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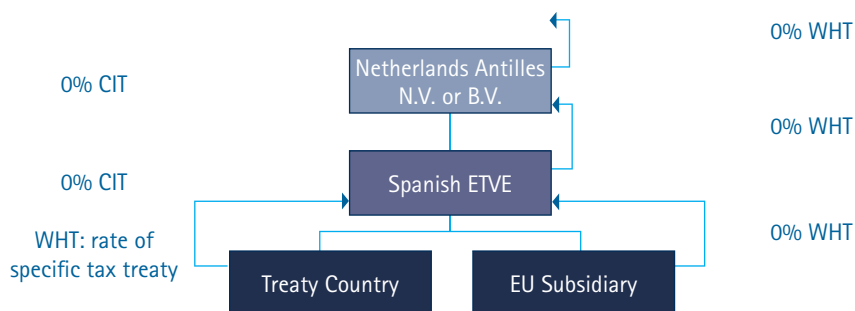
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Spain – Netherlands Antilles Route

Spain recently removed the Netherlands Antilles from its list of tax havens (the 'blacklist'). This opens new opportunities to provide efficient distribution channels for dividends and capital gains to anywhere in the world without (further) income or withholding taxation. The structure applies to distributions from subsidiaries resident in the EU or countries with a double income taxation agreement with Spain.

The structure blends the multiple benefits from Spain's (ETVE) holding company regime, its large double income tax treaty network, the EU Parent - Subsidiary Directive, and the Netherlands Antilles limited liability company (the N.V. and B.V.). This generates an efficient exit route with zero income or withholding taxation in the countries mentioned.





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This structure, illustrated above, may provide the following main benefits:

- No withholding taxation from EU resident subsidiaries to the Spanish ETVE entity (qualifications apply);
- Neither income nor withholding taxation is applied to dividends and capital gains received by the ETVE;
- Dividends and capital gains received by the Netherlands Antilles N.V. obtain a 100% participation exemption from the applicable local income taxation based on new Netherlands Antilles corporate income tax legislation.
- The Netherlands Antilles does not impose withholding taxation on distributions of dividends regardless of the destination.

The tax benefits of this structure (0% taxation) provide a marked improvement over the classic Netherlands – Netherlands Antilles route ('the Dutch Sandwich') which is subject to 8.3% withholding tax in the Netherlands.

The solution to avoid the 8.3% withholding tax in the Netherlands is to reroute the flow of dividends. This can be easily achieved by transferring the place of effective management of the Dutch B.V. to Spain and apply in Spain for the ETVE regime. Then the Spain – Netherlands Antilles route can be used (0%). Amicorp can assist in transferring the Dutch B.V. to Spain, apply for the ETVE regime and implement the Spain – Netherlands Antilles route.

Spanish ETVE Regime

A Spanish holding company (ETVE) is actually a regular Spanish company (a Spanish S.L. or S.A.) that qualifies for holding company treatment.

Often the most desirable entity for a holding company is the private limited liability company (S.L.). Like any other limited company, it provides limited liability, requires a minimum level of capital (€3,006) and is more commercially flexible than the alternative public company version, the S.A.

ETVE registered entities must have registered shares (i.e., no bearer shares). The ETVE regime exempts dividends and capital gains received in the Spanish entity from income provided that certain conditions are met:

- **Minimum participation:** The foreign subsidiary equity participation must be at least 5%, (direct or indirect) or have an acquisition value of more than 6 million Euros.
- **Holding period:** The foreign participation must be held uninterrupted for at least 1 year. This may include a related entity holding period, if consecutive.
- **Sale of shares:** Capital gains from the sale of subsidiary shares to buyers not located in tax havens (determined under Spanish rules) are exempt from tax. The alternative is taxable at 18%.
- **Income:** Dividends and capital gains may be excluded from the income tax base. All other income sources (e.g., interest) are subject to taxation at ordinary Spanish corporate income tax rates.



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- **Tax regime of the foreign subsidiary:** Foreign subsidiaries must be subject to a tax regime analogous to the Spanish tax regime. This is 'de facto' for all Spanish double income tax treaty partners.
- **Activities of the foreign subsidiary:** At least 85% of the foreign subsidiary's income must derive from the exercise of an active trade or business. Dividend and capital gain income from second or lower tier subsidiaries, engaged in active business, may qualify provided all requirements are met.
- **Human and material resources:** the ETVE must have the human and material resources needed to manage subsidiaries

Netherlands Antilles

In the last week of 2009 the Minister of Finance of the Netherlands Antilles signed a decree to amend the profit tax legislation in the Netherlands Antilles. These amendments to the Profit Tax Ordinance were already approved by the parliament in September 2009 and have entered into force retroactively as of January 1, 2009.

Under the old legislation a 100% exemption applied to income (dividends and capital gains) from participations in Netherlands Antilles companies and from participations of at least 25% in Dutch companies, whereas a 95% exemption applied to participations in companies in third countries, participations of less than 25% in Dutch companies, as well as participations in Netherlands Antilles exempt companies. Under the new legislation the distinction between the participation exemption of 100% and the participation exempt of 95% is abolished. The 100% participation exemption will apply to all qualifying participations held by Netherlands Antilles companies (N.V. or B.V.) regardless of the residence of the company in which the participation is held. The purchase price paid by a company for own shares, liquidation proceeds, repayment of paid-up capital and distributions of bonus shares are not considered dividends. Capital gains derived from qualifying participations will be 100% tax-exempt. The 100% participation exemption will also apply to income derived from permanent establishments outside the Netherlands Antilles.

In order to qualify for the 100% participation exemption qualifying participations (at least 5% or, if less than 5%, a minimum cost price of USD 500,000) must be subject to a nominal profit tax rate of at least 10%, which is the case in Spain.



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Retroactively as per January 1, 2009, the Netherlands Antilles N.V. and B.V. provide a 100% participation exemption for distributions received from Spain. The distribution of all types of income from the Netherlands Antilles to any jurisdiction in the world is not subject to taxation. The resulting effective tax rate in this structure is 0%.

Often, a Netherlands Antilles N.V. or B.V. is used for asset holding (e.g., real estate), trading, shipping or royalty licensing companies.

Highlights of the Netherlands Antilles N.V. and B.V. include:

- The flexible corporate laws permit the Articles of Association to provide for a variety of investment structure alternatives.
- There is no minimum capital requirement, however; the company's equity may not be negative at the time of incorporation or when initiating distributions to the shareholder(s).
- A Netherlands Antilles N.V. or B.V. may:
 - be changed into different entity forms and even move cross-border (i.e., transfer of statutory seat, redomiciliation);
 - merge with other comparable companies, including cross-border (forward or reverse) mergers;
 - split off or spin off assets / businesses to comparable companies, including cross-border.
(Note: cross-border mergers and conversions are only possible if the laws of the other jurisdiction also permit such mergers and conversions).
- There is no requirement to publish or audit the annual accounts of a N.V. or B.V., provided the N.V. is not deemed a 'Large N.V.' (companies managed by Amicorp do generally not fall under such classification).

Conclusion

The removal of the Netherlands Antilles off the Spanish blacklist should permit the use of more efficient holding structures for distributing income from EU and Spanish Treaty countries. Connected to the tax benefits of the Netherlands Antilles, investors worldwide may safely hold and retrieve their investments while carrying only a minimum of distribution taxation.

For more detailed information on the Spain – Netherlands Antilles Route or to discuss your personal needs in this area, please contact your nearest Amicorp Office or contact:

Juan Navarro
Amicorp Curaçao
j.navarro@amicorp.com

Gerard Garcia-Gassull
Amicorp Espana
g.garcia-gassull@amicorp.com



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- Spain – Netherlands Antilles Route

Amicorp offices

EUROPE

Amicorp Baltic UAB
Konstitucijos ave. 7
24th floor
LT-09308 Vilnius
Lithuania
Tel.: +370 5248 7532
Fax.: +370 5248 75350
Email: vilnius@amicorp.com

Amicorp (Cyprus) Ltd.
1 Avlonos street
Maria House
Nicosia 1075
Cyprus
Tel.: +357 22 504 000
Fax.: +357 22 504 100
E-mail: cyprus@amicorp.com
Post address
PO Box 23293
Nicosia 1680
Cyprus

Amicorp de España, S.L.
Paseo de Gracia 21, 4º 1ª
Barcelona 08007
Spain
Tel.: +34 93 241 7563
Fax.: +34 93 241 7564
E-mail: barcelona@amicorp.com

Amicorp Luxembourg SA
47, Boulevard Royal
L-2449 Luxembourg
Grand Duchy of Luxembourg
Tel.: +352 26 27 43
Fax.: +352 26 27 43 50
E-mail: luxembourg@amicorp.com

Amicorp Netherlands B.V.
WTC Amsterdam, Tower C-11
Strawinskylaan 1143
1077 XX Amsterdam
The Netherlands
Tel.: +31 20 578 8388
Fax.: +31 20 578 8389
E-mail: netherlands@amicorp.com

Amicorp Switzerland AG
Zug Representative Office
Baarerstrasse 75
6300 Zug
Switzerland
Tel.: +41 41 712 1355
Fax.: +41 41 712 1356
Email: switzerland@amicorp.com

Amicorp Switzerland AG
Zollikerstrasse 164
CH-8008 Zurich
Switzerland
Tel.: +41 44 252 0880
Fax.: +41 44 252 0881
Email: switzerland@amicorp.com

Amicorp (UK) Limited
3rd Floor
5 Lloyds Avenue
London
EC3N 3AE
Tel.: +44 207 977 1250
Fax.: +44 207 977 1251
E-mail: london@amicorp.com

THE AMERICAS

Amicorp Americas LLC, Agencia en Chile,
(Representative Office)
Augusto Leguía Norte 100, Of. 712
Las Condes
Santiago, Chile
Tel.: +56 2 570 5650
Fax.: +56 2 570 5669
E-mail: santiago@amicorp.com

Amicorp Argentina S.A.
Torre Chacofi
25 de Mayo 555, Piso 22 C1002ABK
Buenos Aires
Argentina
Tel.: +54 (11) 4311 2090
Fax.: +54 (11) 4314 4978
Email: argentina@amicorp.com

Amicorp Barbados Ltd.
Carleton Court, 2nd Floor
High Street, Bridgetown
Barbados
BB11128
Tel.: +1 (246) 228 5363
Fax.: +1 (246) 228 5981
E-mail: barbados@amicorp.com

Amicorp do Brasil Ltda.
Rio de Janeiro Representative Office
Rua Lauro Müller 116
31 Andar, sala 3104
Edifício Torre do Rio Sul
22290-160, Botafogo
Rio de Janeiro - RJ
Tel.: +55 21 2295 7525
Fax.: +55 21 2295 7948
E-mail: riodejaneiro@amicorp.com

Amicorp do Brasil Ltda.
Rua Helena 260
14 Andar-conj. 141, Villa Olímpia
04552-050 São Paulo - SP
Brazil
Tel.: +55 11 3049 3454
Fax.: +55 11 3049 3455
E-mail: saopaulo@amicorp.com

Amicorp BVI Limited
2nd Floor Marcy Building
Purcell Estate
P.O. Box 2416, Road Town
Tortola
British Virgin Islands
Tel.: +1 284 494 2565
Fax.: +1 284 494 2552
E-mail: bvi@amicorp.com

Amicorp Curaçao B.V.
Pareraweg 45
P.O. Box 4914, Curaçao
Netherlands Antilles
Tel.: +599-9 434 3500
Fax.: +599-9 434 3533
E-mail: curacao@amicorp.com

Amicorp Mexico
Mexico Representative Office
Edificio Torre Esmeralda III
Blvd. Manuel Ávila Camacho
No. 32, Piso 4
Col. Lomas de Chapultepec
11000 México, D.F.
Tel.: +52 55 5202 5999
Fax.: +52 55 5202 1004
E-mail: mexico@amicorp.com

Amicorp Services Ltd.
Miami Representative Office
Brickell Bay Office Tower
1001 Brickell Bay Drive
Suite 2310
Miami, Florida 33131
U.S.A.
Tel.: +1 305 416 4730
Fax.: +1 305 416 4738
E-mail: miami@amicorp.com

Amicorp Services Ltd.
New York Representative Office
641 Lexington Avenue
Suite 1504
New York, NY 10022
U.S.A.
Tel.: +1 212 752 3267
Fax.: +1 212 634 6305
E-mail: newyork@amicorp.com

ASIA/PACIFIC

Amicorp Advisory Services Pvt. Ltd.
1907 - 19th Floor
World Trade Centre - Centre 1
Cuffe Parade
Mumbai 400 005
India
Tel.: +91 22 2216 6783
Fax.: +91 22 2216 6784
E-mail: mumbai@amicorp.com

Amicorp (Shanghai) Consultants Ltd.
3108 United Plaza
Shanghai 200040
1468 Nanjing Road West
Jing'an District
Shanghai 200040
P.R. China
Tel.: +86 21 6289 6665
Fax.: +86 21 6289 6697
E-mail: shanghai@amicorp.com

Amicorp Hong Kong Limited
Suites 1306-07
13th Floor, ING Tower
308 Des Voeux Road Central
Hong Kong
Tel.: +852 3105 9882
Fax.: +852 3105 9883
E-mail: hongkong@amicorp.com

Amicorp Management India Private Ltd.
1st Floor, RMZ Titanium
135, Old Airport Road
Bangalore 560017
India
Tel.: +91 80 4005 4900
Fax.: +91 80 4005 4906
E-mail: bangalore@amicorp.com

Amicorp New Zealand Ltd.
Unit C3
17 Corinthian Drive
North Shore City 0752
Auckland
New Zealand
Tel.: +64 9 414 4614
Fax.: +64 9 414 4362
E-mail: newzealand@amicorp.com
Post address
PO Box 300125
North Shore City 0752
Auckland
New Zealand

Amicorp Singapore Pte. Ltd.
55 Market Street
#09-02
Singapore 048941
Tel.: +65 6532 2902
Fax.: +65 6534 1244
E-mail: singapore@amicorp.com