



Parliament of Sint Maarten

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**National Ordinance amending the General
National Ordinance Land Taxes in connection
with international obligations**

**Report
No. 5**

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance amending the General National Ordinance Land Taxes in connection with international obligations.

Parliament considers the present draft to be adequately prepared when the questions below are answered in time for the public meeting so that the draft can be discussed in a public meeting.

The United Democrats-faction has taken note with interest of the draft. The faction would like to know if there is a yearly membership fee to be paid by Sint Maarten besides the NAfl. 1 million for system, set up and training.

Will online companies be affected by this legislation and if so, how?

What blacklisting measures will be taken if we are not a member of the OECD?

Will there be an additional cost pertaining to personnel?

The Sint Maarten Christian Party-faction has taken note of the draft with interest. The faction mentions that in the past countries signed agreements with each other to exchange tax information. Will this amendment give Government the authority to exchange tax and financial information automatically with other countries without having to sign further treaties or agreements with those other countries? Can an indication be given how many times this national ordinance was applied in its 5 years of existence? How many treaties were signed and how many times financial information was exchanged and to which countries? The Netherlands Antilles was a jurisdiction (rechtsgebied) that

participated in the CRS. Is Sint Maarten now a jurisdiction and if yes, since when? Countries involved in automatic exchange of information committed to provide information as of September 2017. Furthermore, on a list of the OECD, Sint Maarten along with other countries, is scheduled to provide its first tax and financial information effective September 2018. Other countries that started exchanging information in 2017 did so as September 2017, yet Sint Maarten in 2018 wants to submit information as of July 1, 2017, the latter according to the Explanatory Memorandum. Why does Sint Maarten want to provide the information retroactively from July 1, 2017, according to page 2 of the elucidation?

This draft amendment is simply an addition to the foundational national ordinance. However, nothing really happens unless the national decrees, containing general measures are drafted and enter into force. If the Government is serious about enforcing this national ordinance then there must be a plan to complete the national decrees, containing general measures and how and when to enforce them, at least by a particular date, especially if Sint Maarten wants to begin the exchange of information with other countries as soon as possible. Does the Government have a plan outlining when the various national decrees, containing general measures will be required and executed?

For banks and other financial institutions to be able to provide the necessary information automatically, the Government would need to set up a division to handle, receive, file and process this information. Does the Ministry of Finance have a division already? If not, how does it plan on setting up such a division? On page 3, reference is made to article 45a of the General National Ordinance Land Taxes. Upon checking the original national ordinance, article 45a could not be found. The elucidation states that the proposed article 45a is now the amended article 61a in the proposed national ordinance currently being handled in Parliament. Can the Government indicate in the amended national ordinance where article 45a is included?

Mention is made in the elucidation that this proposed national ordinance will have no financial consequences. Undoubtedly cost will be involved when the national decrees, containing general measures are worked out and put into effect. Can Government give an indication as to how much the

actual execution of this national ordinance and the national decrees, containing general measures will cost Government (besides the NAfl. 1 million in obtaining software)? What are the other cost involved, such as staffing, office space and such? The faction concludes that there is still a lot of work to be done. Is there a timeline set out after the approval of this Ordinance for the automatic exchange of tax and financial information to be put in place? In other words: when will this national ordinance be implemented? Can Government provide a list of all countries that Sint Maarten would be able to require this information from about its residents (residents of those countries that are here on Sint Maarten or have a business on Sint Maarten)? What are the financial benefits for Sint Maarten being able to exchange this tax information automatically? Can the Government provide a list of all countries that Sint Maarten has tax treaties with to avoid double taxation? Can Government provide the policy, if there is one, concerning the inkeerregeling? Will Sint Maarten establish an automatic exchange of tax information with places such as Anguilla, Curaçao, Aruba, Cayman Islands, Bahamas, Turks and Caicos?

How many offshore companies are registered in Sint Maarten? How much tax income is generated from the companies in the offshore sector? How many trust offices are registered in Sint Maarten? What is the contribution of the financial offshore sector to Sint Maarten, to its GDP, to the total tax revenue and to the total employment? Does the tax office assess the off shore and trust companies every year? Does Government know if the offshore companies on Sint Maarten are compliant to having a physical address and a resident director? Does Government know if the Chamber of Commerce has also cleaned up its registry (to ensure that every offshore company has a physical address and a resident director)? If the answer is no, then what does Government intend to do about this?

Once this amendment is passed by Parliament the execution is placed with the Minister of Finance who via national decree, containing general measures decides on the execution policies. Can Government share with Parliament what conditions will be set in those national decrees, containing general measures before the exchange of tax information can go into effect? What conditions will be

included in those decrees that the persons who are to comply will have to comply with?

The faction notes that the process of the trajectory of a national ordinance in Sint Maarten from start to finish takes much longer on Sint Maarten than in the Netherlands. It is for this reason that the Government wants to bypass the process of presenting national ordinances to Parliament and only work in the future with national decrees, containing general measures. This would mean that after Parliament approves this amendment, Parliament has no further say in this matter.

The faction also mentions that the Council of Advice and Government did not see eye to eye on several issues as far as this piece of legislation is concerned. One of the critical notes from the Council of Advice was that the Government didn't consult any stakeholders such as the SER when drafting this Ordinance. One of the reasons given was that in Holland and in Curaçao, the SER was not consulted. The faction is of the opinion that the reality of Sint Maarten is completely different compared to that of Curaçao and the Netherlands. Not because they didn't consult with the SER means that Sint Maarten must also not do so.

The National Alliance-faction has taken note of the draft with concern. The faction is interested to know if a timeline/deadline can be obtained as to when the national decree, containing general measures can be expected?

The Council of Advice raised questions and gave advice on privacy and certain areas being regulated by a ministerial regulation vs. a national decree, containing general measures. Have any adjustments been made in this respect?

Has the amount of NAfl. 1 million been budgeted in the budget? If so, please indicate where? Assuming that this will fall under 'Capital Expenditures', how is it expected to be funded since based on the last budget meetings the source to fund the 'Capital Expenditures' was unknown?

What exactly is being amended in this national ordinance compared to the prior national ordinance? What changes are being made and how do they change the national ordinance? Can the list of countries that are member to this agreement and thus can request information from Sint Maarten's residents and businesses be provided? Are there more FATCA agreements such as these that we are signatory

to and what are the consequences of such for the residents and registered businesses of Sint Maarten? There is discussion between our Government and others within the Kingdom. Is there a difference between the 'ingezetene' and 'ingeschrevene' here on St. Maarten as there is in the Netherlands? Who exactly is affected by this amendment? Who is expected to comply with this national ordinance once this has passed?

What are some of the consequences? What exactly does blacklisting imply for Sint Maarten if we do not comply with this national ordinance? Can it involve that Government will be fined? What will be the repercussions on individuals, besides Government? What are all of the negative consequences on the banking and investment climate of Sint Maarten? Was any input from the SER sought or will any be sought? If and when this national ordinance is passed, will an information campaign be launched to further inform the general public and those that would be affected about timeline, effect etc.? Which entity would ensure that Sint Maarten complies with this national ordinance?

Mention is made by the Council of Advice that 'geen notificatie of inzage of correctierecht is opgenomen in het ontwerp', has this been corrected? If included in other national ordinances, can an indication be given where these missing components can be found? In responding to the Council of Advice in the further report (nader rapport), the Government made note that certain recommendations did not need further elucidation in the Explanatory Memorandum, specifically, on page 4, 4 points were mentioned. How will the CRS influence the privacy of concerned persons, who will be affected? Under which circumstances has Sint Maarten committed itself to the CRS? What is the content of the CRS? Where are the obligations for reporting taken up?

The United St. Maarten Party-faction has taken note of the draft with some concern. The faction refers to the concerns of the Council of Advice pertaining to the lack of restrictions as it pertains to privacy. A high amount of information can be handed to third parties. Some of this can contradict other existing national ordinances related to privacy, including the Constitution. Is this national ordinance in accordance with any privacy related national ordinances?

Would it be something where advice from the Ombudsman would be needed?

The faction refers to the creation of red tape in our banking sector. Processes have gotten even more difficult to get done due to new regulations, reporting etc. What effect might this national ordinance have on our banking sector and the ability for the banking sector to handle and give good service to businesses and individuals in Sint Maarten? Will this have any effect on the time it takes for someone to open an account? Are there any situations because of lack of information that people will not be able to open an account because maybe they haven't complied with a request by the Inspectorate to submit information? Will that now have an effect on the ability to do banking on Sint Maarten?

From an overall perspective, where does Sint Maarten rank in a global view? Are there any other situations where Sint Maarten is blacklisted in any way or acquired a lower level? Are we in any sort of different level in an international scope in terms of tax compliance, banking etc.?

The faction expresses its concern about one of the amendments resulting in the Minister of Finance having the authority to impose a fine of up to NAfl. 25.000. The proposed article states 'can' and not 'shall'. This gives the impression that this is a subjective option of the Minister of Finance to choose whether a fine should be issued or not. Are there any specific guidelines as to how, if any measures/fines are taken or even further legal measures taken for people that may not be in compliance for whatever reason? What is the process for executing such measures? Does the Minister of Finance need an advice from the Inspectorate before executing any reason for legal recourse or fines?

This report is to be considered as Final Report.

Stipulated in the meeting of the Central Committee of June 14st, 2018.

The Reporter,

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