

Every withholding agent for wage tax purposes is obliged to record the identity of his employees in his payroll administration. The withholding agent should receive the concerning information in the form of an employees statement (in Dutch: werknemersverklaring) and a copy of a valid passport or ID, from the employee.

In order to avoid that due to this missing information incorrect amounts of wage tax are withheld, a so-called anonymous tax rate (anoniementarief) has been introduced. This tax rate is equal to the highest marginal income tax rate mentioned in tariff group II, being 58.95%. In order to avoid this risk it is very important to have the required documents on file.

We would be pleased to assist you further with the wage tax issues.



SOCIAL SECURITY PREMIUMS

General

Social security premiums are levied in connection with the wage tax.

- Old age pension and widow & orphans pension insurance
- General health insurance
- Sickness insurance
- Accident insurance
- Cessantia insurance

AOV/AWW (old age pension and widow & orphans pension insurance)

The total premium amounts to 13.5%, which premiums are due up to a maximum yearly wage of Afl. 65,052. The total premium is in principle divided between the employer (9.5%) and the employee (4%). The employer can however pay the employees' part of the premiums tax exempt. The AOV/AWW premiums are only due until the employee reached the age of 60.

AZV (general health insurance)

The total premium amounts to 11.5%, which premiums are due up to a maximum wage of Afl. 85,000. The total premium is in principle divided between the employer (8.9%) and the employee (2.6%). The employer can however pay the employees' part of the premiums tax exempt.

Svb (Sickness insurance)

This premium is only paid by the employer. The premium amounts to 2.65%, which premiums are due up to a maximum wage of AFL. 54,600.

Svb (accident insurance)

This premium is only paid by the employer. The premium varies between 0.25% and 2.5% depending on the risk of the work performed and up to a maximum wage of AFL. 54,600.

Svb (cessantia insurance)

This premium is only paid by the employer. The premiums amounts to Afl. 40 per employee per year. The cessantia is in principle paid out upon dismissal of the employee by the employer. If the dismissal is due to acts of the employee, no cessantia is due.

CORPORATE INCOME TAX

General

Corporate income tax is due on profits of a company located in Aruba, for example the profits of a limited liability company (a NV, a VBA, an AVV). Corporate income tax is also due of foreign entities which are based on actual circumstances located in Aruba. Also foreign entities which have taxable presence in Aruba such as a permanent establishment or representative are subject to taxation in Aruba. If an entity has a taxable presence on Aruba, the income resulting from these activities is subject to 28% corporate income tax. In that respect we note that losses of a year can be set off against future profits during a period of five years. It is not allowed to carry back fiscal losses.

Resident tax payers

Resident taxpayers are subject to corporate income tax on their world-wide income. For certain foreign income, double tax relief may be granted based on the BRK (the tax regulation for the Kingdom of the Netherlands) or based on the basis of the State Ordinance Avoiding Double Taxation.

Non-resident taxpayers

Foreign taxpayers are entities which are not located in Aruba and which have taxable presence in Aruba, such as a permanent establishment or permanent representative. Also interest income of non-resident companies received from loans which are secured by real estate located in Aruba are subject to corporate income tax in Aruba.

Tax base

Corporate income tax is due on the realized profits of that financial year. The fiscal profits have to be indicated in the corporate income tax return. This return has to be filed on an annual basis. In principle the profits which are stated in the financial statements will be the base to calculate the fiscal profit. However there are certain specific tax rules in Aruba based on which the taxable profits will be calculated. We will discuss below certain important rules which should be taken into consideration, such as the arms length principle, the participation exemption, the facility of the fiscal unity and the limitation of deduction of interest.

Arms length principle

The arm's length principle stipulates that affiliated companies should deal with each other against third party conditions. That means that the conditions should be equal to conditions which would be set by independent companies. If not, the tax inspector might adjust the price into an arms length price. The calculation of the arms length price can be based on comparable transactions. Also, the cost plus method or the resale minus method can be used. The best method to be used will depend per situation. There are also specific documentation requirements for inter-company transactions. If it will not appear from the administration that the transaction is arms length, the

burden of proof regarding the question whether the used price is arms length will shift to the tax payer, whilst normally the tax inspector has to proof that the transaction is not arms length. In that respect the transactions should be described in the administration. The transactions should also be laid down in an agreement, for example in a loan agreement in case of a loan, or in a management agreement in case of management services. Also the calculation of the arms length price should appear from the administration.

Participation exemption

Dividends or capital gains resulting from a qualifying share participation in another company can be received untaxed based on the participation exemption. The participation exemption covers dividends as well as capital gains. In case shares are held in a non-resident entity, the participation exemption only applies if that non-resident subsidiary is subject to corporate income tax and if the company, from which the shares are held are not considered a passive investment. It is important to note that costs related to the participation are not tax deductible in Aruba.

Fiscal unity

If a parent company owns at least 99% of the shares in another company located in Aruba the companies can apply to enter a fiscal unity. If the conditions are met then a consolidated corporate income tax return can be filed. Another advantage would be that within the fiscal unity the fiscal losses and profits of the separate companies can be set off against each other in a year.

Limitations on the deduction of costs

There are specific rules in Aruba which will limit the deduction of payments of costs if these payments will be made to affiliated parties. For this purpose entities are considered to be 'affiliated' if there is a direct or indirect share participation of 1/3.

A payment to a related party is only fully tax deductible if the payment is arms length and in case the company which will receive the payment is taxed at a rate of at least 15%. If the revenues are subject to taxation for that company but at a rate lower than 15% the payments are for 75% tax deductible in Aruba. If the revenues of that related company are not subject to tax at all the payments are not deductible.

Tax return

The Tax Authorities will normally issue a tax return approximately 6 months after the end of the accounting year. Tax returns have to be filed within 2 months. The tax authorities can, at the request of the taxpayer, extend that period.

We would be pleased to assist you further with the corporate income tax issues.

TURN OVER TAX (the BBO)

There is 1,5% turn over tax due on the revenues on the sale of goods and the delivery of services in Aruba if these transactions took place by entrepreneurs and companies (even if the company is a non resident company). The taxable base consists of all remunerations received by the entrepreneur for the supply of goods or the rendering of services.

Some exemptions are applicable. For example no BBO is levied over the supply of an immovable property if in relation to this supply transfer tax is due. Furthermore exemptions apply to:

- The export of goods.
- Prescription medicines.
- Renting out of real estate that is used as a private dwelling.
- Renting out of apartments or hotel rooms, in as far as room tax is due.
- Providing the opportunity to gamble, in as far as gaming tax is due.
- International transportation of goods and persons by ships or airplanes.
- Investment income, such as interest and dividends.
- Qualified bank transactions.
- Insurances and the services performed by intermediaries of insurance companies.

Fiscal unity

A parent company that owns all the shares in a subsidiary can request to enter into a Fiscal Unity for BBO purposes. If a fiscal unity exists the turnover generated with intercompany transactions is exempt from BBO.

Cash or invoice method

The BBO is levied on a cash basis. However, upon request the entrepreneur may opt to apply the invoice method.

Tax return

The tax returns have to be filed on a monthly basis. The tax return has to be filed within 15 days after the end of that month.

We can assist you further with this issue.

FOREIGN EXCHANGE COMMISSION

General

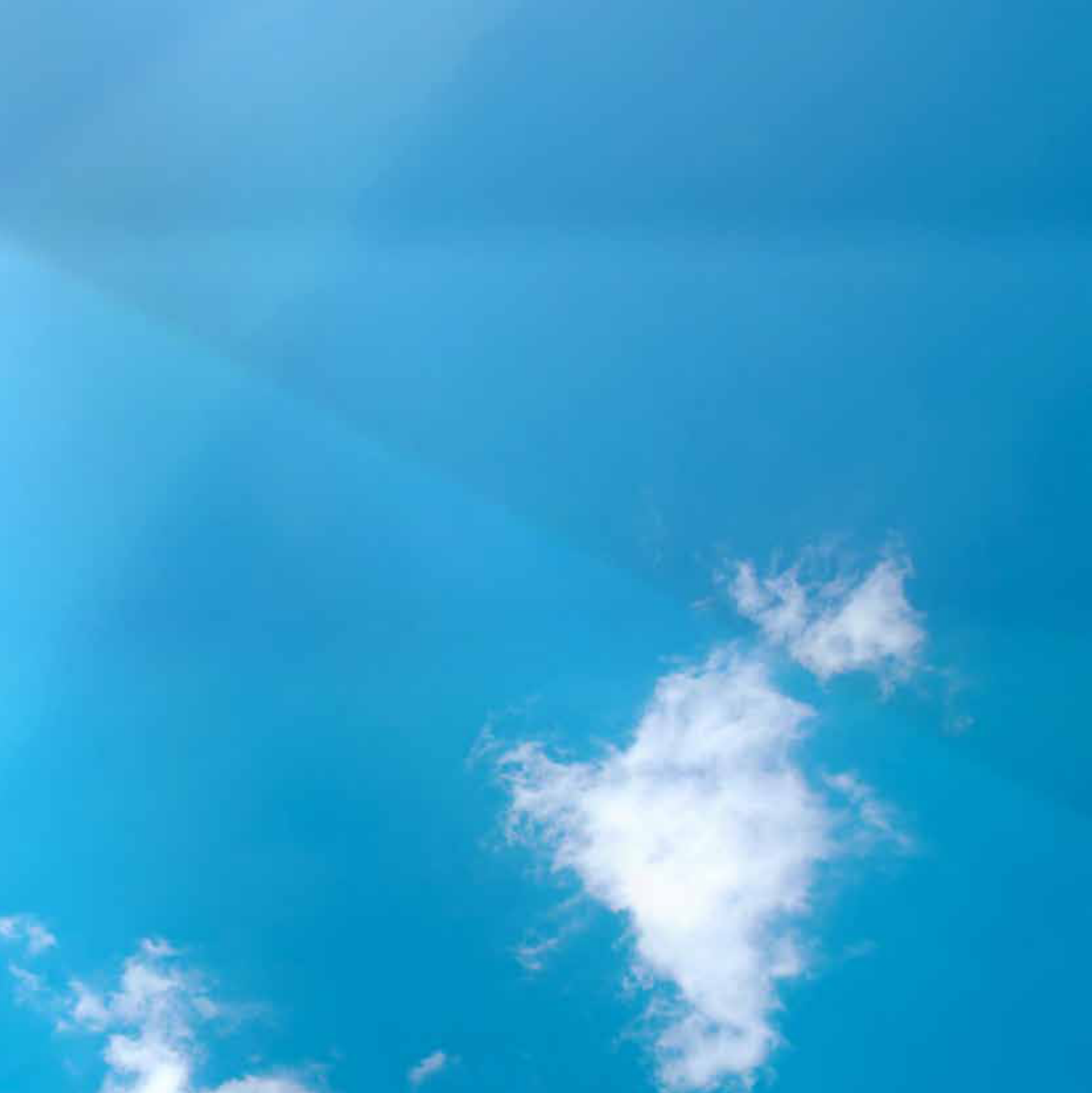
Foreign exchange commission when an Aruban resident (individual or company) makes a payment abroad. The rate is set at 1,3% of the payment.

Licenses

If the amount of the transfer abroad by a legal entity exceeds Afl. 750,000 per calendar year (for an individual Afl. 300,000), a license of the Central Bank of Aruba is required.

We can assist you further with this issue.





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