

# Wastewater levy Bonaire – An update for hotels and restaurants



Bonaire is known for its beautiful underwater world and is considered a paradise for divers. To help protect this paradise, the Island Ordinance Wastewater Levy Bonaire 2021 (in Dutch: 'Eilandsverordening afvalwaterheffing Bonaire 2021') was introduced in 2021. This island ordinance contained the framework for the Island Ordinance Wastewater Levy Bonaire 2023, based on which the Bonaire authorities can actually levy taxes to help fund the management of wastewater. This makes it possible to have residents of and companies and institutions on Bonaire contribute to the costs of the collection, transport, purification, and disposal of wastewater. The introduction of a wastewater levy was a condition of the European Commission for granting subsidies to Bonaire for the construction of the sewage system and wastewater treatment plant.

According to the Island Ordinance Wastewater Levy Bonaire 2023, the management of wastewater is a duty of care for citizens, companies, and institutions within the assigned areas. These must pay an annual fee of 30 dollars per connection to the drinking water network and 30 dollars per plot connected to the sewage system. In addition, if accommodation is offered in a guest room or food is prepared for sale, an additional 600 dollars per room or kitchen must be paid annually. This additional levy mainly applies to hotels and restaurants and the underlying idea of the Bonaire authorities is that large wastewater dischargers have to contribute accordingly, and the levy could be (partly) passed on to tourists. This way the increase in the cost of living for households on Bonaire can be limited.

However, many hotel and restaurant owners were not pleased by this high additional levy and several of them therefore went to court together with the Bonaire Hotel and Tourism Association (Bonhata), that looks after their interests. They argued that the new wastewater ordinance is in violation of the Finance Act of Public Entities Bonaire, Sint Eustatius and Saba (in Dutch: 'Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba'), international treaties and the principles of equality and proportionality. They primarily demanded that the new wastewater ordinance be declared wholly or partly non-binding. In a prior court proceeding, the commencement date of this new wastewater ordinance was already adjusted by the government of Bonaire from January 1, 2023 to October 1, 2023.



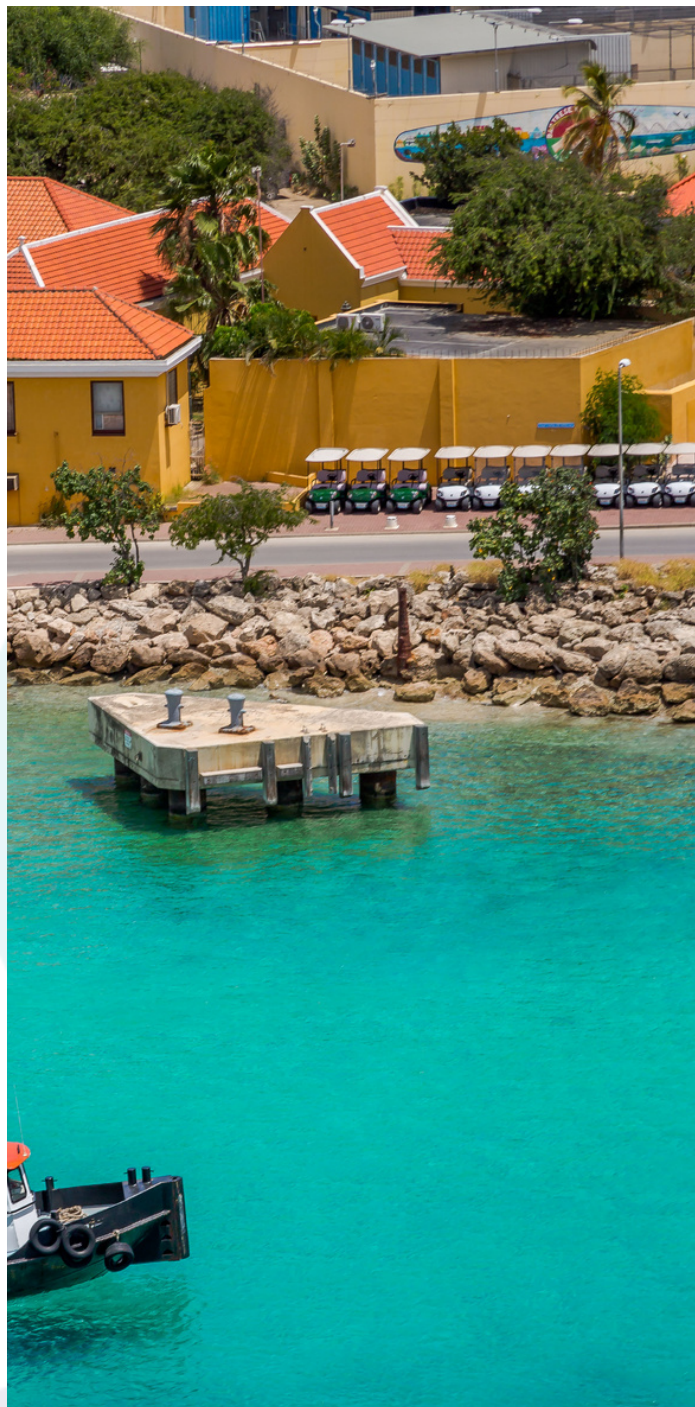


On August 9, 2023 the Court ruled (in ECLI:NL:OGEABES:2023:14) in favor of Bonhata and co-plaintiffs and agreed with the statement that the additional levy in the new wastewater ordinance is not in accordance with the purpose of the specially amended article 57a of the Finance Act of Public Entities Bonaire, Sint Eustatius, and Saba. In the explanatory notes to the amendment to the Finance Act of Public Entities Bonaire, Sint Eustatius, and Saba, it is explicitly stated that the principles of equality and proportionality must be taken into account in case of any differentiation of the levy base and rate. This means that only if the composition or quantity of the wastewater deviates sufficiently, differentiation in levy base or rate is justified.

After examination the Court concluded that there are no such justifications of sufficient weight in this case. After all, the composition and quantity of wastewater from hotels and restaurants do not significantly differ from that of a household that justifies the tenfold increase of the rate. Additionally, no research has been conducted by the government of Bonaire to prove the contrary. Limiting the increase in the cost of living for households on Bonaire and the reasoning that mainly tourists benefit from protecting the coral are also no valid justifications for differentiation based on article 57a of the Finance Act of Public Entities Bonaire, Sint Eustatius, and Saba.

The additional levy for hotels and restaurants is therefore not in accordance with the principle of equality and article 57a of the Finance Act of Public Entities Bonaire, Sint Eustatius, and Saba as well. The Court declared the concerning legal provisions to be non-binding and to never have been binding, which means that the Island Ordinance Wastewater Levy Bonaire 2023 will enter into force on October 1, 2023, without these provisions.

Currently, the government of Bonaire wants to talk with hotel and restaurant owners to find a solution together. If that attempt fails, the government will consider appealing to the decision of the Court.



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