# Aruba

## A. At a glance

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|---|---|
| Corporate Income Tax Rate (%) | 25 |
| Capital Gains Tax Rate (%) | 25 |
| Branch Tax Rate (%) | 25 |
| Withholding Tax (%) | |
| Dividends | 0/5/10 (a) |
| Interest | 0 |
| Royalties from Patents, Know-how, etc. | 0 |
| Foreign-Exchange Commission | 1.3 (b) |
| Branch Remittance Tax | 0 |
| Net Operating Losses (Years) | |
| Carryback | 0 |
| Carryforward | 5 |

(a) The 0% rate applies to dividends paid to resident holding companies. The 5% rate applies to dividends paid to nonresident publicly traded companies and to dividends paid on qualifying shareholdings under applicable tax treaties. The 10% rate applies in all other circumstances.

(b) A foreign-exchange commission (FEC) is imposed on all payments by residents to nonresidents. The FEC is withheld by banks on behalf of the Central Bank of Aruba or paid directly to the Central Bank of Aruba by residents.

## B. Taxes on corporate income and gains

**Corporate income tax.** Corporate income tax is levied on resident and nonresident entities. A domestic entity is an entity that is established in Aruba or incorporated under Aruban law.

Tax is levied on total profits earned from all sources during the company's accounting period. "Profit" means the total of net gains, under any name or in any form. Branches of foreign entities are taxed on Aruban-source income, such as profits earned through a permanent establishment.

*Permanent establishment.* A permanent establishment is deemed to exist in Aruba in the case of the following:

- A permanent representative in Aruba.
- A foreign enterprise that builds, installs, maintains, cleans or repairs capital assets on Aruba for more than 30 days. These 30 days include, among others, days spent on the technical preparation and cleaning up of the site.
- Foreign shareholders (not natural persons) of Aruba fiscal transparent companies with real economic presence in Aruba.

**Rate of corporate income tax.** The corporate income tax rate is 25%.

**Special tax regimes for certain companies.** Special tax regimes available for certain companies in Aruba are described below.

*Free-Zone Companies.* Companies operating in the free-zone are subject to corporate income tax at a rate of 2% on profits derived from their qualifying activities and to a free-zone facility charge of up to 1% on their annual gross turnover. The free-zone is a defined territory in which no import duties are levied if the goods are not imported for use in the domestic market. On approval, services can be rendered outside of the defined territory. The import duties exemption mentioned above does not apply for service companies established outside the defined territory.

The free-zone law was amended as of 1 January 2020. The following are highlights of the amendments:

- Only services designated in a state decree can be rendered by a free-zone company. No such (draft) decree had been published at the time of writing.
- In addition to financial services (already prohibited prior to 1 January 2020), the following services cannot be rendered by a free-zone company:
  - — Notary, lawyer, accountant, tax advisors and similar services
  - — Intellectual property (IP) activities
  - — Other services designated in a state decree (however, no such [draft] decree had been published at the time of writing)
- Qualifying services can be rendered to both foreign and local customers (so-called "ring-fencing" has been eliminated) at the corporate income tax of 2%.
- Companies engaging in the following geographically mobile activities must perform their so-called "core income generating activities" in Aruba with sufficient substance:
  - — Shipping
  - — Head office
  - — Pure holding
  - — Distribution and other services
  - — Other service-related services

A grandfathering period of up to 30 June 2021 is applicable for free-zone service providers performing IP activities as of 1 September 2018 and other free-zone service providers performing non-IP activities as of 15 November 2018.

In addition, the following benefits are available to free-zone companies:
- Exemption from turnover taxes with respect to the supply of goods outside Aruba and the rendering of services to persons outside Aruba
- On request, exemption from the FEC for payments abroad that are not related to local sales
- A 0% dividend withholding tax rate

*Imputation Payment Companies.* Imputation Payment Companies (IPCs) were subject to the regular corporate tax rate (see *Rates of corporate income tax*). Under the IPC regime, part of the corporate income tax paid by a company was remitted to its shareholders in the form of an imputation payment. The IPC regime was available to all companies conducting qualifying activities such as hotel, financing, licensing or investment activities. The IPC regime was abolished as of 2016. However, existing IPCs can continue making use of this regime until 2026.

*Special Purpose Companies.* Special Purpose Companies (SPCs) were introduced as of 2016. In principle, qualifying SPCs are subject to a corporate income tax rate of 10%. However, for companies performing qualifying hotel operations, the applicable corporate tax rate can be 10%, 12% or 15%. In addition, SPCs are exempt from dividend withholding tax. SPCs may engage only in the following qualifying activities (in some cases, they must meet certain additional requirements):
- Hotel operations
- Aviation operations
- Shipping operations
- Generation of sustainable energy
- Scientific or cultural activities that enhance the knowledge economy
- Financing that is different from the financing offered by credit institutions
- Making portfolio investments (other than in real estate)
- Holding of shares and participation rights
- Primary sector operations (agriculture, fishing, beekeeping and livestock)
- Medical tourism
- Rehabilitation centers
- Sales of sustainable means of transportation with no or low $CO_2$ emissions
- Tech startups

As of 1 January 2021, SPCs performing the abovementioned qualifying activities are prohibited from deriving income from IP activities. Furthermore, SPCs engaging in the following geographically mobile activities must perform as of 1 January 2021 their so-called "core income generating activities" in Aruba with sufficient substance:
- Shipping
- Holding
- Financing
- Asset management

A grandfathering period of up to 1 January 2023 is applicable for SPCs whose activities and assets in terms of nature and size existed already on 15 November 2018.

*Exempt Companies.* An Exempt Company is exempt from corporate income tax and withholding tax on dividends paid if it performs one of the following activities:
- Financing (if the company does not qualify as a credit institution)
- Investing, other than in real estate
- Holding of shares and participation rights
- Insuring special entrepreneurial risks (activities of captive insurance companies)

As of 1 January 2020, Exempt Companies performing the abovementioned qualifying activities are prohibited from deriving income from IP activities. In addition, Exempt Companies engaged in the abovementioned geographically mobile activities must perform as of 1 January 2020 their so-called "core income generating activities" in Aruba with sufficient substance. A grandfathering period of up to 1 July 2021 is applicable for Exempted Companies whose activities and assets in terms of nature and size existed already on 15 November 2018.

**Fiscal transparency.** Aruban limited liability companies can opt for fiscal transparency for Aruban corporate income tax and dividend withholding tax purposes within one month after incorporation. If fiscal transparency is granted, the limited liability company is treated as a partnership for Aruba income tax, corporate income tax and dividend withholding tax purposes; that is, only the partners are taxed in Aruba on Aruban-source income, unless the entity loses its fiscal transparency status.

As of 9 April 2019, all fiscal transparent entities are required to have real economic presence in Aruba (also referred to as "substance requirements") and as a result have a taxable presence in Aruba. Fiscal transparent companies that existed prior to 9 April 2019 will have until 1 January 2022 to comply with the new real economic presence (substance) requirements.

Fiscal transparent companies engaged certain designated activities must now perform their so-called "core income generating activities" in or from Aruba with sufficient substance. The new substance requirements apply to the following designated geographically mobile activities:
- Head office activities
- Insurance
- Distribution and other services
- Shipping
- Financing and leasing
- Holding
- Asset management
- Banking
- IP activities (fiscally transparent companies engaged in certain so-called "enhanced risk IP activities" have an enhanced burden to prove that their income relates to activities performed in or from Aruba)

The existence of the "core income generating activities" in Aruba may also be determined on a group level, meaning that the required activities can be outsourced to affiliated entities established in Aruba.

If the new substance requirements are not met in a certain year, the fiscal transparent company will no longer be treated as a fiscal transparent company as of that year. Consequently, the formerly fiscal transparent company will become subject to profit and dividend withholding tax in Aruba.

Fiscal transparent companies are required to annually report their financial statements and the identity of their shareholder(s) to the tax authorities within six months after the end of their financial year. Noncompliance with this requirement may result in an administrative fine of a maximum AWG10,000, a monetary fine of AWG25,000, incarceration of a maximum of six months or a loss of the fiscal transparent status.

It is possible to obtain an advance ruling from the local tax authorities on the treatment of the local presence.

**Branch profits tax.** Branches of foreign companies are taxed at the same rate as resident companies. No additional withholding taxes are imposed on remittances of profits.

**Capital gains.** Capital gains are taxed as ordinary income. However, certain capital gains are exempt from corporate income tax under the participation exemption (see *Participation exemption*).

**Administration.** In principle, the corporate income tax return for the preceding accounting period must be filed and the corresponding corporate income tax due must be simultaneously paid within five months after the end of the accounting period.

**Dividends.** A 10% withholding tax is imposed on dividends distributed to nonresidents. The rate is reduced to 5% for dividends distributed to publicly traded companies. A 0% rate applies to dividends distributed to resident companies that qualify for the benefits of the participation exemption.

The Tax Regulation for the Kingdom of the Netherlands provides for special dividend withholding tax rates (see Section E).

**Participation exemption.** Aruban resident companies are exempt from corporate income tax on dividends and capital gains derived from shares with respect to qualifying participations. A qualifying foreign participation must satisfy both of the following conditions:

- The shares must not be held as inventory or as a portfolio investment.
- The participation must be subject to a tax on profits.

**Foreign tax relief.** Foreign tax relief is available through the Tax Regulation for the Kingdom of the Netherlands. Foreign tax relief is also available under the state decree for the avoidance of double taxation.

## C. Determination of trading income

**General.** Commercial profits must be calculated in accordance with "sound business practice" and generally accepted accounting standards.

**Inventories.** Inventories are generally valued using the historical-cost, first-in, first-out (FIFO) or weighted average methods.

**Depreciation.** Depreciation may be calculated by the straight-line, declining-balance or flexible methods.

## D. Miscellaneous matters

**Foreign-exchange controls.** The Central Bank of Aruba regulates the foreign-exchange market and carries out the necessary transactions as executor of exchange policy. Remittances abroad require an exchange license issued by the Central Bank of Aruba.

**Debt-to-equity rules.** Aruba does not impose a debt-to-equity ratio.

**Controlled foreign companies.** Aruba does not have specific controlled foreign company legislation. However, numerous measures limit tax deductions related to intercompany transactions that are not at arm's length and intercompany transactions with low-taxed entities.

**Transfer pricing.** If a company or individual participates, directly or indirectly, in the management, supervision or the capital of two or more corporate entities, the conditions that apply to the supply of goods and the rendering of services between these related entities must be at arm's length. These conditions are similar to the conditions that would have applied in transactions with unrelated parties. Information to substantiate arm's-length transactions must include, among other items, the following:

- The agreement between the entities
- Transfer-pricing method that was chosen and why it was chosen
- How the consideration was determined

**Country-by-Country Reporting.** Local legislation implementing Country-by-Country Reporting (CbCR) obligations and additional transfer-pricing documentation requirements has been enacted as of 1 January 2020. The Country-by-Country (CbC) report is applicable to Aruba tax resident entities that are members of a multinational enterprise (MNE) group with a consolidated group turnover exceeding AWG1.5 billion (approximately USD833 million) in the fiscal year preceding the fiscal year to which the CbC report applies. In addition, a group entity of an MNE that is tax resident in Aruba should notify the tax authorities by the last day of the financial year of the MNE about the identity and tax residency of the CbC reporting entity.

Aruba tax resident entities of an MNE group are also required to have a master file and local file. This requirement only applies to Aruba tax resident entities of an MNE group that have a consolidated group turnover exceeding AWG100 million (approximately USD56 million) in the fiscal year preceding the year to which the tax return applies. The qualifying MNE group entity should have the master file and local file available at the level of the Aruba entity at the moment of filing the tax return. The Aruba tax authorities can request these files from the Aruba entity.

Noncompliance with the abovementioned transfer-pricing documentation requirements and the obligations to hold a master file and/or a local file may lead to the following:
- A reversal of the burden of proof
- A monetary fine up to AWG25,000
- Criminal charges (including a fine or imprisonment)
- Payment of the amount of taxes that have not been collected as a result of the noncompliance

## E. Tax treaties

Provisions for double tax relief are included in the Tax Regulation for the Kingdom of the Netherlands. These provisions avoid double taxation between the countries of the Kingdom of the Netherlands (Aruba, Curaçao, the Netherlands [including Bonaire, Sint Eustatius and Saba; these islands are known as the BES-Islands] and Sint Maarten) regarding taxes on income, capital and other items.

Under the Tax Regulation for the Kingdom of the Netherlands, the general withholding tax rate of 10% on dividend distributions from an entity resident in Aruba may be reduced to the following rates:
- 7.5% if the recipient of the dividends is a company that has capital divided in shares and that has a share interest in the nominal paid-up capital of the Aruba entity of at least 25%
- 5% if such recipient of the dividends is also subject to tax on profit at a rate of at least 5.5%

Effective from 10 October 2010, the Netherlands Antilles (which consisted of five island territories in the Caribbean Sea) was dissolved as a country. As a result, the island territories of Curaçao and St. Maarten became autonomous countries within the Dutch Kingdom. The island territories of Bonaire, St. Eustatius and Saba (BES-Islands) have become a part of the Netherlands as extraordinary overseas municipalities.

The Tax Regulation for the Kingdom of the Netherlands remains in place until bilateral tax treaties have been concluded between the countries in the Dutch Kingdom.

Aruba has entered into tax information exchange agreements with Antigua and Barbuda, Argentina, Australia, the Bahamas, Belgium, Bermuda, the British Virgin Islands, Canada, the Cayman Islands, the Czech Republic, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Mexico, Norway, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Spain, Sweden, the United Kingdom and the United States.

Aruba is recognized by the Organisation for Economic Co-operation and Development as a jurisdiction that has substantially implemented the internationally agreed tax standard and, as such, is approved-listed.