

OPTIMIZING TAX REVENUE

Performance Audit

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General Audit Chamber

Algemene Rekenkamer

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SUMMARY

One of the tasks of the General Audit Chamber is the examination of the efficiency of the management of money and material, the organization and the functioning of the government departments of the country. In this context, the Board of the General Audit Chamber announced in September 2013, its intention to initiate an audit of the “efficiency of the reform of the tax system and tax revenue compliance”. The investigation would, according to the board, contribute to the societal need for a fair and balanced fiscal system and a professional, customer-oriented and impartial Tax Department.

The Minister of Finance originally included five objectives in the 2011 Budget: (1) improvement of tax assessment and collection, (2) simplification of the tax system, (3) harmonization of the tax system with French Saint Martin, (4) increasing compliance and eliminating free-riders, (5) review of the Tax Holiday facilities. It is not clear to us how these policy objectives relate to each other and how they are prioritized. Further segmenting of the policy objectives did not help the situation. The large discrepancy between the contents (text) of the budgets of the past three years and the reality of the daily operations at the Tax Department and Fiscal Affairs, confirm our finding in this regard.

To our knowledge, the Minister of Finance has, in the last three years, not informed Parliament regarding the manner in which these measures related to the aforementioned policy objectives were implemented or achieved and the costs related thereto. Moreover, Parliament, to our knowledge, did not call the Minister to account on this subject during the last three years.

We therefore conclude, that not all of the measures related to the initial five policy objectives for optimizing tax revenue, were implemented and achieved. There has been little or no attention given to the objectives of harmonizing the tax system with French Saint Martin, eliminating free-riders and reforming the Tax Holiday facilities.

Much attention was given to achieving the other objectives: the improvement of assessment and collection, simplifying the tax system, and increasing compliance. An important condition for the realization of these objectives was the ‘upgrade’ of the Tax Department. This same Department is tasked with the execution of most of the improvement measures.

We note that despite the use of external support, and issuance of various reports and advice, substantial elements required to strengthen the organization of the Tax Department have not been achieved. The Inspectorate, the Receiver and the Audit and Criminal Investigation Department (*Controle en Opsporing*) still operate as separate entities (individual “islands”). Staff, resources (including housing) and systems are not integrated. As part of the continuing activity of “elimination of backlogs”, the Tax Department considers the reorganization of the Department and implementation of new ICT-systems as prerequisites for achieving a structural solution of the assessment and collection process. Links with other public sector databases such as the Chamber of Commerce, Social Security (SZV), and Cadaster should lead to improved compliance. The

Tax Department, by its own admission, will not be able to properly function without sufficient qualified staff and management personnel, and certainly will not be able to independently implement the required change process. We are concerned that absent a structural solution for the personnel shortcomings, the next improvement plan will not be fully achieved due to the lack of the required staff.

The need for a properly functioning Tax Department is evident given the fact that despite the efforts of the past three years, costs for assessment and collection have increased slightly and compliance, based on estimates provided, has significantly declined. Even the result of tax audit (control) activities is currently very difficult to determine due to mismatched systems and the absence of a comprehensive overview. Because of this, providing an answer to the question 'how actual costs relate to budgeted costs' is (currently) not possible. To do so, the Minister of Finance will first have to provide for proper and verifiable insight into the system.

RECOMMENDATIONS

Given that it was almost impossible to measure the achievement of the five policy objectives for optimizing tax revenue in terms of efficiency and effectiveness, we will refrain from issuing detailed suggestions. We do provide several general recommendations:

1. Budgets should be drafted in a more policy-based manner. Policy that is adopted in the budget should, in principle, be able to be executed using SMART+C¹ norms. The minister, in this case the Minister of Finance, should be regularly urged by Parliament to give account for the status of the achievement of the proposed policy. Parliament can supervise, using its budget authority and with the requisite financial information: a) a realistic budget, b) the Memoranda that the Minister of Finance must provide in accordance with article 44 of the National Financial Accounting Ordinance and c) the Financial Statements including the report on compliance from the General Audit Chamber.

2. The yet-to-be approved Plan of Action for the Integration and Strengthening of the Tax Department Sint Maarten (*Plan van Aanpak Project Integratie en Versterking Belastingdienst Sint Maarten*) is based on the following point of departure: first complete the organizational reform of the Tax Department, specifically the integration of the organizational units of the Department, the integration and renewal of ICT-systems and housing the organization in a single location; then address the reform and simplification of the tax system. We endorse the value of this statement and recommend that Parliament formally approve this approach. Secondly, we recommend that Parliament act as needed to ensure that the Minister of Finance does all that is possible to achieve the necessary organizational improvements for the Tax Department and also to strengthen the policy unit of that Department. In our opinion, only after the aforementioned is done should the minister operationalize the policy objective regarding simplification of the tax system. It is clear that the current staffing of the Department (quantitatively and qualitatively) makes this impossible. We therefore recommend, temporary support (for example for three years) for the Head of the Department to carry out the plan. This assistance can take the form of a "change team" that functions on behalf of the Head of Department and that is positioned between the head and the managers of the Inspectorate, the Receiver and the Audit and Criminal Investigation department.

3. Draft additional rules regarding the execution of tendering (procurement) procedures as required by article 47, paragraph 6 of the National Financial Accounting Ordinance (*Comptabiliteitslandsverordening*). These rules are not yet drafted and as such, there is no guarantee that procurement is carried out in a transparent, objective and non-discriminatory fashion. Moreover, there is no definition governing when exceptions in the public interest are possible.

¹ Specific, Measurable, Agreed upon, Realistic, Time-based and Consistent

OUR AUDIT

1.1 Background

The year 2011 represented the first full calendar year that Sint Maarten operated as an autonomous country within the Kingdom of the Netherlands. In the run-up to achieving the new status, the government of the Island Territory of Sint Maarten wanted to obtain additional insight into the level of public services on the island. After all, as a country, Sint Maarten, must be able to identify what the scope of government services can and should be. To this end, Policy Productions (a.o.) charted the level of public services and facilities in 2006 on behalf of the Island Government (PP, 2006). Despite the fact that adequate management information, recent policy evaluations and policy plans with concrete objectives and underlying substantive argumentation were not sufficiently available, Policy Productions was able to develop a good impression of the level of services and facilities. They concluded that the transition from Island Territory to Country Sint Maarten was a multifaceted process that would take time and perseverance to achieve. This was so, not only to maintain services, but also in cases where the interest of the Country and that of individuals were at stake. According to Policy Productions, adjustments in the structure would be required to support institutional assurance of the public interest. Thereafter, an optimal level of service could only be achieved by means of the budget mechanism. The analysis resulted in a seven urgent policy recommendations, one of which concerned the Tax Department of Sint Maarten :

- *Improvement of the supervision and control on the compliance with tax obligations and the collection of tax revenue.*

Government indicated in the 2011 Budget that the recommendation remained relevant and would be further developed in subsequent years. For example, the fiscal policy of Sint Maarten would focus (as of 2011) on optimizing tax revenue, limiting public spending and reducing the backlogs in infrastructure and social services.

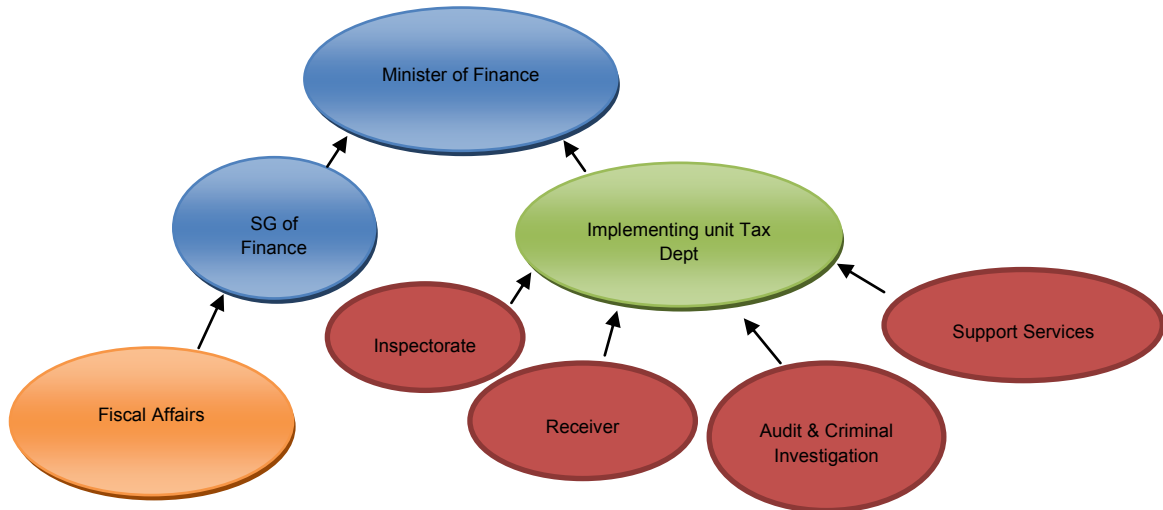
In a letter dated September 10, 2013, addressed to the Chairperson of Parliament, the Board of the General Audit Chamber announced its intention to initiate an audit regarding the performance (efficiency and effectiveness) of the reform of the tax system and tax revenue compliance. The Board wanted to determine to what extent the minister was able to optimize the effectiveness and efficiency of tax revenue. Such a study would, according to the Board, contribute considerably to the public's interest in a fair and balanced tax system and a professional, customer-oriented and impartial tax authority.

1.2 Audit Environment

The performance audit was carried out at the organizational units that, in principle, are tasked with, and are responsible for the translation and achievement of policy objectives into measures and activities: the Tax Department (implementing organization) and Fiscal Affairs (policy unit). In accordance with the National Ordinance Structure and Organization of National Government (*Landsverordening inrichting en organisatie Land*), the Tax

Department, as an implementing organization, is placed directly under the Minister of Finance. The Tax Department is comprised of the Inspectorate (assessment), the Receiver (collection), Audit and Criminal Investigation (*controle en opsporing*), and Support Services (personnel, procurement, finance, ICT, housing, front desk, archives). Fiscal Affairs is a unit of the Ministry of Finance and as a policy department it is placed, hierarchically, under the Secretary-General (SG) of that ministry. Policy initiatives are drafted into legislation by this department. Policy and implementation are therefore separated.

Figure 1. Positioning of Tax Department and Fiscal Affairs



In practice, the Tax Department is considered a unit of the Ministry of Finance. This situation is dealt with pragmatically by both the Ministry and the Department. In this context, there is also a functional relationship between the Head of the Tax Department and the Secretary General of the Ministry of Finance. Based on the 2013 annual plan, the staffing complement at the Tax Department and Fiscal Affairs is as follows:

Table 1 Staffing Tax Department and Fiscal Affairs

Description	Staffing	Filled	Vacancies
Head of dept and section Support Services	24	12	12
Receivers Office	58	47	11
Inspectorate	38	29	9
Audit and Criminal Investigation	23	16	7
<i>Subtotal Tax Department</i>	<i>143</i>	<i>104</i>	<i>39</i>
Fiscal Affairs	7	2	5
<i>Subtotal Fiscal Affairs</i>	<i>7</i>	<i>2</i>	<i>5</i>
TOTAL	150	106	44

The table above shows that the Tax Department has a staffing complement of 143 fte (full time equivalent) of which 39 are vacancies. Fiscal Affairs has a staffing complement of 7 fte of which 5 are vacancies. That represents approximately 30% of the total available capacity. On December 3, 2012, as part of the budget discussions and negotiations related to budget 2013, a hiring freeze was initiated. The vacancies listed above can therefore not be filled. In this context, it is understandable that both the Tax Department as well as Fiscal Affairs opted to hire external consultants to assist with both executive functions as well as more complex policy matters. The budgets of the Tax Department and Fiscal Affairs for the years 2012 and 2013 are as follows:

Table 2 Budget Tax Department and Fiscal Affairs (Amounts in ANG x 1.000)

Description	Annual Plan 2012	Budget 2012	Annual Plan 2013	Budget 2013
Head of dept and section Support Services	1.088	1.088	1.162	1.093
Receivers Office	4.942	4.942	5.122	5.036
Inspectorate	3.394	3.394	3.213	3.213
Audit and Criminal Investigation	2.815	2.815	2.251	2.251
External support	600	n.a. ²	500	n.a. ³
Subtotal Tax Department	12.839	12.240	12.248	11.594
Fiscal Affairs		948		728
Subtotal Fiscal Affairs		948		728
TOTAL	12.839	13.187	12.248	12.321

The National Financial Accounting Ordinance (article 47 paragraph 6) stipulates that additional regulations must be developed by National Decree, to govern the manner in which procurement (tendering) is carried out. These regulations have not yet been drafted, as a result of which there can be no guarantee that procurement is done in a transparent, objective and non-discriminatory fashion. Moreover, there is no definition governing when exceptions in the public interest are appropriate.

1.3 Framework of the Performance Audit

In keeping with article 30 of the National Ordinance General Audit Chamber (*Landsverordening Algemene Rekenkamer AB 2010, GT nr.18; hereafter: LV AR*), among the tasks of the General Audit Chamber is the examination of the performance (efficiency) of the management of money and material, as well as the organization and the functioning of the departments of the Country. In terms of performance audits, the General Audit Chamber seeks to answer the question "to what extent, based on government policy, have the desired policy results – in terms of performance (output) and effects achieved (outcome) - been realized. In addition, we also try to determine the level of cost effectiveness. As such, we developed two primary queries:

² Not separately stated in the budgets of 2012 and 2013 for the Tax Department.

³ Idem.

- *To what extent are the measures relating to the five policy objectives aimed at optimizing tax revenue been implemented and achieved?*
- *How does the actual expenditure relate to budgeted estimates?*

To answer these questions, we carried out documentary research as well as interviews with managers of various government services related to the Tax Department.

2 DESIGN OF PUBLIC POLICY

2.1 Introduction

In this chapter, we first discuss the five policy objectives (included in the 2011 budget) aimed at optimizing the tax revenue of Sint Maarten. We then examine the translation of said policies as included in the Tax Department's 2013 Annual Plan. The Department plays a significant role towards the realization of these five policy objectives.

2.2 Policy Objective Budget 2011

In the 2011 Budget, the Minister of Finance stated that the tax burden would, as much as possible, remain unchanged, inasmuch as rate increases and new taxes would be limited. Optimizing tax revenue would be achieved through:

- Improving assessment and collection.
- Simplifying the tax system.
- Harmonizing the tax system with French Saint Martin.
- Increasing compliance and eliminating free-riders.
- Review of the Tax Holiday facilities.

These original five objectives were further revised by the Minister into the three following policy objectives:

1. Improving assessment and collection.
2. Harmonizing the tax system with French Saint Martin.
3. Improving controls aimed at elimination of free-riders.

The following figure shows how the five originally three objectives fall under this revised policy objectives.

Figure 2. Review policy objectives Optimizing Tax Revenue

Original Objectives	Revised Objectives
1. Improving assessment and collection	1. Improving assessment and collection: <ul style="list-style-type: none"> • Simplifying tax system <ul style="list-style-type: none"> ○ Reducing costs of assessment and collection ○ Improve compliance ○ Create favorable business climate (review Tax Holiday facilities) • Upgrading Tax Department <ul style="list-style-type: none"> ○ Strengthen Personnel ○ Improved control and communication ○ Proper ICT infrastructure and equipment

Original Objectives	Revised Objectives
	<ul style="list-style-type: none"> ○ Education ○ Proper physical infrastructure ○ Eliminate backlogs • Information and communication <ul style="list-style-type: none"> ○ Improve tax morality and awareness of objectives and control activities ○ Check compliance
2. Simplifying tax system	3. Harmonizing the tax system with French Saint Martin
2. Harmonizing the tax system with French Saint Martin	3. Eliminate free-riders <ul style="list-style-type: none"> ○ Improve immigration checks ○ Improve checks on registration
4. Increase compliance and eliminate free-riders	
5. Review Tax Holiday Facilities	

2.3 Objectives Tax Department’s 2013 Annual Plan

The Tax Department’s 2013 Annual Plan includes the translation of the Minister of Finance’s vision regarding fiscal policy. The plan includes the following four goals:

- Improving government’s financial management to the level of ‘best practice’ in order to comply with the norms of the Kingdom Law on Financial Supervision.
- The complete implementation of a revised tax system that is fair, simple, competitive and economically sound for both individuals as well as businesses.
- Ensuring that all the necessary laws and regulations in the field of financial management are prepared or being worked on.
- Improving the functioning of the Tax Department to a level that the tasks of assessment, collection and control are carried out in an efficient and effective manner.

2.4 Conclusion regarding the design of public policy

It is not clear to us how the policy objectives relate to each other and how they are prioritized. Moreover, we note that the approved budget objectives contained in the 2011 Budget are only partially reflected in the objectives stated in the Tax Department’s 2013 Annual Plan.

3 ACHIEVEMENT OF GOVERNMENT POLICY

3.1 Introduction

In this chapter, we examine the extent to which the measures and activities aimed at the realization of the policy objectives to optimize the tax revenue were efficiently and effectively achieved.

3.2 Improving assessment and collection

The following figure reflects the intended objectives and activities the Minister of Finance (Budget 2011) planned to carry out in order to improve the assessment and collection of tax revenue.

Figure 3. Activities policy objectives for improvement assessment and collection

1. Improving assessment and collection:
 - Simplifying the tax system
 - Reducing costs of assessment and collection
 - Improve compliance
 - establishing a Compliance Team
 - increasing effectiveness of the Tax Department, increased use of new and strengthening of, existing sanctions, revised penalty (fines) policy
 - establishing working group to study the introduction of a modern tax system
 - Create favorable business climate
 - review Tax Holiday facilities
 - Upgrading Tax Department
 - Strengthening Personnel
 - Improved control and communication
 - Proper ICT infrastructure and equipment
 - Education
 - Proper physical infrastructure
 - Elimination backlogs
 - Information and communication
 - Improve tax morality and awareness of objectives and control activities
 - public campaign aimed on business sector
 - Check compliance
 - control campaign at businesses

Simplifying the tax system

Reducing costs of assessment and collection

To simplify the tax system, the Minister of Finance wanted first to reduce the cost of tax assessment and collection. In Budget 2011, the minister stated that these costs represented approximately 2.7% of income. The Tax Department achieved tax revenue⁴ of over ANG 327.4 MM based on a budget of ANG 12.2 MM in 2012. That means that the operational costs in 2012 were approximately 3.7% of income (tax revenue). In 2013, the operational costs were approximately 3.5% of the income (with a budget of ANG 11.6 million and a tax revenue of ANG 328,8 million). Instead of reducing the cost of assessment and collection, costs increased by 0.8% in 2013 as compared to 2011.

Improving Compliance

Secondly, the minister wanted to improve compliance. Compliant behavior manifests itself in the fact that citizens and businesses register (being subject to taxes), file taxes (timely), file completely and correctly, and pay taxes on time.⁵ The scope of non-compliance on Sint Maarten is not precisely known. Independent research with set definitions is not available. In 2011, the estimates of non-compliance range from 30-40% (Budget 2011), in 2013, the estimate was 40-60% (Budget 2013). In the revised objectives related to increasing compliance, the effects on the non-compliance are not found.

The objectives related to increasing compliance as described in a 2012 'Terms of Reference (TOR) Compliance', is incorporated in the Project plan New Tax Department Sint Maarten (*Projectplan Nieuwe Belastingdienst Sint Maarten*⁶ NBDSXM. Please refer to 'Upgrading Tax Department), and are listed as follows:

- increasing tax revenue by means of controls within the campaign itself;
- increasing tax revenue as a spinoff effect of the controls;
- heightened awareness of the tax rules by the taxpayers;
- increasing tax morality of the target group;
- sustainable increase in tax revenues through increased compliance ;
- promotion of the concept of 'fair share' through increased compliance because the tax burden is perceived to be more equitably divided.

The above mentioned activities are also developed in a SMART + C manner. For example, there is an overview of the number of on-site investigations and observations to be carried out per industry. To execute the TOR Compliance, a Compliance Team was established comprised of staff from the Audit and Criminal Investigation Department and an external party.⁷ The Compliance Team focuses on industries for which the Tax Department has received indications that taxable entities are not or largely not compliant. In 2013, those taxable entities were real estate brokers, property owners who live abroad and importers. Given the knowledge and skillset available, the staff of the section Audit and Criminal

⁴ Wage and income tax, Turnover Tax (TOT), profit tax, vehicle tax, transfer tax, duties and other taxes.

⁵ TOR Compliance, October 19, 2012, page 3.

⁶ Project New Tax Department Sint Maarten, March 24, 2009.

⁷ The Compliance Team is a regular part of the operations of the Audit and Criminal Investigation section.

Investigation execute investigations at the smaller and medium-sized enterprises, while for medium-sized and large enterprises the work is carried out by the external party.

While activities started, the Progress Report NBDSXM (*Voortgangsrapportage NBDSXM*) of May 2012⁸, indicates that not all activities were completed. The inventory of businesses in Front- and Backstreet started in 2012. Beside regular activities, the Audit and Criminal Investigation section (refer to 'Information and Communication') initiated the following activities aimed at improving compliance in 2013:

- Project Philipsburg inventory of businesses (incl. use/absence of cash registers).
- Project foreign taxpayers (real estate).
- Information session regarding cooperation between the Inspectorate and Receiver.
- Project receipt of filings from 2004 through 2010.
- Project receipt of filings from 2013 (in the form of compliance activities).
- Inventory of businesses in Simpson Bay/Colebay (filming of businesses).

For some of the other work, a third party was used, for example to develop an overview of businesses, to film businesses and to execute a study regarding the feasibility of introducing a modern tax system. However, by the end of 2012, the Minister of Finance decided to discontinue this cooperation, for the time being, due to a legal review of said third party (specifically A&M/Taxand).

A budget of ANG 1.0 MM was available for the TOR Compliance. The budget for the project was not sufficient to fully fund the Compliance Team. As such, contributions from the budget of the project 'Improving Financial Management' were needed. At the end of 2013, the budget for the project TOR Compliance had been depleted.

Table 3. Budget TOR Compliance

Description	Amount (in ANG)
New Tax Department	400.000
Improving Financial Management	280.000
Sint Maarten's Contribution	320.000
TOTAL	1.000.000

In terms of compliance, it is important that use can be made of other public sector databases. This allows file comparisons to be made. Examples include registration information of citizens and businesses from Census, Chamber of Commerce (CoC), social health insurance (SZV) and Cadaster. The Tax Department has made arrangements with the Census Department in order to access data from their database, but this is not yet the case for other organizations. As an example, the database of the Chamber of Commerce related to businesses is not available because management of the Chamber claim that the information is not 'up to date'.

⁸ Progress report Project New Tax Department, May 2012, April June 2013, pages 6-7/12.

In addition, in the 2012 Budget, the Minister of Finance stated increasing the effectiveness of the funds made available to the Tax Department would be looked into. Possibilities that would be considered included making greater use of criminal penalties, tightening existing sanctions, and reviewing the policy related to issue fines as well as creation of additional measures such as extending the time period (term) for assessment and collection of 'back taxes'. A start was made in this regard by holding discussions with the primary stakeholders (Inspectorate, Receiver, Audit and Criminal Investigation and the legal advisor of the Minister of Finance). The required legislative amendments still have to be drafted and ratified by Parliament.

The Minister stated in the 2011 Budget that improvement of the functioning of the organization for assessment and collection together with the introduction of a simplified system should lead, in the coming years, to an additional ANG 20 MM in tax revenue.⁹ The amount was increased to ANG 30 MM in the 2013 Budget. In the table below, the tax revenue of Sint Maarten is presented starting in 2011.

Table 4 Tax Revenue of Sint Maarten from 2011 (amounts in ANG x 1.000)

Type of Tax	Achieved 2011	Achieved 2012	Achieved 2013
Wage and income tax	122.107	125.441	127.819
Turnover tax	111.726	134.417	140.484
Profit tax	27.071	22.425	21.081
Vehicle tax	8.532	8.523	7.184
Transfer tax	14.727	11.097	9.355
Duties	9.766	9.595	9.873
Other taxes	10.193	15.947	13.039
TOTAL TAX REVENUE	304.122	327.445	328.835

Although we see a surge in tax revenues in 2012 as compared with 2011, in our view, this can *not* be attributed to an increased compliance. Further analysis shows that this increase is mainly caused by an increase in the Turnover Tax (approximately 20%). This can be due to several reasons, for example, the increase in rate of the Turnover Tax as of February 2011. We also recognize a significant increase in stay-over/room tax (*logeergastenbelasting*), - a segment of 'other taxes' - as compared with the previous year.

Creation of a favorable business climate

To create a favorable business climate, the Minister of Finance included the objective "review Tax Holiday facilities" in the 2011 Budget. The Tax Holiday facility is a stimulus measure aimed at attracting investors to Sint Maarten. The arrangement offers tax

⁹ To realize the system reform (in the budgets the terms simplification of the system and system changes are used interchangeably), international agreements, European and Dutch guidelines, as well as the OECD guidelines, must be taken into account.

exemptions for a certain period of time or tax reduction if investment is made in Sint Maarten. Those interviewed in the course of our investigation, indicated that this incentive measure does not work. Furthermore, they state that the implementation of the Tax Holiday Facility is too labor intensive and has the unwanted effect of some investors abandoning the island at the end of the 'holiday period'. Hence the measure achieves the opposite of what is intended.

In the interim, consideration is being given to the abolishment of this stimulus measure as part of the tax simplification initiative. This choice is not substantiated through independent research or an exhaustive quantitative analysis. Discussions regarding alternatives have taken place between the ministries of Finance and Tourism, Economic Affairs, Transportation and Communication, however, these talks are currently at a stalemate.

No separate project group was established to deal with the elimination of the Tax Holiday Facility. The project is a part of the Project Plan Assistance Fiscal Affairs (*Projectplan Bijstand Fiscale Zaken*). Originally it was the intention to include the elimination of the Tax Holiday in the Tax Department's 2013 project plan (*Projectplan Belastingplan 2013*), but that did not occur. The project for the elimination of the Tax Holiday Facilities is being coordinated by external parties due to the lack of capacity (staff) at Fiscal Affairs. The project is still in an exploratory phase. The work is not yet operationalized and the subproject remains unclear in terms of the legislative process, planning and budget. The latter would be included in the Project Plan Assistance Fiscal Affairs, for which an amount of ANG 1.8 MM is reserved.

Upgrading Tax Department

A project plan, New Tax Department Sint Maarten (*Projectplan NBDSXM*), aimed at upgrading of the Tax Department was started in 2009. The project plan deals with activities to initiate and finance (partly through USONA) solutions for the most important problems at the Tax Department. According to the plan, the Tax Department requires:

1. strengthening of personnel, quantitatively but mostly qualitatively;
2. improved control and communication;
3. proper ICT infrastructure and equipment;
4. additional education;
5. proper physical infrastructure (new building);
6. elimination of backlogs.

The Final Evaluation Report of the NBDSXM Project (*Eindrapport evaluatie project NBDSXM*) of November 2012, indicates that not all of the original objectives were achieved and as such the project was extended until the end of 2013. For example, there is still no complete integration of the Tax Department. The evaluation points out the following causes:

- the physical separation between the Inspectorate and the Audit and Criminal Investigation Department on the one hand, and the Receiver on the other;
- the absence of an integrated budget (each department has a separate budget);

- the lack of an integrated ICT system (Inspectorate and Receiver do not have access to each other's systems and changes are manually inputted).

Besides the 2012 evaluation, other reports have been issued (Taxand, Bearingpoint, Project Plan Fiscal Affairs) containing discussion regarding the above mentioned problems and as well as providing possible solutions. Regardless of how good the intentions of the various ministers and department heads, little or nothing of the improvement proposals have come to pass. Furthermore, implementation often depends on the political climate on Sint Maarten, despite the fact that organizational improvement processes are, essentially, technocratic and professional in nature.

Evidence that the most important problems faced by the Tax Department are not solved is found in the still-to-be formalized Plan of Action for the Project Integration and Strengthening of the Tax Department Sint Maarten (*Plan van Aanpak project Integratie en Versterking Belastingdienst Sint Maarten*) of May 2014. According to this Plan of Action, the problems at the Tax Department are (still) focused around the following subjects:

1. There are insufficient qualified staff and management personnel to properly support everyday operations. And there is certainly inadequate staff to independently execute the required change process.
2. More than ever, it is essential that the organizations and work processes of the Inspectorate and the Receiver are integrated into a single organization with effective and efficient operations.
3. The ICT (system and support) must be modernized, integrated, changed and brought up to date.
4. The physical infrastructure, specifically the housing of all the organizational units to be integrated, must be prepared to allow housing in a single building as soon as possible.
5. Backlogs should be eliminated and new backlogs should be avoided.
6. Increase compliance through enhanced visibility, enforcement and supervision, but above all, through integrated systems (assessment and collection).
7. The level of service and customer-orientation must be improved, both in processes as well as physically (front desks etc.).

The Plan assumes that the organizational reform will first be completed prior dealing with tax reform (adjustment, simplifying tax system). That would mean that for the time being, the old Dutch-Antillean legislation will be maintained. The Plan also contains an "Urgent Action Plan" comprised of the following activities:

- immediately setting objectives, mission and vision for the project Integrating and Strengthening Tax Department Sint Maarten;
- creating support for the change;
- immediate drafting of a budget request for capital investment;
- immediately staffing and starting a project organization (project leader, project group, information manager, additional interim manager NBDSXM to support the Tax Department);
- guiding the reorganization related to questions directed at the Dutch Tax Authority (with experience in the BES-islands, Bonaire, Sint Eustatius and Saba);

- achieving the 'integration' of the Tax Department Sint Maarten along the lines of the BES-model (proven track record);
- divide the whole project into subprojects and place these in clusters;
- drafting a communication plan focusing on internal and external target groups.

Elimination of backlogs

Because we were barely able to acquire information regarding the other five problem areas in terms of objectives for the upgrading of the Tax Department, we decided to delve deeper into the project "elimination of backlogs". The objectives of this project concerned getting rid of existing backlogs and preventing new administrative backlogs from forming, the tax assessment regulation, notice of opposition (*bezwaarschriften*) and tax audits. The objectives were drafted in a SMART+C format and the coordination was done within the project NBDSXM as part of the regular organization. The sub-project was part of the Tax Department's 2012 and 2013 Annual Plans. External consultants would assist in carrying out the activities.¹⁰

The previously mentioned Final Evaluation Report for the Project NBDSXM, reports that during the execution of the project, priorities changed. The intended output required to achieve a good starting point for the improvement of the Tax Department was not achieved through the 'elimination of backlogs' initiative. Because objectives were not achieved, the decision was made to initiate a follow up process as a way to "catch up". Additionally, the minister wants to use the "Priority Project Reducing Backlogs" (*Acuut Project Inhalen Achterstanden*) in 2014, to collect at least ANG 25 MM in unpaid taxes and concurrently reorganize the Tax Department and introduce new ICT systems to structurally solve the assessment and collection problems. An external consultant would be used for this project as well.

The project "elimination of backlogs", maintains, as part of the Project NBDSXM, a budget of ANG 1.043.147. As of the end of 2013, ANG 618.000 was spent in three phases.

Information and Communication

In terms of information and communication, the Minister of Finance indicated in the 2011 Budget, that additional attention would be given to providing the public with information about rights and responsibilities of the Tax Department. In the opinion of the minister, this was a subject that was heretofore neglected. In the 2012 Budget, the Minister indicated that the Compliance Team would undertake the following activities:

- A public campaign focused on the Compliance Team's target groups, specifically, the business sector. The goal of the campaign was to improve the tax morality and awareness related to the objectives of the control activities.
- An inspection campaign, consisting of audits and on-site observations (field research) at companies, focused on the compliance of rules related to the wage tax, Turn Over Tax, income tax (profit from business) and income tax (individual persons).

¹⁰ The external experts were provided by a Curaçao based firm based on Service Level Agreement.

We have not been able to determine whether the public information campaign of 2012 was carried out. The inspection campaign was carried out, but we were not able to confirm the results. The reasons include, firstly, it is not known if the Receiver was able to actually collect taxes due, and secondly, the taxpayer maintains the option to object to the assessment. Thirdly, the systems of the various units within the Tax Department are not linked.

3.3 Harmonization of Tax System with French Saint Martin

According to Government, the fact that the island is divided into two entities (Dutch Sint Maarten and French Saint Martin), that maintain completely different government administrations and systems of assessing and collecting taxes, is of significant influence on the way in which changes to those systems are implemented. The change process in terms of constitutional structure that has taken place on both sides of the island, should provide opportunities, heretofore not available, for tax simplification and harmonization.

Harmonization of both tax systems would, according to Government, lends itself to an effective approach against tax evasion as well as preventing double taxation. The following figure present the activities – as listed in the 2011 Budget - in terms of this matter.

Figure 4. Planned activities for Harmonizing assessment and collection

2. Harmonization of Tax Systems with French Saint Martin	
	<ul style="list-style-type: none"> ▪ creating an overview of fiscal laws of Sint Maarten; ▪ analysis by Fiscal Affairs of the French tax system; ▪ drafting of Treaty commitment of Sint Maarten; ▪ drafting a Treaty to avoid double taxation; ▪ analysis of the French Treaty commitment and suggestions regarding the draft Treaty.

There is no separate project organization established for the project related to harmonization of the two tax systems. This is due to this activity being a part of the Project Plan Assistance Fiscal Affairs. We do note that in that Project Plan, the issue of harmonization is only briefly summarized. Fiscal Affairs is responsible for the achievement of the harmonization, but has not operationalized the policy objective, nor is the objective formatted SMART+C. The project is still in a preparatory phase of development and has not actually started. The various meetings and negotiations to prepare for harmonization have not taken place. It is therefore unclear if the required cooperation from the French is present. A parliamentary approval process will be required in the event of an agreement. The budget estimate for the project is ANG 50.000,-.

3.4 Eliminations of free-riders

In the 2011 Budget, the minister stated that there is a perception that the percentage of free-riders is relatively high. The income foregone because of the free-riders due to inadequate control in many areas, is estimated to be at least 2-4% of the gross domestic product.

Figure 5. Planned activities to eliminate free-riders**3. Eliminate free-riders**

- Improve immigration checks
- Improve checks on registration

The policy objective of elimination of free-riders has not been further operationalized nor has it been formatted SMART+C. Activities to improve the checks of immigration and registration have not occurred and thus have not lead to a reduction in lost income due to free-riders

3.5 Conclusion

We conclude that not all measures related to the five original policy objectives to optimize tax revenue have been implemented and achieved. There has been little or no attention given to the harmonization of tax system with French Saint Martin, the elimination of free-riders and the review of the Tax Holiday Facilities.

Much more attention was given to achieving the other objectives: the improvement of the assessment and collection, simplifying the tax system, and increasing compliance. The Minister wanted to achieve the policy objective 'improving assessment and collection' by simplifying the tax system, upgrading the Tax Department and through information and communication. In terms of simplifying the tax system, we conclude that despite generous hiring of external experts and despite establishing and setting up a number of working groups tasked with developing plans for the reform and simplifying of the system, progress has been limited. We note that there has been no success in terms of reducing the costs of assessment and collection. The operational expenditure in 2011 was 2.7% of income and the percentage was 3.5% in 2013. Improving compliance has also not been successful. Estimates of non-compliance were between 30-40% in 2011 and in 2013 these estimates increased to 40-60%. It is notable that the contract with the external consultant hired to assist in this regard, is still mired in legal issues. We are furthermore convinced that we did not receive all relevant (financial and budget) information, particularly in terms of quotations and reports related to a number of external consultants.

In regard to increasing the effectiveness of, among others, policies related to sanctions and fines, we conclude that a start was made in 2014 by means of discussion with the most important stakeholders (Inspectorate, Receiver, Audit and Criminal Investigation and the legal advisor of the Minister of Finance). The required legislative amendments must still be drafted and approved by Parliament. Creating a favorable business climate is also progressing slowly. For example, the activities required to abolish the Tax Holiday Facilities have not been operationalized and the project is uncertain, in terms of legislation, planning and budget. As part of the 2011 Budget, the minister stated, in the coming years, the improvement of the organization of assessment and collection along with the introduction of a simplified tax system would result in an additional ANG 20 MM.¹¹ This improvement in tax revenue was increased to ANG 30 MM in the 2013 Budget. Although a significant increase in tax revenue is evident in 2012 as compared to 2011, it is not likely due to

¹¹ To realize the system reform (in the budgets the terms simplification of the system and system changes are used interchangeably), international agreements, European and Dutch guidelines, as well as the OECD guidelines, must be taken into account..

improved compliance. Further analysis shows that the increase is primarily due to an increase in the Turnover Tax (approximately 20%). This can be ascribed to a number of reasons, for example the increase in the TOT rate as of February 2011. We also noted a significant increase in room/stay-over taxes (part of 'Other taxes') as compared to the previous year.

The 'upgrading' of the Tax Department, based on the evaluation of the Project New Tax Department as well as other reports, should focus on the following substantive improvements and key points:

1. integration of the organizational units of the Tax Department (Inspectorate, Receiver, Tax Audit);
2. integration and modernizing/renewal of the ICT-systems of the Inspectorate and the Receiver;
3. proper physical infrastructure(integrated units and departments at one location);
4. improving customer service;
5. qualitative strengthening of management positions.

We conclude that despite all reports and advices, these substantive points for strengthening the organization of the Tax Department were not realized. Establishing a good starting point for the upgrading of the Tax Department through eliminating backlogs, has, despite the SMART+C formatting of objectives, not been achieved. In terms of information and communication, we could not determine whether the public information campaign was executed in 2012. The inspection campaign was carried out, but we could not verify the results. First, because it is not known if the Receiver actually collected the taxes assessed but also because taxpayers maintain the right to object. Finally, there is the fact that the systems of the various departments within the Tax Department are not linked making verification difficult.

4 REACTION OF THE MINISTER OF FINANCE AND EPILOGUE OF THE GENERAL AUDIT CHAMBER

The Minister of Finance reacted to this report on September 29th, 2014. This response can be read in its entirety in § 4.1. Based on the comments of the minister, we provide an epilogue (§ 4.2).

4.1 Reaction of the Minister of Finance

The minister writes:



MINISTER OF FINANCE – SINT MAARTEN Minister van Financiën Sint Maarten

Aan de voorzitter van de
Algemene Rekenkamer
Dhr. R. Halman
Philipsburg
Sint Maarten

0678

Sint Maarten, 29 september 2014

Betreft: conceptverslag “Doelmatigheidsonderzoek Optimalisering Belastinginkomsten”

Geachte heer Halman,

Over het algemeen kan ik mij vinden in bovengenoemd verslag, de bevindingen en conclusies met de volgende opmerkingen:

- Gedurende de periode vanaf 10 oktober 2010 tot heden, 4 jaar, zijn er drie verschillende regeringen en drie verschillende Ministers van Financiën geweest. Hoewel de Ministers op hoofdlijnen nagenoeg dezelfde beleidsdoelen nastreefden, is het inzicht in de wijze waarop de beleidsdoelen dienden te worden nagestreefd steeds anders geweest en heeft tot grote vertragingen geleid met alle gevolgen van dien. Structurele veranderingen zoals bijvoorbeeld de vereenvoudiging van een belastingstelsel vergen niet alleen een gedegen onderzoek maar ook jaren van voorbereiding en implementatie. De discontinuïteit van regeringen binnen een relatief kort tijdsbestek in relatie tot de complexiteit van de gestelde doelen heeft het veranderproces aanzienlijk vertraagd.
- Veranderingen in het belastingstelsel zijn voor een belangrijk deel afhankelijk van de haalbaarheid op een open eiland met twee geheel verschillende belastingstelsels en heffingsgebieden. De noodzaak van harmonisatie is dan ook al jaren geleden onderkend. In praktijk lijkt dit een force majeure.
- Het door de USONA gefinancierde compliance project is door de SBAB uitgevoerd en overgedragen aan de Afdeling Controle en Opsporing. Dit project is met name gericht op het in kaart brengen van zogenaamde “free riders”. Dit onderwerp heeft dus wel degelijk aandacht gekregen en krijgt dat nog steeds. Een meer gestructureerde aanpak van dit probleem is noodzakelijk en discussies ter zake zijn opgestart.
- Het hanteren van non compliance percentages is uitermate gevaarlijk omdat het enige wetenschappelijk verantwoorde onderbouwing mist. Bovendien geeft het de indruk dat de overheid een proportioneel deel aan inkomsten mist. Ook deze stelling is onjuist en heeft in het verleden al eens tot misverstanden geleid. Immers indien van de 100 belastingplichtigen er 30% zijn die non compliant zijn, zou geconcludeerd kunnen worden dat er een non compliance is van 30%. Echter indien deze 30% belastingplichtigen slechts een belastingaandeel van 5% vertegenwoordigen, is het effect op de inkomsten dus 5% en geen 30%. Nadere toelichting bij non compliance percentages is noodzakelijk.

Ministry of Finance/ Ministerie van Financiën

Government Administration Building
Post Office Box 943, Philipsburg, St. Maarten – (T)+721-5422026 – (F)+7215420151 –
(E) Velma.Windefelde@sintmaartengov.org



MINISTER OF FINANCE – SINT MAARTEN
Minister van Financiën Sint Maarten

- In de aanpak van het non compliance fenomeen maken wij onderscheid tussen:
 - Bekende belastingplichtigen die niet geheel aan hun verplichtingen voldoen,
 - Niet bekende belastingplichtigen.

Het zal duidelijk zijn dat juist deze laatste groep de meeste aandacht dient te krijgen. Het is ook de moeilijkste groep om onder controle te krijgen. Plannen om bijvoorbeeld een beter beeld te krijgen door bestandsvergelijkingen (GEBE, SZV, Belastingdienst, KvK e.a.) zijn nog onvoldoende van de grond gekomen.

- In de begrotingen kunnen geen inkomsten worden opgenomen die niet gegarandeerd gerealiseerd kunnen worden en een wettelijke basis hebben. Schattingen van inkomsten op basis van compliance activiteiten worden dus niet opgenomen in de begroting en zijn ook in 2013 uiteindelijk geëlimineerd.
- De bezetting van de belastingdienst (heffing, inning, controle en opsporing) blijft ver achter bij de formatieplannen. Afgezien van het feit dat we ons kunnen afvragen of de formatieplannen nog wel realistisch zijn, dienen wij de organisatie en personele bezetting te beoordelen op capaciteit. Met name door budgettaire belemmeringen en mede door de onmogelijkheid om kennis en capaciteit te financieren middels de kapitaaldienst, bevinden wij ons in een vicieuze cirkel zo niet neerwaartse spiraal.

Wij hebben goede nota genomen van uw verslag en kunnen ons in grote lijnen daarin vinden. Het geeft ons inziens duidelijk aan dat beleid en veranderingsproces voor de lange tijd vastgelegd dient te worden en minder gevoelig voor regeringswisselingen dient te zijn.

Hoogachtend,

Martin J. Hassink



Translated text of the minister's letter:

To the Chairman of the
General Audit Chamber
Mr. R. Halman
Philipsburg
Sint Maarten

Sint Maarten, September 29, 2014

Re: draft report "Performance Audit Optimizing Tax Revenue"

Esteemed Mr. Halman,

In general, I agree with abovementioned report, the findings and conclusions subject to the following remarks:

- During the period from October 10, 2010 to date, 4 years, there have been three different governments and three different Minister of Finance. Though the ministers have, in general terms, sought to execute the same objectives, the manner in which these objectives should be achieved has differed, which has led to large delays and subsequent consequences. Structural change such as for example simplification of the tax system require not only proper research, but also years of preparation and implementation. The lack of continuity of governments within a relatively short period of time compared to the complexity of the stated objectives caused significant delay to the change process.
- Changes to the tax system are, in large part, dependent on the feasibility of an island that is "open" and maintains two completely different fiscal systems and tax areas. The necessity of harmonization has been recognized for years. In practice it seems to be force majeure.
- The compliance project financed through USONA and implemented by SBAB was transferred to the unit Audit and Criminal Investigation. This project is in fact aimed at delineating the so called "free riders". The subject matter has thus in fact received attention and continues to do so. A more structured approach of the problem is necessary and to this end, discussions have been initiated.
- Use of non-compliance percentages is extremely perilous due to the lack of scientifically sound substantiation. Moreover, the perception is created that government is proportionally losing part of its income. This statement is untrue and has in the past led to misunderstandings. After all, if 30% of the 100 persons subject to taxation are non-compliant, the conclusion could be that there is 30% non-compliance. However, if these 30% of persons subject to taxation are simply represent 5% of the share of taxes, the effect on income is thus 5% and not 30%. Further elucidation of non-compliance percentages is therefore necessary.
- For the approach of the phenomenon of non-compliance we distinguish between:
 - Known persons subject to taxes who do not fully meet their tax obligation,
 - Unknown persons subject to taxes.

It should be clear that particularly the last group require the most attention. This is also the most difficult group to get under control. Plans to, for example, develop a better picture of the group through data comparison (GEBE, SZV, Tax Department, Chamber of Commerce and others) have not yet been sufficiently achieved.

- The budgets cannot contain income that are not guaranteed as realized and for which there is a legal basis. Estimates of income on the basis of compliance activities are not included in the budget and have therefore also been eliminated for 2013.
- The actual staffing of the Tax Department (assessment, collection, audit and criminal investigation) remains far behind the staffing plans. Beside the fact that we can question whether those plans remain realistic, we need to evaluate the organization and the staffing on the basis of capacity. Particularly due to budget challenges and partially also the impossibility to fund knowledge and capacity via the capital account, we find ourselves in a vicious cycle, if not a downward spiral.

We have taken good note of your report and we can agree with it in a general sense. In our opinion, it clearly shows that policy and change processes need to be approved for the long term and need to be less sensitive to changes of government.

Respectfully,

Martin J. Hassink

4.2 Epilogue

Our response to the Minister's reaction is as follows:

October 1, 2014

Reference: AR0110914/189

Re: letter of September 29 ref. 0687 regarding response to draft final report

Honorable Minister,

In your correspondence dated September 29, 2014, reference number 0678, you provide your reaction to our performance audit "Optimizing Tax Revenue" as part of the process of consultation. We wish to thank you for your input and take this opportunity to respond to your submission.

The General Audit Chamber is pleased that, "in general" you agree with our report. We acknowledge your observation that sustainable policies and change processes should be approved for the long term. In that regard, we have pointed out, on several occasions, in our reports related to the compliance audits of the financial statements, that budgets should be more policy-based. It is important that policy contained in approved budgets is formulated in a SMART+C (*specific, measurable, agreed upon, realistic, time based and consistent*) manner. Operationalizing policy in this manner can also limit discontinuity caused by changes of government.

Continuity of the execution of policy may also be secured by ensuring that sufficient care is taken in preparing, organizing and phasing the roll-out of coherent programs supported by adequate, qualified personnel. Ensuring the existence of a project structure within the civil service that is aimed at the efficient and effective achievement of (in this case) the five policy objectives for optimizing of tax revenue, was and remains the Minister's responsibility.

The efficient and effective deployment of needed resources (staff and money) also was and remains a ministerial responsibility. The choice between the use of (relatively expensive) consultants instead of securing a structural solution for the understaffing of the various strategic positions at the Tax Department and Fiscal Affairs could, and still can, be made. Moreover, increased attention is needed to improve (optimize) the coordination between those drafting the budget and those executing the budget. We feel such choices are achievable, for example, with regard to the policy objective 'Harmonization of assessment and collection with French St. Martin'. The bottlenecks in terms of the implementation of this policy objective, i.e. the understaffing of the Tax Department coupled with a limited (possibly unrealistic) budget, can be resolved in a practical manner.

We drew no conclusions in terms of the efficient and effective implementation of the policy objective 'Elimination of free-riders'. The reason is because the planned activities (improving the immigration and registration checks/controls) were not carried out. There was no budgetary expenditure other than that which was financed via USONA for the compliance project – executed by SBAB.

In our report we clearly stated that a precise degree of non-compliance on Sint Maarten remains unknown. Independent research using set definitions are absent in this regard. To be able to state something regarding the degree to which the policy objective 'compliance' was realized, we made use of information from a number of sources, among which, the approved budgets (see literature list). The compliance percentages for which you state your concern, are derived from these budgets. We therefore recommend that the Minister carry out additional scientific research regarding the issue of compliance in order to avoid misinterpretation regarding the scope of non-compliance.

In conclusion, we cannot fail to note the absence of any intent from the Minister in terms of the general recommendations listed in our report. Given the acknowledgement by the Minister regarding the many challenges facing the Tax Department and Fiscal Affairs, as well as his desire to achieve the five policy objectives in question, we hope that our well-considered suggestions receive attention.

On behalf of the board of the General Audit Chamber,

Respectfully,

Ronald C. Halman
Chairman

Joane Dovale-Meit
Secretary-General

LIST OF PERSONS INTERVIEWED

Mr. Geert Bergsma, Head Tax Department Sint Maarten

Mr. Ravi Daryanani, Head Financial Accounting, a.i. Head Tax Department

Mr. Janio Chayadi, Acting Head Fiscal Affairs

Mrs. Mercedes James, Senior Legislative Lawyer Fiscal Affairs

Mr. Guillianio Saturnillia, Head Audit and Criminal Investigation Department

Mr. Arno Peels, Acting Secretary General Ministry of Finance

Mrs. Sherry Hazel, Head Receiver

Mrs. Wideke Vijverberg, Program manager BAK

Mrs. Angela Dekkers, USONA Sint Maarten

Mrs. Lucy Gibbes-Richardson, Head Economic Affairs, Transport and Telecommunication

Mr. Miguel de Weever, Secretary-General a.i., Ministry Tourism, Economic Affairs,
Transport and Telecommunication

Mr. Jaap Duinkerker, Policy Officer,

Ministry Tourism, Economic Affairs, Transport and Telecommunication

LITERATURE

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Presentation working visit of the Governor, 23 October 2012

Presentation NVAB Conference, 7 May 2013

Presentation PEFA

ABBREVIATIONS

BES	Bonaire, Sint Eustatius and Saba
CoC	Chamber of Commerce
Lv AR	Landsverordening Algemene Rekenkamer (<i>National Ordinance General Audit Chamber</i>)
NBDSXM	Nieuwe Belastingdienst Sint Maarten (<i>New Tax Department Sint Maarten</i>)
SG	Secretary General
SMART+C	Specific, Measurable, Agreed upon, Realistic, Time-based and Consistent
TOR	Terms of Reference



General Audit Chamber

Algemene Rekenkamer