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Curacao – Dutch Parliament Approves New Netherlands-Curacao Taxation Agreement

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On September 29, 2015, the Senate (*Eerste Kamer*) of the Dutch parliament approved the new bilateral rules for the avoidance of double taxation between the Netherlands – including its Caribbean territories (i.e., Bonaire, Saba and Sint Eustatius) – and Curaçao. There are updates to the rules governing the taxation of pensions and gifts and inheritances, as well as the exit tax, in the new agreement, known as *Belastingregeling tussen Nederland en Curaçao or* "BRNC."

Why This Matters

The BRNC updates the status of the legal relations between Curaçao and the Netherlands since the date of the prior agreement.[1]

Expatriates and multinational organizations with cross-border workers should be aware of the new rules under the BRNC, in particular those governing the taxation of pensions and the exit tax.

The agreement will help facilitate cross-border business between the respective jurisdictions and better define taxing rights by each jurisdiction over various elements of income that arise to taxpayers subject to the laws of the parties to the agreement.

Background

The BRNC contains significant changes concerning the Tax Arrangement for the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk* or "BRK")[2], with transitional rules for some elements. The BRNC will govern the relationship between Curaçao and the Netherlands as of January 1, 2016, thereby replacing the BRK. The BRNC was published in the Bulletin of Acts and Decrees (*Staatsblad*) on October 9, 2015.[3]

We highlight below the provisions of the BRNC that will be of considerable interest to multinational employers and their cross-border employees, as well as expatriates choosing to live and work and/or retire in the jurisdictions concerned.

Pensions

The source state may in future levy a maximum 15-percent tax on the gross amount of regular private pension and annuity benefits. This tax is, in principle, creditable in the state of residence. This does not apply to Dutch nationals already receiving private pensions and annuities and who are resident in Curaçao on June 5, 2014; they will only be subject to tax in the state of residence. This transitional rule will also apply in reverse, i.e., to individuals already receiving a Curaçao pension or annuity and who are resident in the Netherlands on June 5, 2014.

Capping the rate at 15 percent or exclusive taxation in the state of residence do not apply however in cases where the pension is fully redeemed outright.

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Capital Gains, Dividends and Exit Taxation

Under the former agreement[4], the Netherlands had the right to tax capital gains arising after the individual's emigration regardless of whether the capital gain had accrued before the moment of emigration. Under the terms of the new agreement, this right is limited to a period of 10 years after the emigration on capital gains accruing before the emigration. Transitional rules provide that the period will be five years for individuals who had already emigrated by June 5, 2014.

Under the terms of the new agreement, the national 25-percent income tax rate will apply (instead of the 15-percent dividend withholding tax rate under the former agreement) to dividends from a substantial interest[5] for a period of 10 years after the emigration of the holder of the substantial interest to the extent that an amount is still outstanding (on a protective assessment) from the capital gain calculated upon emigration. Where income tax is concerned, this means tax of 19.5 percent for Curaçao and 25 percent for the Netherlands. A transitional arrangement will apply for cases that already existed on June 5, 2014, however, so that the substantial interest reservation period will be five years and taxation in the source state will still be limited to a maximum of 15 percent.

Profits on Substantial Interest

Besides source state taxation on dividends from a substantial interest for a period of 10 years after emigration (see above), during this period the source state will also have the right to tax capital gains on shares, profit-sharing certificates, call options, usufruct, and certain receivables. By contrast, the new state of residence of the holder of the substantial interest must provide a step-up to prevent double taxation in the case of actual disposal.

Gift and Inheritance Taxation

The BRNC contains just one provision on gift and inheritance tax. The Netherlands, as the former state of residence of the testator or benefactor, may levy taxes during the first five years after emigration; however, Curaçao also has the right to levy gift and inheritance tax. The gift and inheritance tax paid to Curaçao is offset (via a credit method) against the amount due in the Netherlands. A transitional rule may apply.

KPMG Note

The changes resulting from the implementation of the BRNC can be complex and challenging, and could require, in some cases, modifications to organizations' policies and processes in order to benefit from potential tax savings and to help foster compliance. Please consult with your usual tax adviser or a tax professional with Meijburg & Co. Caribbean if you have questions about how the BRNC might impact you.

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Footnotes:

1 The Tax Regulation for the Kingdom of the Netherlands of 28 October 1964 (*Belastingregeling voor het Koninkrijk*) has been amended by the Laws of 5 and 12 December 1985, which became effective on 1 January 1986, the Law of 13 December 1996, which became effective on 1 January 1997, and the Law of 14 December 2002, which became effective on 1 January 2002.

2 Ibid.

3 See Belastingregeling Nederland Curaçao, published in the *Staatsblad*, Nr. 348, 9 oktober 2015.

4 See footnote 1.

5 In principle, a taxpayer has a substantial interest in an entity if he (together with his partner) is a direct or indirect shareholder of at least 5 percent of the issued share capital.

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