

Sales tax

Where you ~~do~~/enjoy it and how often

January 19 2012

Agenda

General overview

Sales tax – Assets, lease of real estate

Sales tax – Place of foreign service

General overview

General overview

General aim is:

- Shift from direct to indirect taxation
- Reducing direct tax rates to get in line with rest of world
- Reducing distortion of competition in sales tax

General overview 3

Reducing tax rate (after a long period of increases)

Profit tax rate

- 1939-1954 8%
- 1954-1956 24%
- 1956-1967 24-30%
- 1967-1970 24-34%
- 1970-1991 27-34%
- 1991-1999 32-39% (incl.surtax 44.85%!)
(inc. surtax 34.5%)
- 2000-2011 30%
- 2012-? 27.5% (no surtax!) (now ca. 60% of highest)
- Aim = 20%

Assets, lease of real estate

Sales tax

Assets

Situation until 2011

- Business activities Subject to sales tax
- Investment activities Not subject to sales tax

More and more real estate leased by using a separate corporation or a foundation

- No commercial activities
- Maintenance etc. in hands of third party

Result

- No sales tax

Sales tax

Assets

Amendment 2012

Old statutory provision

Entrepreneur is:

- Anyone who operates his own business or profession independently

New addition to the provision

- Anyone who operates an asset to obtain regular revenues

Sales tax

Assets

Operating assets to obtain revenues

Examples:

- Lease of movable property and real estate
- Licensing and copyright
- Establishing building and planting rights, or leasehold
- Commercial trade in securities

Not included (from the explanatory notes):

- Private investment such as shares and bonds by private investors and those that buy and own shares in the same way as private investors

Sales tax

Assets

Operating assets to obtain revenues

Subject to sales tax:

- Regular activities aimed at obtaining income

Not subject to sales tax:

- Occasional activities, e.g.
 - renting out your car to someone for a few days
 - renting out your house in Westpunt for one weekend to a friend

Sales tax

Real estate

Lease of local real estate

Subject to tax

Exemption:

- Leasing long term of property that is furnished, intended and used for permanent housing

Interpretation of Inspectorate:

Long lease, minimum of one year, depending on circumstances
?????

Sales tax

Real estate

Furnished, intended and used for permanent housing

Student, legal resident for 10 months Not exempt?

Permanent resident leases house for nine months,
awaiting renovation of his own home Not exempt?

New resident leases house for nine months
and then moves to newly bought house Not exempt?

Questions

- What if longterm contract is broken up after six or nine months?
- Who is responsible for unpaid sales tax if house is used differently?

Sales tax

Real estate

Connection to tourist tax of 7%:

Lease of real estate is subject to sales tax:

Exemptions:

- Permanent housing
- Transactions subject to tourist tax
 - Any stay accommodation used by non-resident of Curaçao (not registered as resident)

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Real estate

Please note:

Companies leasing houses to tenants:

- Was subject to tax, now tax exempt

Owner must inform tenant about the new tax, 6%

Owner is responsible for the correct tax and the correct amount

- Lease to resident 6% sales tax
- Lease to non-resident 7% tourist tax
- Permanent housing (>1yr) Tax exempt

Advisable:

- Stipulate in contract that a house must be used as such
Not allowed: sublease
use as office

Foreign services

Sales tax

Place of service

History

Basic rule:

Service is (deemed to be) provided where the provider is established

Foreign service providers:

- Place of service is where the service is **performed**

Explanatory note:

- Place of service is where the service is **enjoyed**

Sales tax

Place of service

Result

Court case:

- Tax inspectorate defended the text of the notes
- Tax court followed the text of the law

Charles Evans Hughes (Supreme Court USA 1910-1941)

- “The constitution is what the judges say it is” (1907)

Sales tax

Place of service

Government POV

- Distortion of commerce: foreign service provider pays no sales tax
- Loss of income

Amendment January 1, 2012:

- Place of service is where the service is **enjoyed**

Sales tax

Place of service

Examples	Old	New
Renting a car from a rental agent in Miami		
• Not performed or enjoyed on CUR	No	No
Bookkeeper from Aruba provides service on CUR		
• Performed and enjoyed on CUR	Yes	Yes
IT programmer in UK provides a program for local company		
• Not performed on CUR, enjoyed on CUR	No	Yes

Sales tax

Place of service

Examples

IT consultancy and support

- Writing programs, technical support

Lawyers, business and tax advisers, accountants

- Advise, outsourced bookkeeping and administrative services

Management fee paid to head office

- Includes fees for centralized intercompany costs

Franchise fees

Temporary employment agency

- Employee works here, but the agency provides the service abroad

Sales tax

Place of service

Exemption:

Local service provider uses the foreign service for his client

- Local service fully subject to sales tax including the foreign service cost
- Service enjoyed abroad (foreign customer) not subject to tax

Sales tax

Place of service

Formal aspects

Service provided is subject to tax

Basic rule:

- Service provider must file and pay

Specific rule, shift of obligations:

- Recipient of service must file and pay
- Convert amount paid to ANG, 6% added to monthly tax form

New form for sales tax

Sales tax

Place of service

Formal aspects

Please note!

- Shift not only for entrepreneurs

Explanatory note:

- Tax obligation for private person is not difficult:
If he can not show the service provider has charged sales tax, he must pay the sales tax himself

Question: How do you do that

- Not registered
- No CRIB nr
- No sales tax form
- File at the time of each foreign service or once a year?

***“It is not where you take things from -
it’s where you take them to”***

Jean-Luc Godard

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