

## Curaçao

# Amendments in the Curaçao turnover tax ordinance

## Introduction

Further to the amendments of the Curaçao turnover tax (hereafter: "TOT") ordinance as per 1 May 2013, a Ministerial decree (hereafter: "Ministerial Decree") was released providing guidance on matters such as receipt requirements, the indication of prices and related topics. Considering the short period within which the taxpayer had to adopt relative extensive mandatory changes included in the TOT, the aim of the Ministerial Decree is to provide relief with retroactive effect as of 1 May 2013.

In this newsflash we will only elaborate on the details of the Ministerial Decree related to the receipt requirements (in Dutch: "*kassabonvereisten*") and the indication of prices (in Dutch: "*prijsaanduiding*").



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## I. Indication of prices

As per 1 May 2013, it is no longer allowed to offer services and goods at prices which do not include the TOT due. Hence, the indicated price should be equal to the total amount payable including TOT, the so-called 'Consumer Price' (in Dutch: "*consumentenprijs*"). Due to the short period of implementation of the mandatory indication of the Consumer Price, the following reliefs were introduced in the Ministerial Decree.

### A. Ultimately as per 1 October 2013

It is approved that the mandatory indication of Consumer Price should ultimately be complied with as of 1 October 2013. Up to this date, the statutory sanction that may be imposed when the indication of the Consumer Price is not met will not be enforced (punishable by fine of the third category: ANG 10,000). The Ministerial Decree explicitly mentions that it is not forbidden to indicate the Consumer Price prior to 1 October 2013.

This relief is only granted on the condition that it should explicitly be stated that the indicated prices do not include TOT due. Moreover, the applicable TOT rate has to be indicated as well.

### B. Mainly (at least 70%) performing to TOT entrepreneurs

Until further notice, a general relief of the mandatory indication of the Consumer Price is granted for TOT entrepreneurs that for at least 70% perform services and/or deliver goods to other TOT entrepreneurs.

Even though the Ministerial Decree does not mention the criterion for measuring the threshold of 70%, we understand that in principle the turnover of the entrepreneur should be used as benchmark.

This relief is only granted on the condition that it is explicitly stated that the indicated prices do not include TOT due. Moreover, the TOT rate applicable to the service or good has to be indicated as well.



## II. Dual display of prices

For a transitional period from 1 May 2013 up to 1 January 2014 it became mandatory to indicate prices both including and excluding TOT. According to the explanatory notes, this dual display of prices should provide transparency on the possible change of prices because of the new TOT exemptions and TOT rates as per 1 May 2013.

However, considering the complaints from the business sector regarding the practical challenges and the substantial temporarily investment resulting from the mandatory dual display of prices, the following reliefs were announced in the Ministerial Decree.

### A. The transitional period up to 1 January 2014

An entrepreneur is required to display the prices both including and excluding TOT as of the moment that the entrepreneur applies the mandatory indication of the Consumer Price. Hence, ultimately as of 1 October 2013 the entrepreneur has to display both prices (including and excluding TOT). Please note that the obligation to display the prices both including and excluding TOT expires by law as of 1 January 2014.

In the period that an entrepreneur applies the mandatory dual display of prices, the sanction applicable to offering services and goods for prices excluding TOT due, should not be enforced (punishable by fine of the third category: ANG 10,000).

However, we understand that there should be no sanction if an entrepreneur does not comply with the dual display of prices.

### B. How to comply with the double display of prices

Depending on the size and the particular background of the business, it is up to the entrepreneur to decide on how the obligation of the dual display of prices is met. The dual display of prices on each separate good or service could be omitted if the price movement can be traced in a different manner. This could for instance be done with an old price card, an old menu, the indication of old prices on the shelves or a price conversion list. In any event, insight should be provided in the price movement on request of the consumer.

### C. Excluded groups

From the obligation to apply a dual display of prices are excluded:

- ▶ Entrepreneurs that already use prices including TOT prior to 1 May 2013; and

- ▶ Entrepreneurs which for at least 70% perform services and deliver goods to other TOT entrepreneurs and make use of above-mentioned relief to indicate prices excluding TOT (as indicated in paragraph 1).

### III. Receipt requirements

New receipt requirements were enforced as of 1 May 2013 also taking into account the ordinance introducing the cash registration system (in Dutch: “*Landsbesluit kasregistratiesystemen*”) which already is in place for certain appointed entrepreneurs.

The ordinance introducing the cash registration system becomes mandatory as of 1 January 2014 for all entrepreneurs operating in the following industries:

- ▶ Retail
- ▶ Personal services
- ▶ Catering
- ▶ Lottery

As from 1 May 2013, these entrepreneurs should issue a receipt instead of an invoice. The new receipt requirements consist of the following:

- ▶ Date and time of issuance of the receipt.
- ▶ Unique receipt number (as issued by the Inspector of Taxes).
- ▶ Cash-identification number.
- ▶ Fiscal logo (as to be determined by the Minister).
- ▶ Name or trade name, address, tax identification number (crib-number) of the performing entrepreneur.
- ▶ Clear description of the goods delivered or services performed.
- ▶ Amount of the goods or scope of the services.
- ▶ Price per unit (including TOT).
- ▶ TOT rate applicable, or notification of the applicable TOT exemption.
- ▶ Total price (in cash or in kind) and discounts not included in the price per unit.
- ▶ Total amount of TOT due by the customer.

Additionally, it is compulsory to state the abovementioned amounts in Antillean Florin. However, it is allowed to state the total amount due also in US Dollars. The receipt issued to the customer should include the indication "kassabon" whereas on a copy of the receipt the wording "kopie kassabon" should be mentioned.

In case of non-compliance with the receipt requirements, in principle a fine of the fourth category (ANG 25,000) or a jail sentence with a maximum of 6 months can be imposed. If the receipt requirements are intentionally not complied with, more severe sanctions can be imposed.

#### 1. Relief for non-compliance with certain receipt requirements

The new receipt requirements specifically relate to the use of the cash registration system. To the extent that implementation of this system has not yet become mandatory

for an entrepreneur, it is not yet possible to fully comply with all receipt requirements. Hence, the following has been approved.

For entrepreneurs who are obliged to issue a receipt, the following receipt requirements do not need to be complied with prior to 1 January 2014: (i) a unique receipt number (as to be issued by the Inspector of Taxes), (ii) a cash-identification number and (iii) the fiscal logo (as to be determined by the Minister). Instead of a unique receipt number, each receipt should however be consecutively numbered.

This approval applies up to 1 January 2014.

### 2. Relation between receipt requirements and relief on the indication of prices

To the extent that an entrepreneur uses the relief granted up to 1 October 2013 to indicate the prices exclusive of TOT (as mentioned in paragraph 1), that entrepreneur is also allowed to state the prices per unit exclusive of TOT on the receipts up to 1 October 2013. As from 1 October 2013 the prices per unit on the receipts should include TOT.

#### *Indicating prices per unit including TOT*

In case an entrepreneur indicates the prices including TOT, receipts should indicate prices per unit including TOT (please see example under 'legal' situation as included in the table below). In this event, receipts should indicate the total amount payable and separately the total TOT payable (indicated per TOT rate)

#### *Indicating prices per unit excluding TOT*

In case an entrepreneur indicates the prices excluding TOT, receipts should indicate the prices per unit exclusive of TOT. The receipt should first state a subtotal exclusive of TOT, subsequently the total TOT due (separately indicated per TOT rate) and finally the total amount due including TOT (see example under 'approved' situation in the table below).

The other receipt requirements which became effective as of 1 May 2013 should be fully complied with. For example, a clear description and the quantity of the goods delivered or the services performed should be mentioned on receipts.

Receipt 'legal' situation (incl. OB)			Receipt 'approved' situation (excl. OB)	
Product A	ANG 2.00		Product A	ANG 2.00
Product B	ANG 4.24	T1/6%	Product B	ANG 4.00
Product C	<u>ANG 3.27</u>	T2/9%	Product C	<u>ANG 3.00</u>
Total	ANG 9.51		Subtotal	ANG 9.00
			T1/6%	ANG 0.24
T1/6%	ANG 0.24		T2/9%	ANG 0.27
T2/9%	ANG 0.27		Total	ANG 9.51

### 3. Sales to tourists

With the introduction of the TOT ordinance in 1999, it was approved that entrepreneurs situated in Willemstad do not indicate the TOT on the issued invoices or receipts considering that their clientele mainly consists of tourists. The TOT due is for own account of and therefore absorbed by these entrepreneurs. In practice, this relief is also applied to the delivery of goods to local consumers. This relief is revoked and replaced with the approval below.

#### ***New approval***

Entrepreneurs situated in Willemstad whom mostly (for at least 50%) deliver goods to tourists are allowed not to state the TOT due on receipts issued. This approval is granted under the condition that these receipts mention the wording 'tax free'. Furthermore, the entrepreneurs should be able to provide the tax inspector with a written statement in which they make plausible that the goods are mostly delivered to tourists.

The TOT due will be absorbed by the concerning entrepreneurs and should be remitted by them in the manner that is currently applicable. The taxable base to be used is the amount billed to the customer. If the entrepreneur does not meet the requirements or does not fulfill the tax obligations, the approval will be cancelled and the TOT due should be mentioned on the receipts.

This approval only applies to the delivery of goods. For services, which include spending in the food services industry, there is no possibility to invoke this approval. This approval can be applied in anticipation of a final solution for the tax free sale of goods in Willemstad to tourists.

### 4. Conclusion

The Ministerial Decree introduced certain changes that (can) have an impact as of 1 October 2013. It is therefore recommendable to assess what the impact on each entrepreneur will be in order to timely take the appropriate action. The highlights can be summarized as follows:

#### **Indication of prices:**

- ▶ Ultimately as per 1 October 2013 every TOT entrepreneur should comply with the mandatory indication of the Consumer Price i.e. indicate the selling price including TOT.
- ▶ An exception applies to TOT entrepreneurs that for at least 70% perform services and/or deliver goods to other TOT entrepreneurs.

As a general guideline, this mandatory Consumer Price indication per 1 October 2013 will be relevant for most entrepreneurs including retailers such as: supermarkets, pharmacies, stores, hotels, restaurants, bars, etc.

#### **Dual display of prices:**

- ▶ Ultimately as per 1 October 2013 up to 1 January 2014 every TOT entrepreneur (with exception of the excluded groups) is required to display prices including and excluding TOT.



- ▶ Depending on the size and the particular background of the business, it is up to the entrepreneur to decide on how the obligation of the dual display of prices is met.

As a general guideline, the dual display of prices as of 1 October 2013 and up to 1 January 2014 is relevant for most entrepreneurs.

#### Receipt requirements:

- ▶ Of all the receipt requirements, the following do not need to be complied with until 1 January 2014 by entrepreneurs who are obliged to issue a receipt: (i) a unique receipt number (as to be issued by the Inspector of Taxes), (ii) a cash-identification number, and (iii) the fiscal logo (as to be determined by the Minister).
- ▶ Instead of a unique receipt number, each receipt should be consecutively numbered.
- ▶ Ultimately as per 1 October 2013 the prices per unit on the receipts should include TOT.

As a general guideline, the receipt requirements as of 1 January 2014 are relevant for entrepreneurs operating in the following industries: retail, personal services, catering, lottery.

#### Sales to tourists:

- ▶ TOT entrepreneurs situated in Willemstad which mostly (for at least 50%) deliver goods to tourists are allowed not to state the TOT due on receipts issued.
- ▶ The TOT will be absorbed by these entrepreneurs and should be remitted by them in the manner that is currently applicable. The taxable base to be used is the amount billed to the customer.

For a tailor made analysis of the impact of the receipt requirements or the indication of prices as included in the Ministerial Decree on your business, please contact one of the consultants below.

It should be noted that this information is of a general nature only and should not be regarded as an advice in respect of any specific situation.



<b>Bryan Irausquin</b>	+ 5999 4305075	bryan.irausquin@an.ey.com
<b>Zahayra de Lain</b>	+5999 430 5080	zahayra.de-lain@an.ey.com
<b>Cristina de Freitas Brás</b>	+5999 430 5070	cristina.de.freitas@an.ey.com
<b>Donna Muns - O'Niel</b>	+5999 430 5018	donna.oniel@an.ey.com
<b>Andy Hamson</b>	+5999 430 5077	andy.hamson@an.ey.com
<b>Walter Verra</b>	+5999 430 5073	walter.verra@an.ey.com
<b>Kimberly Schreuders</b>	+5999 430 5072	kimberly.schreuders@an.ey.com

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