



MEMORANDUM ON THE TAX ADVANTAGES OF USING A LIMITED LIABILITY COMPANY IN THE NETHERLANDS (‘Besloten Vennootschap – B.V.’)

Historically, The Netherlands has played a key role in international tax planning. By using its large, sophisticated tax treaty network, and favorable internal tax regime, The Netherlands offers a wide range of facilities, which allows non-resident corporate and individual clients a wide range of tax advantages. The most important international tax planning structures carried out by making use of the Netherlands are the following:

- **Holding structures**

In these kinds of structures, a company holds the shares in an intermediate holding company in the Netherlands, which in its turn holds shares in subsidiary companies located outside the Netherlands. The tax burden on the income generated from these subsidiaries (dividends and capital gains) can be decreased largely because:

- The Netherlands large treaty network provides that reduced withholding tax rates are applicable to dividends paid to a Netherlands holding company (within the EC the withholding taxes on dividends from one entity to another are even reduced to zero under certain conditions);
- No Netherlands corporate income tax is payable on dividends received or on capital gains realized on the (partial) sale of shares under certain conditions (participation exemption);

The conditions for the participation exemption can be summarized as follows:
The corporate taxpayer must hold at least 5 percent of the shares in the 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 the State in which the profits have been generated;
- The shareholding should not be held as a passive portfolio investment.

- **Finance structures**

Inter group financing can be accomplished by using a Netherlands intermediate finance company which borrows monies from a (group or third party) company for lending to group companies. Taxes to be paid on the interest received and paid with respect to the borrowed monies can in most cases be reduced to almost zero because:

- Through the large Netherlands treaty network, withholding taxes on interest are in most cases decreased to zero;



- Interest paid can to a large extent be deducted from interest received, leaving only a small spread in the Netherlands, which spread is taxed at the regular corporate income tax rate of 34.5% (over the initial profit of EUR 22,689 a rate of 29% is applicable);
- The Netherlands does not levy any withholding tax on interest;

As of April 1, 2001, Netherlands resident companies that are mainly (for at least 70%) involved in back-to-back inter-company finance activities can only obtain an advance tax ruling with the Netherlands tax inspector (giving certainty in advance on the amount of taxes due) if they both satisfy various substance requirements and run real risks with their back-to-back inter-company finance activities.

However, advance tax rulings are not required in order to establish and operate these transactions.

- **Royalty structures**

The cross-border flow of royalties can be structured through a Netherlands royalty company, which licenses industrial property rights, such as patents, trademarks, and movie rights from the license holder company and sub-licenses these rights to other companies. The tax benefits are that:

- Through the large treaty network, royalties paid to a Netherlands royalty company are taxed at reduced withholding rates varying in most cases between 0-5%;
- Royalties paid can to a large extent be deducted from royalties received, leaving only a small spread in the Netherlands, which spread is taxed at the regular corporate income tax rate of 34.5% (over the initial profit of EUR 22,689 a rate of 29% is applicable);
- No withholding tax is payable on royalties paid by a Netherlands royalty company;

As of April 1, 2001, Netherlands resident companies that are mainly (for at least 70%) involved in back-to-back inter-company licensing (royalty) activities, can only obtain an advance tax ruling with the Netherlands tax inspector (giving certainty in advance on the amount of taxes due) if they both satisfy various substance requirements and run real risks with their back-to-back inter-company licensing activities.

However, advance tax rulings are not required in order to establish and carryout these transactions, moreover they can be structured as non-inter-company activities.

In order to benefit from the above-described structure, a Dutch B.V. will have to be established.

Besloten Vennootschap (B.V.)

The B.V. is a private company with limited liability established under the laws of The Netherlands.



The B.V. corporate entity form is the most common form used by foreign investors.

The B.V. has only registered shares, which are not evidenced by share certificates, and since such shares are registered in the shareholders' name, they cannot be listed at official stock markets.

B.V. shares are not freely transferable. The transfer and issuance of registered B.V.'s shares has to be effected by execution of a notarial deed.

Unless the B.V. has a single shareholder, no information on the shareholders will be registered in any public document or at any public institute in The Netherlands. The records of the Ministry of Justice are not public and since the deed of incorporation will be deposited with the Trade Register and can be checked by any third party, the incorporator(s) (which are specifically mentioned in the deed of incorporation) may be publicly known.

Incorporation

For the incorporation of a B.V. the following is needed:

1. Compliance with Amicorp's Know Your Client Policy. In general, a current, clear and legible copy of the ultimate beneficial owner's passport needs to be provided, as well as a reference letter from reputable bank, law or tax firm in which the ultimate beneficial owner has a relationship for at least 6 months. The ultimate beneficial owner's full name, business address and occupation, and where available, telephone and fax numbers need to be made known to us.
2. A full statement in writing regarding the business, affairs, objects and (future) actions or transactions of the ultimate beneficial owner(s). There must be sufficient details of the proposed business activity of the company.
3. A name for the company. This name should not be too generic in nature and must begin or end with "Besloten Vennootschap" or "B.V.", as otherwise it will not be approved by the Justice Department. Preferably, various alternatives should be submitted.

The Deed Of Incorporation

In the Netherlands, a B.V. is incorporated by means of the execution of a Notarial Deed of Incorporation ("akte van oprichting"), which contains the Articles of Association ("statuten").



The Deed of Incorporation is subject to the prior approval ("Statement of No Objection") of the Minister of Justice. Furthermore, a bank statement evidencing the payment on shares (if in cash), or an auditor's statement (if in kind) must be available on the day of incorporation.

Procedure

The draft of the Deed of Incorporation must be prepared by a Dutch Civil Law Notary specialized in corporate matters. The Notary then submits the final draft to the Ministry of Justice and, if there are any objections from the Ministry, makes subsequent amendments.

The Form and The Founders

The Notarial Deed that must be in Dutch and must be signed by the Notary and the founder(s) or on the founder(s) behalf by virtue of a written power of attorney. The founder(s) may be individuals and/or legal entities, may be of any nationality and may be domiciled anywhere. The Notary is required by law to keep the original Deed. However, certified copies as well as (office) translations in English will be issued to the founder(s) and/or the Management Board.

Share Capital

There are three types of Capital:

- (a) Authorized Capital, which sets the limit beyond which no shares may be issued other than by altering the Articles of Association. The Articles of Association contain the amount of the Authorized Capital, the number (and classes) of shares it is divided into and the nominal (or par) value in Euro of each share;
- (b) Issued Capital, which forms the issued part of the Authorized Capital and reflects the aggregate nominal value of the issued shares; and
- (c) Paid-in Capital, which is the part of the Issued Capital for which payment has been received by the company. In general, each issued share must be fully paid-in upon its issuance. However, it may be provided - if permitted by the Articles of Association - that 75% of the nominal value of an issued registered share need only be paid-in after the company has called it up.

The total nominal value of the issued and paid-in capital must amount to (at least) EUR 18,000. Furthermore, the ratio between authorized and issued capital cannot exceed 5 to 1. Payment may be made in cash or in kind. The debt/equity ratio is not legally controlled.



The Statement Of "No Objection"

- (a) The Statement of No Objection is an instrument by which the Minister of Justice exercises administrative control over the contents of the Deed of Incorporation and, once the company is incorporated, over alterations of the Articles of Association.
- (b) The Statement of No Objection is required by law in order to, among other things, ensure that there is no obvious likelihood that the company will be used for unlawful activities or that the corporate form will be abused. Accordingly, the Ministry must - in addition to the final draft of the Deed of Incorporation - be supplied with certain details regarding the founders and the first managing directors of the company.

Dutch founders and members of the Management Board (including individuals not having the Dutch nationality, but living in the Netherlands) must provide certain information which is collected by the use of standard questionnaires; for companies the completed questionnaires must be accompanied by a copy of their most recent annual accounts. For non-Dutch corporate founders and members of the Management Board, a copy of their most recent annual accounts suffice, whereas for non-Dutch individuals a letter from their bankers stating that the individual is known to the bank and has normally met with his obligations towards this bank is required at a minimum. All non-Dutch founders must affirm that they have no intention of transferring their shares or changing the composition of the Management Board within one year of incorporation (if they do, additional information is required).
- (c) The procedure for obtaining a Statement of No Objection normally takes approximately 72 hours as the moment all required documents and information has been provided to the civil law notary appointed to handle the incorporation.

Capital Contribution

If the payment on the issued shares is to be made in cash, a company cannot be incorporated until a bank statement with respect to this payment has been issued to the Notary who executes the Deed of Incorporation. Such a statement - which is valid only if issued by a bank established within the E.E.C. - may contain either a guarantee for the amount to be paid on the shares, or a statement saying this amount was transmitted to a bank account in the name of the company "in the process of incorporation", not sooner than five months before the date of incorporation of the company which account shall remain in the company's name until after its incorporation. In other words, the money to be paid on shares must be available before or on the day of incorporation. It should be noted that, for the first mentioned type of bank statement (the guarantee) the bank will normally charge a fee related to the amount of the guarantee, whereas for the latter type of bank statement normally just administrative costs are charged.



If payment on the shares is made in kind, a description by the founder(s) of the contribution with a statement of the value thereof as well as an auditor's statement is required.

Official Seat and Registered Address

The official seat is the city in the Netherlands identified as such in the Articles of Association. Apart from the official seat, the company must have an office address to be registered in the Commercial Register. This registered address can be anywhere in- or outside the Netherlands. It may be that, for tax or other reasons it is preferable that the company's office (registered address) is in the Netherlands. If such office is not (yet) available, the company may be domiciled with a "trust company", specialized in providing services in the field of management and administration of companies.

Commercial Register

Within eight days after its incorporation, the company's data must be registered with the Commercial Register of the Chamber of Commerce in the District of the company's official seat and certified copies of the Deed of Incorporation and the bank or auditor's statement(s) must be deposited.

In case all issued and outstanding shares in the company are held by one individual or legal entity, certain data of this sole shareholder have to be registered also.

If the company's office is located in another Commercial Register District than its official seat, the company must also be registered with the Commercial Register of the Chamber of Commerce of such other District.

Liability: Until the first registration of the company with a Commercial Register, the members of the Management Board, together with the company, are jointly and severally liable for the obligations of the company.

Capital Tax

In general, a capital tax of 0,55% of the net capital contribution (paid-in capital plus share premium, if any) is due. In case the payment on the shares consists of a contribution in kind, an exemption could be available, but only in certain circumstances, such as: a merger, a takeover or an internal reorganization (all as defined by law). The capital tax must be paid within one month after incorporation.

Shareholders' Register

The Notary charged with the incorporation of the company will provide for a shareholders' register. This register must be kept at the company's office and kept up-to-date by the Management Board.



Information required for the incorporation of the B.V.:

1. Full first names, surname, occupation, home address, place and date of birth, nationality and marital state of:
 - (a) the founder(s);
 - (b) the first shareholders (if these are other persons than (a));
 - (c) the first members of the Management Board;
 - (d) the first members of the Supervisory Board, if the company will have such a board.
2. If the functions mentioned in 1 are exercised by companies (Supervisory Board members must be individuals) it shall be provided the full name, official seat and office-address, the laws under which they exist and a copy of their constitutional document (e.g. by-law, certificate of incorporation, extract from Commercial Register).
3.
 - (a) the name of the "new" company, which must contain the abbreviation "B.V.";
 - (b) the official seat, which must be in the Netherlands;
 - (c) the special objects;
 - (d) the amount of the authorized, issued and paid-in capital, the number of issued shares and the manner of payment;
 - (e) kind of shares (ordinary, preferred, priority or other).
4. Dutch founders and members of the Management Board (including individuals not having the Dutch nationality, but living in the Netherlands) shall fill out questionnaires plus (for companies) a copy of their most recent annual accounts shall be presented.
5. Non-Dutch corporate founders and members of the Management Board shall provide a copy of their most recent annual accounts.

Non-Dutch founders and members of the Management Board not living in the Netherlands shall provide a letter from their bankers stating that:

 - (i) the individual is known to the bank, and
 - (ii) has normally met with his obligations towards his bank.
6. Non-Dutch founders (individuals not living in the Netherlands or corporate) shall provide a letter stating that they have no intention to:
 - a. within one year after the incorporation, transfer the title to one or more shares of the company to any third party or co-operate to the acquisition by any third party of the right to vote any of the shares of the company;



- b. within one year after the incorporation of the company, charge any other person than those to be appointed at the incorporation of the company as member of the Management Board of the company.

Time Frame

As mentioned, the incorporation of a B.V. will take approximately 72 hours due to the fact that Dutch Ministry of Justice must issue a declaration of no-objection. The Ministry will have to be provided with details about the beneficial owners of the BV. However, shelf companies are available (see below).

"Shelf" Companies

As it can take considerable time to incorporate a BV, it is possible to purchase a shelf company if not much time is available.

The transfer of shares of a (shelf) company must be executed by notarial deed, a copy of which will be presented to the Netherlands' tax authorities.

Costs involved

Fees related with the incorporation of the B.V.

The civil law notary fees for incorporating a BV (with minimum capital) amount to approximately EUR 2,000 (ex VAT and disbursements) for a BV with standard bylaws and a minimum paid up capital of EUR 18,000.

These fees include the notary fees, trade name research, and first registration with the Chamber of Commerce. All fees can be paid out of the paid-up capital of EUR 18,000. Amicorp Netherlands' fee will depend on time spent assisting at incorporation but can be calculated at EUR 1,500 (excluding VAT and disbursements).

In case management services are to be rendered, an annual management fee of approximately EUR 3,100 (ex V.A.T.) will be charged, which includes the following services:

- Acting as managing director;
- Providing the registered office of the company;
- Maintaining the corporate records (shareholders' register, minutes of the board, shareholders' meetings etc.);
- Organizing and keeping minutes of the annual meeting of shareholders;
- Supervisory matters relating to the registration with the Chamber of Commerce;
- Checking and filing of bank correspondence, including statements;
- Checking and filing of other correspondence and if required forwarding copies thereof.



All other services such as bookkeeping and preparing the annual accounts, complying with the Netherlands Central Bank requirements, reviewing and executing documents to be entered into on behalf of the company will be charged separately on a quarterly basis, hourly fee of EUR 70 to EUR 150 (ex VAT) per hour spent for accounting services respectively EUR 100 to EUR 150 (ex V.A.T.) per hour spent on legal / corporate services (depending on the employee(s) involved) and EUR 175 (ex VAT) per hour spent for special services.

A shelf company is operational (almost) immediately. Charges are net asset value plus a mark up of EUR 5,700. Net asset value amounts in general to EUR 18,000.

If you would be interested in obtaining additional information on this or related subjects, kindly contact our offices at the address indicated.

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References are available upon request. Extensive memos are also available on the services of affiliated companies.

International tax planning and financial structuring are subject to constant changes and therefore Amicorp strongly recommends that each potential user of its services seek professional tax and legal advice in his/her country of origin before deciding on the use of international financial structures.