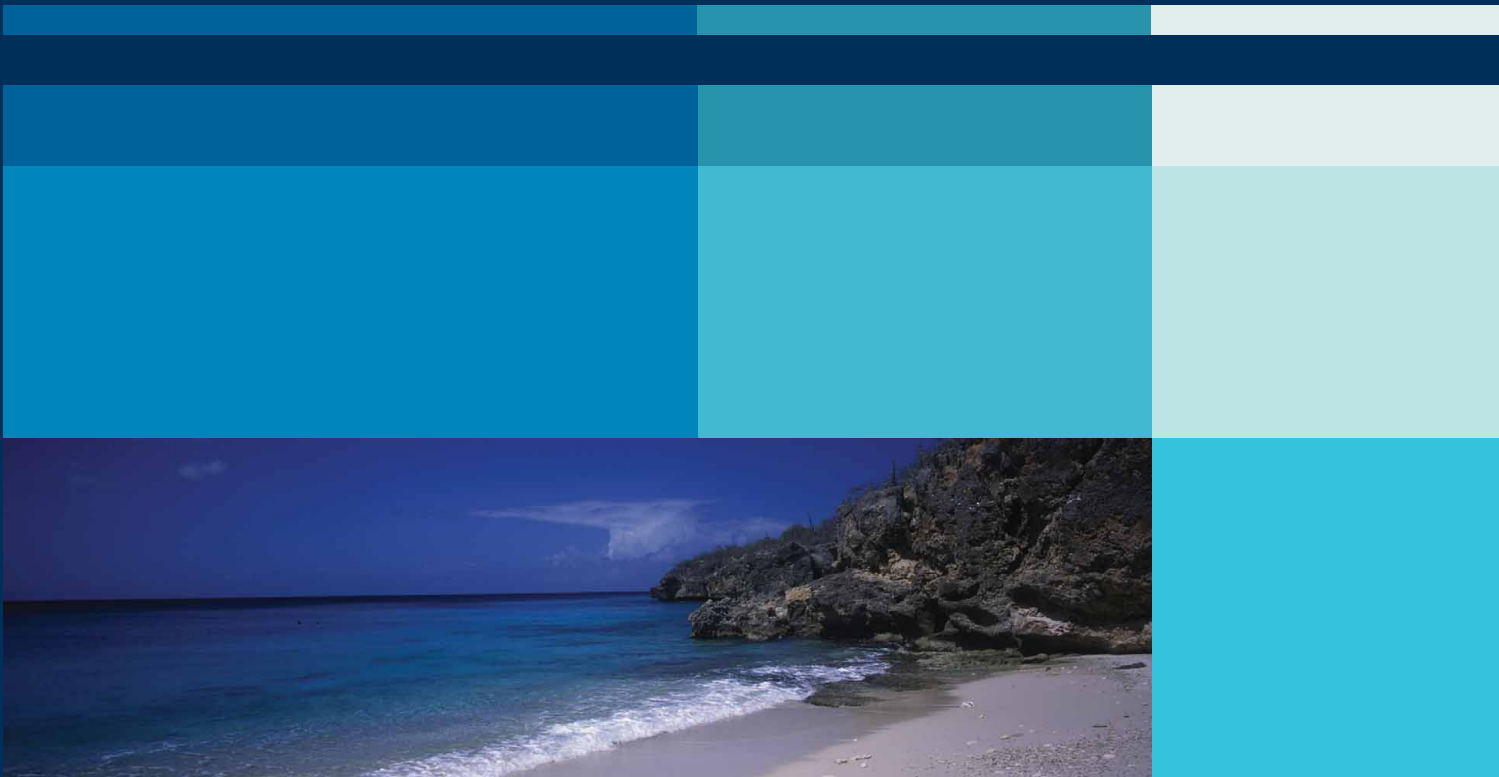


# Amicorp Group

## Netherlands Antilles

Management, administration, fiduciary, consulting, business process outsourcing and corporate structuring services





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## The Amicorp Group

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The Amicorp Group (Amicorp) is a financial service company specialized in providing corporate and trust management services, private wealth and estate planning, corporate, asset and project finance structuring and Business Process Outsourcing services. Amicorp delivers responsive administrative, legal, corporate and fiduciary structuring services to a broad range of corporate and individual clients.

We are committed to providing a non-competing environment of trust and integrity with the professional intermediaries who usually play a major role in the business efforts of clients. We understand and anticipate the needs of our professional intermediaries and work hand-in-hand to deliver the best possible solutions. We work to achieve this by thoroughly studying the different markets in which we are active.

In most cases, we work directly with client intermediaries such as lawyers, accountants, private bankers and other advisors. However, our clients include high net worth individuals, publicly and privately





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held companies, pension funds, start-up operations, partnerships and trusts. We solidly protect their interests through diversification of risk, maintaining a conservative financial profile, and by providing the peace of mind that comes from dependable and loyal client relationships.

Clients with international operations and investments benefit from the support of our proactive and result-driven professional team in the design and implementation of creative and innovative strategic corporate solutions to meet the challenges of today's complex international business environment. We work exclusively in politically stable environments to ensure the security and practical results required by our clients.

Mutual trust and in-depth understanding of our client's business needs are essential for developing personal and long-term relationships between them and our account management teams. Our strength is founded on our commitment to providing top quality and unsurpassed service. We believe that high quality is about much more than delivering the agreed services at the agreed time. We believe that close collaboration with our clients is essential to successful management of their overall business processes and to providing insight into their developing and dynamic business environment.

Commitment to excellence, supported by ongoing investment in technology and specialist human resources, enables us to continually update and improve our range of service and product offerings, and optimize the processes in which they are executed. We ensure that each client receives exactly what they need in the most timely and cost-effective manner, coupled with ongoing follow-up, quality end results, and a rapid response to all inquiries and requests.

We develop new structuring options and investigate new markets on a constant basis in order to provide our clients with the most up-to-date information and present them with new opportunities as they arise. Internal Product Focus Groups, consisting of our most knowledgeable experts in each segment, work together with our regional Market Coordinators and play a major role in providing information and details on current and developing opportunities to our clients. These Groups and Coordinators, coupled with our internal systems, provide Amicorp team members with immediate notice of and access to any changes in legislation or corporate governance initiatives that may benefit or hinder our clients.



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Our worldwide team of professionals comprises over 300 specialists from 25 countries that contribute with a wide range of expertise and experience. They include Attorneys, Certified Public Accountants and bankers – many of whom are members of national and international fiscal and legal bar associations.

Amicorp is wholly independent and privately owned. This eliminates the risk of any conflicts of interest arising from the cross-selling of audit, investment, legal and tax advisory services. As a fully integrated company rather than a partnership, we provide our clients with strong central direction and integrated, unbiased teamwork between our worldwide networks of offices located in:

Barbados, Brazil, British Virgin Islands, Chile, China, Cyprus, Hong Kong, India, Lithuania, Luxembourg, Mexico, New Zealand, Singapore, Spain, Switzerland, The Netherlands, The Netherlands Antilles, United Kingdom and the United States of America.

Our supporting offices are located in Anguilla, the Bahamas, Belgium, the Cayman Islands, Denmark Madeira, Malaysia, and Sweden.

*Please note: Amicorp does not provide tax-consulting or asset management services. Each potential client is recommended to obtain tax advice in each jurisdiction where he or she will be active. Amicorp regularly refers and liaises with both legal and tax experts in all our operation jurisdictions.*





# The Amicorp Group

<a href="#">The Netherlands Antilles</a>	<a href="#">Page 8</a>
<a href="#">The "Dutch Sandwich" and Other Structures</a>	<a href="#">Page 10</a>
Holding Structures	Page 10
Finance Structures	Page 12
Royalty Structures	Page 12
Holding & Finance Structures Combined	Page 13
Investment:	Page 14
Repatriation of Untaxed Income	Page 14
Repatriation of 'offshore' income:	Page 15
<a href="#">The Sweden - Netherlands Antilles Holding Structure</a>	<a href="#">Page 16</a>
Dividend Distributions from Sweden to The Netherlands Antilles	Page 16
Swedish Income Tax on Dividends Received	Page 17
Swedish Controlled Foreign Corporation (CFC) Rules	Page 17
Swedish Withholding Tax on Dividends Distributed	Page 17
Swedish Capital Gains Taxes Regarding a Sale of Shares/Liquidation	Page 18
Netherlands Antilles Income Tax on Dividends Received	Page 18
Netherlands Antilles Withholding Tax on Dividends Distributed	Page 19
<a href="#">Services of Amicorp Curaçao N.V.</a>	<a href="#">Page 20</a>
<a href="#">Legal Entities in The Netherlands Antilles</a>	<a href="#">Page 21</a>
The Netherlands Antilles 'Naamloze Vennootschap' (N.A N.V.)	Page 21
The Netherlands Antilles 'Besloten Vennootschap' (N.A B.V.)	Page 24
The Netherlands Antilles 'Stichting' (Foundation)	Page 26
The Netherlands Antilles 'Stichting Particulier Fonds' (Private Foundation or SPF)	Page 26
<a href="#">Taxation in The Netherlands Antilles</a>	<a href="#">Page 31</a>
Introduction	Page 31
The Netherlands Antilles New Fiscal Framework (NFR)	Page 32
Transition Rule	Page 32
Participation Exemption	Page 33
Flat Profit Tax Rate of 34.5%	Page 34
Netherlands Antilles Withholding Tax	Page 34
Netherlands Antilles 'Besloten Vennootschap' (N.A B.V.)	Page 34
Carry-Forward of Losses	Page 34
Mergers	Page 34
Fiscal Unity Treatment	Page 35
Ruling Policy	Page 35
Types of Model Ruling	Page 35
Supporting Activities Structure with a N.A N.V.	Page 36
Tax Rulings for Other Types of Income	Page 37
The Tax Arrangement for the Kingdom of The Netherlands (BRK)	Page 37
E-Zone Regulations in The Netherlands Antilles	Page 38
Structuring for E-Commerce in Curaçao	Page 39
Anti-Money Laundering and Anti-Terrorism Financing measures in The Netherlands Antilles	Page 40
<a href="#">Brochure - Terms of Use</a>	<a href="#">Page 42</a>

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## The Netherlands Antilles

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Since 1939, The Netherlands Antilles has been a major international financial centre and has become one of the preferred locations in the Caribbean for international tax planning and financial transactions.

The Netherlands Antilles is an autonomous country within the Kingdom of The Netherlands, with a legal system based on civil law, similar to the legal system in The Netherlands. The highest court for appeals is the Supreme Court in The Hague, The Netherlands.

The government is a parliamentary democracy. The Queen of the Kingdom of The Netherlands is the head of State and is represented by a Governor-General. The Netherlands Antilles is known for its stable political and legal climate. The standard of living in The Netherlands Antilles is one of the highest in the Caribbean, and the Central and South American region.

The main island of The Netherlands Antilles is Curaçao, located in the southern part of the Caribbean Sea, just north of Venezuela. Curaçao has a well-developed business infrastructure with many local and international banks, audit firms, tax consultants and legal advisors established on the island.

Over the past years The Netherlands Antilles has made the following significant revisions to its legal and tax regime:

- In the year 2000, a new legal entity was introduced, the Netherlands Antilles Besloten Vennootschap 'N.A. B.V.' (see page 23). This entity provides wide-ranging capabilities and flexibility as a corporate vehicle and for financial tax planning purposes.
- In 2001, The Netherlands Antilles revised its tax regime in order to clearly distinguish itself from non-tax compliant, shelter jurisdictions. The objective was to achieve full compliance with the guidelines set by the Organization for Economic Cooperation and Development (OECD) and the European Union. Both organizations discourage business relations with non-tax compliant jurisdictions and countries that provide unilateral preferential treatment to international businesses.
- In 2001, The Netherlands Antilles introduced a Civil Code comparable to that of The Netherlands which abolished or revised many outdated laws.
- Also in 2001, The Netherlands Antilles implemented national laws regulating electronic transactions and other issues related to E-Commerce, including electronic signatures.

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- In 2002, The Netherlands Antilles adopted legislation for the supervision of fiduciary services. As a result only specially licensed companies are allowed to perform management services in The Netherlands Antilles.
  - In 2003, new laws regulating the supervision of investment entities and fund administrators were effectuated.
  - In 2004, The Netherlands Antilles adopted new legislation for all legal entities which further enhanced the capabilities and flexibility of the legislation introduced in 2000 for the N.A. B.V. The legislation applies broadly to all Netherlands Antilles legal entities, such as the Netherlands Antilles Naamloze Vennootschap 'N.A. N.V.' (see page 21), the Foundation and the Private Foundation.

These legislative changes greatly differentiate The Netherlands Antilles from the non-tax compliant 'shelter' jurisdictions which are located in other parts of the Caribbean. The Netherlands Antilles is a highly suitable location for financing and other business activities not bound by a specific geographic location.



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## The "Dutch Sandwich" and Other Structures

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Under both The Netherlands Antilles New Fiscal Framework 'NFR', (see page 32), and the special tax arrangement for the Kingdom of The Netherlands 'BRK' (see page 38), beneficial tax planning opportunities are available using a combination of a Netherlands Antilles company and a Netherlands company.

Historically, The Netherlands has long played a key role in international tax planning. The Netherlands offers a wide range of facilities which allow non-resident corporate and individual clients a large range of tax advantages through its large and sophisticated tax treaty network and favourable internal tax regime. The most common international tax planning structures employing The Netherlands - Netherlands Antilles company combination are as follows:

### Holding Structures

A Netherlands Antilles company holds the shares of an intermediate holding company resident and established in The Netherlands, which in turn, holds the shares of subsidiary companies located outside The Netherlands. The tax burden on the income generated from these subsidiaries (i.e., dividends and capital gains) can be decreased largely due to:

- The Netherlands' large treaty network providing reduced withholding tax rates on dividends paid to a Netherlands holding company (i.e., withholding taxes on dividends distributions from an other EU member state can be reduced to zero under the EU Parent Subsidiary Directive);
- No Netherlands corporate income tax is payable on dividends received or capital gains realized on the (partial or complete) sale of shares, under certain conditions under the Netherlands participation exemption).

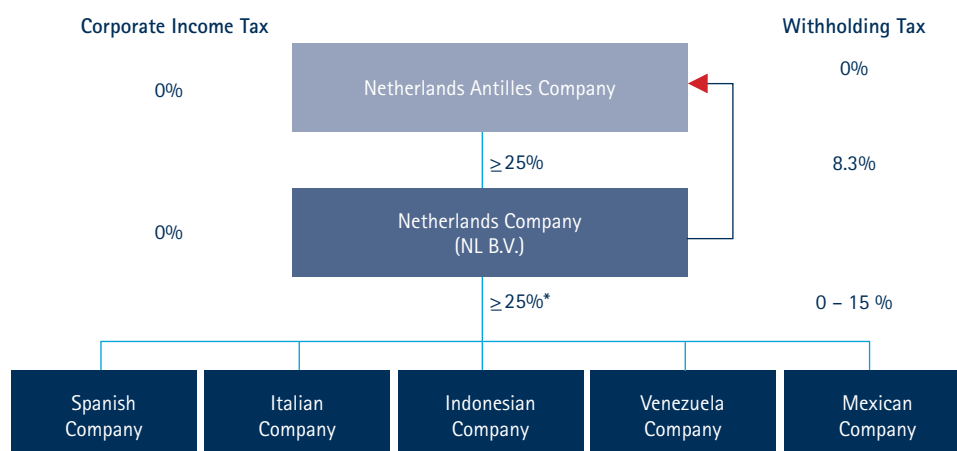
To obtain the benefits of the Netherlands participation exemption all of the following must be satisfied:

- The corporate (taxable) entity must hold at least 5% of the share capital of the subsidiary;
- The shares must not be held as inventory;
- The profits of the (foreign) subsidiary must be subject to an income tax of 10% in the State in which the profits were generated; and
- The shareholding should not be held as a passive portfolio investment.

Where the participation exemption applies, the following results are available:

- An 8.3% Netherlands withholding tax applies to dividend distributed to a Netherlands Antilles (corporate) shareholder, provided the Netherlands Antilles shareholder holds at least 25% of the shares (given certain conditions). The effective rate can be decreased in combination with intra group financing.
- Where dividends from a foreign subsidiary to a Netherlands intermediate holding company have been subject to foreign withholding tax, given certain conditions, a partial credit (up to 3%) on distributions will be granted against any Netherlands dividend withholding tax. In practice, this can reduce the Netherlands dividend withholding tax rate from 8.3% to 5.3% on distributions to the Netherlands Antilles.
- Income derived from Netherlands dividends is, under certain conditions, subject to a 100% participation exemption in The Netherlands Antilles. For capital gains, a 100% participation exemption is available as well.
- No withholding tax is due on dividends distributed from a Netherlands Antilles company.

The 'Dutch Sandwich' holding structure (involving a related Netherlands and Netherlands Antilles company) can be illustrated as follows:



\* For shareholdings from 25% no Dividend withholding tax applies from EU subsidiaries to NL parent company.

\* For shareholdings from 5% dividend income receives a full participation exemption in The Netherlands provided requirements are met.

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## Finance Structures

Intra-group financing can be accomplished through a Netherlands intermediate finance company. This company borrows monies from a Netherlands Antilles finance company for re-lending to other intra-group companies. Taxes to be paid on interest received and paid (with respect to the borrowed monies) can in most cases be reduced nearly to zero, due to:

- The large Netherlands treaty network, withholding taxes on interest distributed to The Netherlands often are decreased to zero.
- Interest paid can to a large extent be deducted from interest received. This leaves only a small spread in The Netherlands. This spread is taxed at the regular corporate income tax rate of (max. 25.5%).
  - (From 2007, The Netherlands graduate corporate income tax rates were reduced. For income up to Euro 25,000 the rate is now 20%, and for income between 25,000 and Euro 60,000 the rate is 23.5%. All Income over Euro 60,000 is taxed at a rate of 25.5 %.).
- The Netherlands does not levy any withholding tax on interest payments
- In The Netherlands Antilles, income tax can be reduced to a minimum by entering into a tax ruling with the tax inspector, leaving only a small interest spread subject to the regular corporate income tax rate of 34.5%.
- The Netherlands Antilles does not levy any withholding tax on interest payments.

## Royalty Structures

The cross-border flow of royalties for licensing intellectual property rights can be structured through a Netherlands royalty company. A Netherlands Antilles (corporate) license holder sub-licenses rights of patents, trademarks, or movie rights to a Netherlands company which re-licenses them to other companies. The tax benefits include:

- Through its large treaty network, royalties paid to The Netherlands company are subject to reduced withholding rates varying between 0-5% (in most cases)
- Royalties paid can to a large extent, be deducted from royalties received. Only a small spread remains in The Netherlands. This spread is taxed at the regular corporate income tax rate (maximally 25.5%).
- No withholding tax is payable on royalties paid by a Netherlands royalty company to a Netherlands Antilles company

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- In The Netherlands Antilles, income tax can be reduced to a minimum by entering into a tax ruling with the tax inspector, leaving only a small royalty spread subject to the regular corporate income tax rate of 34.5%
  - The Netherlands Antilles does not levy any withholding tax on outgoing royalty payments

As of April 1, 2001, companies resident in The Netherlands that are primarily (i.e., at least 70%) involved in back-to-back inter-company finance activities can obtain an advance tax ruling with the Netherlands tax inspector provided that various substance requirements are met and the transaction bears actual finance risk. Though advance tax rulings give certainty on the amount of taxes due, they are not required in order to establish and operate these transactions. These structures can be planned to engage in non-inter-company activities.

### Holding & Finance Structures Combined

The following structure shows a Netherlands Antilles N.V. that owns shares in both a Netherlands B.V. and a Netherlands Antilles tax exempt B.V. This structure may reduce the effective dividend withholding tax rate on dividends paid by the NL B.V. to the N.A. N.V. from 8.3% to a rate that is substantially lower (i.e., 2% to 4%).

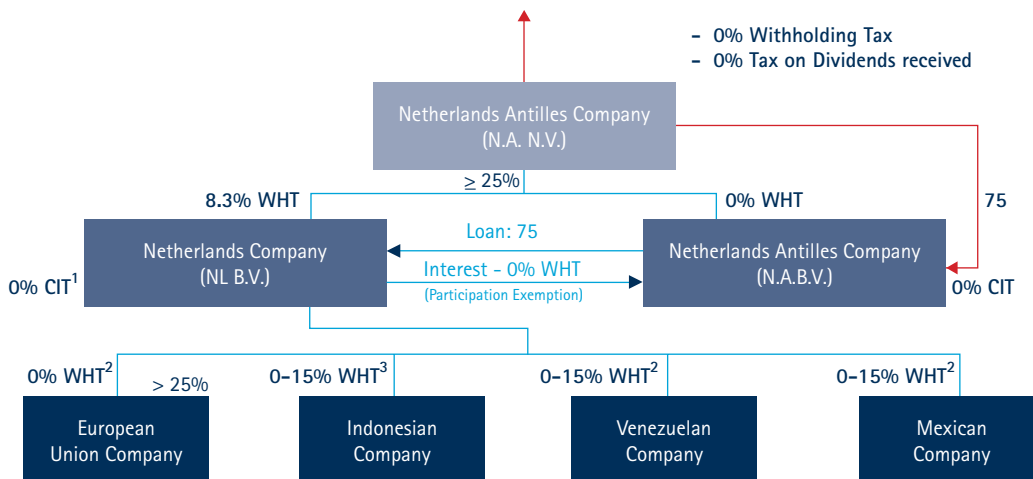




In 2004, The Netherlands has changed its thin capitalization rules. The amount of group related interest payments deductible for tax purposes in The Netherlands is now limited by a maximum debt-equity ratio of 3:1.

For example, if the N.A. N.V. capitalizes the Netherlands B.V. with an amount of 25, and capitalizes the N.A. B.V. with an amount of 75 the N.A. B.V. can subsequently lend the amount of 75 to the Netherlands B.V. at a market rate interest percentage (e.g., 6%). The Netherlands B.V. now has been founded with the debt-equity ratio of 3:1 (required for the application of the Netherlands participation exemption) and can invest the entire amount received into foreign participations.

**Investment:**



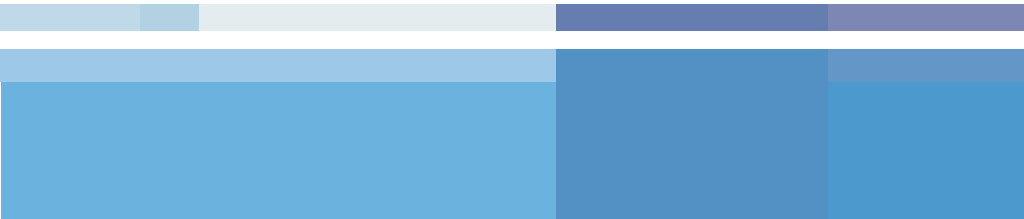
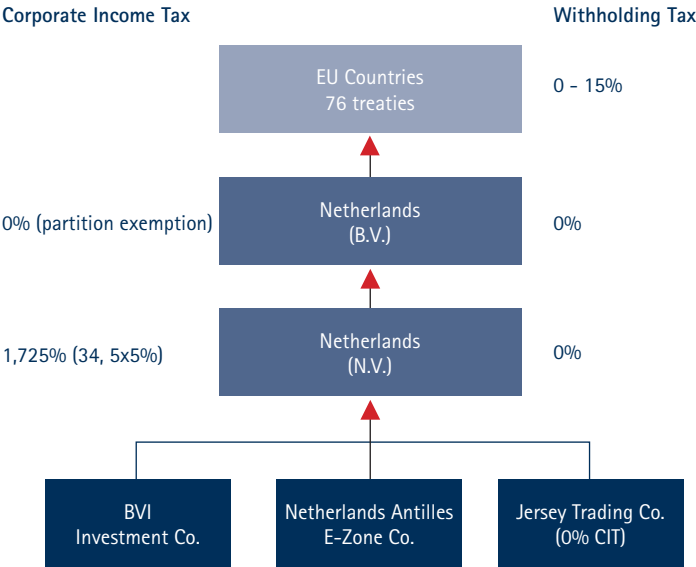
1 Participation exemption available for shareholding of >5%  
 2 Under EU Parent subsidiary Directive – conditions apply  
 3 Depending on specific Double Taxation Agreement

**Repatriation of Untaxed Income**

Since the introduction of the New Fiscal Framework, income derived from a zero or low tax jurisdictions can be repatriated to the E.U. (e.g., through The Netherlands) via The Netherlands Antilles, under certain conditions (e.g., the untaxed income stemming from group financing activities or consisting of portfolio income).



Repatriation of 'offshore' income:



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## The Sweden – Netherlands Antilles Holding Structure

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Sweden is a fully tax compliant jurisdiction with a very large global network of double tax treaties and has an advantageous company law. This provides Sweden with an excellent platform for the establishment of international holding structures. A Swedish holding company can provide the client with the following major advantages

- No taxation on dividends received from business shares<sup>1</sup>
- No withholding taxation on interest paid
- No capital gains taxation from sales of business shares
- Interest paid by the holding company is tax deductible
- No thin capitalization rules
- No tax on capital contributions and transfers and no stamp duty
- Losses may be carried forward indefinitely
- No prohibitions against trading with low tax jurisdictions

### Dividend Distributions from Sweden to The Netherlands Antilles

Swedish tax advisors are of the opinion that since the introduction of its New Fiscal Framework (i.e., imposing a corporate income tax rate of 34.5%) distributions from Sweden to The Netherlands Antilles



<sup>1</sup> All shares not listed on a stock exchange.



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qualify for the withholding tax exemption. The benefits of this route can reduce the tax burden beyond the Netherlands – Netherlands Antilles route. Amicorp has experience with this structure and can provide more information on request.

### Swedish Income Tax on Dividends Received

Dividends received by a Swedish company from a business-related subsidiary will be exempt from Swedish corporate income tax regardless of the level of shareholding and holding period. All non-listed shares are always considered business shares. For listed shares, the exemption requires at least 10% share ownership and a minimum holding period of 12 months.

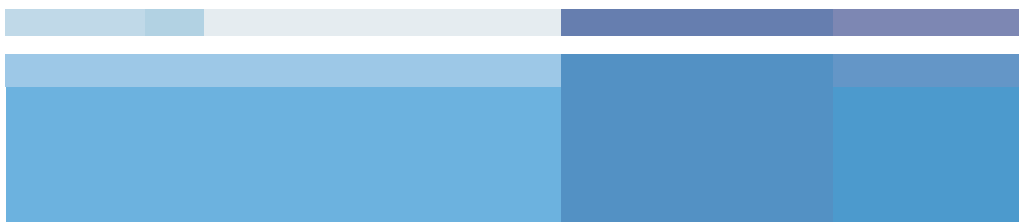
### Swedish Controlled Foreign Corporation (CFC) Rules

The Swedish CFC rules apply if the income of the participation is taxed under a low tax regime. The threshold for a 'low-tax' rate is below 15.4%. If the income is considered CFC income, the Swedish parent will be taxed in Sweden on its share of the CFC income.

Exposure to CFC rules is triggered by shareholdings, direct or indirect, of 25% or more of capital or voting rights in the foreign entity at the end of the shareholders' fiscal year. Tax liability occurs regardless whether the income has actually been distributed to the Swedish shareholder.

### Swedish Withholding Tax on Dividends Distributed

Dividends distributed from a Swedish company will be exempt from Swedish withholding tax of 30% provided the foreign receiver of the dividends is a company, taxable in its own jurisdiction in a manner similar to the taxation of dividends in Sweden. In general, this has been defined as an income tax rate of at least 15.4%.



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Normally, set conditions apply in jurisdictions with which Sweden has concluded a double income tax treaty and in all EU countries except for Cyprus. However, many other jurisdictions that have no treaty with Sweden are also allowed this benefit.

### Swedish Capital Gains Taxes Regarding a Sale of Shares/Liquidation

A Swedish company can realize capital gains without any capital gain taxation. Capital gains from the liquidation of business-related shares are exempt from corporate income tax. For publicly listed shares, the exemption requires at least 10% share ownership and a minimum holding period of 12 months. However, the tax exemption does not apply where the participation has been subject to the Swedish CFC rules.

### Netherlands Antilles Income Tax on Dividends Received

The New Fiscal Framework generally provides a 95%<sup>2</sup> participation exemption for dividend income derived from foreign sources (i.e., neither Netherlands nor Netherlands Antilles sourced). In addition, a 95%<sup>3</sup> participation exemption can apply to income derived from capital gains realized from the sale of shares in a foreign corporation.

Application of the benefits of this participation exemption does not require the foreign participation to be:

- Subject to a profit/corporate income tax
- Held for a certain period before claiming the exemption's benefits
- An active company

The following conditions must be satisfied:

- Shareholding of at least 5% in the paid-up capital of the company if the capital has been divided into shares, otherwise at least 5% voting power in such a company
- Shareholding of at least 5% of the share certificates in a fund (for joint accounts) which is based in The Netherlands Antilles
- Holding an interest in a company or fund (for joint accounts) with an acquisition price of at least ANG 1,000,000 (approx. USD 600,000)

<sup>2</sup> To be increased to 100%.

<sup>3</sup> To be increased to 100%

If the Netherlands Antilles company receives dividends or disposes of the shares of a non-resident company, then currently 95% of the dividends will be exempt from tax. All capital gains derived from the sale of the shares of a non-resident company are likewise 95% exempt.

Dividend income received from a Swedish subsidiary has a total effective tax burden in The Netherlands Antilles of 1.725% (i.e., 5% taxed at the rate of 34.5%), further to be decreased to 0%

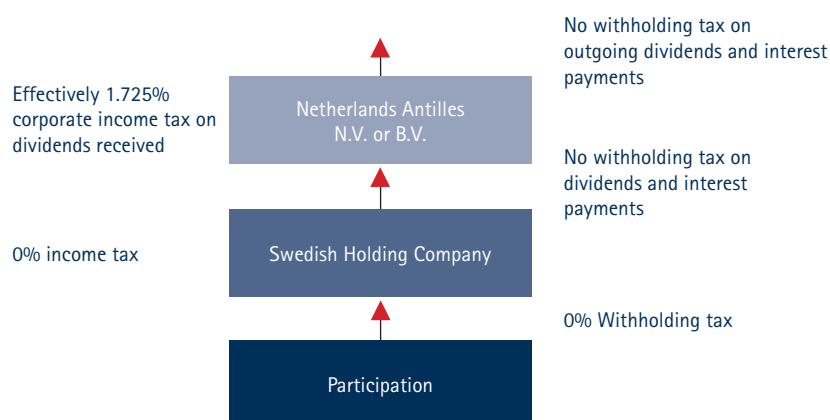
### Netherlands Antilles Withholding Tax on Dividends Distributed

There is no withholding tax on dividends distributed from The Netherlands Antilles (to either private individuals or corporate entities).

Other points of interest (Sweden/Netherlands Antilles):

- Neither Sweden nor The Netherlands Antilles have anti-avoidance regulations
- Neither Sweden nor The Netherlands Antilles have thin capitalization rules
- Audited accounts must be filed annually in Sweden
- No audited accounts need be filed in The Netherlands Antilles
- In The Netherlands Antilles, access to shareholder information is strictly limited

The basic Swedish holding company structure is illustrated below:



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## Services of Amicorp Curaçao N.V

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Each client's needs are evaluated through communication with the client and his tax advisor. Based upon the understanding of those specific needs, Amicorp then creates a specific structure. Various services can be provided on an ongoing basis within each structure. Some of the services include lease of office space, furniture and utilities, the provision of dedicated telephone and facsimile lines, P.O. Boxes, E-mail and website facilities.

Amicorp's staff and professionals render legal services, as well as corporate secretarial, administrative, bookkeeping, invoicing and payroll services. Directors can be provided from within or outside the Amicorp Group to perform as individual managing and supervisory directors of client companies. Amicorp's international internal network and staff provide its clients the peace of mind that their Amicorp structures are and remain in compliance with tax laws, tax filing requirements, government regulations, and in general good standing under the various laws of the countries involved.

Amicorp's extensive, fast growing international network ensures that its clients remain at the forefront of tax planning innovation with the best solutions available to fit their needs.



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## Legal Entities in The Netherlands Antilles

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### The Netherlands Antilles 'Naamloze Vennootschap' (N.A. N.V.)

The N.A. N.V. is a limited liability company based on recently developed Netherlands Antilles corporate law. It is similar to the U.S. 'C' corporation ('Inc.') and the Latin American and Southern European 'S.A.'. In, 2004, new legislation broadened the features of the N.A. N.V. making it similar to the Netherlands Antilles Besloten Vennootschap (N.A. B.V.) The attractiveness of both the N.A. N.V. and the N.A. B.V. is founded in their flexibility.

The characteristics of the N.A. N.V. include the following:

#### General Characteristics:

- Flexible corporate laws allow for Articles of Association that provide for a variety of structuring opportunities for international investors
- Corporate formation occurs rapidly (Ministerial 'declaration of no objection' is not required)
- The Articles of Association may be drawn up in various languages
- The Articles of Association can be drawn up in different forms, to reflect what (foreign) users need in their own legal system
  - o For example, the Articles can be organised to have the N.A. N.V. resemble an IBC company, a Delaware corporation or a German GmbH
- Annual accounts of a N.A. N.V.<sup>4</sup> must be prepared within 8 months following the end of the company's fiscal year. A 6 months extension can be obtained.
- For a N.A.N.V. there is no requirement to publish or audit the annual accounts
- Confidentiality of shareholder information
- The Managing Board can be organised as a one-tier board (Anglo-Saxon model) or a two-tier board (civil law model)

In a one-tier board, there is a General Board and an Executive Board. One or more members of the General Board may participate as members of the Executive Board provided they collectively form a minority of the Board of Directors. The Executive Board manages and represents the company.

In a two-tier board, the supervision of the Managing Board is conducted by a separate Supervisory Board, though not obligatory. Typically, the Supervisory Board safeguards that the Managing Board manages the legal entity in accordance with the articles of association. To execute this function, the Supervisory Board can have several types of powers. These powers are determined in the Articles of

<sup>4</sup> For the qualification criteria, see page 24: Distinguishing Characteristics of an N.A. N.V.

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Association. Only private individuals may act as Supervisory Board members. A N.A. N.V. can also choose to set up a so called Independent Supervisory Board (see page 24: Distinguishing Characteristics of an N.A. N.V.).

#### Capital and Shares:

The most significant characteristics of the N.A. N.V. regarding capital and shares are:

- Not all shares need to have the right to profit distribution (see next paragraph)
- Others, in addition to shareholders, may also be entitled to profits as well
- No minimum capital requirements apply, unless stated in the Articles of Incorporation
- There can be voting and non-voting shares and shares with restricted voting rights
- Shares can be assigned a nominal value or no nominal value at all
- Only registered shares may be issued
  - If provided in the Articles of Association the N.A. N.V. may convert registered shares into bearer shares
- The transfer of registered shares can be restricted or prohibited in the Articles of Association

At the time of incorporation (and any time thereafter) voting and profit sharing rights must be assigned by the issuance of shares. These rights can be assigned to a single share, or to two shares, each carrying one of the rights. Such shares must be placed with a Founder or third party, other than the company.

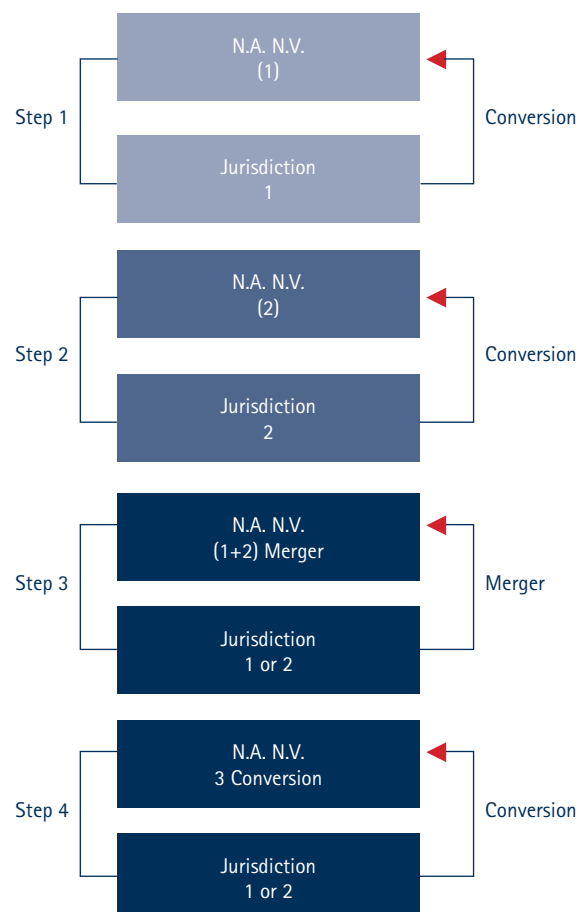
#### Conversion, Merger and Division:

An N.A. N.V. can be converted (through a corporate continuance) into other legal entities and visa versa, including foreign entities (e.g., an N.A. N.V. can be converted into an N.A. B.V. but also into a French S.A. or a Netherlands Foundation and vice versa). This conversion procedure has replaced the transfer of seat procedure where companies were able to transfer their seat to and from The Netherlands Antilles. Nevertheless, the ordinance providing for the transfer of the seat of companies within the Kingdom of The Netherlands remains in effect.


The main criterion for a cross border conversion of a foreign entity into an N.A. N.V. is that the law governing the foreign legal entity does not oppose such a conversion. When an N.A. N.V. is to be converted into a foreign entity, the laws of the foreign country must provide for the continuation of the N.A. N.V., as a foreign (now domestic) entity. A conversion should not lead to termination or dissolution of the transferred legal entity.

An N.A. N.V. can merge with similar legal entities, including foreign companies. A merger is a legal act between two or more legal entities where one legal entity acquires the assets of another (target) legal entity or where a new legal entity is formed from the union of both legal entities. In local mergers, the N.A. N.V. can be either the acquiring or acquired company. However, in cross border mergers the N.A. N.V. can only be the acquiring company. Whereas the laws of a foreign country do not allow for cross border mergers but rather allow for cross border conversions, the conversion procedure can be used as intermediate step in the process. As such, a legal merger is effectuated in The Netherlands Antilles and subsequently, the merged company is converted back into a domestic company indigenous to the foreign country.

This procedure can be illustrated as follows:



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An N.A. N.V. can divide its assets between two or more other companies that share a similar legal form. The company dividing its assets can choose to cease to exist entirely or to wholly or partly transfer its equity to one or more acquiring companies against the receipt of shares from (at least one of) the acquiring companies while continuing to exist itself. An N.A. N.V. may be founded with divided assets of another legal entity (e.g., a Foundation) provided that this legal entity becomes the sole shareholder of the N.A. N.V. following the division.

#### Distinguishing characteristics of the N.A. N.V.:

- Issued registered shares may be converted into bearer shares
- Shareholders have a preference right upon the issuance of new shares unless otherwise provided for in the Articles of Association
- Profits received from various sources are subject to low effective tax rates
- An N.A. N.V. can be listed on a (foreign) securities exchange

The N.A. N.V. can choose to establish an Independent Supervisory Board where its members are appointed for a period of no less than three (but no more than six) years. Special procedures exist to suspend and/ or dismiss Independent Supervisory Board members during their term.

The N.A. N.V. qualifies under the Tax Arrangement for the Kingdom of The Netherlands (see page 38). As such, this entity is ideal to serve as a holding or finance entity in international corporate structures. Furthermore, the N.A. N.V. is often utilized as a royalty or trading company. For details about the taxation of the N.A. N.V. see, 'Taxation in The Netherlands Antilles' on page 31.

#### The Netherlands Antilles 'Besloten Vennootschap' (N.A. B.V.)

The N.A. B.V. is a limited liability company first introduced on January 1, 2000. It is used mainly as:

- Special Purpose Vehicle (SPV) in combination with a Netherlands Antilles Private Foundation as its shareholder; for repackaging
- Securitisation transactions; and in leasing and other asset financing transactions.

The legislation of the N.A. B.V. served as a model for the legislative adjustments to the above described N.A. N.V. The same general corporate characteristics, capital and share requirements and conversion, merger and division facilities apply to the N.A. B.V. The characteristics of the N.A. N.V. in the previous paragraphs on pages 21-23 apply equally to the N.A. B.V., unless specifically mentioned otherwise.

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### Distinguishing Characteristics of the N.A. B.V.:

- Only registered shares may be issued
- Upon issuance of shares, only shareholders have a right of preference if provided for in the Articles of Association
- The Articles of Association may provide shareholders to be personally liable for the debts of the company (if desired)
- The Articles of Association may stipulate the grounds for dissolution of the company

An 'Owner-Managed' B.V. can be formed in which the shareholder is both owner and manager of the company. There is no separate Board of Managing or Supervising Directors. The relationship between shareholders of an Owner-Managed B.V. is primarily regulated by the shareholder's agreement.

Because of its flexibility, the N.A. B.V. can serve many purposes, such as a Mutual Fund vehicle or an international Joint Venture vehicle where the proceeds and control can be designed along the wishes of all participants. For details about the taxation of the N.A. B.V., see: 'Taxation in the Netherlands Antilles' on page 31.



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## The Netherlands Antilles Foundation ('Stichting')

A Netherlands Antilles 'Stichting' (or Foundation) is a legal entity incorporated by notarial deed. The General Characteristics described under 'General characteristics' of the N.A. N.V. likewise apply to the Foundation, unless specifically excluded. Foundations have no shareholders, so shareholder confidentiality is not an issue.

Distinguishing characteristics of the foundation:

- The organization's objectives must be clearly described in the Articles of Association. They may range from charitable to commercial
- A Foundation does not have members
- The Board of Directors is usually the only directive group within a Foundation
- There are no obligations to contribute to net equity (i.e., no minimal capitalization requirement)
- Payments to the Founders, people who are part of its board or third parties are not permitted. An exception exists for payments of a charitable, social or ideological nature.
- The name of the Foundation must include the word 'Foundation'.

Traditionally, a Foundation is utilized mainly for charitable purposes, as a Management vehicle for Estates or as a Voting Trust.

## The Netherlands Antilles 'Stichting Particulier Fonds' (Private Foundation or SPF)

The Netherlands Antilles is a civil law jurisdiction. The Anglo-Saxon ('common law') concept of Trusts does not exist within its legal framework. However, a separation of rights and interests into 'legal rights' and 'beneficial interest', like a common law trust, can be achieved by using the Private Foundation.

The difference between a traditional 'Stichting' (Foundation) and the 'Stichting Particulier Fonds' (Private Foundation) is that the Private Foundation is allowed to make distributions to Beneficiaries without the requirement that such distributions have to be of a charitable, social or ideological nature. In addition, distributions to the Founder of the Private Foundation are possible. Just as with the standard Foundation, the general characteristics described under 'General characteristics' of the N.A. N.V., likewise apply to Private Foundations, unless described otherwise.



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A Private Foundation includes the following participants:

#### The Founder

This is any person of legal age and sound mind which can either be a natural person or natural persons, or a legal entity. Further, a Trust can act as a Founder of a Private Foundation.

#### The Board

The managing group organised as a Board. The Board may consist of a natural person(s) of legal age and sound mind and/or corporate bodies, provided that their Articles of Association allow such activity.

The Articles of Association can describe all powers held by the Board Members. However, the Articles must at least provide the appointment and dismissal procedures for the Members of the Board. These procedures may be decided upon by the Founder, Supervisory Board, other Board Members or any other body of the SPF as determined by the Articles of Association.

#### The Beneficiary

Anyone can be a Beneficiary of a Private Foundation, without restriction. The Articles of Association provide direction for the appointment and dismissal of Beneficiaries and the procedures for making distributions to them. It is not a requirement for a Private Foundation to have Beneficiaries.

#### The Supervisory Board

The Founder has the discretion to form a Supervisory Board at the time of incorporation and anytime thereafter. The Supervisory Board can only consist of natural persons and can have one or more members.

#### The Articles of Association of a Foundation

The Articles of Association determine the purpose of the Foundation, the representation powers of the Board (the members) and the persons authorized to appoint and dismiss the Board Members. The Articles may provide additional guidelines for management of the Foundation, regulations regarding its dissolution, etc. Netherlands Antilles law does not contain strict regulations regarding the organization of a Foundation and allows Founders great flexibility to create a legal entity that formalizes their specific estate plan.

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### Revocable vs. Irrevocable

The Articles of Association can provide the Founder authorisation to dissolve the Foundation at any time, after which the assets of the Foundation can be reassigned back to the Founder. The Founder can also have the authority to change the Articles of Association. The provision of such power will classify the Foundation as 'revocable'.

In contrast, a Foundation can be set-up with Articles not providing any rights to the Founder beyond the mere contribution of assets to the Foundation. This classifies the Foundation as 'irrevocable'.

In principle, the same advantages and disadvantages are applicable with revocable and irrevocable Foundations as with revocable and irrevocable Trusts.

### Discretionary vs. Non-Discretionary

If the Articles of Association do not provide for any limitation to the powers of the Board, the Board is totally discretionary in its management and distributions to Beneficiaries. On the other hand, the Articles may contain one of many types of Non-Discretionary measures as determined by the Founder's wishes.

### Letter of Wishes

A Letter of Wishes for a Private Foundation serves the same function as the Letter of Wishes for a Common Law Trust. The letter of wishes is not a public document, and is not required for a Foundation.

### Duration of a Private Foundation

A Private Foundation may be dissolved by a voluntary resolution or as provided in the Articles of Association. It is not possible to determine a set life time for the SPF after which it should dissolve itself. However, the lifetime of the SPF can be linked to its purpose as described in the Articles of Association.

### Assets Contributed or Transferred to a Private Foundation

As with a Trust, virtually any type of assets may be contributed to a Foundation, as long as the holding of such assets does not cause the Foundation to engage in business activities. Nevertheless, the passive



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holding of the shares of active companies, licenses and active portfolio management (i.e., on its own behalf) are permitted.

Assets may be donated to the Foundation or the Foundation may purchase the assets. Considering the 'forced heirship' regulations of many Civil Law jurisdictions, it is often preferable for a Founder to contribute funds to the Foundation, which in turn, uses the funds to purchase the assets intended for the Foundation to hold. As a result, only the amounts contributed to the Foundation will be subject to the forced heirship regulations of the Founder's jurisdiction. Any appreciation in the value of the Foundation's assets is not subject to the 'forced heirship' regulations.

As the Private Foundation is a separate legal entity, it becomes the legal and beneficial owner of all assets it holds.

#### Tax Treatment of Contributions to a Private Foundation

If the Founder contributes assets to a Foundation, most jurisdictions levy taxes on this transfer of wealth. These taxes vary from jurisdiction to jurisdiction. Some jurisdictions levy tax only on the receiving entity. However, in most cases the transfer of assets to a Private Foundation is a taxable contribution. Therefore, it is often more attractive to sell the assets to a Foundation at the lowest acceptable price and have the Foundation remain indebted to the Founder for the amount of the debt. Professional guidance in the country of residence of the Founder, and/or where the assets are located is recommended. A donor, resident in The Netherlands Antilles, is subject to a 25% gift tax.

#### Taxation of a Private Foundation

A Private Foundation is fully tax-exempt. All contributions into a Foundation and contributions made by a Foundation are free from taxation and there is no profit tax on any of its income. Under some circumstances, periodical distributions made by a Foundation may be subject to wage tax in The Netherlands Antilles.

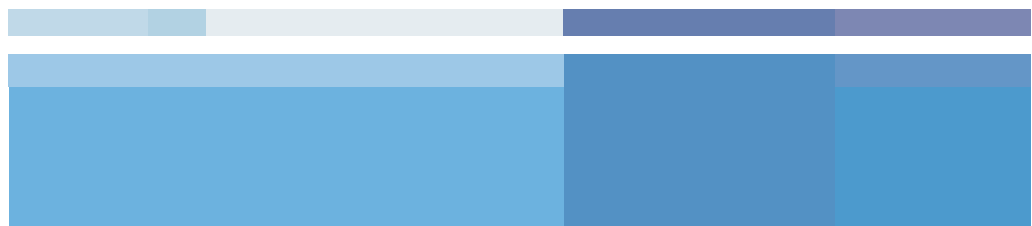
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### Characteristics of a Private Foundation

Typically, the Private Foundation is used as an estate planning or asset protection vehicle. It can own financial assets, real estate, company shares, etc. The Private Foundation has the following characteristics:

- A separate legal status with its own specific legislation
  - Appointment of the Board of Directors may take place at the time of incorporation, or any time thereafter by the Founder, the Board of Supervisory Directors or any other body of the SPF determined by the Founder.
  - The Private Foundation's object clause can include the Founder's specific wishes
  - The investor can maintain full control over the assets
  - Provides access to a controlled asset holding following a death during a certain period of time
  - The Management Board has discretion to review the Private Foundation's Articles of Incorporation, also in terms of distributions in favour of the beneficiaries
  - Family assets can be maintained without depriving the heirs of the economic interest rights
  - Can provide confidentiality with respect to the identity of the Beneficiaries of certain assets (it can even be decided to delay the appointment of any Beneficiary or not to inform any Beneficiary at all of their status)
  - Possibility to change the Beneficiaries during the life of the Private Foundation
  - An orderly distribution of assets upon death according to the wishes of the Founder, without complex probate proceedings
  - The protection of family assets against spendthrift heirs, and/or political, criminal and economical risks
  - No requirements to publish information regarding the financial status of a Private Foundation
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## Taxation in The Netherlands Antilles

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### Introduction

The Netherlands Antilles is a leading trade and financial centre, offering an attractive commercial regime. Traditionally, the tax rates varied depending upon the type of income a company generated. However, companies were generally taxed at rates between 2.4% - 9.66% based on the Profit Tax Ordinance 1940.

In 2002, tax reforms were introduced under the name New Fiscal Framework ('Nieuw Fiscaal Raamwerk' or 'NFR'). The main purpose of the legislation was to repeal the provisions in the Profit Tax Ordinance 1940 that governed the offshore regime (Articles 8A, 8B, 14 and 14A). The main objective of the repeal of the tax law for offshore companies was to ensure that The Netherlands Antilles would not be characterized as a tax haven or a country with a harmful tax regime. A further objective was to conclude a new Tax Agreement for the Kingdom of The Netherlands (BRK; or Belastingregeling voor het Koninkrijk'), which would establish a more favorable and long lasting tax relationship with The Netherlands. Finally, there was the objective to conclude additional tax treaties with other countries in Europe and the Americas.



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Resulting from this, as of January 1, 2002, all Netherlands Antilles resident companies were, in principle, subject to a single profit tax regime. The standard rate of corporate income tax is 34.5% (including surcharges).

### The Netherlands Antilles New Fiscal Framework (NFR)

The NFR's various changes provide:

1. The elimination of distinctions between offshore and onshore companies
2. A transitional 'grand fathering' rule granting the advantages of the old 'offshore' regime to existing companies up to and including 2019 (e.g., holding, financing, royalty and ruling companies) provided these companies have initiated 'substantial activities' by December 31, 2001.
3. The introduction of a 100% participation exemption for dividend income derived from The Netherlands and The Netherlands Antilles provided set conditions apply.
4. A 95%<sup>5</sup> participation exemption for income not derived from Netherlands (or Netherlands Antilles) dividends, under certain conditions;
5. The introduction of a 95%<sup>6</sup> participation exemption for capital gain income realized from the alienation (e.g., sale) of the shares of a foreign participation, under certain conditions. The participation exemption will be 100% where the Netherlands Antilles company holds at least 25% of the shares of the alienated company and the company is a resident in The Netherlands;
6. The introduction of a flat profit tax rate of 34.5% (including surcharges) on all corporate taxpayers;
7. The elimination of withholding tax on outgoing interest, royalty and dividend payments;
8. A special exemption from profit taxes for the Netherlands Antilles B.V., under certain conditions;
9. The extension of the loss carry-forward period to 10 years;
10. Business merger provisions; and
11. Fiscal unity facility.

### Transition Rule

The NFR provides a transition rule. This rule extends the benefits of the offshore regime to companies already existing under the old offshore regime (i.e., 'grandfathering') which commenced substantial activity before December 31, 2001. Companies, whose activities are within the Profit Tax Ordinance, may continue to be grandfathered under the offshore regime up to and including the year 2019. Companies

<sup>5</sup> To be increased to 100%.

<sup>6</sup> To be increased to 100%.



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benefiting from the offshore regime under a ruling practice may also benefit up to and including 2019, provided that they are in possession of a valid ruling or have filed a request for a ruling. The application of the transitional rules stops if the offshore company no longer performs 'substantial activities' and the company's shares are alienated to an unrelated third party. Continued OECD influence may reduce the scope of the transitional rule. The grandfathered 'offshore' companies may at any time elect to be taxed under the new regime.

### Participation Exemption

The participation exemption does not require non-resident companies to be subject to profit or corporate income tax in its country of residence. There is no minimum holding period required prior to claiming the benefits of the exemption. There is no requirement that the foreign company be an active company.

The provisions in the Profit Tax Ordinance (as amended by the New Fiscal Framework) provide a broad participation exemption provided:

- Shareholding of at least 5% of the (paid-up) capital of a company if the capital is divided into shares; or
- At least 5% of the voting power in such a company; or at least 5% of the share certificates in a fund for joint account based in The Netherlands Antilles; or
- An interest in a company or fund (for joint account) with an acquisition price of at least ANG 1,000,000 (about USD 600,000).

Under the participation exemption, when a Netherlands Antilles company receives dividends or capital gains realized on the disposal of the shares of another Netherlands Antilles company, the recipient is 100% exempt from profit tax. The receipt of distributions of dividends or capital gains from the disposal of shares in a non-resident Netherlands Antilles company are 95% exempt from tax.

The Profit Tax Ordinance 1940 provides a 100% tax exemption on dividends received from a Netherlands company provided the Netherlands Antilles company owns at least 25% of the shares in the Netherlands company.

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Capital gains derived from the sale of a Netherlands resident company are also 100% exempt provided the Netherlands Antilles company owns at least 25% of the shares of the Netherlands company.

### Flat Profit Tax Rate of 34.5%

Under the NFR, a profit tax rate of 30% applies. When the surcharge of 15% (of the 30%) is added, the resulting income tax rate is 34.5%.

### Netherlands Antilles Withholding Tax

There is no withholding taxation on interest or royalty payments.

### Netherlands Antilles 'Besloten Vennootschap' (N.A. B.V.)

Under the New Fiscal Framework, The Netherlands Antilles introduced a new type of company, the Netherlands Antilles Private Company with Limited Liability (N.A. B.V.). If an N.A. B.V. meets certain requirements it will be exempt from profit tax (i.e., 'exempt N.A. B.V.'). An exempt N.A. B.V. is not considered a taxpayer for profit tax purposes and so cannot benefit from the provisions of the Tax Arrangement for the Kingdom of The Netherlands (BRK, see page 38) because of its tax-exempt status. The exchange of information provision does apply to the exempt N.A. B.V.

The most important requirements to apply for exempt status are:

- Business objectives may only involve investment in debt instruments, securities and/or deposits;  
and
- The annual accounts must be audited.

As such, the N.A. B.V. is well suited to hold and manage mutual funds and portfolio investments.

### Carry-Forward of Losses

The amended Profit Tax Ordinance provides that losses may be carried forward for a period of up to 10 years.

### Mergers

The amended Profit Tax Ordinance introduces 'rollover relief' for business mergers. The enterprise should be contributed against the issuance of shares of the acquiring company. If the business is transferred as



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part of a business merger, the gains generated by the transferor will not be subject to taxation provided certain conditions are met.

### Fiscal Unity Treatment

The NFR introduces fiscal unity for corporate income tax purposes. Resident companies with wholly owned resident subsidiaries may qualify for this regime. If qualified, the parent company is entitled to submit one consolidated income tax return on behalf of the whole fiscal group. As a result, only the parent company is assessed for profit tax purposes. The main advantage of this relief is that it increases the number of opportunities to offset losses. Generally, the losses of one company can be offset against the profits made by another company in the fiscal group. No profits need be recognized on inter-company transactions, they are disregarded for profit tax purposes. NFR Fiscal unity confined to companies established under the laws of The Netherlands Antilles, The Netherlands and Aruba. Companies employing this relief must have their place of management located in The Netherlands Antilles.

### Ruling Policy

A new Ruling Policy was implemented under the NFR satisfying the latest international standards regarding transparency and 'ring fencing'<sup>7</sup>. The primary objective of this ruling policy is to offer advanced certainty to taxpayers to increase the attractiveness of The Netherlands Antilles as a place of business for multinational corporations.

### Types of Model Ruling

The Ministerial Decision specifies that model rulings will be drawn up for the following:

Inter-company supporting activities:

- Management of investment funds and fund capital
- Holding activities
- Financing activities
- Licensing activities
- Branch activities

<sup>7</sup> The practice of isolating a designated pool of money from outside risk



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- Proceeds that can be designated informal capital
  - Forms of hybrid financing
  - Provision of certain services

Model rulings regarding supporting intra-company activities generally apply a 'cost-plus' calculation. The following activities qualify for this ruling:

- Accounting services and keeping accounts
- Re-invoicing services
- Cash and currency management of the capital of group companies
- Providing information, including sales promotion materials, and completing purchase and sales transactions without representative authority
- Non-risk bearing insurance and re-insurance activities
- Factoring of accounts
- Non-risk bearing intra-company financing activities
- Non-risk bearing licensing activities

Under this ruling the N.A. N.V. will be taxed on a cost plus basis. Typically, a mark-up on cost will be 5%. Thus, the result is an amount equal to 5% over the actual costs incurred in The Netherlands Antilles to manage and run the operation. This amount will be taxed at 34.5%.

Non-risk bearing means that the N.A. N.V. does not hold any financial risks (e.g., being currency risks, debtor's risks, etc.). The pay-out of loans, interests, license fee, insurance premiums etc. should be a fixed percentage (i.e., up to 100%) of that respective type of income that is actually received. For clarity, the pay-out is not part of the cost basis in the calculation for a cost-plus mark-up.

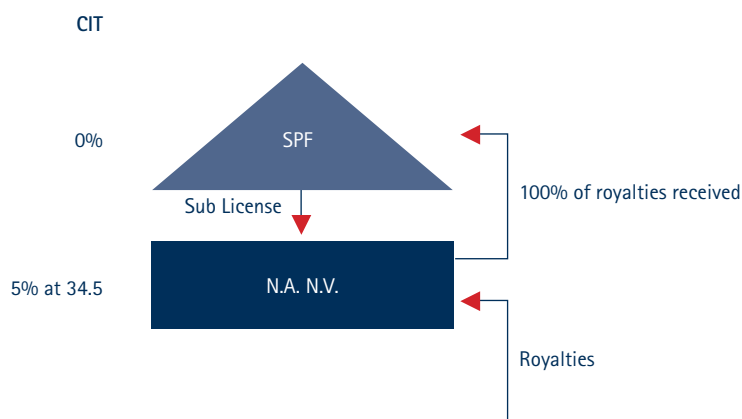
### Supporting Activities Structure with a N.A. N.V.

The use of an N.A. N.V. as support entity can be demonstrated by the description of the following structure where a N.A. N.V. is used as support entity for a Private Foundation to undertake investment activities:

A Private Foundation obtains a license for investments. However, due to legal restrictions a Private Foundation may not engage in activities other than managing/holding passive investments. Therefore, the Private Foundation incorporates a N.A. N.V.

The N.A. N.V. will actually manage the license on behalf of the Private Foundation (i.e., via a sublicense). The N.A. N.V. further sublicenses the rights to a third party. The net royalties received by the N.A. N.V. are taxed on a cost plus basis (e.g., 5% over the costs incurred in The Netherlands Antilles [management fees] at 34.5%). The royalty is then received by the Private Foundation without any further taxation.

This structure can be illustrated by the following figure:



### Tax Rulings for Other Types of Income

Under the NFR, several standard rulings were introduced by the tax inspector. This greatly reduces the effective tax burden for income types other than dividends and capital gains. For more information on the other available tax rulings, please contact Amicorp.

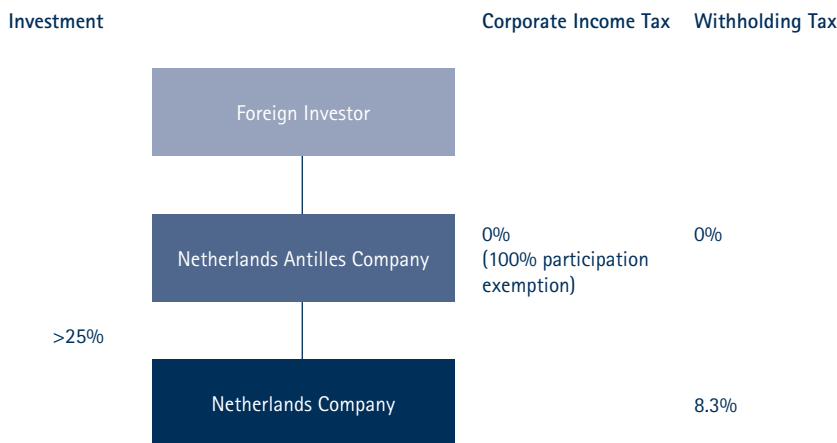
### The Tax Arrangement for the Kingdom of The Netherlands (BRK)

The BRK has the effect of a tax treaty and governs the tax relations between the member countries of the Kingdom of The Netherlands and their residents. Under the BRK, dividends paid by a company



resident in The Netherlands to a company resident in The Netherlands Antilles owning at least 25% of the shares of the Netherlands company, will be subject to an 8.3% Netherlands dividend withholding tax (The standard Netherlands dividend withholding tax rate is 15%).

This can be illustrated as follows:



### E-Zone Regulations in the Netherlands Antilles

E-Commerce businesses can be established in areas that used to be known as 'Free-Zones' following a legislation that created 'E-Zones'. An E-Zone is a designated area for E-companies to operate internationally and contribute to the economy of The Netherlands Antilles. There are no ownership limitations for an E-Zone company, and local and foreign shareholders are treated equally. Companies established in an E-Zone have special benefits over a regular Netherlands Antilles company including:

- A low 2% profit tax rate;
- No sales tax on any turnover generated on sales made abroad.

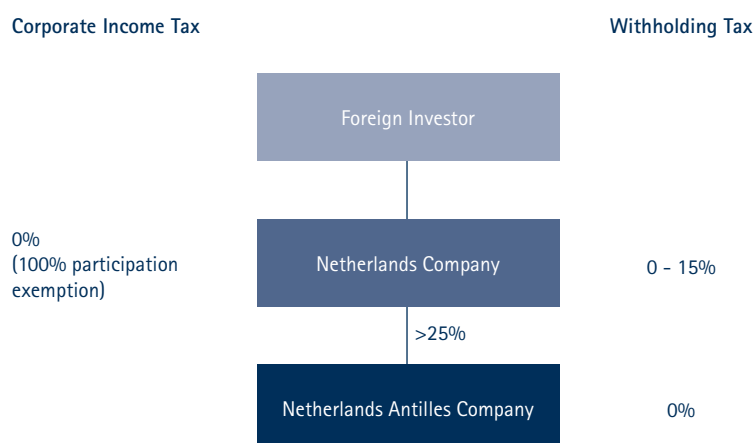
Special sites are available only for E-Commerce related companies. Such sites offer office space, server farms, employment agencies, call centres and first class connection to the internet. Under certain

conditions, it is possible for foreign investors to establish their own E-zone entity for businesses related to the internet.

As a well-developed financial centre with highly skilled workforce, Curaçao is an attractive location to establish an E-Commerce business.

### Structuring for E-Commerce in Curaçao

One of the major benefits for an E-Zone company is its status as a 'qualified entity' under the Tax Arrangement for the Kingdom of The Netherlands. This qualification provides an E-zone company the ability to be established as a subsidiary of a Netherlands company. If the Netherlands Company holds an interest in the subsidiary of more than 5%, the profits derived from the Netherlands Antilles E-zone company can receive a full participation exemption in The Netherlands. In addition, there is no withholding tax in The Netherlands Antilles. This structure can benefit from the extensive treaty network of The Netherlands, resulting in a very low total taxation for the E-Commerce business.



The structure above is very well suited for existing 'old economy' companies wishing to expand their scope to E-Commerce based activities (e.g., a web-server, call centre, etc.).

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## Anti-Money Laundering and Anti-Terrorism Financing measures in The Netherlands Antilles

Amicorp's ISO-certified internal processes ensure quality and security. To assist in the prevention of money laundering activities, terrorist financing or other criminal activities through its services, Amicorp maintains a comprehensive Compliance and Risk Management program. This program includes numerous strict internal policies and procedures organised through its dedicated Compliance Department, a comprehensive staff training program and independent audit assessment programs.

Our anti-money laundering and anti-terrorism financing procedures include:

- A 'Know Your Client' policy which includes strict client acceptance procedures
- A suspect/unusual transaction detection and prevention policy coupled with reporting procedures
- A periodic comprehensive client risk assessment covering anti-money laundering issues

Amicorp strictly adheres to the International Accounting Standards concerning its clients' financial administration.

To render services to clients, Amicorp's compliance and risk management system requires at all times:

- Fully documented disclosure of the identity of all ultimate beneficial owners;
- Complete disclosure of all company and/or group related activities;



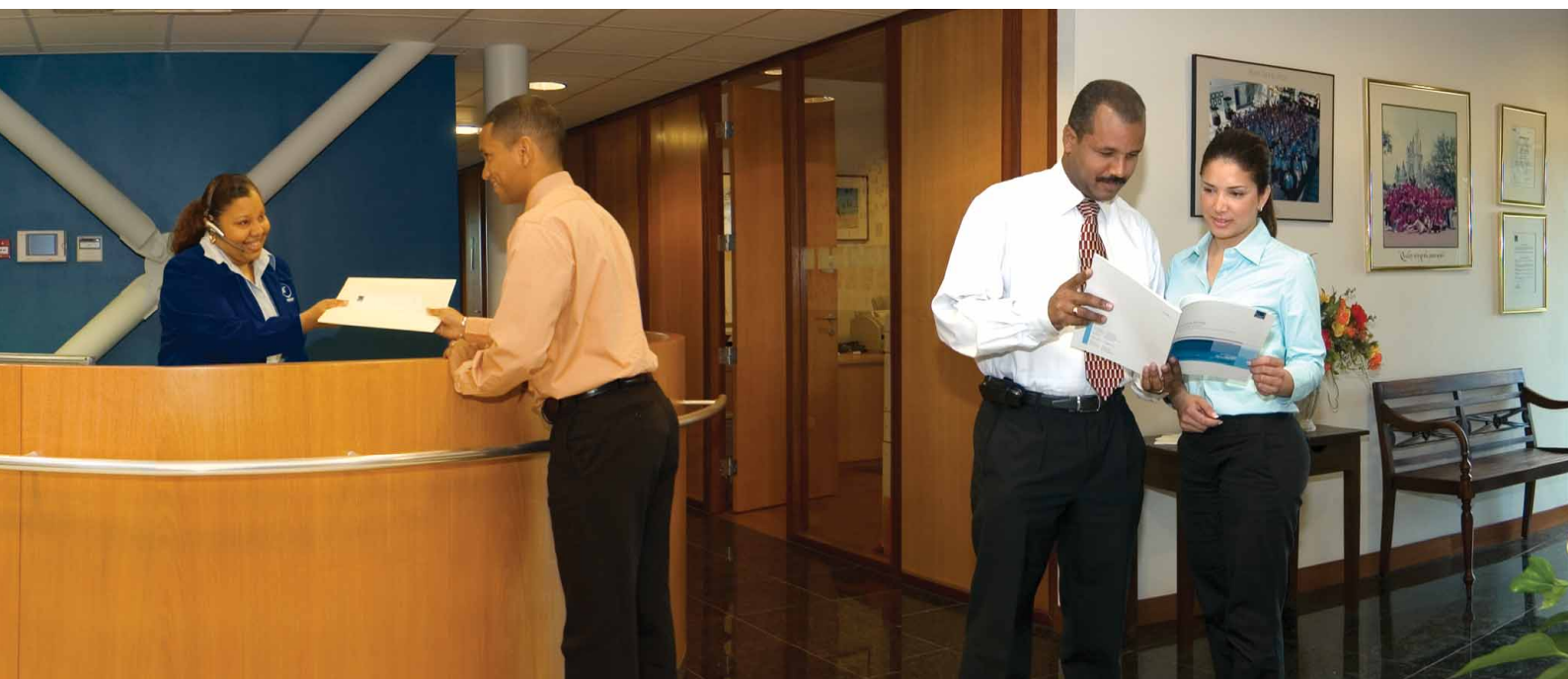
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- Full documentation on related participations, shareholding entities and other directly related parties; and
  - Full disclosure into all financial and bank transactions for companies managed by Amicorp.

Amicorp's policies and procedures fully comply with the Netherlands Antilles regulations on anti-money laundering and anti-terrorism financing. These regulations specifically include:

- National Ordinance Penalization of Money-laundering (official Gazette 1993, 53);
- National Ordinance Identification for Rendering Financial Services (Official Gazette 1996, 23);
- National Ordinance Reporting Unusual Transactions (Official Gazette 1996, 21);
- National Ordinance on the Supervision of Trust Service Providers (Official Gazette 2003, 114);

The above compliance regulations are supervised by the Central Bank of The Netherlands Antilles, and adhere to the Anti-Money Laundering and Anti-Terrorism Financing recommendations of the Financial Action Taskforce (FATF).

January 2008



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