

Caya Punta Brabo # 13
Phone: +297-582-6336
Fax: +297-582-5256



E-mail: info@wtsaruba.com
Web: www.wtsaruba.com

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TAX SPECIAL



GAMING TAX

The Government of Aruba intends to amend the legislation concerning the specific tax paid by casinos, hereinafter called “gaming tax”. A draft for the amendment of the State Ordinance on the gaming tax (“*Landsverordening Speelvergunningrecht hazardspelen*, AB 1990 no. GT 45”), **WTS** presented to the parliament of Aruba (“*Staten*”) and is expected to enter into force soon. In this “What’s up – tax special” we would like to inform you of the changes ahead, since they will impact your organization, your budget and your net income.

Key elements proposed changes

The key elements of the proposal now before Parliament are:

- a. a different basis on which to calculate the gaming tax;
- b. increase of the gaming tax rate;
- c. re-definition of the administrative rules;
- d. a different way of imposing future rate increases.

These changes are mostly a result of differences of opinion on the interpretation of elements of the gaming tax, which were decided by the Tax Court in its decision of November 16, 2004, case number 2002/1973. The court decided that the levy from the casinos was a tax and not a charge for a government service rendered. The court also decided that the gross amount of the receipts, which was the basis to calculate the tax owed, was not equal to the total amount of bills in the bill acceptor on slot machines.

a. Proposed basis for calculating the gaming tax and tax rate

The explanatory notes (“EN”) to the proposed changes states that the new basis to calculate the tax due is the result of the game (“*spelresultaat*”), also referred to as the “win”. The win is in the EN defined as the difference between the money inputs received and the winnings paid out (i.e. the sum of the table wins and slot wins). These wins are the result of money (coins, bills, credit notes (“tickets”) etc.) received and the change in inventory of the tables and slot machines. The win however also includes: Winnings paid out in a special way, such as “hand paid out jackpots” and “tickets”.

Markers.

The fee received by a casino for merely providing the opportunity and facilities to gamble, for instance in the case of poker tournaments where players play against each other and not against the casino.

Games of chance, which are offered outside of the scope of a permit holder’s permit. This because the changes contain a presumption that the permit is granted for every type of game of chance possible.

b. Proposed increase in gaming tax rate

The fixed fee of AWG 5,000 on a monthly basis will be abolished. In stead, the gaming tax will be set on 14% of the win. and the EN mentions that the Government estimates that, on balance, this will result in an annual increase in revenues of AWG 7 million.

c. Proposed redefinition of the administrative rules

The gaming tax will be owed for every location (“casino”), which makes use of the permit obtained, i.e. as if every casino operated by the permit holder had obtained a separate permit. The National Ordinance on gaming tax will also be included in the General State Ordinance on Taxes (“*Algemene Landsverordening Belastingen*, AB 2004 no. 10”, hereinafter: ALB). Application of the ALB will regulate amongst others the monthly filing of the tax return, the payment of the tax due and the organization of the administration.

As regards the organization of the administration, in general, the administration has to clearly show a company's assets and liabilities and its income and expenses. In the case of the casinos moreover, the taxable basis for the calculation of the tax due must clearly appear. This implies e.g. the different types of wins for the different types of games of chance offered and fees received must be administered separately and clearly. The Minister may also set special rules to facilitate tax audits.

Finally, the Government makes it possible for it to establish any rules deemed necessary by State Decree containing generally applicable rules ("*Landsbesluit, houdende algemene maatregelen*").

The State Decree on the gaming permit charge ("*Landsbesluit speelvergunningrecht*, AB 1990 no. GT 8", hereinafter: "LBHAM"), stipulates that experts designated by the Inspector of Taxes may be present in the casinos. The government proposes to maintain its authority under article 5 of the State Decree, in addition to that afforded by the ALB, because of the importance of the experts' presence in the casino for a good understanding of what goes on there as concerns receipts of gamblers' input, fees, paying out of winnings and the way in which the win (as the basis for calculating the gaming tax) is established.

d. Future rate increases

The procedure of the LBHAM is also proposed in the present draft to modify the tax rates. The LBHAM, established by the Government and containing the rate increase or decrease of the gaming tax, must be submitted to Parliament within six months from the date it entered into force for ratification by State Ordinance. In case the LBHAM is not approved by Parliament, it will immediately be abolished. Please take into account however that the new rate as proposed by LBHAM will be applicable as soon as the LBHAM enters into force and will remain so if the LBHAM is ratified or will immediately be abolished if it is not.

WTS observation

In our opinion a rate increase of a tax by LBHAM is contrary to the law, as taxes, which the Tax Court decided the gaming tax is, may only be levied on the strength of a formal law. Using an LBHAM to increase or decrease the gaming tax rate is too flexible and arbitrary. Casino's especially will not be able to prepare an accurate budget, since the gaming tax rate can increase at any time as per LBHAM.

Entry into force

The amendment of the gaming tax will enter into force on the first day of the first calendar month following the publication thereof in the Official Gazette of Aruba. According to the EN the moment of entry into force was chosen so as to give taxpayers sufficient time to organize their administrations so as to be able to comply with the new rules.

Please note that no action should be taken on the basis of information contained in this memorandum prior to consulting your tax advisor.

The team of **WTS** can assist you with any questions you may have with respect to these new laws. You may reach us by e-mail at the following addresses:



wolter.cari@wtsaruba.com



snijders.frank@wtsaruba.com



clark.cindy@wtsaruba.com



demiranda.mireille@wtsaruba.com



statia.charitza@wtsaruba.com



winklaar.zalma@wtsaruba.com

**W-Tax & Legal Services,
Caya Punta Brabo # 13, Oranjestad, Aruba
Tel: (297) 582 6336 | Fax: (297) 582 5256
Website: www.wtsaruba.com**

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