



## Creation of New BES Islands Tax Regime New tax planning opportunities in the Netherlands Antilles

On October 10, 2010, the Netherlands Antilles as a jurisdiction within the Kingdom of the Netherlands will be dissolved. Instead, two separate new jurisdictions, Curaçao and Sint Maarten, will come into existence. The other three islands of the current Netherlands Antilles (Bonaire, Sint Eustatius and Saba, known collectively as the BES islands) will become overseas municipalities of the Netherlands; public bodies as described in Article 134 of the Dutch Constitution. Curaçao and Sint Maarten will become autonomous parts of the Kingdom of the Netherlands, with a status comparable to that of Aruba. As a result, the Kingdom of the Netherlands, currently consisting of three jurisdictions (the Netherlands, the Netherlands Antilles and Aruba) will, after October 10, 2010, consist of four jurisdictions (the Netherlands, Aruba, Curaçao and Sint Maarten). However, there will be five fiscal regimes, because the BES islands, though part of the Netherlands, will have their own tax regime.

### Will this impact Amicorp clients?

There will be no change for Amicorp's clients who legally and/or beneficially own Netherlands Antilles entities, such as a Netherlands Antilles NV, Netherlands Antilles BV or Private Foundation (SPF), if their statutory seat is in Curaçao or Sint Maarten. This applies to both the so-called "old regime offshore companies" and client companies incorporated after 2001. The "grandfathering rules" for old regime offshore companies will remain in force, as guaranteed, until 2019. The other companies will remain subject to the profit tax ordinance.

The Private Foundation (SPF) with a statutory seat in Curaçao or Sint Maarten will remain a tax-exempt entity, provided that the SPF does not conduct a business (holding activities and portfolio investments are not considered a business). The Netherlands Antilles do not levy withholding tax on dividends, interest, royalties and service fees paid to non-resident persons or entities. This will remain the case in Curaçao and Sint Maarten.

Almost all Amicorp client entities existing under Netherlands Antilles law have their statutory seat and registered office in Curaçao. Only a few of these entities have their statutory seat in Sint Maarten. In either case, there will be no changes as both Curaçao and Sint Maarten will be the legal successors of the Netherlands Antilles once the Netherlands Antilles as a jurisdiction ceases to exist. The Civil Code of the



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Netherlands Antilles, including the provisions for legal persons (NV, BV, foundation, association) and the Netherlands Antilles corporate income tax law (profit tax ordinance) will be in force in the new jurisdictions, Curaçao and Sint Maarten. (Naturally, because of these changes the names of the laws also must be changed).

### Changes in the tax regime

Under this new tax regime, as it is envisaged in the bill that has been submitted to the Dutch parliament, it is possible for companies in Bonaire, Sint Eustatius and Saba not to be subject to corporate income tax if certain conditions are met.

In the bill Tax Act BES (Belastingwet BES), companies in the BES islands are by operation of law (bij wetsfictie) deemed to be resident in the Netherlands, which means that they will be subject to Dutch corporate income tax and Dutch dividend tax. It seems reasonable to expect that companies in the BES islands that are subject to Dutch corporate income tax and Dutch dividend tax will be entitled to the benefits of the approximately eighty double taxation agreements (DTAs) the Netherlands has concluded.

*However, this aspect has not yet been included in the bills regarding the BES islands or in the Dutch tax laws and tax treaties. If the Netherlands does choose to include the BES islands in the tax treaties then it will be necessary to conclude a protocol to the tax treaty with each tax treaty partner of the Netherlands, because in the current tax treaties of the Netherlands the Caribbean part of the Kingdom of the Netherlands (meaning the Netherlands Antilles and Aruba) is explicitly excluded.*

With regard to the double taxation agreements (DTAs) and tax information exchange agreements (TIEAs) the Netherlands Antilles has entered into, there will be no changes for Curaçao and Sint Maarten as these islands will be the legal successors of the Netherlands Antilles with respect to the DTAs and TIEAs the Netherlands Antilles has concluded. For example, Curaçao will be a legal successor of the Netherlands Antilles in the TIEA between Spain and the Netherlands Antilles, which implies that the attractive tax planning route Spain (ETVE Holding Company) – Curaçao will still be possible.

### Amicorps' services

For the BES islands, the situation will be different as they will be part of the Netherlands. Amicorp can offer incorporation, management and administration services for companies in Bonaire (situated 80 kilometers east of Curaçao). Prior to October 10, 2010, Amicorp can incorporate companies with a statutory seat in Bonaire as Netherlands Antilles companies. Then they will continue to exist as Bonaire companies automatically as of October 10, 2010. Incorporation can also take place after October 10, 2010 directly under the laws of the BES islands.

Amicorp can transfer the statutory seat of an existing Netherlands Antilles company to any island within the current Netherlands Antilles (Curaçao, Sint Maarten, Bonaire, Sint Eustatius, Saba) as the current situation is that the laws of the Netherlands Antilles are applicable in all of these islands (Civil Code, Act on Notary Office, etc.). A shareholders meeting and amendment of the articles of association of the



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company will be sufficient to transfer the statutory seat of the company within the Netherlands Antilles. As of October 10, 2010, the company (NV or BV) then will continue to exist as a Curaçao, Sint Maarten or BES islands company.

### Tax consequences following the changes

This choice will have tax consequences as the current profit tax ordinance of the Netherlands Antilles will continue to be in force in Curaçao and Sint Maarten, but not in the BES islands.

According to the bill Tax Act BES, qualifying companies in the BES islands can opt to be subject to specific BES islands taxes instead of being subject to the Dutch corporate income tax and Dutch dividend tax. These companies will not be subject to corporate income tax at all. Instead, the BES islands distribution tax (opbrengstbelasting) and property tax (vastgoedbelasting) will be levied.

The distribution tax will be levied on the proceeds derived from shares in companies resident in Bonaire, Sint Eustatius or Saba. Also, distributions by foundations, private foundations and cooperatives in Bonaire, Sint Eustatius or Saba could be subject to the distribution tax. The tax rate will be 5%.

The property tax will be levied on an annual basis on commercial property with a value above USD 50,000. The tax base of the property tax will be 4% of the value of the property and the tax rate will be 20%. This results in an effective tax rate of 0.8% of the value of the property.

Qualifying entities are those:

- With an active business (at least 50% active income);
- That, with respect to the non-qualifying assets generating passive income (dividends, interest, royalties), employ at least three resident persons and own qualifying real estate;
- In a free zone (handels- en dienstentrepot);
- Held for at least 95% by a resident natural person and holding a participation of at least 50% in one of the above-mentioned entities.

For the second category of qualifying entities certain requirements apply. The entity resident in Bonaire, Sint Eustatius or Saba must employ at least three resident natural persons and must, for a period of at least 24 months, have commercial property with a value of at least USD 50,000 at its disposal for carrying out its business activities. The entity must also have an own office located therein that is equipped with facilities that are usual in the financial sector. Certain requirements apply with respect to the activities and responsibilities of the employees.



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### Amicorp looking forward

If this bill is approved, there will be tax legislation in Bonaire, Sint Eustatius and Saba providing new tax planning opportunities. Amicorp offers Bonaire companies (NV or BV), giving clients the possibility to benefit from a zero percent profit tax regime (and very low local taxes instead) while at the same time, these companies are located in an overseas municipality (openbaar lichaam) of the Netherlands. The Netherlands is not blacklisted anywhere in the world and is a reputable jurisdiction. Legislation regarding participation exemption, fiscal unity, legal mergers, split-offs, demergers and conversions will be applicable in Bonaire.

The absence of corporate income tax and the availability of the Dutch legal system, proximity to Aruba, Curaçao, Sint Maarten, the United States and South America, availability of multilingual employees and the introduction of the United States Dollar as currency in the BES islands will make the BES islands competitive international financial centres while being part of the Netherlands and fully compliant with OECD and FATF recommendations.

For more information about how Amicorp can assist you in business, contact your nearest Amicorp office or contact one of the undersigned directly.

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