



TAX LAWYERS
AND TAX
CONSULTANTS

The Netherlands Antilles

Private Limited Liability Company *

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1 Introduction

The public limited liability company (*naamloze vennootschap* or: the “N.V.”) and the private limited liability company (*besloten vennootschap* or: the “B.V.”) are the most common legal vehicles for business operations in the Netherlands Antilles. In this memorandum we will discuss the characteristics of the B.V., more specifically the fiscal consequences of the B.V.

The B.V. has the following characteristics:

- a. The incorporation can be done quickly and without many formalities. There is no need for a Ministerial Declaration of No Objection. Solely a notarial Deed of Incorporation is required.
- b. The B.V. does not have any minimum capital requirements.
- c. The Deed of Incorporation of the B.V. can be stated in any language. In case of a language other than Dutch and English, a certified translation will be annexed to the Deed of Incorporation.
- d. Shares may, but do not necessarily have a nominal value. Non- or limited voting right shares and shares that do not, or partly, give right to profits, are permitted.
- e. Bearer shares are not allowed; there are only registered shares. At all times a shareholders’ register shall be kept by the Management Board of the B.V.
- f. The management structure is flexible and is similar to Anglo American concepts. Aside from a Management Board being appointed by the shareholders, as is customary in the Netherlands Antilles, it is possible to have a General Board of Directors and an Executive Board of Directors. The General Board, inter alia, will in this structure appoint and supervise the executive Board of Directors. The executive Board has a similar role as the Anglo American *executive officers*. If so desired, it is possible to have shareholder-management, which means there is no need for a separate board of directors. The shareholders themselves will then perform director’s duties.
- g. Directors are liable for improper performance of duties. Such liability exists for all involved directors in respect of the general course of business, while each director can excuse himself by proving that considering his particular scope of activities, he cannot be blamed in a particular matter.
- h. Any and all shareholders whose interests are being prejudiced, can request for a court order to the effect that its shares are being purchased by its co-shareholder(s).



- i. The B.V. can be converted into a traditional N.V. and vice versa. There is a possibility for legal mergers, i.e. a merger in which both companies, by way of law, merge into one company.
- j. The B.V. must prepare financial statements within 8 months of the end of the financial year. The shareholders are entitled to inspect the financial statements within a period of two years. There is no obligation to publish financial statements.
- k. The B.V., when it qualifies as an exempt B.V., is not subject to Netherlands Antilles Profit or Dividend Withholding Tax.

2 Fiscal consequences

2.1 General tax regime

2.1.1 Profit tax

The B.V. is, in principle, subject to Profit Tax as any other taxable entity. The profit tax rate is 34.5% flat (consisting of a 30% Profit Tax rate and 15% Island Surtax), which is applicable to all taxpayers. Beside this standard rate, the low off-shore rates of 2.4% - 3% are applicable for (old) off-shore companies.

2.1.2 Participation exemption

The Profit Tax Ordinance (PTO) grants an exemption from Profit Tax in respect of benefits (dividends and capital gains) arising from a qualifying participation. Expenses incurred in connection with a qualifying participation (including capital losses) are not deductible, unless it can be demonstrated that these expenses are indirectly incurred with respect to the realization of profit that is subject to tax in the Netherlands Antilles.

With regard to the scope of the exemption, a distinction should be made between a *foreign qualifying participation* and a *domestic qualifying participation*. A full exemption from Profit Tax is applicable for benefits received/realized in connection with a domestic participation. If the benefit is received/realized in connection with a foreign participation, the exemption from Profit Tax is limited to 95% of the benefits. The remaining 5% is subject to the standard Profit Tax rate (34.5%). In this context, the exempt B.V. is considered to be a foreign participation.

A qualifying participation is defined as an interest of 5% of the paid-in share capital (or voting rights or profit certificates) of a company. An interest which does not meet this criterion may nevertheless be considered a qualifying participation if the acquisition price of the interest amounts to at least ANG 1,000,000 (approximately USD 562,000).





2.2 Exempt B.V.

2.2.1 Requirements

The B.V. may request to be subject to tax against a rate of 0%, provided that the following criteria will be met:

- a. A request to be subject to the 0% rate should be filed with the tax inspector.

The approval of the tax inspector will be applicable for the financial year of the company following the year in which the request is filed. If it is intended that the 0% rate is applicable upon the incorporation of the B.V., a request thereto needs to be filed prior to or **within three months after the incorporation** of the B.V.

- b. The Board of Managing Directors of the B.V. should maintain a register with the names and addresses of all ultimate beneficiaries of the B.V. that (indirectly) hold more than 10% interest in the B.V.
- c. The Board of Managing Directors may consist only of individuals residing in the Netherlands Antilles or certified trust companies residing in the Netherlands Antilles and their directors or employees. The Minister of Finance will publish the conditions that need to be met to qualify as a certified trust company.
- d. The Board of Managing Directors shall annually prepare financial statements on which an independent expert gives an unqualified audit opinion.
- e. The purpose of the B.V. and its actual activities exclusively or nearly exclusively consist of investments in:
 - (i) debt instruments; and/or
 - (ii) securities; and/or
 - (iii) deposits.
- f. The B.V. is not a bank or other financial institution being subject to the supervision of the Bank of the Netherlands Antilles.

2.2.2 Residency for tax treaty purposes

Since the exempt B.V. is not liable to tax by reason of domicile, residence, place of management or any other criteria of similar nature, the company is not a resident as defined in the OECD model double taxation convention. Therefore, the company will not be entitled to protection from source country tax for income from other countries under tax treaties.



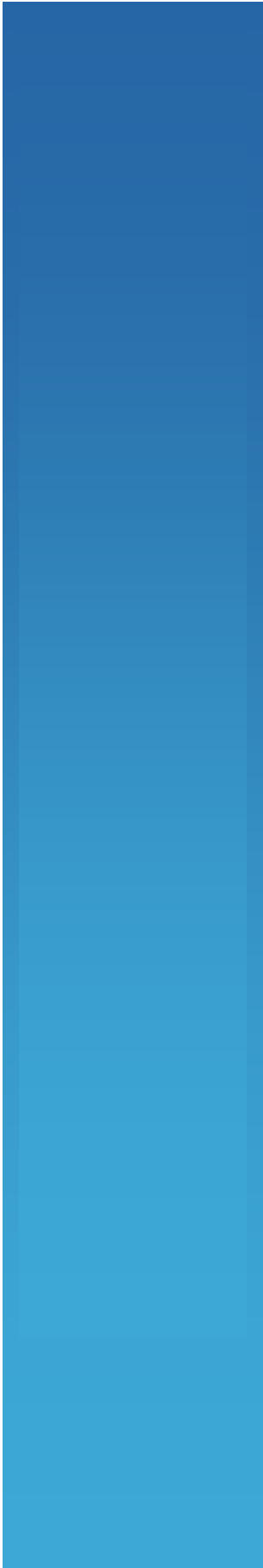
2.3 Change of regime

The possibility exists for an exempt B.V. to become a normally taxed company and vice versa. If an exempt B.V. makes a request thereto, the tax inspector will consider the company as a normally taxed company as from the year following the year in which such request was filed. If, however, a tax exempt B.V. no longer meets (one or more of) the aforementioned criteria, the exempt status is lost from the beginning of the year in which the criteria are no longer met.

For Profit Tax purposes the change of regime by an exempt B.V. into a normally taxed company and vice versa, is considered a dissolution of the company whereupon the capital of the company is considered distributed to its shareholders, deemed to be followed by a contribution of capital by the shareholders. There is no capital tax in the Netherlands Antilles.

3 Conclusion

The B.V. is an internationally competitive corporate entity. Due to the great flexibility of the B.V. in respect of capitalization and management, it has shown to be useful in international investment structures.



This memorandum has been compiled as accurate and careful as possible, based on available information at the abovementioned date, and is meant only as a general guideline. We do not accept any responsibility for actions taken, based on the contents of this memorandum, without additional professional advice.

If you would like to learn more or if you have questions or remarks with respect to the contents of this memorandum you can of course contact one of the tax advisors of PricewaterhouseCoopers Netherlands Antilles or send an e-mail to info@an.pwc.com

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