



# PRACTICAL LAW

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# Curaçao (Dutch Caribbean)

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## TAXATION

### Tax year and payment dates

#### 1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The official tax year starts on 1 January and ends on 31 December. The income tax return should be filed within 60 days after the date of receipt of an invitation to file a return (by the date stipulated on the return form). It is possible to request an extension, which is limited to 18 months after the end of the tax year concerned. Payment should take place within two months after the official date of issuance of the assessment.

### Domicile and residence

#### 2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

##### Domicile

The concept of domicile does not determine tax liability in Curaçao.

##### Residence

An individual becomes subject to Curaçao income, inheritance and gift tax when the individual resides in Curaçao. Whether or not someone resides in Curaçao is determined by facts and circumstance and will therefore always depend on the specifics of the case at hand. Case law can give some guidance for that matter.

The concept of citizenship does not determine tax liability in Curaçao.

### Taxation on exit

#### 3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Curaçao does not levy an exit tax. However, before being able to de-register as a resident, such individual must file the outstanding income tax return(s) eight weeks before departure. Any return filed should include the income during the year of departure, from 1 January till the date of departure. The actual assessments (income tax and social premiums) are levied approximately one week before departure. The individual can de-register as a resident only after payment of the assessments.

Notably, after leaving Curaçao, the person may still be qualified as a non-resident taxpayer for certain sources, such as property.

### Temporary residents

#### 4. Does your jurisdiction have any particular tax rules affecting temporary residents?

An individual becomes subject to Curaçao income taxation when the individual resides in Curaçao (see Question 2, Residence). Individuals that stay in Curaçao for a period shorter than 12 months and reside in other parts of the Kingdom of the Netherlands are not considered to have become a resident of Curaçao. For other temporary residents, there are no specific rules. Whether an individual resides in Curaçao is determined based on the facts and circumstances of the case.

### Taxes on the gains and income of foreign nationals

#### 5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Non-residents are subject to Curaçao income tax on certain income, such as:

- (Rental) income from real estate located within Curaçao.
- Under certain circumstances, dividends and profits realised on the sale of a substantial shareholding in a Curaçao company.
- Salary as a managing director or supervisory board member of a Curaçao company.

The incomes under the first and third bullet point are taxed at the regular income tax rate. The income tax rate is progressive with six brackets ranging from 12% to 49%. For income realised in 2012, the rates were as follows:

- Income from 0 to ANG27,752: 12%.
- Income from ANG27,752 to ANG41,832: 20%.
- Income from ANG41,832 to ANG58,157: 27%.
- Income from ANG58,157 to ANG87,338: 33%.
- Income from ANG87,338 to ANG123,456: 40%.
- Income above ANG123,456: 49%.

The amount of income tax due may be reduced by one or more tax credits. Besides the general tax credit, some additional tax credits may apply, depending on personal circumstances.

The income under the second bullet point above is taxed at a special rate of 19.5% income tax. Capital gains on the sale of real estate are not taxed.



## 6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

For the taxation on income gained by non-residents see *Question 5*.

Curaçao does not levy a withholding tax on dividends or on royalty payments.

A dividend withholding tax law has been enacted but has not entered into force. It is not expected to enter into force in the near future and when it does, a transitional period of 12 months will apply. Within this period it will be permissible to pay out dividends without the levy of dividend tax.

Although Curaçao is not part of the EU, through its affiliation with The Netherlands it has committed itself to the enactment of the Directive 2003/48/EC on taxation of savings income in the form of interest payments (EU Savings Directive). Interest payments to residents of EU member states are subject to withholding tax unless the recipient requests to be exempted; in that case an exchange of information takes place with the recipient's country of residence.

### *Inheritance tax and lifetime gifts*

## 7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Any increase in wealth, received as an heir or specific beneficiary from a resident of Curaçao, forms a taxable basis for the inheritance tax in Curaçao. The applicable rate depends on how close the blood relation is.

Any gift, received from a Curaçao resident, is also subject to Curaçao inheritance tax in as far as it results in a wealth increase and the basis for the gift is generosity.

## 8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

### **Tax rates**

Inheritance tax and gift tax rates are the same, ranging from 2% to 24% depending on the relationship to the deceased/donor and the amount. The rates are as follows:

- Blood relations in the direct descending line and spouse:
  - up to ANG2,000: 2%;
  - from ANG2,001 to ANG4,000: 2.4%;
  - from ANG4,001 to ANG8,000: 2.8%;
  - from ANG8,001 to ANG16,000: 3.2%;
  - from ANG16,001 to ANG32,000: 3.6%;
  - from ANG32,001 to ANG64,000: 4%;
  - from ANG64,001 to ANG128,000: 4.4%;
  - from ANG128,001 to ANG256,000: 4.8%;
  - from ANG256,001 to ANG512,000: 5.2%;
  - from ANG512,001 to ANG1,024,000: 5.6%;
  - ANG1,024,001 and above: 6%.
- Blood relations in the direct ascending line:
  - up to ANG2,000: 3%;
  - from ANG2,001 to ANG4,000: 3.6%;

- from ANG4,001 to ANG8,000: 4.2%;
- from ANG8,001 to ANG16,000: 4.8%;
- from ANG16,001 to ANG32,000: 5.4%;
- from ANG32,001 to ANG64,000: 6%;
- from ANG64,001 to ANG128,000: 6.6%;
- from ANG128,001 to ANG256,000: 7.2%;
- from ANG256,001 to ANG512,000: 7.8%;
- from ANG512,001 to ANG1,024,000: 8.4%;
- ANG1,024,001 and above: 9%.
- Brothers or sisters:
  - up to ANG2,000: 4%;
  - from ANG2,001 to ANG4,000: 4.8%;
  - from ANG4,001 to ANG8,000: 5.6%;
  - from ANG8,001 to ANG16,000: 6.4%;
  - from ANG16,001 to ANG32,000: 7.2%;
  - from ANG32,001 to ANG64,000: 8%;
  - from ANG64,001 to ANG128,000: 8.8%;
  - from ANG128,001 to ANG256,000: 9.6%;
  - from ANG256,001 to ANG512,000: 10.4%;
  - from ANG512,001 to ANG1,024,000: 11.2%;
  - ANG1,024,001 and above: 12%.
- Cousins or grandchildren:
  - up to ANG2,000: 6%;
  - from ANG2,001 to ANG4,000: 7.2%;
  - from ANG4,001 to ANG8,000: 8.4%;
  - from ANG8,001 to ANG16,000: 9.6%;
  - from ANG16,001 to ANG32,000: 10.8%;
  - from ANG32,001 to ANG64,000: 12%;
  - from ANG64,001 to ANG128,000: 13.2%;
  - from ANG128,001 to ANG256,000: 14.4%;
  - from ANG256,001 to ANG512,000: 15.6%;
  - from ANG512,001 to ANG1,024,000: 16.8%;
  - ANG1,024,001 and above: 18%.
- All other cases:
  - up to ANG2,000: 8%;
  - from ANG2,001 to ANG4,000: 9.6%;
  - from ANG4,001 to ANG8,000: 11.2%;
  - from ANG8,001 to ANG16,000: 12.8%;
  - from ANG16,001 to ANG32,000: 14.4%;
  - from ANG32,001 to ANG64,000: 16%;
  - from ANG64,001 to ANG128,000: 17.6%;
  - from ANG128,001 to ANG256,000: 19.2%;
  - from ANG256,001 to ANG512,000: 20.8%;
  - from ANG512,001 to ANG1,024,000: 22.4%;
  - ANG1,024,001 and above: 24%.

### **Tax free allowance**

The following tax free allowances are available:

- Blood relations in the direct descending line:
  - inheritance: ANG4,000;
  - gifts: ANG1,000.



- Spouse:
  - inheritance: ANG12,000;
  - gifts: ANG400.
- All other cases
  - inheritance: ANG400;
  - gifts: ANG400.

### Exemptions

Some exemptions apply, of which the following might be interesting for private clients:

- Gifts of tangible assets for personal use are exempted up to ANG500 for blood relatives in the direct descending line and ANG100 for all others.
- Benefits received in the form of a right of usufruct or periodic payment.
- Benefits received from a private foundation or a trust.

### Techniques to reduce liability

Due to the fact that the tax free allowances for gifts are not significant, gifting during a testator's lifetime is not specifically tax efficient. Structuring the transfer of wealth with the two other exemptions mentioned above in mind may lead to significant reductions of liability. Establishing a Curaçao trust as a non-resident of Curaçao and the subsequent segregation of assets may also lead to a reduction of liability provided the beneficiaries do not qualify as residents of Curaçao.

### Other

Due to the low tax rates and possibilities there is no need for other techniques to reduce liability.

## 9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

The inheritance and gift tax regime is only applicable when the grantor or the testator qualified as a tax resident in Curaçao at the time of death (*see Question 2, Residence and Question 4*).

A transfer tax of 4% is due upon the death of a foreign owner of Curaçao real estate.

## 10. Are there any other taxes on death or on lifetime gifts?

No other taxes on death or on lifetime gifts apply.

### Taxes on buying real estate and other assets

## 11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

### Purchase and gift taxes

Turnover tax is due on every purchase by a foreign national, unless the transaction is subject to transfer tax in case of property (*see below*). Curaçao turnover tax is also levied on entrepreneurs that provide services in Curaçao. An entrepreneur is anyone who carries out a business as well as anyone who exploits an asset with the intention to obtain a durable income. As a result, exploiting real estate has become a service that, in general, is subject to turnover tax.

The turnover tax rate currently amounts to 6%. Renting long-term real estate, only suitable and used for permanent living, has become exempted. Renting of hotel rooms and apartments that are subject to room tax is also exempted from turnover tax. In general, it is not possible to receive a refund for turnover tax paid, for example, for turnover tax paid on coherent transactions.

Upon the transfer of Curaçao real estate, a transfer tax of 4% is due by the buyer or beneficiary.

Curaçao legislation imposes a room tax on anyone providing accommodation to non-residents against payment. Moreover, the room tax is levied on persons that make real estate accommodations (or a part thereof) available through time-sharing in order to provide a place to stay. Persons not registered with the Civil Registry of Curaçao are considered to be non-residents.

The room tax rate is 7%, except for time-sharing facilities which are taxed as follows:

- ANG70 per week for a studio.
- ANG80 per week for a one bedroom unit.
- ANG90 per week for a two bedroom unit.

### Wealth taxes

Curaçao does not have any tax legislation with respect to wealth taxes.

## 12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Real estate holding structures for non-resident individuals are usually the Curaçao trust or Curaçao private foundation. Since its introduction, the private foundation has become widely used. It has been used as the top-holding entity of international structures, allowing the international business a maximum of flexibility. Previously privately owned assets, such as art collections and real estate, have been transferred to private foundations, providing for an efficient protection of assets. The private foundation has become a relatively easy to incorporate and cost-efficient (relatively low maintenance costs) alternative for a number of practical uses. The Curaçao trust, available since 1 January 2012, can be used in a similar way.

### Taxes on overseas real estate and other assets

## 13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

All residents of Curaçao are subject to income tax on their worldwide income. Resident taxpayers are taxed on their taxable income, defined as income less deductible costs, minus losses carried forward. Income is defined as the result of real estate, capital, entrepreneurship and labour, and entitlements to periodic payments. Deductible costs are divided into personal burdens and extraordinary burdens.

Interest income on bank accounts abroad are taxed at the progressive tax rate, which range from 12% and 49% (*see Question 6*). However, interest on local bank accounts is taxed at a special rate of 6.5%.





For persons earning a foreign pension or living from (foreign) capital returns resident in Curaçao, the Pensionado Regulations may be applicable. The main conditions are that the individual:

- Has not been a resident of Curaçao for the preceding five years.
- Upon becoming resident of Curaçao has reached the age of 50.
- Obtains a private dwelling in Curaçao valued at least ANG 450,000.

A person meeting the above conditions can apply for either one of the following tax options:

- Taxation of income from foreign sources at 10%.
- Deemed foreign income of ANG500,000 which is subject to the regular (progressive) income tax rates (effective tax burden of approximately ANG224,000; see *Question 6*).

#### International tax treaties

#### 14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

The Netherlands Antilles, as Curaçao's predecessor in title, have concluded full tax treaties to prevent double taxation (for example with Norway and The Netherlands), as well as a number of treaties on the exchange of information regarding taxes (TIEAs). The TIEAs have been concluded with Antigua and Barbuda, Australia, British Virgin Islands, Bermuda, Canada, Cayman Islands, Denmark, Faroe Islands, Finland, France, Greenland, Grenadines, Iceland, Mexico, New Zealand, Spain, St. Lucia, St. Kitts and Nevis, St. Vincent, San Marino, Sweden, United Kingdom and the United States. Not all these TIEAs have entered into force as yet.

The Tax Arrangement for the Kingdom of The Netherlands is an agreement similar to a double tax treaty, between The Netherlands, Aruba and the former Netherlands Antilles. The renegotiation of this tax arrangement as a result of the dissolution of the Netherlands Antilles is pending. Until the renegotiation has been finalised, the current Tax Arrangement remains in force. Furthermore, the former Netherlands Antilles concluded a double tax treaty with Norway.

### WILLS AND ESTATE ADMINISTRATION

#### Governing law and formalities

#### 15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is not essential for an owner of assets in Curaçao to make a will in Curaçao. The inheritance of assets located in Curaçao is governed by the inheritance laws applicable to the natural person in question. Under Curaçao conflict of law rules, the laws of the country of habitual residence are applicable. If a person has no habitual residence, the laws of the country with which a person has the closest connection all circumstances taken into account, shall apply. To the extent the owner resides in Curaçao or would qualify as a Curaçao resident for Inheritance Law (which is codified in the Civil Code) purposes, the owner may opt to make a will should he want to deviate from the provisions set out in Curaçao law. If the will is made in Curaçao, the will must be governed by the laws of Curaçao.

#### 16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

A will in Curaçao, except for a codicil and an emergency will, can only be made by a notarial deed (or by a private deed that must be put into custody of a civil law notary - rarely used). A will can never be a mutual will, it is a unilateral juristic act. The formalities do not vary depending on the nationality, residence and/or domicile of the testator. The main formal requirement is that the will in Curaçao take the form of a notarial deed executed before a civil law notary.

A codicil is a private handwritten dated and signed deed made by the testator, which can be used to leave a specific legacy with respect to clothing, personal objects and personal jewelry, certain assets belonging to the inventory and certain books.

#### Redirecting entitlements

#### 17. What rules apply if beneficiaries redirect their entitlements?

Under the laws of Curaçao a beneficiary cannot in principle redirect its entitlement. Delegation can be allowed in certain circumstances.

In general, except where the statutory division applies (see *Question 28*), the heirs are entitled to the undivided estate and can reach an agreement with respect to the exact division of the estate among themselves.

#### Validity of foreign wills and foreign grants of probate

#### 18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

##### Validity of foreign wills

The internal validity and consequences of a will must be governed by the laws of the habitual residence of the testator in cases where a choice of law has not been made (see *Question 15*). With respect to the formal validity, Curaçao is not a party to the Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961.

Persons that have their habitual residence in Curaçao, can only make a will that complies with the local requirements of preparing an authentic deed.

##### Validity of foreign grants of probate

The concept of grants of probate is not recognised under the laws of Curaçao. Under Curaçao conflict of law rules, the question of whether the rights and obligations and possession of the estate pass directly to the heirs is governed by the applicable laws of succession.

#### Death of foreign nationals

#### 19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

There are no relevant practical estate administration issues if foreign nationals die in Curaçao. If the deceased has a bank



account with a bank in Curaçao, the bank will ask for a certificate of inheritance and will freeze the account in the meantime.

### Administering the estate

#### 20. Who is responsible for administering the estate and in whom does it initially vest?

##### Responsibility for administering

The testator can appoint one or more executors of his will. The powers of an executor are to:

- Administer the estate.
- Pay off debts of the estate, which during its administration must be paid from the assets of the estate.
- Execute testamentary obligations which the testator has imposed on the executor.

The testator can limit the executor's authority. If the testator has appointed an executor with the authority to administer the estate, the executor represents the heirs in and out of court during the administration.

##### Vesting

Under the laws of Curaçao, the rule of seisin (*de saisine*) applies, according to which the heirs succeed to the estate of the deceased (all rights and obligations).

#### 21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

##### Establishing title and gathering in assets

See *Question 20*.

Inheritance laws contain specific provisions with respect to winding-up an estate only in the following circumstances:

- A beneficiary acceptance (that is, acceptance without liability to debts beyond the assets descended).
- Court order.

##### Procedure for paying taxes

Within one year after the deceased's death, the statutory representative must submit an inventory to the court. Any gift or inheritance taxes due become payable once the Inspectorate of Taxes has drawn up the assessment. The assessment is only established once the tax return has been filed. It cannot be predicted with certainty how long it takes between filing the tax return and receiving the assessment. As a matter of practice, it can easily be calculated what amount of the estate should be reserved for taxes.

##### Distributing the estate

It depends on the assets that form part of the estate how these should be transferred (distributed). In general, under the laws of Curaçao, a clear distinction must be made between the partition and the transfer of an asset. For a transfer of ownership (*overdracht*)

title to take place, a transfer or delivery (*levering*) of a valid title must be effectuated by a person who has the right to dispose of the asset. The title must describe the asset in a sufficiently precise manner. Depending on the kind of asset to be transferred, Curaçao law prescribes different methods of transfer.

In practice, the partition and transfer of the estate must be included in a notarial deed and if, for example, Curaçao real estate is involved, this deed must be registered with the Land Registry. Distribution of immovable property is subject to the law where the property is situated (*lex rei sitae*).

#### 22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

The deadline for filing the succession taxes depends on when the Inspector of Taxes sends a tax return (see *Question 21, Procedure for paying taxes*).

#### 23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

There are very limited grounds to nullify a will, such as:

- An abuse of circumstances.
- Threat.
- Deception.

A beneficiary who invokes one of those grounds must prove that the testator would not have made the last will if such circumstances had not occurred.

The last will can also be nullified if one can prove from circumstances outside the last will that the testator would not have made the last will if he or she would have been aware of the erroneous motive.

In addition, the last will is null and void when the contents or an important motive are contrary to public order or morality.

A beneficiary can request the court in first instance to dismiss an executor or administrator for serious cause.

### SUCCESSION REGIMES

#### 24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

The estate will be devolved in accordance with the intestacy law of Curaçao, or an applicable will. The starting point of the succession regime is inheritance by consanguinity (blood relation). There is one exception: the surviving lawful spouse inherits together with the blood relations of the deceased (see *Question 28*).

Curaçao law provides for inheritance by substitution. If a person pre-deceases the testator then the children of the person inherit by substitution what their father or mother would have inherited.

There is complete freedom of testamentary disposition in Curaçao. The laws of Curaçao do not contain forced heirship rules.



### Forced heirship regimes

#### 25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

##### Avoiding the regime

Not applicable (see Question 24).

##### Assets received by beneficiaries in other jurisdictions

Not applicable.

##### Mandatory or variable

Not applicable.

### Real estate or other assets owned by foreign nationals

#### 26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Under Curaçao conflict of law rules, the laws of the country of the person's habitual residence are applicable. If a person has no habitual residence, the laws of the country with which a person has the closest connection all circumstances taken into account, shall apply. No distinction is made between movable and immovable assets.

An individual becomes subject to Curaçao inheritance and gift taxes when the individual resides in Curaçao (see Question 2, Residence and Question 4). In principle, therefore, a foreign national will not be subject to Curaçao succession tax laws.

#### 27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Succession laws do not distinguish between movable and immovable assets. The courts therefore do not apply the doctrine of *renvoi*.

### INTESTACY

#### 28. What different succession rules, if any, apply to the intestate?

The intestacy rules only apply if a person did not make a will. There are two possible succession regimes:

- Inheritance pursuant in one's own right.
- Inheritance by substitution.

There are four groups of heirs under Curaçao law:

- A spouse of the deceased together with the children of the deceased.
- The parents of the deceased together with the brothers and sisters of the deceased.
- The grandparents of the deceased.
- The great-grandparents of the deceased.

If there is a surviving spouse and any children, they each inherit equal parts of the estate. Provided the deceased does not leave any stepchildren, the children are not entitled to receive assets directly from the estate. All assets and liabilities vest in the surviving spouse and the children then have a claim for the value of their share in the estate. These claims bear an interest and are not due and payable. This is the so-called statutory division.

#### 29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

The inheritance laws of Curaçao provide the following rights (so-called other statutory rights):

- The right of the spouse of the deceased and/or household member to continue to use the house that belongs to the estate.
- The right of usufruct of the spouse of the house and inventory.
- The right of usufruct of the spouse of assets needed for his/her care.
- The right of a child to claim an outright payment of the amount necessary for maintenance and education.
- The right of a child, step-child, foster child or grandchild of the deceased to claim an amount to be compensated for labour performed in the household or business of the deceased during their majority.
- The right of the surviving spouse, child or step-child of the deceased to claim the transfer of assets of the estate that were instrumental to the business of the deceased, where the business will be continued by them. Alternatively they may claim the transfer of the shares in the company.

### TRUSTS

#### 30. Are trusts (or an alternative structure) recognised in your jurisdiction?

##### Type of trust and taxation

On 1 January 2012, new legislation entered into force according to which it is now possible to set up a trust (Curaçao Trust) similar to the trust in Anglo-Saxon common law jurisdictions.

The introduction of the Curaçao Trust serves as an important instrument which could be used within financial transactions in the Caribbean as a significant part of these transactions are initiated from common law jurisdictions.

The Curaçao Trust can be used for different purposes, such as, for example:

- To set aside capital for children's upbringing, education or maintenance.
- Estate planning.
- Charitable purposes.
- Structuring by pension funds or investment funds.

A Curaçao Trust is subject to profit tax. The current profit tax rate is 27.5%. However, a trust is exempt from profit tax provided such profit is not the result of running or carrying out a business.

A Curaçao Trust can also apply for taxation at a profit tax rate of 10% (no specific conditions apply). In these circumstances, a Curaçao Trust is subject to profit tax laws, and can benefit from participation exemption, investment allowance, depreciation and loss compensation. The main tax incentive is the participation exemption under which dividend income received from and capital gains realised on the disposal of qualifying shareholdings are fully tax exempt. The exemption applies in the following circumstances:

- If the NV (the Dutch term for a public limited liability company) holds at least 5% of the paid-up capital or owns at least 5% of the voting rights in a company with a capital divided into shares.

- A shareholding valued at least ANG1 million.

Acquisition from a non-resident is not subject to Curaçao gift tax. Distributions to a non-resident are not subject to Curaçao gift or income tax. Curaçao transfer tax may be due on the transfer of, for example, real estate situated in Curaçao or ships registered in Curaçao to or by the Curaçao Trust.

#### Residence of trusts

The Curaçao Trust must be incorporated by a notarial deed executed before a civil law notary in Curaçao. The trust deed must contain the trust provisions, including at least:

- Details of a beneficiary or a specific purpose.
- The appointment of at least one local trustee and the acceptance by the latter of such role.
- A provision to ensure that there shall be a local trustee at all times during the existence of the trust.
- A description of the trust assets.
- The name of the trust (this must contain the word trust).

#### 31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Yes, such trusts are recognised.

#### 32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

A Curaçao Trust, as well as any similar trust that is resident in Curaçao, is subject to profit tax (see *Question 30, Type of trust and taxation*). Should a trustee (natural person) become resident in, or leave, Curaçao, the general taxation rules apply (see *Questions 1, 2 and 3*). Should a trustee (company) become or cease to be resident of Curaçao, that company will have to adhere to the rules of the Curaçao profit tax laws.

#### 33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

#### Purpose trusts

Yes, the law provides for these trusts.

#### Perpetuities and accumulations

There is no such restriction on the perpetuity period.

#### Beneficiaries' rights to information

Yes, the trust deed can restrict the beneficiaries' information rights to a certain extent.

#### 34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

There are no specific provisions which protect trust assets from claims in foreign divorce proceedings.

#### 35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

The *Actio Pauliana* (fraudulent conveyance) principle allows a creditor to proceed against the assets which have been transferred in very specific circumstances. The *Actio Pauliana* does not prohibit or limit the transferability of an asset.

*Actio Pauliana* enables both third parties and the trustee in bankruptcy to nullify legal acts that would prejudice their ability to discover assets against which they could have recourse. For an act to be nullified, the requirements are the following:

- A legal act was performed by the debtor (for example, the settlor of the trust).
- The debtor was not obliged to perform the act.
- The legal act prejudices one or more creditors in their ability to find assets against which to take recourse.
- The debtor knew or should have known of such prejudice.
- If the legal act was for consideration, the other party should have known or had reason to know of such prejudice.

Prior to bankruptcy, the nullification can be invoked by any creditor who is prejudiced in its ability to find assets against which to take recourse, whether or not its claim arose before or after the relevant legal act. In practice, it may be difficult to prove the requirements under the last two bullet points above.

The right to annul a legal act lapses after three years as from the date when the creditor acquired the right to invoke the annulment (in principle, the date on which the creditor discovers the legal act in question).

## OWNERSHIP AND FAMILIAL RELATIONSHIPS

### Co-ownership

#### 36. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

The Civil Code contains a specific title with respect to co-ownership of property. A co-ownership of property exists where one or more assets belong to two or more persons at the same time. The second part of that title deals with special regimes of co-ownership. The co-owners can agree on the enjoyment, use, and administration of property. The Civil Code contains provisions relating to the division of co-owned property, including division by court.

For income tax purposes, the fact of co-ownership must be mentioned on the income tax return.

Division of co-owned real estate is subject to registration tax.





### Familial relationships

#### 37. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

The rights of cohabitants/civil partners in real estate are protected in certain circumstances. For example, they have the right to continue to use the house that belongs to the estate (this is one of the so-called other statutory rights; see *Question 29*).

If a man and a woman marry without a prenuptial agreement, they will be married under the general community property regime, which means that all property acquired during marriage will be co-owned by the spouses with some exclusions such as property acquired by virtue of inheritance or gift.

The spouses can decide to enter into a prenuptial agreement before or during marriage. The most common provision of the prenuptial agreement is the exclusion of the general community property regime. The spouses can also opt to incorporate a yearly or final settlement clause.

#### 38. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Curaçao law does not provide for any recognised relationship for same-sex, or opposite sex, couples.

#### 39. How are the following terms defined in law:

- Married?
- Divorced?
- Adopted?
- Legitimate?
- Civil partnership?

##### Married

A marriage means a civil union between a man and a woman.

##### Divorced

A marriage is ended by divorce, granted by the court. The petition can be filed by one or both spouses on the ground of irreconcilable differences.

##### Adopted

An adoption takes place by a court judgment in first instance, upon request by two persons of opposite sex or by a single person. Adoption by a couple is only allowed if the couple have lived together over three years uninterrupted.

##### Legitimate

A child is legitimate when he or she is born in wedlock. However, the law does not distinguish between legitimate and illegitimate children. Acknowledgement of a child without a father can take place by a deed of acknowledgement, drafted by a registrar of births, deaths and marriages or by a notarial deed.

### ONLINE RESOURCES

*Official website of the government of Curaçao*

[www.gobiernu.cw](http://www.gobiernu.cw)

The official website of the government of Curaçao, which contains all laws that entered into force since 10 October 2010 (the date on which Curaçao became a separate country within the Kingdom of The Netherlands).

*Official website from the Ministry of Foreign Affairs*

[www.minbuza.nl](http://www.minbuza.nl)

The official website from the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which lists the international conventions that apply to the Kingdom of The Netherlands and/or the separate countries within the Kingdom.

#### Civil partnership

Civil partnership is not defined.

#### Minority

#### 40. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

A minor is someone who has not reached the age of 18, except if such person is 16 or 17 and is married. A minor heir has the same rights (and with respect to claims on the estate, the same risks) as a person of full age. The minor is legally represented by its parent(s) or a guardian.

The statutory representative of the minor requires the court's authorisation for certain legal acts which are listed in the Civil Code, for example, legal acts that affect the estate of a minor.

### CAPACITY AND POWER OF ATTORNEY

#### 41. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

When a person loses capacity (*handelingsbekwaamheid*) he cannot engage in any legal acts. That also means that such person cannot grant a power of attorney to a third party. Curaçao law does recognise powers of attorney made under the law of other jurisdictions but in some cases a notarial power of attorney is required.

A person loses its capacity if he is placed under guardianship. The guardian appointed by the court is authorised to represent such person. A court may appoint an administrator over a person's property if the person cannot administer his own property.

### PROPOSALS FOR REFORM

#### 42. Are there any proposals to reform private client law in your jurisdiction?

There are currently no proposals to reform private client law in Curaçao.



## CONTRIBUTOR DETAILS



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**Qualified.** Kingdom of The Netherlands, which includes Bonaire, The Netherlands, Curaçao, Aruba, St. Maarten, Saba and Statia

**Areas of practice.** Tax litigation; privacy and asset protection; and advice on investment structures.

#### Recent transactions

- Implementation of privacy and asset protection structures, including the use of the Dutch Caribbean Cooperative and Dutch Caribbean Private Foundation.
- Advice and implementation of holding structures involving ultimate beneficial owners (UBOs) in Latin America with activities in Europe.
- Tax litigation to prevent fishing expeditions under tax information exchange agreements.

**Qualified.** Curaçao, Bonaire, Aruba, St. Maarten, Saba and Statia

**Areas of practice.** Corporate and finance.

#### Recent transactions

- Extensive experience in advising and structuring involving the Curaçao SPF and Curaçao Trust.
- Publishes frequently on the use of the Curaçao SPF and Curaçao Trust and is regularly asked to be a lecturer on the subject at seminars.
- Advised a variety of local and international corporations, private clients, investment institutions and financial institutions such as banks and trust service providers.



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**Qualified.** Kingdom of The Netherlands, which includes Bonaire, the Netherlands, Curaçao, Aruba, St. Maarten, Saba and Statia

**Areas of practice.** Tax litigation; privacy and asset protection; and advice on investment structures.

#### Recent transactions

- Advice on investments in the hospitality sector in Bonaire.
- Assisting start-ups in Bonaire and Curaçao.
- Advice and implementation of holding structures involving UBOs in Latin America with activities in Europe.

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**“OBSTACLES ARE THINGS  
A PERSON SEES WHEN  
HE TAKES HIS EYES  
OFF HIS GOAL.”**

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E. JOSEPH COSSMAN

