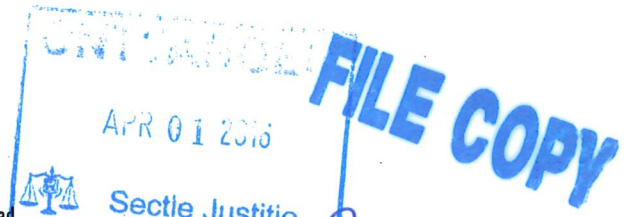




Sociaal Economische Raad  
Social Economic Council



Sectie Justitie

Bestuurskantoor Sint Maarten

Datum  
ontv.: - 1 APR 2016

To the Prime Minister Mr. W. Marlin  
the Minister of Finance Mr. R. Gibson  
the Minister of Justice Mr. E. G. Kirindongo  
the Minister of Tourism, Economic Affairs, Traffic and Telecommunication Mrs. I. Arrindell  
Clem Labega Square  
Philipsburg, Sint Maarten



Philipsburg, March 30<sup>th</sup>, 2016

#### LETTER OF ADVICE

Our reference: SER /16/BP/31

Re: Letter of advice concerning registration of transactions at the ports of entry and indirect taxation

Honorable Ministers,

The SER kindly asks your attention for this unsolicited advice.

Given its institutional role, the SER initiated a review of indirect taxation because this would be of value to the social economic development of Sint Maarten (see 1.1). In tackling this project it became apparent that governments will rely increasingly on indirect taxes. This is already a global trend (see 1.9). Sint Maarten's indirect tax model, Turnover Tax (TOT), has extensive shortcomings in compliance, extent of coverage and economic impact (SER advice June, 2015, see also 1.8). The SER has identified that all effective alternative indirect tax models will require some form of registration of transactions at the ports of entry: the harbor and the airport. This registration is not in place now.

The SER advises government to implement registration of all transactions at the ports of entry: the harbor and the airport. The movements of goods between the Dutch and French side remain burden free and unregistered. The registration should include all transactions. This registration should be simple and not unnecessarily burden economic activity and consumers. The data from this registration will facilitate both the measurement of compliance of existing taxation and the ability to judge the returns on investments when Sint Maarten needs to invest in alternative and more effective indirect tax models. Ports of entry registration of transactions creates the necessary time and data for long term tax planning and decision making to replace TOT with another tax.

More specifically, the SER advises government to implement the registration of all transactions by businesses to/from Sint Maarten via the harbor and the airport by quantity, type, value and owner by CRIB-number (see 1.4). No CRIB-number: no imports and exports. All transactions not representing trade are registered without CRIB-number<sup>1</sup> (see 1.5). This registration would not delay the logistical process of importing and exporting goods, just as similar requirements in other jurisdictions don't cause delays.

<sup>1</sup> Through experience the Customs Department would need to determine rules which goods represent trade and how these can be recognized appropriately. E.g. the 'Overseas Association Decision' defines that all goods below a certain value are not trade if they are occasional, for private use and without commercial purpose. This value must be high enough to accommodate non trade imports and low enough so traders are unlikely to make the effort to circumvent their goods being registered as trade. This makes sure all persons can order small items over the internet without needing to supply a CRIB number.



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This measure widens the tax base and increases tax compliance (see 1.3). An unlevel playing field, which is caused by some businesses paying their fair share and others not, is a longstanding complaint of the business community.

Ports of entry registration of transactions by value by the Customs Department would allow the Tax Office to compare the value of the imported and exported goods of businesses with the TOT received from those businesses. This task of linking imports and exports to registered businesses at the Tax Department would be made relatively easy because both departments would be using CRIB-numbers for identification. Registration of transactions would therefore allow the Tax Office to more accurately estimate the revenue of importing and exporting businesses upfront, and therefore lessen the need for after-the-fact tax audits. The information position of the tax office towards businesses that do not import or export would remain unchanged (see 1.2). Currently different types of avoidance and evasive behavior regarding TOT exist, and some would still exist after the implementation of ports of entry registration of transactions. Over the long term the synchronization of tax systems of the Dutch and French side will serve the tax compliance on both sides.

Ports of entry registration of transactions can be implemented without large government and private sector investments while at the same time the necessary legislation is already in place. Shipping companies already have the necessary information in their administration when the goods leave from harbors and airports abroad because they have to comply with export requirements in other jurisdictions. They would only need to add the CRIB-number. This addition to the shipping administration would not delay the logistical process of importing and exporting goods, just as identity requirements in other jurisdictions don't do so (see 1.3). The SER would like to add that the registration of imported and exported goods is a necessary element for the taxation of transactions and the security of any country (see 1.1a).

The government of Sint Maarten must determine the rights and obligations of businesses and citizens regarding CRIB-numbers (obtaining, issuing and verifying procedures of CRIB-numbers) because CRIB-number would play a more important role in economic activity after the implementation of ports of entry registration of transactions (see 1.7).

Ports of entry registration of transactions would lessen the immediate concerns of government regarding TOT revenue by extending the tax base and increasing compliance. Moreover, the registration of transactions would determine, with hard data, the import and export of goods by owners, and therefore would paint a clearer picture of the economic activity in Sint Maarten. This data is needed to make a future decision to replace TOT with another indirect tax more feasible (see 1.2). From a government perspective, any future decision to replace TOT with another tax will be accompanied by uncertainties. Ports of entry registration of transactions will diminish those uncertainties, and therefore aid decision makers facing that choice.

From discussions with the Tax Office, Fiscal Affairs, the (former) cabinet of the Minister of Finance, the Commission of Financial Oversight (CFT), a member of the Commission of Finance of Parliament and the Minister of Finance, the SER learned that generally all parties are deeply concerned about tomorrow's financial challenges. The policy discussion on taxation tends to become relevant when revenue demands increase, and therefore economic arguments and long term tax planning give way to immediate revenue



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concerns<sup>2</sup>. Tax planning is lacking where it concerns indirect taxation. For the future however indirect taxes will be more important and Sint Maarten's indirect tax model, TOT, is not optimal. Ports of entry registration of transactions creates the necessary time and data for long term tax planning and decision making to replace TOT with another tax (see 1.10 and 1.11).

The TOT rates in Curaçao show us when a lack of tax planning and disappointing TOT revenues interact (see 1.10).

The SER urges all to read the full argument of the advice in the elaboration (see elaboration 1.1-1.11). The elaboration also gives further details of the measure and the consequences it would have for different stakeholders (see 1.3 and 1.4).

In June, 2015, the SER advised government not to raise the rate of TOT due to issues with compliance, extent of coverage and economic impact.

Now, in this advice, the SER advises to implement ports of entry registration of transactions. In all feasible indirect tax models to replace TOT, the registration of transactions is necessary, and it is an alternative to raising the rate of TOT until Sint Maarten arrives at a new indirect tax model.

This calendar year, the SER will advise to implement an alternative indirect tax model, and elaborate on the choice and design of this new model.

### **Advice:**

The SER unanimously advises the government of Sint Maarten

- to register all transactions by businesses to/from Sint Maarten from the harbor and the airport by quantity, type, value and owner by CRIB-number by the Customs Department under existing legislation<sup>3</sup>. Transactions not representing trade are registered without CRIB-number<sup>4</sup>.
- to make imports and exports dependent on registration with the Tax Office. No CRIB-number, no imports and exports.
- to start ports of entry registration of goods as soon as possible, and not to await the introduction of the automated system ASYCUDA for customs.

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<sup>2</sup> The SER welcomed that Finance Minister Gibson stated in Parliament that TOT is disruptive and should be replaced. Daily Herald 11-02-2016, "TOT is disruptive to growth, says Gibson", front page.

<sup>3</sup> Landsverordening houdende regels met betrekking tot de in- en uitvoer van goederen, article 14A, sub 2A and Landsverordening op de in-, uit- en doorvoer, article 54, sub 5.

<sup>4</sup> Through experience the Customs Department would need to determine rules which transactions represent trade and how these can be recognized appropriately. E.g. the 'Overseas Association Decision' defines that all goods below a certain value are not trade if they are occasional, for private use and without commercial purpose. This value must be high enough to accommodate non trade imports and low enough so traders are unlikely to make the effort to circumvent their goods being registered as trade. This makes sure all persons can order small items over the internet without needing to supply a CRIB number.



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- to arrange that, under existing legislation<sup>5</sup>, the information on imports and exports is transferred in a secure manner via the Customs Department to the Tax Office, and will be used for TOT tax assessments.
- to determine the rights and obligations of businesses and all persons living in Sint Maarten regarding CRIB-numbers in a policy document (obtaining, issuing and verifying procedures of CRIB-numbers in a timely fashion).
- to start a policy project on a new indirect tax model to replace TOT, and to give room for economic, instead of revenue increasing, reasoning.
- to open a clear channel of communication and information sharing in order to synchronize the Sint Maarten tax system with the French side in so far as it relates to increasing tax compliance for both sides.

Respectfully,

Oldine V. Bryson- Pantophlet  
Chairwoman

Gerard M.C. Richardson  
Secretary General

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<sup>5</sup> Landsbesluit houdende algemene maatregelen tot onderverdeling en nadere uitwerking van het Ministerie van Financiën, article 13, sub2j, states that the Tax Office is responsible for the supervision [toezicht] on import, export and transit of goods [in-, uit- en doorvoer van goederen].



## Elaboration on the advice

### 1.1 General considerations regarding ports of entry registration of transactions

In the SER advice 'Turnover Tax', June, 2015, the SER elaborated that an increase in TOT rate would damage the economy due to its cascading effects. In fact, the increase in 2011, from three to five percent, already showed businesses opting out of TOT and adjustments in economic behavior by consumers. The SER concluded that each time the rate of TOT is raised, the relative revenue will decrease, and therefore the rate should not be raised. More tax would be levied over a shrinking tax base. Given the fact that indirect taxation will become more important in the future, and for many countries already has become more important, the necessary option is to replace TOT with a more sustainable tax without a cascading effect.

At the same time, the SER is concerned about the financial position of government. This concern is shared by the former Minister of Finance ('skeleton budget'<sup>6</sup>), the Minister of Finance ('financial crisis'<sup>7</sup>), the Prime Minister ('serious problem'<sup>8</sup>, 'first priority of government is to get the finances of the country in order'<sup>9</sup>), the Committee of Financial Oversight ('a formidable task'<sup>10</sup>) and the Central Bank of Curaçao and Sint Maarten ('increase revenues, in particular tax revenues (...) otherwise the country will remain in a vicious circle of unbalanced budgets'<sup>11</sup>). The SER is concerned because the government is an important partner for social economic development. Without sufficient resources the government can not execute, or will delay, new social economic policies which will benefit the people and the economy of Sint Maarten.

The SER also advised in June, 2015, to widen the tax base and increase tax compliance. The SER is of the opinion that an increase in government revenues is needed bearing in mind that an increase in tax rates is unwanted, and a decrease is preferred.

The ports of entry registration of transactions brings together these concerns: replacing TOT, lagging TOT revenue and increased tax compliance. Ports of entry refers to the imports and exports via the harbor and airport; the movements of goods between the Dutch and French side remain free and unregistered.

- no increase in TOT tax rate
- an extended tax base for TOT
- an increase in tax compliance
- hard data on economic activities regarding goods in Sint Maarten
- low institutional and private sector investments
- the first step to replace TOT with another tax indirect tax model

<sup>6</sup> Daily Herald, 'Budget is with CFT', Daily Herald, February 15<sup>th</sup>, 2015.

<sup>7</sup> Today, 'We are in a financial crisis', December 10<sup>th</sup>, 2015.

<sup>8</sup> Daily Herald, 'William says cabinet will address questions on elections', November 20<sup>th</sup>, 2015.

<sup>9</sup> SMN News, 'Prime Minister William Marlin promised open and transparent government, November 20<sup>th</sup>, 2015.

<sup>10</sup> Daily Herald, 'CFT approves delay of 2016 Budget to Jan 31', December 9<sup>th</sup>, 2015.

<sup>11</sup> Central Bank, Economic Developments in 2015 and outlook for 2016, December, 2015, page 1.



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The SER advises government to implement the registration of transactions by businesses to/from Sint Maarten via the harbor and the airport by quantity, type, value and owner by CRIB-number. Furthermore, the SER advises government to also register all transactions between private persons to/from Sint Maarten via the harbor and the airport by quantity, type, value and owner by CRIB-number as long as these goods represent trade. Goods not representing trade are registered without CRIB-number.

### **1.1a Normal institutional development**

The SER would like to add that the registration of transactions is a necessary element for taxation on goods and security of any country. Almost all countries, also Small Island Development States (SIDS), have institutions in place for the ports of entry registration of transactions, often including a business or personal identification number, and this should be regarded as a normal institutional development for Sint Maarten, albeit urgent because of the financial position of the government at present. In other words, due to the financial position of the government of Sint Maarten, and the important role of TOT for total tax revenues, this normal institutional development needs to be fast-tracked.

### **1.2 General consequences of ports of entry registration of transactions**

The SER is confident that the registration of the value, type, quantity and owner by CRIB-number of transactions used for economic activity as registered by the invoice will likely have, all other things being equal (*ceteris paribus*), a positive influence on the revenues of TOT.

Ports of entry registration of goods will increase the information position of the Tax Office substantially, and therefore will improve tax compliance. Ports of entry registration of goods allows the Tax Office to compare the value of the imported and exported goods of businesses, identified with a CRIB-number, with the TOT received from those businesses, also identified by CRIB-number. The higher the turnover, the higher a possible TOT revenue increase if businesses are currently non-compliant. Many businesses import goods directly, and the registration of the value of their imported goods is in many cases a hard indicator of the revenues from the sale of those goods. Registration of goods would therefore allow the Tax Office to estimate the revenue of importing and exporting businesses more accurately. Moreover, it allows the Tax Office to narrow the focus of audits towards businesses which appear to be non-compliant with taxes because non-compliance in one tax category tends to correspond with non-compliance in another.

Non-compliant businesses will find it more difficult to evade taxation because the value and owner of goods they import and export are known by the Tax Office. If currently non-compliant businesses will continue to be non-compliant with TOT after goods registration is implemented, their risk of higher TOT assessments and fines will increase, making tax evasion as a business strategy less feasible. The registration of transactions will therefore positively influence the tax revenues because it changes the incentives of businesses importing and exporting goods which are currently (partly) evading TOT. Moreover, these incentives will be changed immediately for fast moving goods, and changed on the long(er) term for other goods depending on inventory levels.



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The registration of transactions will determine, with hard data, the import and export of goods, and therefore will paint a clearer picture of the economic activity in Sint Maarten in general. Registration of transactions would also determine to some extent which TOT revenues are currently not captured. This is important because any future decision regarding indirect taxation will benefit from this information, and government could better forecast the tax revenues from transactions on goods with different tax models, be it either TOT, Value Added Tax, Sales Tax or another indirect tax. The concerns of the SER regarding TOT as a model of taxation are mentioned under 1.8 and 1.9.

### **1.3 Investments to implement ports of entry registration of goods**

This measure, the registration of transactions, can be implemented without a large government investment, and at the same time the necessary legislation is already in place<sup>12</sup>; no extra legislative decision needs to be made. The Customs Department would need access to the existing harbor goods registration system (GLS). This can be done by adding an extra software module, and then manage the specific information they need for ports of entry registration of transactions. If this access would be difficult to obtain, the Customs Department would need to receive this information directly from shipping companies, guarding the confidentiality of this information with security measures. The information must be secure because it contains confidential business information [bedrijfsgeheim]. For the airport, a transactions registration system is not in place, but just like ocean freight shipping companies, the necessary information is already in the possession of the air freight shipping companies. Legislation can be put in place by requiring the air freight companies to use the same software as the harbor (GLS) for easy linking of the systems.

The costs of the adjustments in the administration for shipping companies, distributors, parcel delivery services and freight forwarders in Sint Maarten would be minimal because the required data is already being captured by their administration when the goods leave from harbors or airports abroad as they have to comply with export requirements in other jurisdictions. All (large) harbors and airports already require these companies to register the value, type and quantity of goods. These Sint Maarten companies would only need to add the CRIB-number of the owner to their administration, and then transfer this information to Customs Department via the harbor (GLS) registration system before the goods arrive. Air freight companies would need to transfer this information directly to the Customs Department. A requirement from Customs Department to Shipping Companies, air- and ocean freight, to add a CRIB-number is feasible and does not disturb the logistical process. Shipping companies would pass on the CRIB-number requirement to their clients, be it the owners of the goods, freight forwarders or parcel delivery companies. Many of their clients are returning clients; this means that after the initial entry of the CRIB-numbers in their administration, little extra administration would be needed. The limited number of carriers, fewer than 10 for ocean freight and fewer than 10 for air freight, makes the ports of entry registration of goods feasible on the short term because their administration systems are already geared towards ports of entry registration of transactions.

The administration process of the Tax Office regarding TOT levying would need to be adapted to incorporate the information from the Customs Department in order to more accurately estimate the

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<sup>12</sup> Landsverordening houdende regels met betrekking tot de in- en uitvoer van goederen, article 14A, sub2, A and Landsverordening op de in-, uit- en doorvoer, article 54, sub5.



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TOT levy for importing and exporting businesses. This means ports of entry registration of transactions enables the Tax Office to adjust the TOT assessment with the information from these transactions.

#### **1.4 Consequences for different businesses in the private sector**

From an economic perspective, registration of transactions by businesses with a CRIB-number will level the playing field regarding TOT between compliant and non-compliant registered local businesses which import and export. Moreover, the TOT tax base will be extended to non-registered local businesses which import and export and foreign businesses to level the playing field further. An important element is that, if ports of entry registration is implemented, businesses can only import and export goods through the Dutch side if they have a CRIB-number: no CRIB-number, no imports and exports. The ports of entry registration of transactions will have the following consequences for the private sector.

Many businesses import goods directly next to their local purchases, and the registration of the value of their imported goods by invoice is in many cases a hard indicator of their revenues. The average markup on types of products can often be estimated, and this makes ports of entry registration of transactions a useful tool. If used properly, fewer audits are needed because they can be executed more focused. Ports of entry registration of transactions would mean more compliance control at the harbor and airport, and therefore less need for control at the place of business.

Local registered non-compliant businesses which import and export will find it more difficult to evade tax because the value and owner of imported and exported goods would be known by the Tax Office. If currently non-compliant businesses with a CRIB-number will continue to be non-compliant after transactions registration is implemented, their risk of higher TOT assessments and fines will increase, making (partial) tax evasion as a business strategy less feasible. The registration of transactions will therefore positively influence the revenues from TOT because it changes the incentives of non-compliant businesses directly importing goods which are currently (partly) evading TOT.

Local registered non-compliant businesses which do not import and export will not have an incentive to change their economic behavior. The information position of the Tax Office towards those businesses will remain the same.

Local registered compliant businesses which import and export will have less unfair competition from non-compliant competitors because the costs of doing business, at least regarding TOT, will be more equal. The information position of the Tax Office towards local compliant businesses which import and export will also improve, but this will not lead to higher tax revenues from TOT because they are already compliant.

Foreign businesses active in Sint Maarten, currently not registered with the Tax Office, will be forced to register with the Tax Office. This registration is already compulsory by law<sup>13</sup>. Without a CRIB-number, Customs Department will not clear their imported or exported goods. In other words, it would be impossible for unregistered foreign businesses to import or export goods. Some of those foreign

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<sup>13</sup> Landsverordening houdende regels inzake een belasting op bedrijfsomzetten, article 5, sub 3: *buiten het heffingsgebied wonende of gevestigde ondernemers (...) worden geacht voor deze prestaties domicilie te hebben gekozen ter Inspectie van de Belastingdienst*.





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businesses will choose to register with the Tax Office, obtain a CRIB-number, and pay TOT. This will also make it more feasible for the Tax Office to levy other taxes. Some of those foreign businesses will choose to buy their goods from other local businesses. This should increase the economic activity of the registered local businesses who import goods directly. Other foreign businesses might import via the French side or cease their economic activities when they can no longer profit from non-compliance, and the latter will create opportunities for local businesses.

Local unregistered businesses which import and export goods will be forced to register with the Tax Office or import via the French side. Without a CRIB-number, Customs Department will not clear their imported or exported goods. This registration will increase the revenues from TOT, and it will also make it more feasible for the Tax Office to levy other taxes. If those businesses choose to remain unregistered, they could cease to import products themselves and buy from local registered businesses with a CRIB-number.

Local unregistered businesses which do not import and export will not have an incentive to change their economic behavior. The information position of the Tax Office towards those businesses will remain the same.

Companies registered on the French side importing through the Dutch-side harbor and airport will need to register with their SIRET number (French business identification number).

Ports of entry registration of transactions not only improves the information position of the Tax Office regarding the sales of goods. Because most services are linked to goods one way or another, it would also improve the information position of the Tax Office regarding those businesses which provide services and import and export goods. For example, if hotels and restaurants import food and beverages directly, over time this also gives an indication of the minimum number of services they provide.

### **1.5 Private persons and ports of entry registration of transactions**

Additionally, the SER advises to register the imported and exported goods between private persons by CRIB-number if these transactions represent trade. If these goods do not represent trade, the transactions are still registered but without CRIB-number. The information from goods not representing trade is still useful from a statistical point of view to determine how much Sint Maarteners purchase directly abroad. Through experience the Customs Department would need to determine rules which goods represent trade and how these can be recognized appropriately. E.g. the 'Overseas Association Decision' defines that all goods below a certain value are not trade if they are occasional, for private use and without commercial purpose. This value must be high enough to accommodate non trade imports and low enough so traders are unlikely to make the effort to circumvent their goods being registered as trade. This makes sure all persons can order small items over the internet without needing to supply a CRIB number.

French citizens would need to register with their social security number.

The parcel delivery services which supply goods ordered by citizens, often over the internet, would have the opportunity to obtain the CRIB-number when the owner forwards the order confirmation to the transporter, either parcel delivery services, freight forwarders or shipping companies. In other words,



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the CRIB-number could be attached to the shipment before the goods arrive on the island. When owners collect their goods, the CRIB-number can be validated. The SER would like to add that currently all private persons and companies liable to pay taxes [belastingplichtigen] are required to be registered with the Tax Office and have a CRIB-number. Once the rules regarding obtaining, issuing and verifying procedures have been determined, also private persons who are not required to have a CRIB-number should easily be able to obtain one.

### **1.6 Considerations regarding the open border with the French side**

Although this measure, the registration of transactions via the harbor and airport, would improve the information position of the Tax Office regarding TOT considerably, some businesses will interpret this as sufficient reason to import and export via the French side.

The possible choice by businesses to import and export goods via the French side (Galibay and L'Espérance airport) depend on more factors than a future registration of transactions on the Dutch side. Other factors which influence this choice are the existing flow of goods, the time it takes goods to arrive on the island, the costs of handling the goods by the harbors and airports, the infrastructure of the harbors and airports and the fee of the shipping company.

Tax compliance should be primarily not about policing businesses and citizens to change their behavior. It is more about improving the relationship between tax authority and taxpayer, increasing the ease of compliance and decreasing the ease of non-compliance, if needed with penalties, and the ability to do so. The ports of entry registration of transactions addresses the latter, and does not aim to be a 'waterproof' tool against all forms of tax non-compliance. Currently different types of avoidance and evasive behavior regarding TOT exist, and some would still exist after the implementation of ports of entry registration of transactions. Over the long term the synchronization of tax systems of the Dutch and French side will serve to improve the tax compliance on both sides. Therefore, an open a clear channel of communication and information sharing is needed.

### **1.7 CRIB-number**

The ports of entry registration of transactions requires that businesses and citizens would need their CRIB-number more often than before. The government of Sint Maarten must therefore determine the rights and obligations of businesses and citizens regarding CRIB-numbers, and preferably work more closely with the Chamber of Commerce in this endeavor regarding the CRIB-numbers of businesses. Currently no policy documents or legislation exist which manages the obtaining, issuing and verifying procedures of CRIB-numbers<sup>14</sup>. When CRIB-numbers gain more importance in economic behavior, such documents are necessary to manage the correct use of CRIB-numbers. The registration of French businesses with their SIRET number and French citizens with their social security number would benefit from an agreement between the Dutch and French side how to validate these numbers.

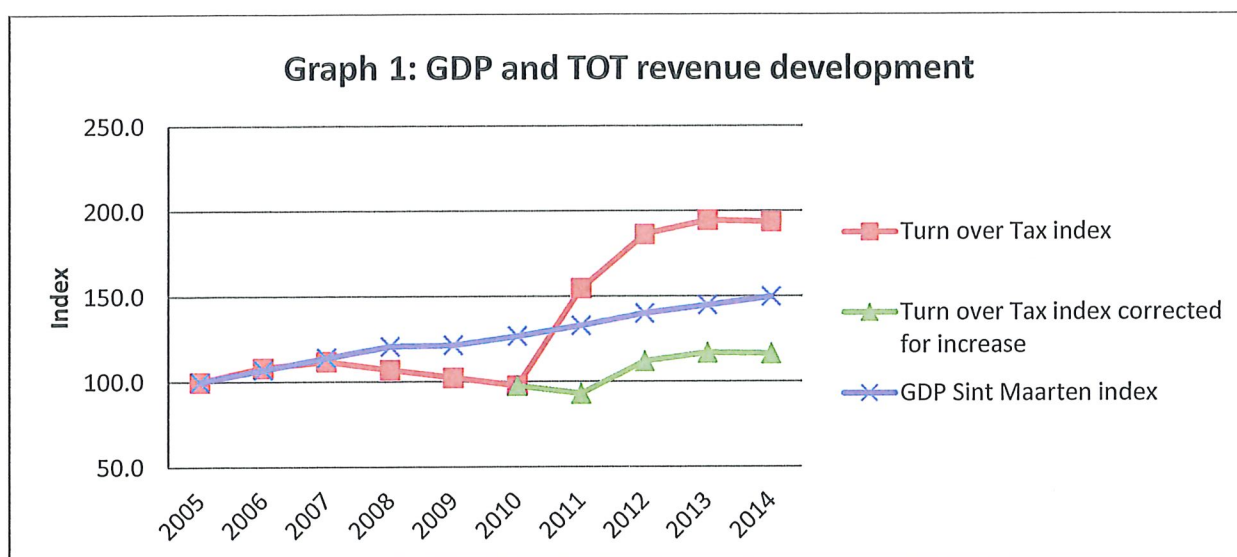
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<sup>14</sup> Email Department of Fiscal Affairs, 17-12-2015



### 1.8 TOT revenue development

In June, 2015, the SER advised the government of Sint Maarten not to raise the rate of TOT. The rate of TOT was raised in 2011 from 3 to 5 percent (and increase of 66.6 percent), and this increase resulted in about 20 percent less TOT revenue being collected than should have been collected according to the GDP (2013). This is identified by the difference between the purple and green line in the graph below. TOT is a tax that should follow the GDP, but it did not. Graph 1 (below) shows the development of TOT and GDP.



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The SER identified several factors influencing the development of TOT revenues.

First, from an economic perspective, the cascading effect of TOT influences TOT revenues. TOT does not only raise the cost of doing business when a product or service is sold to the consumer, but TOT raises the costs of doing business each time a product changes owner. Each time a product changes owner / moves through the supply chain the revenue is taxed instead of the added value. This means that each time a product is sold, another 5% TOT is calculated into the price independent of the value a business adds. When the TOT rate increases, or when supply chains are long(er), these cascading effects become more severe. The problem is that nobody has the information how many times, on average, products are sold before they reach the consumer, but the data indicate that various economic actors adapted their behavior to avoid this cascading effect.

Second, TOT drives consumers to import products privately or via a business under their own name [eigen gebruik]. The consumers therefore avoid either a supplier, or avoid that their supplier, when acting as a middleman [tussenpersoon], needs to pay TOT over the value of the product because there is no transfer of ownership. This means that there is no delivery of products [levering van goederen] over

<sup>15</sup> The Tax Office provided all the tax data, The Department of Statistics provided the data on GDP. The TOT revenue of 2008, 2009 and 2010 was only registered at the federal (Antilles) level, the SER assumed a gradual transition between known values.



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which TOT is levied, TOT is only levied over the service. It is also unknown how many consumers import products directly over the internet and bypass the local economy.

Third, the execution of the tax laws by the Tax Office inherently influences the amount of revenues collected. The SER does not have sufficient insight how the Tax Office conducts its administration other than the tax revenues data and report of the General Audit Chamber Sint Maarten on the optimisation of tax revenues<sup>16</sup>. The report states that former advices, projects and investments to improve the Tax Office had limited effects. This indicates that any future investments in the Tax Office must be chosen carefully. The report further adds that the costs of levying and collecting taxes have increased while compliance decreased. The report does not specify the compliance for TOT.

Fourth, next to the rate increase, several products were exempted for TOT in 2011<sup>17</sup>. These exemptions make up about 8-10 percent of the revenues of wholesalers<sup>18</sup>, and the total percentage of 'food and related' products was estimated at 14 percent of 'whole sale and retail trade' imports in 2009<sup>19</sup>. The (in 2011) newly exempted products do not fully explain lagging TOT revenues compared to GDP.

Fifth, another possible factor regarding the TOT revenue development is how the exemptions are managed by the Tax Office. TOT is attractive as a tax model because it is simple. When certain products are exempted from TOT, or a different rate is levied over different type of products, then the TOT tax model becomes more complicated, and therefore demands more institutional capacity to be managed. Without this capacity, opportunities to confuse those categories emerge.

All these factors, each to either a large or small degree, influenced the TOT revenue development over the years. In other words, the disappointing TOT revenue depends on multiple factors. Because TOT forms about one third of total revenues, each time the rate is raised the relative revenue decreases, TOT has negative economic consequences, these points give reason to further elaborate on TOT as a tax model.

### **1.9 TOT as a tax model in today's economy**

In all conceivable ways, TOT is an outdated tax. From a list of 101 countries and the countries of the European Union, only these countries have a full turnover tax: Aruba, Sint Maarten, Curaçao and Suriname. A number of countries, for example Kenya, South-Africa and Argentina, have TOT if the revenue of a company is below a certain threshold; businesses above that threshold have Value Added Tax<sup>20</sup>. In comparison, worldwide about 160 countries (out of 200 countries) have a Value Added Tax (VAT) and Goods and Service tax (GST), and more countries follow each year. The remaining countries

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<sup>16</sup> General Audit Chamber Sint Maarten, "optimalisering van belastinginkomsten, doelmatigheidsonderzoek, October, 2014.

<sup>17</sup> Exemptions basic goods: bread, sugar, salt, milk, butter, baking oil, baby food, diapers, toilet paper, rice, beans, potatoes, grains, flower, chicken and fruit.

<sup>18</sup> SER interview with a wholesaler.

<sup>19</sup> Department of Statistics, press release, May, 2012. This is the most recent import/export survey conducted at the time of writing this advice.

<sup>20</sup> Ernst & Young, Worldwide VAT, GST and Sales Tax Guide, 2014.



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mainly rely on an American style Sales Tax regarding indirect taxation, and many countries have some form of Import Duties<sup>21</sup>.

TOT is a tax that could work well, but only if the rate is kept very low, no more than 3 percent perhaps, and the supply chain is short, both to avoid cascading effects. As a small island development state, Sint Maarten has a relatively short supply chain, but TOT already put businesses under strain. Additionally, other negative consequences are also associated with TOT. TOT stimulates vertical integration. This means that businesses cluster economic activities to avoid taxation over transactions (insourcing instead of outsourcing). This leaves smaller business at a disadvantage; they have fewer opportunities to sell their products and services to larger companies. Moreover, if small businesses buy products from wholesalers to sell to consumers, they are less competitive if the same wholesaler also sells to consumers. Because supply chains have become longer in the modern global economy, and it is advantageous for an economy to have small and innovative businesses, all countries but a few have eliminated taxes with a cascading effect.

Another important factor is that from the tax literature, the general consensus is that indirect taxation is preferred over direct taxation in a modern economy. Indirect taxation will have a much larger share in the tax burden in the future. This is in line with thinking and recommendations of the OECD<sup>22</sup>, World Bank and IMF. However, this international trend towards more indirect taxation can not take place in Sint Maarten with the current tax model. The IMF advised Sint Maarten to replace TOT with Value Added Tax (VAT) in 2014<sup>23</sup>.

Ports of entry registration of goods is a solution to minimize some of the unwanted effects TOT has on the economy and tax revenues. In the longer term, a new tax model for indirect taxation must be chosen which stimulates sustainable social economic development. The example of Curaçao shows what could happen if Sint Maarten does not change its course regarding indirect taxation and sticks with TOT, and it also shows that tax planning needs to be exercised on time.

### **1.10 Curaçao and TOT**

Curaçao has followed a similar path as Sint Maarten regarding TOT, but has taken two steps further. In Curaçao the revenues from TOT also disappointed compared to expectations, and in order to raise more, the government of Curaçao raised the general rate to 6 percent (from 3, to 5, to 6 percent) and raised the rate for luxury and some unhealthy products to 9 percent. This leaves Curaçao with some exempted products [basisproducten], and two different rates (6 and 9 percent). Curaçao also introduced an 'electronic cash-registry program' as a control mechanism to manage the different rates, and to detect suspected misuse applying the rates. The SER Curaçao advised the government of Curaçao that, due to its cascading effects, the current TOT possibly causes more vertical integration of businesses,

<sup>21</sup> This is a gross simplification of the variation in indirect taxation.

<sup>22</sup> OECD, Consumption tax trends 2014, 2015.

<sup>23</sup> IMF, IMF country report No. 14/239, page 10.



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unfair competition for businesses which can not vertically integrate their activities; mostly small businesses, a negative influence on employment and an unfavorable business climate<sup>24</sup>.

In Curaçao TOT revenues disappointed each time from a revenue perspective, and due to higher rates TOT became increasingly distortive from an economic perspective. The government of Curaçao initiated several times plans to introduce a (limited) Value Added Tax system [BTW-stelsel]<sup>25</sup>, but the preparation time for such an introduction was too long compared to the immediate needs of government to raise more revenues. In other words, tax planning lacked in Curaçao. The same dynamic regarding taxation seems to apply to Sint Maarten.

### **1.11 Tax planning in Sint Maarten**

Also in Sint Maarten, taxation becomes more relevant when revenue demands increase, but taxation is not often a topic in policy discussions as a factor to promote economic growth or explain a lack of growth. Consequently, economic arguments do not give direction to the policy discussion on indirect taxation because these are mostly held on moments that revenue increasing arguments are leading. From discussions with the Tax Office, Fiscal Affairs, the cabinet of the Minister of Finance, the Commission of Financial Oversight (CFT), a member of the Commission of Finance of Parliament and the Minister of Finance, the SER learned that regarding indirect taxation, all are deeply concerned about tomorrow's financial challenges, but those challenges are approached with immediate concerns; long term economic concerns are often overruled in the decision making process. Given the economic performance of Sint Maarten and the current demands on revenues, the responsible tax planners should start a discussion on a model of indirect taxation, preferably this calendar year<sup>26</sup>. Ports of entry registration of transactions would bring some of the immediate concerns of government regarding TOT revenue to the background by extending the tax base and increasing compliance. This would create the necessary time and data for long term tax planning and decision making.

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<sup>24</sup> SER Curaçao, advies 052/2013-SER, February, 2013, page 14. Downloaded from <http://www.ser.cw/language/nl/eid/58839>.

<sup>25</sup> SER Curaçao, advies 052/2013-SER, February, 2013, page 14.

<sup>26</sup> The SER welcomed that Finance Minister Gibson stated in Parliament that TOT is disruptive and should be replaced, Daily Herald 11-02-2016, "TOT is disruptive to growth, says Gibson", front page.



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