

# CHRONICLES OF THE CURAÇAO REAL ESTATE TAX

*By Mitchell Karman, Tax Manager at EY  
Dutch Caribbean*

## **Introduction**

With interest rates hitting new lows, there is a global trend of real estate increasing in value. While investors reap the benefits of their well-timed purchases, tax authorities worldwide claim their emperor's share by taxing capital gains and imposing real estate tax assessments based on the increased value of the property.

Real estate is an incredibly valuable object of taxation for jurisdictions.

Whereas people, companies and capital may migrate, immovable property stays put. It is a rather permanent object of taxation of which the value and returns are generally exclusively taxable in the jurisdiction where that real estate is located.<sup>2</sup> In addition, the taxation of real estate is also efficient from a tax collection perspective. When worst comes to worst, the authorities will always have the option of executing the property for the purpose of collecting the outstanding tax debt.

## **The Curaçao tax authorities recently also seem to have discovered the effectiveness of the real estate tax**

and has proceeded with imposing tax assessments in a rather nonconservative manner. In many of these cases the authorities have no regard for the legal statute of limitations and impose assessments for periods up to 10 years prior. The court cases which resulted from the authorities' crusade against its own backlog are a rollercoaster. Judges seemingly protecting the country's

financial interest, **judges ruling in favor of taxpayers because of a technical omission by the legislator** and inspectors retracting assessments to prevent setting a losing precedent. These are the Chronicles of the Curaçao real estate tax.

## **The enlightenment of 2014**

As per 1 January 2014, Curaçao performed an overhaul in the way in which it taxes real estate. The reason for this change was the dire financial situation of the country.<sup>3</sup>

## **The government choose to transition from a 'land tax' to a 'real estate tax'.**

Shortly speaking, the old land tax used a rather complex method of taxing the estimated rental value of the property, whereas **the new real estate is more robust and intends to tax the absolute value of the property.**

It is no coincidence that the government also commenced a large-scale operation in the same year, the so-called "Revaluation of the Country of Curaçao", in which the Tax Authorities essentially reassessed the ownership and value of all real estate located in Curaçao. In the course of this exercise, the Tax Authorities were able to identify a significant amount of properties or establish ownership thereof previously not known to them.



### **Land tax assessments up to and including 2013**

Following the reassessment of ownership and value of Curaçao real estate, the **Tax Authorities proceeded with imposing land tax assessments en masse for periods of up to 10 years ago**. This is questionable, because in principle the Authorities are only allowed to impose land tax assessments for periods up to five years ago. An extended period of 10 years may only apply if there is a so-called “new fact”. In essence, this concerns a fact not known by the Inspector and could not reasonably have been known by the inspector. Based on the case law of the Dutch Supreme Court, facts known by other inspectors (e.g. the income tax inspector) may not be attributed to the knowledge of other public servants (i.e. the land tax inspector).<sup>4</sup>

In the following cases in which taxpayers objected to the extended reassessment period, the Court ruled that the fact that the ownership of the respective properties only came to light pursuant to the project “Revaluation of the Country of Curaçao” did constitute a new fact.<sup>5</sup> As a result, the Authorities were allowed to impose land tax assessments for the previous 10 years. It could be questioned whether the Court’s

ruling on the constitution of a “new fact” – and therewith an extended tax reassessment period of 10 years – was just. As previously mentioned, a new fact is not present if the fact “could have reasonably been known by the Inspector”. It could be argued that **the land tax inspector at the very least should be familiar with the owners of land**, as documented in the country’s land registry. Nevertheless, the Inspector tried his luck, and got the Court on his side.

As a result of this project, a vast number of property owners were confronted with accumulating land tax assessments of up to 10 years ago. One can only imagine their frustration when they learn that the Court more recently ruled that the Inspector has no legal grounds to impose land tax assessments at all because of a technicality.<sup>6</sup> Because the legislator did not provide for a transitional period upon replacing the land tax with real estate tax, **the Court recently ruled any land tax assessments imposed post 1 January 2014 lack legal merit and need to be annulled.**

## **Real estate tax assessments starting from 2014**

One might think that following the large-scale identification of landowners, the Authorities would recognize their own past shortcomings and would proceed with timely imposing an annual real estate tax assessment from thereon. But this would be an overestimation. Even post 1 January 2019, the Authorities are still imposing real estate assessments for the year 2014. Upon objecting to such assessments, **the Authorities argue with blatant fallacies such as claiming that they have effectively six years to impose an assessment.** In a recent case the Inspector retracted the real estate tax assessment for the year 2014 during the court proceedings because the assessment was imposed after expiration of the statute of limitations.<sup>7</sup>

This retraction has likely taken place upon suggestion of the judge, allowing the Inspector to save face and avoid setting a precedent. Although the Inspector retracted the assessment in this particular case, I consider it unlikely that the Authorities will retract all outstanding real estate tax assessments for the year 2014 ex officio.

## **Conclusion**

In the past 8 years, the Curaçao Tax Authorities have been rather fanatical with imposing land tax assessments. In this regard they have proven to not act conservatively in their application of the extended tax reassessment period of 10 years. Almost eight years later it turned out they had no right to impose the assessments in the first place.

More recently, we see the Authorities imposing real estate assessments with disregard of the statute of limitations and it seems they have been called out on this practice in Court as well. Nevertheless, **there are numerous taxpayers who are not aware of the statute of limitations** and – under threat of collection measures by the government – pay their unjust debts. Considering the history, it would really become the Tax Authorities to own up their mistakes and proceed annulling all overdue land tax and real estate tax assessments ex officio.

<sup>2</sup> Most tax treaties allow for exclusive jurisdiction by the state where the real estate is located (see article 6 OECD Model Treaty).

<sup>3</sup> Staten van Curaçao, 2012/13, 031, no.3, p. 1.

<sup>4</sup> Dutch Supreme Court of 21 April 1971, nr. 16.535, BNB 1971/158.

<sup>5</sup> Curaçao Court in First Instance of 25 November 2020, ECLI:NL:OGEAC:2020:261.

<sup>6</sup> Curaçao Court in First Instance of 3 January 2021, ECLI:NL:OGEAC:2021:58.

<sup>7</sup> Curaçao Court in First Instance of 5 October 2021, ECLI:NL:OGEAC:2021:194.