

TAX INCENTIVES FOR NON-RESIDENT REMOTE WORKERS OFFERED BY SINT MAARTEN

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INTRODUCTION

The Government of Sint Maarten introduced a tax exemption for non-resident remote workers employed by international companies and temporarily deployed in Sint Maarten as part of a set of amendments of law that entered into effect in February 2023. This tax exemption can also be applied by digital nomads, who typically tend to be more independent and thus would not be in employment with one specific employer.

This article provides a breakdown of the applicable tax legislation and the amendments that were made to the pre-existing legislation for implementation of this tax exemption.

HISTORY

The text of the personal income tax ordinance (in Dutch: "Landsverordening op de Inkomstenbelasting") applicable in Sint Maarten is derived from the text that was applicable under the Netherlands Antilles until October 10, 2010. Therefore, at present all previous constituents of the dismantled Netherlands Antilles have similar stipulations in their income tax legislation based on which any foreigner (non-resident) that performs labor within the country's jurisdiction and receives payment for this labor will be subject to personal income tax. In principle, there is no minimum number of days for this labor to be subject to personal income tax. The income tax ordinance makes reference to



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a wage tax exemption that can be granted by the Minister of Finance for qualifying projects with a duration of less than 3 months, upon request of the non-resident employer.

Prior to the introduction of the aforementioned amendments the income tax ordinance in Sint Maarten stipulated that any individual performing labor against payment would be subject to personal income tax in Sint Maarten, provided that the labor takes place in Sint Maarten. In the wake of the devastation caused by hurricanes Irma and Maria in 2017 and the assistance received from foreign organizations during the subsequent years required to rebuild the country, the Government of Sint Maarten saw the need to reduce the tax burden for foreign professionals employed by the various international organizations of which the World Bank is the primary example. This goal has been accomplished by establishing clear parameters under which the labor performed by the foreigners deployed by such organizations would not be subject to tax in Sint Maarten. Following implementation of the amendment of law with reference number A.B. 2022, no. 61, foreign individuals can perform labor against payment in Sint Maarten for a period of up to 6 months within a 12-months period without incurring any personal tax incidence in

Sint Maarten, provided that the labor is paid for by a foreign entity. In principle, if all conditions are met the applicant is not required to submit any requests to the tax authorities. The income tax exemption applies by virtue of law.

6-MONTHS PERIOD (183-DAYS)

The remote workers that are desirous of staying in Sint Maarten longer than 6 months would have an interest in knowing if there is room for interpretation of this 6-months term. First it should be noted that in the text of the law this 6-months term is not mentioned, instead reference is made to a 183-days period. In the explanatory notes to the amendment of law, the legislator makes reference to the OECD Model convention and more specifically the commentary to the OECD Model Tax Convention, in which the 183-days period is extensively discussed. Noteworthy is the reference to the anti-fragmentation rules, of which member states have their own variations and the final text has not yet been ratified at OECD level. However, since the common goal of these anti-fragmentation rules is evident, it is not illogical for the legislator to anticipate on these impending anti-abuse rules and pro-actively incorporate some form of these rules in the tax legislation of Sint Maarten. In essence, the anti-fragmentation rules aim to avoid non-taxation in case activities of foreign entities in a jurisdiction are artificially divided into multiple phases to accommodate the term of 183 days (6 months) within a 12-months period. To determine the duration of the stay of a remote worker that would be applying this income tax exemption, the count of the 12-months period starts on the day of entry (first arrival). It is important noting that in the event the remote worker would opt to exit and re-enter the island before the period of 6-months has lapsed, the count would not be interrupted or affected in any manner.

For instance, if a Digital Nomad with Canadian nationality would arrive on October 15th, 2023, and would leave in December for two weeks of Christmas and Year-end celebrations, this person would be allowed to apply the income tax exemption provided that his or her stay in Sint Maarten after the interruption for the Year-end



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celebrations would not extend beyond April 15th, 2024. In effect, the tax exemption would apply only if the stay would be limited to 6 months after arrival on October 15th and payment for this labor is for the account of a non-resident employer. Remote workers being deployed to Sint Maarten on behalf of different international organizations are recommended to seek certainty in advance from the tax authorities of Sint Maarten on the applicability of the income tax exemption. For instance, if a remote worker would be deployed to Sint Maarten for a project that has a total duration of 10 months, and the remote worker forms part of a team of foreign professionals that will be each rotating and working for a couple of weeks in Sint Maarten, the duration of stay of the other team members shall be also taken into account. The latter is the outcome of the anti-fragmentation rules and might lead to tax disputes if the tax authorities make incorrect assumptions

about the collaborative efforts of the various international organizations and deployment of the same individuals for projects that might appear a continuation of previous projects.

Fortunately, the explanatory notes to the new text of article 17 paragraph 5 of the Income Tax Ordinance provide sufficient guidance and make reference to the OECD Model Tax Convention, which should facilitate discussions with the tax authorities of Sint Maarten on specific situations, if and when required.

Immigration and labor law aspects
The tax incentive for remote workers aligns perfectly with the applicable immigration laws and as such the implementation of this tax incentive did not require any amendments to the existing immigration laws and related aspects of the labor laws for non-residents. Sint Maarten welcomes visitors hailing from many countries (approximately 80 countries) without any visa requirements. The visa procedures for nationals of the remaining countries are quite transparent and can be accessed online on the website of the Immigration Department that resorts under the Ministry of Justice. The Digital Nomad that would like to travel to Sint Maarten to work remotely for a certain period of time could access this information online and initiate



entry procedures online, if necessary. In principle all tourists are allowed to stay up to 30 days. Dutch nationals and American nationals are allowed a stay of up to 6 months. Nationals of Canada, Australia, New Zealand, and Japan are allowed a stay of 3 months. The same applies to nationals of all member states of the European Union.

In this respect, it should be noted that tourists are not allowed to work in employment during their stay in Sint Maarten. The definition of the term employment for taxation purposes differs from its definition in immigration and labor laws. However, in the amendment of law for introduction of the income tax exemption for temporary work conducted by non-residents great emphasis is put on the condition that the remote worker should be paid by a non-resident party, in order to qualify for this income tax exemption.

AMENDMENTS IN THE TEXT OF THE LAW

To address the issue of double taxation of income earned with short term employment by remote workers the legislator added a new paragraph to article 17 of the Personal Income Tax Ordinance. The objective of article 17 in the Personal Income Tax Ordinance is to determine and list the sources of income and activities of non-residents that are subject to income tax in Sint Maarten. According to article 17, paragraph 1, sub d, of the Income Tax Ordinance, activities related to labor executed within the territory of Sint Maarten (Dutch part) would be subject to income tax in Sint Maarten.

With the addition of paragraph 5 clear parameters are introduced in the local income tax legislation, to limit the situations in which labor performed within the jurisdiction of Sint Maarten would lead to income tax liability. This approach by the legislator is commendable since it does not require tax treaties to obtain this clarity in cross-border situations and Sint Maarten does not have many tax treaties on avoidance of double taxation.

Traditionally, clarity on points of double taxation would be arranged in either the unilateral policies and decrees or tax treaties on avoidance of double taxation.

Article 17, paragraph 5, sub a, of the Personal Income Tax Ordinance

The first sub stipulates that in case the non-resident performs labor for a period of less than 183 days within a 12-months period and this labor is not paid for by a local employer. In this respect, the local employer includes (i) a permanent establishment as defined in the Profit Tax Ordinance and (ii) an enterprise or profession executed by individuals in Sint Maarten forming part of non-resident collaboration forms.

Article 17, paragraph 5, sub b, of the Personal Income Tax Ordinance

In sub b the latter category of deemed employer is further defined, since this terminology is not common in our Dutch Caribbean tax legislation and especially a novelty in the Sint Maarten tax legislation. This construct is based on the anti-fragmentation rules and targets the collaboration forms such as (limited) partnerships between individual consultants that would take on an assignment amongst each other. If members of these collaboration forms would work in Sint Maarten, the tax authorities would be able to apply the total count of each member's stay for the 183-days mark, and or the 12-months period. More specifically, the tax authorities would assess the duration of the main contract concluded by the respective collaboration form and disallow the tax exemption to the extent that individuals working in Sint Maarten are being paid by this collaborative effort.

Article 17, paragraph 5, sub c, of the Personal Income Tax Ordinance

In the last sub, the legislator included a clause to address the situation in which contractors in the construction industry would have non-resident employees performing labor in Sint Maarten for a short period of time. This tax exemption does not apply to the latter category. In the explanatory notes to the amendment

of law, reference is made to article 4 paragraph 4 and article 21a of the Wage Tax Ordinance, which acts as a safeguard for the tax authorities when foreign sub-contractors are being engaged for construction works in Sint Maarten.

COMPARISON TO ARUBA AND CURAÇAO

As previously mentioned in this article, the other Caribbean countries within the Dutch Kingdom have a similar stipulation as Sint Maarten has in article 17 of the Personal Income Tax Ordinance, in their income tax ordinance based on which non-resident remote workers can become subject to personal income tax in these countries. Aruba and Curaçao also introduced Digital Nomads-programs and launched these programs aggressively through their respective tourism marketing agencies during the pandemic. However, there is no clarity on the tax implications for the digital nomads that wish to work in neither Aruba nor Curaçao. In absence of an extensive tax treaty network, non-resident applicants interested in temporary work in Aruba or Curaçao would have to obtain tax advice to interpret the different unilateral tax policies and decrees on avoidance of double taxation in their specific cases. In this respect, the Department of Fiscal Affairs of Sint Maarten, is a frontrunner within its Dutch Caribbean peers by providing clarity on the exact circumstances under which digital nomads can perform labor in Sint Maarten, without incurring any personal income tax liabilities in Sint Maarten.



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