



Sociaal Economische Raad
Social Economic Council



To the Minister of General Affairs
Prime- Minister Sarah Wescott- Williams
Government Administration Building
Clem Labega Square
Philipsburg

Philipsburg, August 25th, 2014

Our reference: SER /14/DCB/076

Re: Letter of advice concerning “ Ontwerp Landsverordening Kwijtschelden belastingschulden”.

Honorable Prime Minister Wescott- Williams,

In reply to your request for advice, dated June 10th 2014, concerning the remittance of taxes (in Dutch: “ Ontwerp Landsverordening Kwijtschelden belastingschulden”) the Social Economic Council (SER) informs you as follows:

Background:

In the National Gazette of May 24th, 2013, the (then) Minister of Finance, Roland Tuitt, published a temporary waiver for taxes and AVBZ debt [algemene verzekering bijzondere ziektekosten] regarding the period 1976- 2006 with a proviso that the ordinance “Kwijtschelden belastingschulden” should enter into force first. Thus these taxes will only be waived if and when the ordinance “Kwijtschelden belastingschulden” goes into effect.

The reasons for the Minister to establish such a policy are twofold:

- 1) Clean up of the tax administrative system [opschoning system]
- 2) For reasons of efficiency [efficiëntie oogpunt] in order to better focus on tax debts from 2007 onwards, and thus generate more tax revenues.

In summary, the policy document states that as of February 1st, 2013, the Receivers Office is not allowed to collect taxes pertaining to the years 1976- 2006.

The execution of this policy document is as follows:

- There will be no active collection of taxes from the period 1976- 2006. This means that the Receivers Office does not send notices or summons and does not take any enforcement action for taxes owed by businesses and individuals to the Government of Sint Maarten concerning the years 1976 up to and including 2006.



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- In case the taxpayer does (come to the Receiver's Office to) pay the outstanding taxes concerning the period 1976- 2006, that amount paid will be deducted from the taxpayer's tax debts of 2007 or later on, or the amount will be reimbursed, in case the taxpayer concerned does not have (other) outstanding tax debts from 2007 onwards.

The total amount of taxes written off, as a consequence of the decision to write off taxes from 1976-2006 is Naf 4,470,933,628.-.

This policy document is to be regarded as a temporary instruction given to the Receivers Office in anticipation of a law being passed.

Based on the background of the draft ordinance "Kwijtschelden belastingsschulden" the following was taken into consideration:

First of all, every government needs income to perform civil operations, such as health care, education, develop the infrastructure of the state like roads, hospitals and to administrate the running of the state. This income is generally collected from the citizens of the state, better known as "tax (es)".

Paying taxes concerns an arrangement which no government would ever make dependent on the good will of its citizens. Paying taxes is made compulsory worldwide. In collecting taxes, the government does not ask whether the taxpayer can afford the compulsory charge, or wants to pay it. The taxed citizen has no say in the definition of the rates of taxation.

If no one is paying their tax, society would disintegrate, the country would fall apart. Therefore, it is important for every citizen of Sint Maarten to pay his or her tax regularly.

The SER has the following concerns:

The reasons provided to waiver taxes from 1976 up to and including 2006 are to clean up the tax administrative system [opschoning system] and for reasons of efficiency, in order to better focus on tax debts from 2007 onwards, and thus generate more tax revenues. Nonetheless, in January 2014 the CFT reported¹ that tax revenues are still too low compared to the economic growth in Sint Maarten.

From the SER's point of view these reasons are not very weighty reasons to waiver taxes. According to the Receivers Office, some tax debts are indeed too old, thus expired [verjaard] and therefore too difficult to collect. However, the Receivers Office reported not to have a problem collecting taxes from the year 2006 or even from the year 2005. As a matter of fact, that is just what the Receiver's Office was doing, until the instruction came from the former Minister of Finance outlining that no outstanding tax debts prior to 2006 should be collected.

¹ See CFT report http://www.cft.an/jdownloads/Adviezen/Sint%20Maarten/cft_201400020-advies_op_basis_van_artikel_12_bij_de_vastgestelde_begroting_2014_sint_maarten.pdf



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It is not clear why the year 2006 was chosen as a benchmark to stop collecting taxes. In 2013 the then Minister of Finance explained that it is the government's ultimate goal to only collect taxes for the previous year (at that time referring to the year 2012) and the current year (at that time referring to the year 2013). For this reason, the Minister found it opportune to waive outstanding taxes from 1976-2006, stating that "if we do not start to take steps to achieve that goal, then 10 years from now, we will still not be close to that goal²".

The SER is of the opinion that the root of the problem is not being addressed by implementing a policy to waive taxes. The relevant question here to be addressed is: why are individuals or businesses not paying their taxes? What is the government doing about the lack of tax compliance?

The SER strongly believes that if overall tax compliance in Sint Maarten is not improved, in 10 years we will still be facing the same problems and we will probably find ourselves writing off outstanding taxes again. As a matter of fact, some time ago when Sint Maarten was placed under Dutch supervision non tax compliance was already a major issue then and it still seems to be a major issue now

After numerous reports spanning decades and implementing additional technical assistance, there is still no significant increase in compliance. The SER urges the government to investigate what the reason is why tax compliance remains too low, and in her deliberations consider instituting a simpler tax system, that ensures a broader tax base with a lower overall effective rate that because of its competitiveness and uncomplicated nature in and of itself drives down the urge for non-compliance.

In addition, in the case of this draft law, the SER detected other weighty reasons for rejecting it:

- This policy aims to "award" taxpayers who are not compliant with the law. The message the Government of Sint Maarten is sending out with such a policy is, for its citizens not to pay their taxes on time or in fact, at all, since one is being rewarded for not fulfilling his obligation to pay taxes/ for not complying with the law.
- This policy, if enacted into law, will be referred to as an example to waive future tax debts. As a matter of fact, this has already happened in December 2013 when Parliament passed a motion presented by Independent Member of Parliament Mr. Patrick Illidge to write off taxes owed to the Government of Sint Maarten by businesses and individuals from 2006 until 2010.
- The SER can understand that there might be difficulties to collect (very) old tax debts. However, if a taxpayer willingly reaches out to the Receivers Office to pay an outstanding tax debt originating from before 2006, it is unacceptable not to write off that outstanding amount for the year 2006 or previous, and deduct that amount paid from the taxpayer's tax debts of 2007 or later, or to reimburse the amount paid (in case the taxpayer concerned does not have other outstanding tax debts from 2007 onwards).

² <http://www.todayxm.com/2013/02/07/finance-minister-tuitt-says-goodbye-to-old-taxes/>



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- The SER also ponders how the government will generate revenue in order to provide goods and services to the public and to pay for public expenses. The total amount of taxes written off, as a consequence of the decision to write off taxes from 1976- 2006 is Naf 4,470,933,628. - Higher (income) tax rates are not the way to compensate for this loss. Higher rates will discourage working, saving and investing and will further encourage people to base decisions on tax considerations, rather than on real economic fundamentals. The Government of Sint Maarten cannot write off Naf 4,470,933,628. – in taxes on the one hand and apply for loans on the other hand.

Furthermore, the SER wishes to emphasize the objective and the scope of a policy document, according to the “Algemene wet Bestuursrecht³”.

A policy document [beleidsregel] is a guideline; a document wherein the executive body [bestuursorgaan], for example a Minister, gives a description or an explanation on how a particular law should be implemented or executed. A policy document can also be a general rule that is used to balance the different interests of different stakeholders. In addition, a policy document can also be used to establish facts.

Thus: a policy document should be a guideline to provide clarity on a certain law, not the other way around; in this case drafting a policy document in order to amend or draft a new law). A policy document is never designed to allow authorities to give an incorrect interpretation to the law⁴ or to draft a new law.

When drafting a policy document, the principles of good governance should always be taken into consideration.

With regard to the policy document to waive taxes and AVBZ debt:

- an appropriate balance among all interests involved has not been made [belangenafweging];
- insufficient research [zorgvuldigheidsbeginself] was done when drafting this policy, which qualifies this policy to be based on randomness [willekeur].
- the Minister used the policy document to serve another objective than the objective a policy document should serve. The Minister drafted a new ordinance [détournement de pouvoir].
- the legal basis for the Minister of Finance to draft the policy document was not mentioned in the National Gazette of May 24th, 2014 when the policy document was published.

Therefore, the SER concludes that this policy to waive taxes from 1976- 2006, is an unlawful [onrechtmatig] policy.

³ Art. 4:81 AwB

⁴ See “Commentaar Artikel 4:84 AwB to be found at

https://openaccess.leidenuniv.nl/bitstream/handle/1887/3674/360_138.pdf?sequence=1



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The SER has reached consensus on the following:

- That the policy document designed to write off outstanding taxes for the period 1976- 2006 owed to the government of Sint Maarten by individuals and businesses, is unlawful [onrechtmatig].
- That the policy document and the draft law “Kwijtschelden belastingschulden”, designed to write off outstanding taxes for the period 1976- 2006 owed to the Government of Sint Maarten by individuals and businesses, is not in the (fiscal) interest of country Sint Maarten.
- That the draft law “Kwijtschelden belastingschulden” is not the answer to the objectives set out in the elucidation of this draft law.
- That the content of this policy sets the wrong precedent for Sint Maarten.

Advice:

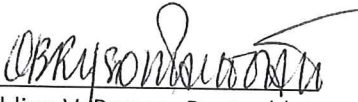
The SER has taken notice of the draft ordinance “Kwijtschelden belastingschulden”. Pursuant to the SER meeting on this topic, the SER advises:

- To disregard the policy document to temporarily waiver taxes since this policy document is unlawful.
- Not to accept the draft Ordinance “Kwijtschelden belastingschulden” based on above-mentioned concerns.
- To take measures to increase tax compliance on Sint Maarten and to investigate why tax compliance in Sint Maarten remains too low after numerous efforts to increase same.
- The government to consider instituting a simpler tax system, that ensures a broader tax base with a lower overall effective rate that because of its competitiveness and uncomplicated nature in and of itself drives down the urge for non-compliance.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,


Oldine V. Bryson- Pantophlet
Chairwoman


Dwight Williams
Vice-Chairman

Cc: The Honorable Minister of Finance, Mr. M. Hassink.

