



**Formal
Tax Law**

Now, for tomorrow





Baker Tilly in the Dutch Caribbean is active in Aruba, Bonaire, Curaçao and St. Maarten.

Specialized in these four markets we complement our local expertise with the benefits of our extensive international Baker Tilly network. Sharing knowledge and information throughout the markets, while we connect to important financial, fiscal and legal developments in the world. We distinguish ourselves in being profoundly competent in several specialist fields, one of which is Formal Tax Law.

'Material tax law governs rules on how tax is to be calculated. Formal tax law determines how tax assessments should be imposed and levied and what rights and obligations the taxpayer has. Formal tax law also provides rules for imposing fines or even imprisonment'

This brochure discusses several formal tax topics. Topics for which you may use a tax lawyer (in Dutch "fiscaal jurist") and in certain cases even a tax attorney (in Dutch "fiscaal advocaat"). Baker Tilly has both disciplines and extensive experience in formal tax matters and proceedings. We greatly value our clients' public integrity and ethics in their tax environment but when the Tax Authorities cross a legal border, our tax lawyer or tax attorney will come into action.

Voluntary Disclosure

Sometimes a taxpayer has certain non-declared income or assets, such as revenue from an enterprise or a foreign bank account. Over time a taxpayer often wants to come clean and eventually report the concealed income or assets. A taxpayer might accept a public function or perhaps he simply does not want to burden his children with the inheritance of 'black money'.

To promote 'making a clean slate', several tax jurisdictions provide the possibility of a voluntary disclosure. If you file an accurate and complete tax return or provide missing information before you suspect that the Tax Authority is already aware, or could likely become aware of an inaccurate or incomplete tax return in the past, no or a lower penalty will be imposed. In all Dutch Caribbean jurisdictions, a default penalty may still apply.

A taxpayer may want to discuss the conditions of a voluntary disclosure freely with a professional advisor. Ideally, he should do this with a tax attorney, rather than a regular tax consultant. Besides knowing all the formal aspects of voluntary disclosure, a tax attorney takes into account all criminal aspects involved. A voluntary disclosure can avoid paying tax penalties or fines, but it doesn't automatically protect you from criminal prosecution! This is an area of the law that most tax consultants are unable to advise you about, whereas Baker Tilly is an expert in this field.

International Information Exchange

Aruba, Curaçao and St. Maarten enter into a growing number of tax information exchange agreements, treaties for the avoidance of double taxation and international arrangements such as FATCA and CRS. The treaties for the avoidance of double taxation avoids paying taxes on the same income or capital in two jurisdictions, but they also contain provisions for solicited and unsolicited exchange of information between countries.

The exchange of information is subject to rules. A country is generally not allowed to request data from another country without a justified motive. There should be a material tax interest or a pending levy or outstanding tax collection and the requested data must be unavailable to the soliciting country through its usual sources.

If your administration is being requested for an exchange of

information, you may need the assistance of a tax lawyer. In an exchange procedure, a taxpayer can have several positions; there are cases in which you are the subject of the investigation yourself, but the authorities may also ask you to cooperate with an investigation regarding someone else.

Baker Tilly can advise and represent you in both situations.



A TIO or FIOD Investigation

The TIO (Team of Information and Investigation) or FIOD (Fiscal Information and Investigation Service) can appear at your doorstep unannounced, demanding to see your books and computers or seize the administration. When they enter, are you properly prepared?

Do you know what to say, what to ask and what to avoid saying or doing? Contrary to an audit by the Tax Authority, these formal tax investigators do not always make an appointment, and a visit usually means that there are criminal aspects involved.

- **Criminal investigators use different investigation techniques than tax auditors and there are different rights and obligations involved. Tax auditors are not allowed to use phone taps, raids or tracking, while the TIO or FIOD can. In Curaçao and St. Maarten the TIO is a special team within the BAB (Tax Accountants Office). On the BES islands the Dutch FIOD leads the investigation from the Amsterdam branch.**
- **During a criminal investigation, a taxpayer must be aware of his status. You can be questioned as a witness, but you can also be interrogated as a suspect. Evidently, the rights of a witness and a suspect are different, but they also differ compared to a regular audit. A suspect of a criminal offence has the right to remain silent, whereas a taxpayer in a regular audit is required to fully cooperate and disclose information.**

Partner and tax attorney Arthur van Aalst is specialized in your rights and obligations in both situations and has extensive knowledge and experience in the field of formal tax legislation, the criminal justice system and its provisions. Moreover, he is legally authorized to represent taxpayers in criminal courts and has certain statutory rights and a formal client-attorney privilege that a regular tax consultant doesn't have. Baker Tilly has created several scenarios for dealing with an unannounced investigation by the TIO or FIOD, which are readily available to you if and when this situation should occur.

Criminal Tax Proceedings

Criminal tax proceedings generally take place in situations whereby a serious violation of tax legislation is involved. Violations include a series of tardy tax returns, inaccurate or incomplete provision of information, failing to keep accurate records or failing to properly file data carriers. The penalties in case of willful committing criminal offences can be as severe as fines in the fifth category, paying back twice the amount of evaded tax, imprisonment or a combination of these. To avoid prosecution, your trusted tax attorney can enter into a transaction agreement with the public prosecutor.

Criminal tax proceedings differ in multiple aspects from regular tax proceedings.

- **First of all, it is not the Tax Authority but a public prosecutor who is in charge of the investigation and takes the case to a criminal court and not to an administrative (tax) court.**
- **Secondly: A case in criminal court is open to the public while tax court proceedings are behind closed doors.**
- **Another big difference is the status of proof: The Tax Authority or a tax judge may apply reversal of the burden of proof against the defendant, whereas the public prosecutor must plead his case based on a closed system of evidence.**





Court of Appeal for Tax Matters

If you disagree with a decision of the Tax Inspector regarding an objection you filed, or if the Inspector does not decide within the legal term of nine months, you may file an appeal with the Court of Appeal for Tax Matters (Gerecht in eerste aanleg). The appeal must be filed within two months after the contested decision of the Tax Inspector. An appeal against an untimely decision by the Tax Inspector must be submitted ultimately twelve months after the nine-month ruling period has expired. If an appeal is filed too late, the Court will declare it inadmissible and will not hear the case. The Court forwards a copy of the appeal to the Tax Inspector, to allow him the opportunity to respond by means of a statement of defense in writing. After this, the Court sets a date for a hearing.

During the hearing, both the taxpayer and the Inspector have the opportunity to defend their case, while the judges get the opportunity to ask questions. After the hearing, the Court issues a ruling in writing. A formal court appeal against the Court's written judgment, up to and including the Dutch Supreme Court, is possible.

Tax Collection Proceedings

If a taxpayer does not pay a tax assessment within the allowed timeframe, the Tax Collector can start formal proceedings to collect the amount owed. For this, the Collector has ample authority and plenty of means at his disposal.

The Collector generally starts with sending a payment reminder. If the owed taxes remain unpaid, the Collector will summon a tax bailiff to serve an injunction. Should you still fail to make payment, the Collector may seize your possessions, real estate or wages. It is possible to object to an injunction, by means of a notice of opposition to the Collector.

At the same time, a case against the Collector needs to be filed with the Court of First Instance. You must do this within one month of the date of the injunction. As this is a civil court proceeding, you are legally required to be represented by an attorney.

Our experienced tax attorney and his team of formal tax specialists are all personally dedicated to protecting your rights and minimizing any risk you may face in regard to formal or criminal suspicion or prosecution.

If you have any questions, we will gladly explain more in depth how our Formal Tax Law Services may be of interest or beneficial to your business or personal ambition.



Now, for tomorrow

Creating meaningful experiences by proactively working to solve your most pressing problems and seize new opportunities. Our relationships with clients are genuine and we value great conversations. We understand your world today and provide insights that shape your tomorrow.

Network members collaborate seamlessly to serve our clients across the globe.

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