

Memo

Taxation of a grant received by a business on St. Maarten

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1. Introduction

This memo provides general information about the fiscal treatment of a grant received by a business which is established on St. Maarten (Dutch part). Such a grant could be issued by the World Bank, the National Recovery Plan Bureau, but also by other organizations. The key element of a grant is that the recipient is not obligated to provide any goods or service in return to the issuer.

This memo is aimed at businesses that are established in St. Maarten. In this context, the place of fiscal residency of the business is relevant. The relevant factor for fiscal residency is the place where the effective management of the business is located¹. If the day-to-day operations of the business are conducted from within St. Maarten for an extended period, fiscal residence in St. Maarten can usually be assumed.

Businesses in St. Maarten occur in several legal forms. This memo will detail the fiscal treatment of a grant received by the following types of businesses:

- a) **The sole proprietorship:** This type of business is not incorporated by a notary. It can have employees, but the private individual running the business is also the taxable subject. The profits are taxed with personal income tax. When performing taxable activities, it has to pay turnover tax (hereafter: "TOT").
- b) **The limited liability company:** This type of business is incorporated by a notary. It usually has a capital divided in shares and usually has legal personality. The most common types in St. Maarten are the *Besloten Vennootschap*² (BV) and the *Naamloze Vennootschap*³ (NV), but also companies incorporated based on foreign law can be taxable on St. Maarten. The profits are taxed with profit tax. When performing taxable activities, it has to pay TOT.

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¹ For fiscal residency, it is not required for the business to be registered in St. Maarten. Note that immigration- and license laws may require registration in St. Maarten, but pursuant to tax law, unregistered businesses may also be taxed.

² Private limited liability company.

³ Public limited liability company.

2. Fiscal treatment of the sole proprietorship

The most relevant taxes for a sole proprietorship that receives a grant are the income tax and the TOT⁴.

2.1 Personal income tax

Income tax is levied on a limited number of taxable sources, from both persons living in St. Maarten and abroad. One of these taxable sources is profit derived from conducting an enterprise. Determining if the activities form a taxable enterprise is beyond the scope of this memo. Assuming that there is a sustainable source of income generated in St. Maarten through multiple clients, it is likely that there is a taxable enterprise. Income tax on the profit is levied based on a bracket-system, with tax rates ranging from 12.5% to 47.5%.

In principle, income tax can be levied on the profits when there is causality between the benefit and the enterprise. Although the recipient of a grant is not required to perform anything in return to the issuer, there is a certain level of causality between the grant and the business activities because the recipient is generally required to use the grant to (re)invest in his active enterprise. Hence, there is a risk that the tax office could consider the received grant as part of the taxable business income. Because 'recovery grants' are a new phenomenon on St. Maarten, there are no clear guidelines yet on how to classify these grants. There is no local jurisprudence and the tax office has not yet taken a formal position on this matter. Because it can be argued that this grant can remain untaxed, we recommend applying for an advance tax ruling at the tax office to obtain certainty on an individual level.

2.2 Turnover tax

If an entrepreneur performs taxable activities, in principle he has to pay 5% TOT and remit this every month to the tax authority via self-assessment.

TOT must only be paid when the sole proprietor renders a service or delivers a good. There is a limited number of exemptions, for instance when a project is funded through development aid.

Because a grant is not usually issued as compensation for a good or a service, no TOT is due on the receipt of the grant. It is therefore not necessary for the sole proprietor to meet the criteria for an exemption, unless of course it wants to perform business activities without charging TOT to a customer.

3. Fiscal treatment of the limited liability company

3.1 Corporate income tax

A limited liability company's profits are taxed with profit tax at a flat rate of 34.5%. Benefits that are directly linked to operating the business or returns on investments are part of the taxable profit. In principle, profit tax can be levied on the profits when there is causality between the benefit and the enterprise. Although the recipient of a grant is not required to

⁴ Other taxes, such as wage tax, may be due. This memo focuses on the personal and corporate income tax and turnover tax.

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3.2 Turnover tax

If an entrepreneur performs taxable activities, in principle he has to pay 5% TOT and remit this every month to the tax authority via self-assessment.

TOT must only be paid when the limited liability company renders a service or delivers a good. There is a limited number of exemptions, for instance when a project is funded through development aid. Because the grant is not issued as remuneration for a good or a service, no TOT is due⁵ on the receipt of the grant. With regard to the grant, it is therefore not necessary for the limited liability company to meet the criteria for an exemption, unless of course it wants to perform business activities without charging TOT to a customer.

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⁵ Other taxes, such as wage tax, may be due. This memo focuses solely on the personal and corporate income tax and turnover tax.