

A general overview of the
opportunities and possibilities
offered by the corporate and tax legislation of

The Netherlands Antilles

(Seventh edition)

C I F A

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founded in 1980

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Letter from the Chairman,

On behalf of the CIFA, the International Financial Services Association of the Netherlands Antilles I am pleased to present to you, the seventh edition of our general brochure. It summarizes many of the possibilities and opportunities for international tax planning through the Netherlands Antilles, provided for by the Netherlands Antilles' corporate and tax legislation. Our brochure includes the recent, current and also near future developments in the areas of corporate and tax legislation in the Netherlands Antilles.

CIFA is an association of professionals engaged in the international financial services sector of the Netherlands Antilles. Among its members you will find management and trust companies, international banks, insurance and re-insurance companies, ship-management companies, civil-law-notaries, auditors, accountants, tax advisors and law firms and international consultancy firms.

From a safe haven to a quality haven

The year of 2001 went into the history of the Netherlands Antilles as the year that new legislation was introduced that did away with the tax haven image it had since the early fifties. In 1993 the decision was taken to completely upgrade and modernize the tax regime of the Netherlands Antilles in order to meet the ever changing quality demands of the international financial services industry. This effort is aimed at creating a platform for transparency rules, a clearly defined exchange of information policy, the abolishment of the distinction between onshore and international companies, no fiscal ring-fencing, no unfair tax practices and a regulatory framework to protect

the NA financial systems against abuse for criminal purposes. All in line with the recommendations of the OECD and the FATF. In this respect I refer you to the chapters in this brochure that deal with the New Fiscal Framework (NFF) and the OECD.

Another major achievement is that the National Ordinance on Supervision of Fiduciary Institutions. It came into force on January 1, 2002.

As from February 1, 2002 an important part of the Netherlands Antilles' regulations on Anti-Money Laundering were made applicable to fiduciary institutions as well. For banks these rules were already applicable since 1997.

I would like to use this opportunity to invite you to visit our website: www.cifa.an. On this website you will find our current list of Members, this brochure and many other items such as English translations of most recent legislation enacted into law. Should you have questions or if we can be of any assistance, please contact us at info@cifa.an

The contents of the following pages is the result of the combined efforts of CIFA and its members. We have provided as much as possible accurate and up to date information. However, due to the ever-changing rules and regulations both in the Netherlands Antilles and abroad, we cannot guarantee the continuing accuracy of every detail. Readers are therefore urged to seek counsel's advice before implementing any plans involving Netherlands Antilles companies.

Gregory E. Elias,
President

Curaçao, March 2002

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1- AN INTRODUCTION TO THE NETHERLANDS ANTILLES.

The Spaniards discovered the islands of the Netherlands Antilles in 1499. From the beginning their location and natural harbors made them unique as ports of call for long voyages and as trading posts. After Rotterdam the harbor of Curaçao is the busiest port in the Kingdom of the Netherlands.

The Netherlands Antilles consists of two groups of islands in the Caribbean Sea. Bonaire and Curaçao some 40 miles off the coast of Venezuela. Sint Maarten, Sint Eustatius and Saba (the Windward Islands) located one hundred miles east of Puerto Rico.

Aruba, which was formerly also one of the islands of the Netherlands Antilles, assumed a separate status within the Kingdom of the Netherlands in 1986.

The principal island of the Netherlands Antilles is Curaçao with a population of about 140.000. The government of the Netherlands Antilles, the Parliament and the Court of Justice are all in the capital of Curaçao, called Willemstad. Willemstad is also the financial, commercial and cultural center of the five islands.

The Netherlands Antilles form part of the Kingdom of the Netherlands with full internal autonomy. The Netherlands Antilles is an Associate Member of the European Community. The system of government of the Netherlands Antilles is a parliamentary democracy based on the Dutch model. Free elections are held every four years. Education and social security systems are also

based on those of the Netherlands. Standard of living is rather high compared to the area. In addition to the local language, Papiamentu, Dutch, English and Spanish are widely spoken.

The main sources of income of the Netherlands Antilles are derived from oil refining, shipping, ship repair and other harbor related services, tourism and international financial services. The infrastructure of Curaçao has been developed to support the commercial and financial services provided, with excellent telecommunications with the world, daily scheduled air services to North and Latin America and Europe. Modern docking facilities for cruise-liners, tankers and container vessels. A duty free zone and a World Trade Center.

The currency of the Netherlands Antilles is the Netherlands Antilles Guilder. The exchange rate of the Guilder is fixed to the United States Dollar at the rate of US\$1: ANG1,79.

The financial sector is supported by a number of international banks offering a wide scale of internationally required services.

All of the larger international audit firms are represented in Curaçao.

Legal practitioners and tax advisors are providing expert advice in the fields of international corporate and tax law.

2- COMPANIES AND OTHER LEGAL ENTITIES

2.1 Companies

The Netherlands Antilles “Naamloze Vennootschap” or “N.V.” is a company limited by shares. The statutory regulations governing the NV are contained in Book-I, chapter 2 of the Commercial Code of the Netherlands Antilles. The NV can act as a public company and as a closely held private company.

2.1.1 Incorporation

The NV is incorporated by notarial deed executed by one or more incorporators before a civil law notary in the Netherlands Antilles. Before the deed of incorporation can be passed, a draft of the Articles of Incorporation must be submitted to the Ministry of Justice of the Netherlands Antilles in order to obtain the so-called Declaration of No Objection.

The Articles of Incorporation must be in Dutch. They constitute the definitive statutes and regulations governing the company and conduct of its affairs.

2.1.2 Registration

Once incorporated, the company must be registered with the Commercial Registry of the local Chamber of Commerce and Industry. Details to be filed include the object of the company, its share capital and the identity of the managing directors and any attorneys-at-fact acting under general powers of attorney. The identity of shareholders is not disclosed.

2.1.3 Licenses

Each company needs to have:

- a foreign exchange license;
- a license for the Managing Directors to act as such;
- a license to carry out business.

2.1.4 Share Capital

In practice the minimum authorized capital for investment, holding, real estate, royalty and trading companies is US\$ 30.000. For finance companies issuing publicly traded debt obligations the minimum authorized capital has to be at least US\$ 60.000. For insurance companies the minimum has been set at US\$ 120.000 whereas the minimum authorized capital for offshore banks is US\$ 600.000.

The authorized capital can be stated in any currency.

There is no capital tax in the Netherlands Antilles.

At least 20% of the authorized capital must be subscribed for at the incorporation and must be outstanding at all times. Contributions of capital in excess of the stated capital are treated as capital surplus.

A Netherlands Antilles company can repurchase its own shares, provided that they are fully paid up and provided that at least 20% of the statutory share capital remains outstanding. Any further reduction of capital requires an amendment of the Articles of Incorporation. The effective reduction however can take place only two months after a notice of the intention to reduce the capital has been published and only if no objections have been lodged with the Court.

2.1.5 Shares

Shares of a NV can be in registered form as well as to bearer if the facility has been provided for in the Articles of Incorporation. If shares are in registered form a share certificate can be issued. For bearer shares share certificates must be issued. Shares must have a par value. In the case of registered shares, they can be partly paid-up to a minimum of 10% of the par value. Bearer shares must be fully paid-up to their par value.

The managing directors are required to maintain a register of shareholders which is open for public inspection for as long as and only if there are shares outstanding which are not fully paid up.

The Articles of Incorporation determine which rights can be attached to the shares of the specific company. Non-voting shares and shares with limited voting rights are permitted, provided that 20% of the outstanding authorized capital comprises shares with full voting rights.

2.1.6 Management

A Board consisting of one or more managing directors ("directeuren") who can be individuals or corporations manages the NV. The board of managing directors represents the company, defines business policy and manages its affairs. There are no restrictions on the nationality of managing directors. At least one managing director must be a resident of the Netherlands Antilles (either an individual or a corporation). Managing directors can also be appointed to act as officers of the company.

If provided for in the Articles of Incorporation a NV may also have a board of supervisory directors (“Raad van Commissarissen”) to oversee the management of the company and to advise and to supervise the board of managing directors.

Managing directors and supervisory directors are appointed by, and can be suspended or dismissed by, the General Meeting of Shareholders.

2.1.7 Shareholders Meetings

The general meeting of shareholders of a NV has the following exclusive powers:

- any amendments of the Articles of Incorporation;
- the appointment, dismissal or suspension of managing directors;
- the appointment, dismissal or suspension of supervisory directors;
- the approval of the financial statements;
- the declaration of dividends;
- the dissolution of the company.

An annual general meeting of the shareholders should be held at least once a year, usually within nine months of the end of a company’s financial year. At the annual general meeting the financial statements and a report of the managing board should be submitted for approval together with such other matters as may be set out in the notice convening the meeting.

Shareholders meetings must be held in the Netherlands Antilles: attendance by proxy is permitted. Unless the Articles of Incorporation state otherwise, a simple majority of adopts resolutions votes present and represented at meetings with no quorum requirements.

Extraordinary general meetings of shareholders may be convened from time to time to deal with matters that arise during the course of the year. Such extraordinary general meetings may also, in certain cases, be convened by shareholders controlling 10% or more of the issued voting shares (or such lesser percentages as may be stipulated in the Articles of Incorporation).

2.1.8 Financial Year

The financial year of a Netherlands Antilles company may be the calendar year or any other twelve-month period to be specified in the Articles of Incorporation. If provided for in the Articles of Incorporation, the financial year can be changed by resolution of the shareholders, without the need to further amend the Articles.

2.1.9 Accounting and financial statements

The managing board is required to prepare financial statements within eight months after the end of the financial year (unless a shorter period is required in the Articles of Incorporation). The financial statements must include a balance sheet and profit and loss account and are to be submitted to the general meeting of shareholders for ratification. The financial statements need not to be audited unless required by the Articles of Incorporation or by the shareholders.

The net profits of a NV are at the disposal of the shareholders that can either declare a dividend or reserve the profits. If the Articles of Incorporation so provide, the managing board may declare interim dividends from current year profits. These interim dividends are subject to ratification by the shareholders at the annual general

meeting. Dividends cannot be paid from current year profits unless prior year losses have been offset.

2.1.10 Transfer of seat

By resolution of the managing board or the shareholders (if provided for in the Articles of Incorporation), the NV may transfer its statutory seat to another jurisdiction and become a company under the laws of another country if the laws of the other jurisdiction also recognize such a transfer. A company incorporated under the laws of another country may transfer its statutory seat to and become a company under the laws of the Netherlands Antilles provided that the laws of the foreign jurisdiction also permit, or do not prohibit such a transfer.

2.1.11 Liquidation

The voluntary liquidation of a NV starts with a resolution of the shareholders to that effect. The liquidator needs not be a resident of the Netherlands Antilles and can be either an individual or a corporation. In the absence of the appointment of a liquidator, the board of managing directors are to act as liquidators.

Once a company is in liquidation, the liquidator manages the affairs. The company continues to remain in existence but only in so far as this is necessary for the liquidation and dissolution of its affairs.

The liquidator must file a notice of liquidation and a plan of distribution of the liquidation proceeds with the Chamber of Commerce. He must place an announcement of the liquidation in the Official Gazette. After a moratorium of two months from the date of the announcement and after all creditors have been paid, the liquidator can make the final distribution of the

liquidation proceeds to the shareholders. After the final distribution, the liquidator must file his final accounts and again publish an announcement in the Official Gazette. Thereafter, and if no objections have been lodged within a period of three months, the liquidation procedure is completed and the company is struck from the Commercial Register.

2.2 STICHTING OR FOUNDATION

A stichting or foundation is a legal entity in its own right with its own assets and liabilities. The legal concept of the stichting developed ages ago from capital being set aside for a special nonprofit or charitable purpose and was originally used by religious and welfare groups. The stichting is still frequently used for religious and nonprofit organizations. Distributions to incorporators or to those, who constitute its bodies, are not allowed, and its distributions are furthermore restricted by law to distributions with an ideal or social purpose.

The foregoing does not mean that the use of a common foundation is restricted to charitable purposes. It can be and is extensively used in structures in which the foundation is the legal owner of assets of which others hold the economic ownership. Any distributions are then neither out of its own funds nor out of its own income and are thus permissible. Also, the restriction does not apply to liquidation distributions: it is permissible to state in the articles of incorporation that upon liquidation the assets shall be distributed to e.g. the incorporator.

A stichting can for example act as custodian or trustee of assets, entrusted and transferred to it for the purpose of

investing, administering and managing such assets on behalf of third parties. A stichting is therefore an ideal vehicle to realize an economic transfer, without transferring control of the assets.

The principal difference between a stichting and a corporation is that a stichting has neither members nor shareholders, nor a capital divided into shares. The board of a stichting, which manages its affairs, is therefore not subject to the overall control of shareholders or members. The initial managing board is appointed at the moment of incorporation. Thereafter vacancies are filled at the sole discretion of the sitting board or by another person or body specially nominated for that purpose.

The foundation may be formed for an unlimited duration, for a certain period of time, or until a specified event occurs. The foundation can be dissolved by resolution of the board, unless the articles of incorporation provide otherwise. It is for example possible that the incorporator has the authority to dissolve the foundation.

2.2.1 Formation

A stichting is established by notarial deed executed before a civil law notary in the Netherlands Antilles. The Articles of a stichting must include the name of the stichting, its purpose, the first managing board and the manner how board members are appointed.

2.2.2 Assets

Unlike a company, a stichting has no capital per se, since it has no shares or shareholders. The founder of a stichting can contribute the initial assets at the time of establishment of the stichting or on any date afterwards.

2.2.3 Management

A Board ("Bestuur"), consisting of one or more members manages a stichting. The powers of the board are set out in the articles of the stichting. A stichting may also have a supervisory board ("Raad van Toezicht") which supervises the board in accordance with the Articles. The founder of a stichting and the members of the Board and of the supervisory board are prohibited to participate in the assets and/or profits of a stichting.

2.3 THE NETHERLANDS ANTILLES' PRIVATE FOUNDATION

A relatively new instrument available to professionals concerned with international tax and estate planning is the Private Foundation, introduced by the Netherlands Antilles legislature as a flexible variant of the long-existing "common" foundation.

As mentioned, the private foundation is a specific and flexible form of the legal entity foundation, which has been described above. Therefore a private foundation neither has shareholders, members or the like. Even beneficiaries do not have to be appointed if such appointment is not desired. In other words, the private foundation is a separate legal entity, with assets and liabilities in its own name.

While the purpose of a common foundation may not be the making of distributions (except distributions of an idealistic or social nature) to the incorporators or to others out of its income or out of its assets, a private foundation is allowed to do so.

Therefore, the purpose of a private foundation may include the making of distributions to incorporators and or others, such as children or grandchildren, without serving an ideal or social purpose. To whom distributions can be made, can be described in the articles of incorporation, in very general or very specific terms. The purpose clause could for instance only authorize the foundation to make gifts as and when the (supervisory) board considers this appropriate.

Another major difference between common and private foundations is that the private foundation's purpose may not be to run a business or enterprise for profit. Managing its assets (investments, equities etc), and to act as a holding corporation, will however not be regarded as "running a business". The foundation may, and should invest its assets, and may do so actively. There are no limits on the type of investments.

2.3.1 Taxation of the private foundation

On the Netherlands Antilles the private foundation is exempt from corporate taxes and its distributions, or rather, the gifts made by it are exempt from gift taxes. The contributions of assets to the foundation are subject to Antillean gift taxes only if the donor is a resident of the Netherlands Antilles. Consequently, a private foundation can be defined as a tax-exempt vehicle.

2.3.2 Incorporation of the private foundation

A private foundation is incorporated as such by deed executed before a Netherlands Antilles notary and is then registered in the Register of Foundations. The articles of incorporation must regulate the appointment and dismissal of the members of the board. The authority to appoint and dismiss board members can be granted to the board itself, the incorporator or to any other specific person or group of persons.

The board must manage the assets of the foundation, and make distributions or gifts, in accordance with the articles of incorporation. These instructions can be as specific, as general or as vague as needed. If desired so, a letter of wishes can be written to inform the board on the more specific wishes of the founder.

2.3.3 Applications for the private foundation

With this rather new concept of the foundation the Netherlands Antilles hopes that it will appeal to clients and practitioners from both civil law and common law countries who may consider it in their overall tax, estate and/or asset planning structures and opportunities and use it instead of an Anglo-Saxon Trust. Needless to say that a private foundation is for instance an ideal vehicle to protect and preserve family wealth or art collections.

Examples of the use of a private foundation are:

- Asset protection;
- Holding of shares;
- Deferral of income;
- Minimizing wealth taxes;
- Preservation of family assets;
- Minimizing taxes on future growth;
- Estate planning.

2.4 PARTNERSHIPS

Within Netherlands Antilles' legislation there are two forms of partnerships:

2.4.1 The Vennootschap Onder Firma

The Vennootschap Onder Firma ("VOF") is a general partnership in which the individual partners are jointly and severally liable for the debts of the partnership.

2.4.2 The Commanditaire Vennootschap

The Commanditaire Vennootschap ("CV") is a limited partnership in which there is a distinction drawn between the limited partners and the general or managing partners. The general or managing partners manage the affairs of the CV and represent it in dealings with third parties. They are jointly and severally liable for the debts of the CV. A limited partner however contributes to the partnership a certain amount of capital. His liability is limited to the amount of capital contributed. A limited partner is prohibited from directly managing the affairs of the CV, however he can represent the general partners as their attorney-at-fact. If a limited partner is involved in the direct management of a CV he forfeits his right to the protection of limited liability and becomes jointly and severally liable for the debts of the partnership, together with the general or managing partners.

Netherlands Antilles' partnerships are formed by either a notarial or a private deed. The absence of a signed deed however can not be used to defeat the claims of third parties. Partnerships must be registered at the Commercial Registry. It is not necessary to disclose the identity of

limited partners. Foreign corporations and/or individuals can act as limited or as general or managing partner.

3 PROTECTION FROM HOSTILE TAKEOVERS

The Netherlands Antilles anti-takeover legislation is based on the December 12, 1988 guidelines of the European Union. It is designed to protect publicly quoted Companies that are established in Curaçao and that are listed on any recognized Stock Exchanges, world wide, from hostile takeovers.

The law provides that a person acquiring 5% or more of the voting power of such a company must advise the Board of the company, which in turn must make a public announcement. Once a person acquires 20% or more of the voting power, without approval of the Board, that person must then make a public offer for all the remaining outstanding shares.

4 CODE OF CONDUCT

In 1989 the three organizations representing the Netherlands Antilles banking and financial offshore industry adopted a resolution that they agree with and will continue to adhere to the Statement of Principles as adopted by the Committee on Banking Regulations and Supervisory Practices; the so-called Committee of Basle. This committee comprises representatives of the Central banks and supervisory authorities of the Group of Ten countries (Belgium, Canada, France, Germany, Italy,

Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the U.K. and the U.S.A. The Statement of Principles adopted by the financial services sector of the Netherlands Antilles relates to the prevention of criminal use of the banking system for the purpose of money laundering.

In a further attempt to safeguard the integrity of the financial system of the Netherlands Antilles a series of new laws came into force both for banking- and other financial institutions as well as for fiduciary institutions:

- the National Ordinance Identification when rendering Financial Services; Pursuant to this law, any (legal) person who renders financial services by virtue of his profession or in the ordinary course of his business is obliged to establish the identity of his customer.
- the National Ordinance Reporting of Unusual Transactions. Pursuant to this law, any (legal) person who renders financial services by virtue of his profession or in the ordinary course of his business is obliged to inform a Reporting Center of any unusual transaction which is contemplated or has taken place.
- the National Ordinance Penalization of Money Laundering. This National Ordinance not only penalizes a person who has been found guilty of intentionally laundering money, but also penalizes a person who intentionally gains benefits from proceeds derived from crime.

5 TAXATION OF INTERNATIONAL COMPANIES

General

The information provided hereafter applies only to companies which were organized in the Netherlands Antilles or are managed and controlled in the Netherlands Antilles and are operative on or before December 31, 2001 and moreover, have chosen or will choose to have the transitional regime of the New Fiscal Framework be applicable to them.

The term “international company” refers to a company organized under the laws of the Netherlands Antilles or managed and controlled in the Netherlands Antilles and which does not conduct a trade or business within the Netherlands Antilles or with residents of the Netherlands Antilles.

5.1 Profit Tax

Companies resident in the Netherlands Antilles and non-resident companies that conduct a trade or business in the Netherlands Antilles through a permanent establishment therein are subject to tax as per the Profit Tax Ordinance 1940.

Resident companies are subject to profit tax on their worldwide income. A company is deemed to be resident if it is organized under the laws of the Netherlands Antilles or if its management and control is carried out in the Netherlands Antilles.

International companies, which are organized under the laws of the Netherlands Antilles or which are managed and controlled in the Netherlands Antilles, are considered as resident companies for Neth. Antilles tax purposes.

The Profit Tax Ordinance 1940, however, grants preferential tax rates to these companies; the preferential rates may be extended to other companies through the ruling policy of the Netherlands Antilles Tax Inspectorate.

The preferential tax rates for international companies are contained in Articles 8A, 8B, 9A, 12, 14 and 14A of the Profit Tax Ordinance 1940. A summary of the relevant provisions follows.

5.1.1 Article 8A Profit Tax Ordinance 1940

This article provides that a company, whose purpose is or includes the acquisition of income from dividends, interest and/or royalties, may request to be subject to tax on such income at preferential rates. The rate, which applies to income, taxable as per article 8A amounts to 15% on dividends. Article 8A of the Profit Tax Ordinance 1940 was generally used when dividend income had benefited from the application of the Tax Treaty with the USA or the UK (both Tax Treaties have been repealed).

5.1.2 Article 8B Profit Tax Ordinance 1940

Article 8B Profit Tax Ordinance 1940 is generally used for taxation of dividend income from the Netherlands and based on the Tax Arrangement for the Kingdom of the Netherlands. It provides for a profit tax rate of 5.5%. As a consequence of the amendment of the Tax Arrangement for the Kingdom of the Netherlands as of January 1, 2002, this rate is no longer applicable.

5.1.3 Article 12 Profit Tax Ordinance 1940

This article provides that no tax will be levied on income derived from real property located outside of the Netherlands Antilles (including any rights there on), provided the property is not held through a permanent establishment.

5.1.4 Article 14 Profit Tax Ordinance 1940

For a company to qualify under Article 14 of the Profit Tax Ordinance 1940 it must have as its principal purpose "...to invest its assets in securities, including shares and other certificates of participation and bonds, as well as in other interest bearing claims, whatever called and in any and all forms".

5.1.5 Article 14A Profit Tax Ordinance 1940

For a company to qualify under Article 14A it must have as its principal purpose: "the acquisition of revenues derived from the alienation or leasing of the right to use copyrights, patents, designs, secret processes or formulae, trademarks and other similar property;

1. royalties including rentals, in respect of motion picture films or for the use of industrial, commercial or scientific equipment, as well as relating to the operation of a mine or a quarry or to any other mining or use of natural resources and other immovable properties;
2. consideration paid for technical assistance, the income from above sources to be received from outside of the Netherlands Antilles.

Companies that qualify under Articles 14 and/or 14A of the Profit Tax Ordinance 1940 are taxed at the rate of

2,4% on the first ANG 100.000 (approx. US\$ 56.000) of taxable income and 3% on the balance.

Under the Guarantee Ordinance, these tax rates have been guaranteed by law until the end of the financial year that commences before July 1, 2019. In addition, capital gains resulting from the alienation of the assets permitted in articles 14 and 14/A for the applicability of the preferential regime and derived by companies which qualify under Article 14 or 14A of the Profit Tax Ordinance 1940 are exempt from tax. Capital losses are not deductible.

6 INDIVIDUAL INCOME TAX

Under the provisions of the Income Tax Ordinance 1943, an individual who is not a resident of the Netherlands Antilles, is subject to tax on income and capital gains from his holding of a substantial interest in a Netherlands Antilles company, which does not qualify as an international company

A substantial interest exists if a taxpayer, whether or not together with his spouse:

- has held directly or indirectly, at least 5% of the subscribed capital of a company whose capital is wholly or partly divided into shares;
- holds the right, directly or indirectly, to acquire shares amounting to at least 5% of the issued share capital (option rights) of a company;
- holds profit-sharing certificates entitling him to at least 5% of the profit of a company or to at least 5% of the distribution made upon liquidation.

Under Article 17 (1) (e) and (f) of the Income Tax Ordinance 1943, a non-resident shareholder of a Netherlands Antilles international company is specifically exempt from the substantial interest provisions and will therefor not be subject to any form of Netherlands Antilles individual income tax on dividends, interest, liquidation distributions or other payments received from these companies. The Neth. Antilles do not withhold tax on dividend, interest or royalty payments.

7 TAXATION PROCEDURES

Annually, all Netherlands Antilles companies must file a profit tax return together with financial statements comprising of a balance sheet, a profit and loss account, and explanatory notes. The tax returns, generally, are due within six months after the end of the calendar or financial year. International companies must file a profit tax return within six months after the end of the financial year. If a company fails to file a tax return by the due date, the Inspector of Taxes has the authority to impose an ex-officio tax assessment.

8 TAX TREATIES

8.1 Norway

On January 1, 1991 a new tax treaty came into force between Norway and the Netherlands Antilles. Under the new treaty, withholding tax on dividends in Norway is reduced from 25% to 15% if paid to a Netherlands Antilles company which is the beneficial owner and holds a participation in the Norwegian company of less

than 25%. The withholding tax on dividends in Norway is reduced from 25% to 5% if the Netherlands Antilles company holds more than 25% of the shares of the Norwegian company.

This treaty also contains a limitation of benefits provision along the lines of the OECD Model treaty.

8.2 Tax Arrangement for the Kingdom

The Tax Arrangement for the Kingdom of the Netherlands (Belastingregeling voor het Koninkrijk or BRK) regulates the tax affairs among the member countries of the Kingdom of the Netherlands, the Netherlands, Aruba and the Netherlands Antilles.

The BRK was concluded in 1964 and was modified since then. Under the present provisions –effective January 1, 2002- of the BRK, the withholding tax on dividends paid by a Dutch company to a resident of the Netherlands Antilles is reduced from 25% to 15%. If a Netherlands Antilles company holds 25% or more of the capital of the Dutch subsidiary the Dutch withholding tax is further reduced as hereinafter described.

The BRK was amended in December 2001 and as of January 1, 2002 a new withholding tax on dividends was introduced. The withholding tax on dividends paid by a Dutch company to a 25% Netherlands Antilles' corporate shareholder will be 8.3%. It is the intention of the parties to the BRK that within the Kingdom of the Netherlands the combined tax burden on Dutch source dividends will be at least 8.3%. In fact, should the total tax burden on dividends received from a qualifying Dutch subsidiary drop below that percentage, an additional withholding tax will be levied in the Netherlands. Capital gains realized

by a Netherlands Antilles company on the alienation of shares in a Dutch company will be exempt from profit tax.

Equally liquidation proceeds are fully tax-exempt.

9 TAX TREATMENT OF COMPANIES (under the 14/14A regime that has been grandfathered till 2019)

9.1 Portfolio investment/holding companies.

Portfolio investment and holding companies fall within the definition of Article 14 of the Netherlands Antilles Profit Tax Ordinance 1940. Their income is taxed at the rates 2,4% - 3%, unless the company elects another rate. Capital gains realized on the alienation of assets, qualifying under article 14 are not subject to tax. Capital losses are not deductible.

If a company borrows funds to finance its investments, the interest payable on such a loan will be deductible for tax purposes provided the loan is obtained from a bank or a similar financial institution.

If a company borrows from other than a bank or similar financial institution, the interest on such loan will not be deductible for tax purposes except if a tax ruling is obtained from the Inspector of Taxes and only to the extent provided for in the tax ruling. Such a ruling is usually granted, provided that the transaction can be considered as having been carried out at arm's length, which generally will be considered to be the case if the company reports a certain minimum taxable income,

such as a margin between interest paid on borrowings and interest received on loans extended.

9.2 Real Estate Companies

Article 12 of the Profit Ordinance 1940 was amended in 1987 to provide that no tax will be levied on income derived from real property situated outside the Netherlands Antilles. In the ruling policy it is agreed that the Article 12 exemption extends not only to direct real property income, such as rental income, but also to indirect income such as dividends received from a subsidiary, provided the income of such subsidiary is derived entirely or almost entirely from foreign real property.

9.3 Finance Companies

In the Netherlands Antilles finance companies may also benefit from preferential rates and/or a reduced tax base.

Interest income earned by a finance company will qualify under Article 14 of the Profit Tax Ordinance 1940 and be subject to tax at the rate of 2,4% - 3%. Interest paid by a finance company will be deductible for tax purposes if paid to a bank or similar institution or if allowed by ruling, as said before.

9.4 Royalty Companies

Royalty companies which are defined as companies that derive their income from patents, copyrights, licenses and other specified sources (see 5.1.5 before) fall within the provisions of Article 14A of the Profit Tax Ordinance 1940; they are subject to tax at the rate of 2,4% - 3%. If the Netherlands Antilles company operates as a sub-licensee, royalty and license fees paid will be deductible

for tax purposes, provided the payments are at arm's length. To the extent that the payments are made to a related party, the arm's length nature of the transaction will be assumed if a certain minimum spread is reported as taxable income. This spread will be determined by tax ruling. If the Netherlands Antilles company is the owner of the particular right or patent, the amortization of the cost of the right is, in principle, not deductible for tax purposes. However, by ruling deduction of depreciation can be agreed to. The company will be required to report a certain minimum income.

9.5 Management, Consulting and Trading Companies

The taxation of Netherlands Antilles companies that earn foreign source management or consultants' fees or trading income is usually determined by tax ruling. Usually, this type of income is subject to profit tax at the rate of 24% on the first ANG 100.000 and 30% on the excess. In most cases, limiting the tax base substantially reduces the effective tax burden.

9.6 Mutual Funds

Mutual funds incorporated in the Netherlands Antilles, which meet certain requirements are exempt from profit tax on non-treaty related income. For the application of the exemption, a mutual fund should either have minimum net assets of US\$ 50 million, at least 50 shareholders and four local employees, or alternatively minimum net assets of US\$ 300 million and two local employees.

Mutual funds that do not meet these requirements will be taxed annually on non-treaty related income, calculated

on the average net assets as follows:

<u>If the net assets are :</u>	<u>the taxable income will be</u>
not over US \$ 25.000.000;	1% of the net asset value
over US \$ 25.000.000 but not over US \$ 40.000.000	US \$ 250.000 plus ½% of excess over \$ 25.000.000
over US \$ 40.000.000 excess over \$ 40.000.000.	US \$ 325.000 plus ¼% of

The resulting income calculated as above will be taxed at the rate of 2,4% - 3% with a minimum tax of US\$ 1.000 and a maximum of US\$ 10.000.

9.7 Captive Insurance Companies

The taxable income of qualifying international captive insurance companies and reinsurance companies that do not earn treaty related income is fixed at ANG 100.000; the income is taxed at the rate of 2,4%. This results in a tax payable of ANG 2.400 (US\$ 1.350,00)

Captive insurance companies receiving treaty related income are taxed as follows: The premium income is taxed at 24 - 30%. By ruling 80% of the net premium income is exempt.

Taxation of Captive Insurance Companies is regulated by ruling.

9.8 International Banks operating in the Netherlands Antilles

International banks require a license from the Bank of the Netherlands Antilles (Central Bank). They are subject to the supervision of the Bank of the Netherlands Antilles.

There are two types of licenses applicable. A type “A” license will be issued to qualifying banks which are either branches or majority-owned subsidiaries of banking institutions or bank holding companies which themselves are subject to adequate consolidated bank supervision in their country of incorporation.

A type “B” license is issued to a bank or a financial institution which is either not subject to any consolidated bank supervision in its country of incorporation or is subject to a standard of supervision that is not considered adequate by the Central Bank of the Netherlands Antilles.

Netherlands Antilles tax legislation contains no special provisions relating to the taxation of international banks. Investment and interest income that qualify under Article 14 of the Profit Tax Ordinance 1940 will be subject to tax at the rate of 2,4% - 3%.

Other income will be taxed at the rate of 24% - 30%; the effective tax rate may be reduced by ruling agreed with the Inspector of Taxes.

9.9.1 Shipping Companies

The shipping legislation of the Netherlands Antilles is based on that of the Netherlands. Ships registered in the Netherlands Antilles sail under Dutch flag. The

Netherlands Antilles Ship Register has been established for over 100 years.

To qualify for registration in the Netherlands Antilles, a ship must be an ocean-going vessel that measures at least twenty cubic meters. A Netherlands Antilles resident, (an individual or a company) must own the ship. There are no nationality requirements for the officers and the crew, except that the master has to be a Dutch national. Dispensation can be granted and is usually granted, if the master holds a recognized professional qualification. There are no specific crew requirements and the crewmembers are not subject to any Netherlands Antilles wage or income tax nor are they entitled to any social security benefits. The Netherlands Antilles is a member of the International Maritime Organization and the International Labor Organization.

Under proposed new legislation, the Netherlands Antilles' Ship Register will also have the facility to register bareboat charters.

9.9.2 Article 9A of the Profit Tax Ordinance 1940

Article 9A applies to both shipping and aircraft companies, including leasing and chartering companies. To qualify for taxation under this article, the company has to be organized under the laws of the Netherlands Antilles and its daily management must be conducted from within the Netherlands Antilles. If a company qualifies under Article 9A, 80% of its profit will be taxed at the rates of 2,4% - 3%, whereas the remaining 20% will be taxed at the rates of 24% to 30%. Including the 15% surtax, applicable for companies that do not qualify as international companies, the effective tax rate

averages 7,73% on the first US\$ 56.000 of profit and 9,66% on the balance. Shipping and aircraft companies are entitled to an investment allowance of 8% of the cost of the ship or aircraft, that may be deducted from the taxable income for the year the investment is made and the consecutive year. They are also entitled to an accelerated depreciation of one third of the cost of the ship or aircraft.

9.9.3 Tonnage Tax

The Shipping Registration Ordinance Tax provides for an alternative tax treatment for Netherlands Antilles shipping companies. Under this ordinance qualifying shipping companies are taxed for each vessel at the rate of US\$ 0,22 per gross register ton with a minimum tax of US\$ 560. Companies electing to be taxed under this Ordinance are exempt from Netherlands Antilles profit tax.

10 SPECIAL FACILITIES FOR PENSIONERS AND RETIREES

The purpose of this paragraph is to briefly outline the main aspects of the Netherlands Antilles “pensionado” facility, which provides for a favorable personal income tax regime for individuals who take up residence in the Netherlands Antilles. The local status of a pensioner/retiree is that of a full resident (not some sort of non-domiciled or special expatriate status).

Provided certain conditions are met, pensioners/retirees will be subject to a 10% Antilles income tax rate on all foreign source income. In this respect it should be noted that capital gains on portfolio investments are not considered taxable income under Netherlands Antilles tax law. Netherlands Antilles source income will be subject at the ordinary Netherlands Antilles personal income tax rates (with a maximum of 57,2% on taxable income exceeding NAG 102.000 (approximately US\$ 57.300).

An election can be made annually to have the foreign source taxable income fixed at NAG 500.000 (approximately US\$ 280.000). The NAG 500.000 taxable income will subsequently be taxed at the ordinary personal income tax rates, resulting in a tax liability of approximately NAG 262.000 (US\$ 148.000). If an election has been made to tax the actual foreign income, the election for fixating the taxable income at NAG 500.000 can not be made for the next two immediate succeeding years. Electing to have foreign source income fixed at NAG 500.000 is not eligible for protection of the Tax Arrangement for the Kingdom of the Netherlands.

In order to qualify for the Pensionado-facility the

pensioner/retiree must meet the following conditions:

- Prior to the first taxable year in which the Pensionado-facility will be applicable, the pensioner/retiree must have been residing outside the Netherlands Antilles for a consecutive period of at least 60 months.
- The pensioner/retiree must have a Netherlands Antilles residence permit for an indefinite period of time (in general this permit will be granted automatically).
- The pensioner/retiree must be registered with the public register of birth, death and marriages. On the moment of registration in the public register, the applicant must be at least 50 years of age.
- The pensioner/retiree may, in general, not be active in the Netherlands Antilles. However, the facility will still be granted if the pensioner/retiree is employed by an entity in which he has directly or indirectly at least a 40% shareholding interest. Furthermore, the pensioner/retiree may be a member of the supervisory board of an entity resident of the Netherlands Antilles. The employment income generated from these sources however will, contrary to the 10% income tax rate, be subject to the ordinary personal income tax rates.
- The pensioner/retiree must own a house for personal use in the Netherlands Antilles with a minimum value on the moment of acquisition of at least NAG 450.000 (approximately US\$ 253.000). This house should be put into use ultimately within 18 months after registration with the public register. There are no requirements as to the number of days the house should be used on an annual basis as personal residence.
- The pensioner/retiree should request for application

of the pensionado facility ultimately within 2 months after registration with the public register.

Owning more than 5% of the shares of a company with a capital divided into shares is considered to be a substantial shareholding interest. Dividends received from or results realized upon sale of a substantial shareholding interest are liable to Netherlands Antilles income tax at the pensionado income tax rate of 10%. Article 8A, 8B, 14 and 14A PTO companies (offshore companies) are not considered to be Netherlands Antilles resident companies regarding application of the pensionado regime. A step up in basis for determining the cost price of the shares (on the basis of the fair market value of the shares) on the moment of taking up residence) is available. On the moment of (future) emigration, the Netherlands Antilles tax authorities are allowed to impose an (emigration) income tax assessment based on the difference between the fair market value upon emigration and the cost price. This tax assessment does not need to be paid however, provided certain conditions are being met. If the pensioner/retiree emigrates within 8 years after taking up residence, this emigration income tax assessment will not be imposed.

Some other relevant Netherlands Antilles tax (related) considerations are:

- The pensioner/retiree is not allowed to deduct personal allowances from his foreign source income.
- The maximum inheritance/gift tax rate (in a parent-children relationship) is limited to 6%. The maximum inheritance/gift tax rate (non-family relationship) is limited to 24%. Under the Tax Arrangement for the Kingdom of the Netherlands, Dutch gift taxes will not be imposed on gifts made after having taken up

residence in the Netherlands Antilles for an uninterrupted period of 12 months. Only a few of the Dutch tax treaties provide for a similar relief.

- The taxable (premium) income is liable to Netherlands Antilles social security contributions, i.e. old age pension premiums (until age 60, premium percentage 11% of taxable (premium) income with a maximum premium of approximately NAG 5.000 (approximately US\$ 2.800) and special sickness premiums (premium percentage 2% of taxable income with a maximum premium of NAG 6.000 (approximately US\$ 3.400).
- Special transition provisions are available for pensioners/retirees who have taken up residency before January 1, 1998. Under these transition provisions non Netherlands Antilles source income will be taxed at a 5% personal income tax level or the pensioner/retiree can elect to have its income fixed at NAG 150.000 to be taxed at the ordinary personal income tax rates, resulting in a tax liability of approximately NAG 63.000 (approximately US\$ 35.000). However, certain Dutch source income is not eligible for protection of the Tax Arrangement for the Kingdom of the Netherlands, i.e. the Netherlands are allowed to levy personal income tax as well on certain type of income.

11 SECURITIES EXCHANGE

As part of the further development of Curaçao as an international financial center, a Securities Exchange became operational in 2000. The Exchange is called International Financial Center & Exchange (IFCE) of Curaçao. IFCE a.o. serves as an international facility for

member organizations through which the members can have access to securities exchanges around the world. In addition, IFCE also has a Securities Trading System, which allows trading members to place orders for their clients or for their own account. These securities may include mutual funds and other financial instruments.

IFCE provides, among others, the following benefits and facilities to its members:

- Access to the major financial markets under a single regulatory and operational environment eliminating the need for setting up offices in several countries.
- Execution, clearance and settlement of equities, options, mutual funds, unit trusts and precious metals trades in leading international markets, including New York, London, Paris and Frankfurt.
- Fixed income products that include securities of both governments and government agencies; municipal bonds; corporate bonds (both investment grade and high yield); mortgage-backed securities; preferred stock; unit investment trusts; and money market instruments.
- Mutual fund products and services.

IFCE is an integral part of the international financial system of Curaçao, which is characterized by its security, stability, integrity and confidentiality.

The Central Bank of the Netherlands Antilles is the regulatory authority of IFCE and exercises such authority based on legislation specifically introduced for this purpose.

12 TAX REFORM IN THE NETHERLANDS ANTILLES AND AND THE AMENDED TAX ARRANGEMENT FOR THE KINGDOM

12.1 Why a New Fiscal Framework (NFF)

A variety of international companies are managed in Curaçao, such as investment companies, finance companies, holding companies, mutual funds, offshore banking institutions, intellectual property holding companies etc.

The Netherlands Antilles, through self-policing and cooperation with the local and foreign authorities, have built a sound reputation for high quality, reliability and character of both its people and its clientele that use its international financial services sector. Curaçao, totally dominant in international financial matters in the Netherlands Antilles, has always taken pride of its vital roll in the international financial community and certainly endeavors to maintain this position.

In order to meet a variety of challenges the international financial services industry is facing, the Netherlands Antilles focused its attention to a complete upgrade and modernization of its tax legislation in line with among others recent policies defined by the OECD.

Complying with the most important features voiced by the OECD Forum on Harmful Tax Practices and accompanying recommendations is considered a prerequisite for a broad acceptance on an international scale and of paramount importance to succeed in expanding its tax treaty network.

Since the NFF is complementary to the Kingdom Tax Arrangement, especially vis-à-vis the tax treatment of Dutch dividend withholding tax on dividends distributed to Antilles parent companies, it is developed in close coordination with the Finance Department of the Netherlands. Although time consuming, this coordination has proven to be fundamental for the future success of the NFF.

In this determined effort to revitalize its financial services industry, the Netherlands Antilles passed three tax bills in December 1999. The first bill amended the 1940 Profit Tax Ordinance (“PTO”), the second introduced a Dividend Tax Ordinance and the third amended the Income Tax Ordinance 1943. These bills together form the New Fiscal Regime of the Netherlands Antilles (“NFR”). The NFR introduces a general corporate tax regime that is broadly comparable to the Netherlands corporate tax regime and may be regarded as a middle-of-the-road, European style, OECD corporate tax system. By the introduction of the NFR regime, the Netherlands Antilles hopes to be an acceptable partner for modern income tax treaties with OECD countries (including the Netherlands) and non-OECD countries. To be able to compete with tax exempt jurisdictions, the NFR also introduced a tax-exempt company.

The financial services industry is the mainstay of the Netherlands Antilles economy, which is closely tied to the outside world. During the last decade, the financial services industry, has become a less prominent contributor to the economy. The principal reasons for this decline are the gradual termination of the tax treaties of the Netherlands Antilles, the repeated amendments of the Tax Arrangement for the Kingdom

(the “TAK”), the implementation of the EU Parent - Subsidiary Directive coupled with the introduction of favorable holding regimes in a number of European Union member states, and the competition from tax-exempt jurisdictions.

In the negotiations with the Netherlands on the amendment of the TAK (which is the equivalent of a tax treaty), it was agreed that the introduction of the NFR would take place simultaneously with the amendment of the TAK. However, the amendment of the TAK took longer than anticipated and, therefore, the Netherlands Antilles decided in August 2000 to retroactively revoke the first and second NFR bill. In mid 2001, the Netherlands and the Netherlands Antilles agreed on a partial amendment of the TAK. The amended TAK called for certain changes in the NFR legislation. These changes were enacted in December 2001. On December 20, 2001, the Minister of Finance of the Netherlands Antilles could finally issue a decree stipulating that the NFR would enter into force would be effective retroactively from January 1, 2001. It was then also decided that the proposed Ordinance on dividend tax 2000, that was revoked in August 2000, would not enter into force.

Simultaneously with the introduction of the NFR, the Netherlands Antilles offshore regime was abolished. The grandfather provisions stipulate however, that all offshore companies that have been established prior to January 1, 2002 and that meet certain requirements will be grandfathered until and including the year 2019. Substantially all offshore investment holding, finance and licensing companies meet this condition.

12.2 HIGHLIGHTS OF THE NEW FISCAL REGIME

Entry into Force. The new legislation entered into force on January 1, 2001. A transition rule provides that taxpayers may elect not to apply the new legislation for a period of (not more than) two book years. This should give taxpayers sufficient time to prepare for the new legislation.

Offshore Companies. Offshore companies that have been established prior to January 1, 2002 and which qualify under article 8A, 8B, 12, 14 and/or 14A PTO or to which the 2.4-3% and/or 24-30% tax rate of the 1993 Guarantee Ordinance on Profit Tax applies (companies that engage exclusively or almost exclusively in e.g. investment holding, financing, licensing, offshore trading and property investment activities) are grandfathered until the year 2020¹. In respect of certain companies (such as offshore trading companies) the continuation of the offshore regime is subject to the condition that they have a valid tax ruling or have submitted a request for such a ruling on or prior to the last day of the book year that ends prior to January 1, 2002. The grandfather provisions further stipulate that the PTO, as it read prior to the first introduction of the NFR in December 1999, will continue to govern the tax position of the qualifying offshore companies. Hence, in principle, the Netherlands Antilles tax position of the above mentioned offshore companies will remain unchanged through the year 2019.

The grandfather provisions of the New Fiscal Regime further stipulate that companies to which the offshore regime continues to apply, may, in respect of profits derived from

¹ Offshore companies that have been incorporated after 1 July 1999 are grandfathered only if they engaged in substantive activities for their own account on or prior to the last day of the book year of the company that ends prior to January 1, 201

shares of Netherlands companies in which they own at least a 25% interest, as from January 1, 2002, elect to apply the participation exemption of the New Fiscal Regime (see below). If such election is made, the dividends are excluded from the profits that are subject to taxation at the offshore rate.

Offshore companies that no longer wish to be subject to the offshore regime may elect to be treated as ordinary NFR companies that are subject to 34.5% profit tax. Upon request, the normal regime will apply as from the beginning of the book year in which the request is submitted or as from the beginning of the following book year.

Profit Tax Rate. The NFR provides for a flat 34.5% profit tax rate (inclusive of the 15% island surcharges), which in principle applies to all taxpayers.

Participation Exemption. Under the new participation exemption, however, profits derived from a qualifying shareholding in a company are either 100% or 95% tax exempt. Expenses that are connected with the investment, including financing expenses, are not deductible if the profits are 100% tax-exempt. If the profits are 95% tax-exempt, 5% of the expenses that is connected with the investment are deductible. Generally, a shareholding amounts to a participation if it represents at least 5% of the share capital or voting power in a company or if the cost price of the shareholding amounts to at least NAF 1 million (US\$ 560.000).

The participation exemption makes a distinction between profits derived from shareholdings in Netherlands Antilles companies, Netherlands companies and other non-resident companies. Profits derived from a qualifying shareholding in a Netherlands Antilles company are 100% tax-exempt. Profits

derived from a Netherlands company of which the Netherlands Antilles company owns at least 25% of the share capital are also 100% tax-exempt. Profits derived from a Netherlands company of which the Netherlands Antilles company owns less than 25% of the share capital and from any qualifying participation in any company that is resident outside the Netherlands Antilles and outside the Netherlands are 95% tax exempt. For the purpose of the participation exemption Netherlands Antilles Exempt Companies are treated as non-resident companies.

Interest Expenses. The general rule under the NFR is that all interest is tax deductible, provided that the conditions of the loan are at arm's length. Certain restrictions apply to interest paid in respect of loans that are connected with certain tax-driven transactions and inter-group reorganizations and to interest paid to affiliated Exempt Companies (as defined below).

Withholding Tax. The Netherlands Antilles has decided not to introduce a dividend withholding tax. It does not levy withholding tax on any Netherlands Antilles source income.

Exempt Companies. The NFR introduces a company that is exempt from profit tax (hereinafter referred to as the "Exempt Company"). Any Netherlands Antilles private limited liability company can qualify as an Exempt Company. Certain stringent conditions are imposed (including conditions in respect of the disclosure of the beneficiaries and in respect of management and financial reporting), which are designed to secure that Exempt Companies are not used for illegal activities. Exempt Companies may engage only in certain financial activities and in investment holding activities. They cannot benefit from the TAK or any tax treaty.

12.3 AMENDMENT OF THE TAX ARRANGEMENT FOR THE KINGDOM

The amended dividend article of the TAK provides that dividends paid by a Netherlands company to a Netherlands Antilles company that owns at least 25% of the share capital in the Netherlands company that pays the dividends, are subject to Netherlands dividend tax at a rate of 8.3%, irrespective of the rate of tax to which the dividends are or to which the recipient is subject in the Netherlands Antilles. Hence, the new rate applies irrespective of whether the recipient is a company to which the NFR or the (abolished) offshore regime applies. The application of the 8.3% dividend withholding tax rate is subject to the condition that the combined effective rate of Netherlands dividend withholding tax and Netherlands Antilles profits tax on the gross dividends is not less than 8.3%. The 8.3% withholding tax rate replaces the 7.5% or the 5% rate that applied until January 1, 2002 to dividends paid to qualifying Netherlands Antilles parent companies.

Dividends paid by a Netherlands company to a Netherlands Antilles company that owns less than 25% of the share capital of the Netherlands company that pays the dividends remain subject to Netherlands dividend tax at a rate of 15%. This rate applies also if the condition that the combined effective rate of Netherlands dividend withholding tax and Netherlands Antilles profits tax on the gross dividends is not less than 8.3% is not met.

It is noted that the new 8.3% Netherlands withholding tax rate does not apply to dividends paid to Aruba companies.

13 THE NETHERLANDS ANTILLES CLOSE COMPANY (NABV)

A tax-exempt corporation is of course ideal for many taxpayers. The Netherlands Antilles will have one in the immediate foreseeable future for investment in debt instruments, securities and deposits. To meet the requirements of the fiscal authorities, a special corporation will have to be created, the so-called Netherlands Antilles Close Company (NABV). The CIFA (the Curaçao International financial Services Association) has taken the initiative to have the rules for the NABV drafted. Both the Netherlands Antilles minister of Justice, Dr R.S.J. Martha and Prof. Peter van Schilfgaarde, adviser to the drafting Committee, were leading forces behind the creation of a flexible and highly modern corporation.

As of January 1, 2000 the NABV rules entered into force. The NABV has registered shares only and the shareholders must be traceable. One striking aspect of the NABV is that it gives shareholders far more freedom to organize their company than in any existing Netherlands Antilles (or Netherlands, for that matter) corporation. Shareholders may choose between the English American one-board system and the classical continental two-tier system. There are voting and nonvoting shares, such at the discretion of the shareholders. Also, there is a possibility to opt for par value or non par-value value shares. Incorporation formalities have been liberalized: the assistance of a civil-law notary is mandatory but the so-called declaration of no objection by the Minister of

Justice has been abandoned. The deed of incorporation can be drafted in any foreign language, provided that the civil-law notary understands the language. Capital protection is minimal on the grounds that its value for the creditors is doubtful and that it is impossible to make it waterproof anyway. Many other old fashioned rules are done away with. On the other hand, in order to make sure that the NABV will be a legally sound vehicle, much attention is given to minority protection and to the liability of directors and officers in case of mismanagement or unlawful conduct.

The NABV is in principle subject to profit tax. However, a full exemption can be applied for if the activities are investing in debt instruments, securities and deposits. The company should not be subject to supervision of the Central Bank as being a bank or a financial institution. Also the company should prepare annual accounts and have them audited by an independent expert. These conditions are in line with current international standards and therefore should not form an unacceptable hurdle for serious investors.

14 NEW LEGISLATION ON THE SUPERVISION OF FIDUCIARY COMPANIES

The Netherlands Antilles Government in close co-operation with the organizations representing the local international financial services industry on a continuing basis is striving to introduce legislation and regulatory regimes in order to enhance its ability to attract quality business, and enable the country to maintain its reputation of pursuing high standards and integrity. Up-to-date legislation combating any form of money laundering, for example, has been enacted over the past five years. As from January 1, 2002 a regulatory regime is in force governing the licensing and supervision for all fiduciary institutions. The supervision is structured in accordance with the National Ordinance on the Supervision of Fiduciary Institutions (management and formation companies rendering so-called management-, trust- and administrative services) within the Netherlands Antilles.

The new supervisory legislation should be seen against the following. The Netherlands Antilles' financial services industry has committed itself to fully adhere to those high standards for which the Netherlands Antilles as a jurisdiction has become known for over the past 40 years. Only such a state of mind will be the guarantee to sustained financial success.

The main characteristics of the new Ordinance can be summarized as follows:

- fiduciary activities are defined as the performance of administration services' for and on behalf of offshore companies, e.g. assisting at the incorporation of

offshore companies, acting as managing director of offshore companies, and the providing of office facilities and a domicile to offshore companies.

- conducting fiduciary activities can only be carried out by a Netherlands Antilles company (NV or BV). Fiduciary companies granted a license shall be registered in a public register kept by the Chamber of Commerce.
- it is prohibited to carry out fiduciary activities without prior license from the Supervisory Board. In the event of a violation of this provision a penalty can be imposed on those convicted of violating said provision in the form of a fine, a term of imprisonment, or a combination of both a fine and imprisonment. In addition, in the event of a revocation of a license the court may order the dissolution of the fiduciary company involved.

The Supervisory Board has the supervision over the fiduciary companies, aimed to protect and safeguard craftsmanship, integrity, solvency and compliance with the Anti-Money Laundering and the so-called Anti Terrorism regulations and compliance with the Supervisory Ordinance as well. Prudent supervision along the lines and rules as defined in the new Ordinance is not only in the interest of the jurisdiction as a whole but certainly in the best interests of the international clientele structuring their specific needs and demands through the usage of Netherlands Antilles entities management by the various local operating fiduciary companies.

15 OECD PROJECT ON HARMFUL TAX PRACTICES

Readers may remember that there were grounds for optimism about future discussions between the Antillean Government and the OECD Forum on Harmful Tax Practices. As reported at that time, the Forum members had taken a constructive and sympathetic view of the potential socioeconomic problems of many countries, such as the Netherlands Antilles, faced with the challenge by the OECD to remove alleged “harmful tax practices” from their tax regimes. To the surprise of OECD, many jurisdictions like the Netherlands Antilles had responded positively to this constructive attitude. As Minister Henriquez put it when responding to the Forum’s invitation in Paris in August 1999 “to enter into a substantial period of dialogue”: “In the light of this, we regard this meeting as the beginning of an ongoing discussion”. In fact, the discussions with OECD officials began in the early part of 2000 and continued with increasing intensity throughout the year. Much of the work and discussion was focused on the need for OECD officials to understand in depth many aspects of Netherlands Antillean tax legislation, including the tax reforms in the NFR. This knowledge helped to assess what reforms to Antillean fiscal law may be needed.

During these discussions OECD executives emphasized again and again that it is not their intention (nor do they have the power or authority) to dictate to any country the type of fiscal regime it may have or the level of tax it may impose. Their concern is solely to ensure:

- “Transparency” — that the administration and application of a country’s tax regime as applied to all

taxpayers transparently clear to anyone who needs to understand how it works.

- Effective exchange of information - especially about the identity of taxpayers that may be benefiting from a preferential tax regime.
- Non-discrimination between different classes of taxpayers for example, by "ring fencing" a preferential tax regime so that access to it is denied to domestic taxpayers whilst being made available to non-residents.

During the course of this dialogue it emerged that Forum executives felt that in light of both the planned and implemented changes to Netherlands Antillean tax legislation which had been supplied to the Forum both by the Antillean Government and from other sources, the Antilles would be qualified to make a "first level commitment" to co-operate with OECD on the elimination of harmful tax practices, if so required.

The significance of a first level commitment was described in the Forum's letter of November 22, 1999 to all jurisdictions under review. The letter explains that there are two possible methods of commitment. "The first and the highest level would take the form of a public political commitment at the highest political level of the jurisdiction and that would endorse the principles of the OECD Tax Competition Report and to eliminate the harmful aspects of its regime for financial and other derived income".

The letter went on to explain that it is intended that jurisdictions undertaking this commitment would be excluded from the list of tax havens to be published by OECD and that jurisdictions making such a commitment

would not be subject to "co-ordinated counteracting measures by OECD countries".

Obviously there would be real advantages in making such a commitment:

- the Antilles would be declassified immediately as a tax haven which would not only be important in changing perceptions but would also guarantee that it will not appear on the tax haven list when published.
- immediately following the making of the first level commitment, the Netherlands Antilles would be invited to join the OECD Global Forum on taxation consisting of OECD members and others who are working together on global developments in the field of international taxation, especially in relation to transfer pricing, taxation and electronic commerce, taxation of global financial markets, etc.

Following such a commitment,

- the Antilles would be invited by OECD to high level meetings on international tax and other macro-economic issues so it would be able to take part in the discussions on such matters and thus in a position to influence the decision making process. Whilst there are these attractions, there would also be risks in making such a commitment. Indeed, the Forum executives themselves indicated that they are aware that a number of jurisdictions are grappling with difficult economy problems. They realized therefore that some countries are facing courageous decisions in making such a commitment to OECD.

No doubt, the decision whether or not to make the commitment was the subject of lively discussions and debate in Curaçao. In that context the Minister of Finance,

made his public commitment on behalf of the Netherlands Antilles Government on November 30, 2000 to the immediate and obvious delight of OECD officials and many of their members. Thus, the Antilles became the first country to make such a commitment since the original six countries did so in May 2000.

Since the commitment, OEGD has been as good as their word:

- The Netherlands Antilles has been invited to take part in the meeting of the Global Forum on taxation in March 2001 when the subject of a model exchange of information convention was on the agenda.
- In December 2000, the Head of OECD Fiscal Affairs invited the Antillean Government to attend a multilateral governmental conference on international tax issues affecting many developing economies. An Antillean delegation headed by our Minister of Justice attended the conference in Barbados in January 2001.
- During the conference in Barbados. Mr. Voges was able to meet some of his counterparts who are interested in closer economic ties with the Netherlands Antilles.

One concrete feature to emerge from these initiatives is that Antillean Government representatives are exploring the possibility of formalizing discussions on to arrive at tax treaty negotiations with three countries.

In summary, the steps taken by the Netherlands Antillean Government have already produced positive results and there is every reason to believe that this process will lead to economic benefits as the reputation of the Netherlands Antilles as a respectable jurisdiction spreads around the world.

16 THE QI-STATUS OF THE NETHERLANDS ANTILLES

On December 1, 2000 the Bank of the Netherlands Antilles (Central Bank) was informed that the request for the Qualified Intermediary (QI) status for the Netherlands Antilles has been approved by the USA Internal Revenue Service (IRS).

The approval is vitally important in connection with the introduction of the new US-tax withholding rules in January, 2001. The new rules made fundamental changes to the manner in which financial institutions, both in the USA and overseas, are being asked to help the IRS to collect taxes at source on US-investment income and to report US holders of overseas accounts. The most significant change is the implementation of a special intermediary regime by which non-US financial institutions can continue to obtain a reduced rate of US-tax withholding for their non-US customers without having to disclose their identity to the IRS or to third parties, provided they agree to assume certain withholding- and reporting responsibilities. According to the new rules, income from US sources will be subject to higher withholding tax rates unless the QI-status has been obtained. To obtain this QI-status, the country where the financial intermediaries are established has to enter into an agreement with the IRS that entails compliance with the Know Your Customer rules (KYC-rules).

This country-approval by the USA-Internal Revenue Services should indicate that Netherlands Antilles' legislation proves to be adequate and in compliance with the international standards of the KYC-rules.

ABN - AMRO Bank N.V.
ABN - AMRO Trust Company (Curaçao) N.V.
ABN-AMRO Bank Asset Management N.V.
Ahold Insurance N.V.
AMACO (Curaçao) N.V.
AMICORP Curaçao N.V.
AMTR (Antillean Management & Trust) N.V.
Anthoom Trust Company N.V.
AON Risk Services (Antilles) N.V.
Arthur Andersen, Auditors
ASCOR Trust Company N.V.
ATC Trustees (Curaçao) N.V.
Banco Mercantil Venezolano N.V.
BDO Auditors and Advisors
BNP Trust (N.A.) N.V.
CAK Trustkantoor N.V.
Century Trust Curaçao N.V.
CMTC Capital Management & Trust Co Inc
COMANCO (Curaçao Overseas Manag. Co) N.V.
CORAL Administration & Management N.V.
Corporate Agents N.V.
CITCO Curaçao International Trust Co. N.V.
Curaçao Trust Management N.V.
Curado Trust N.V.
Deloitte & Touche, Tax Advisors
Delta Asset Management N.V.
DS (Antilles) Capital Management N.V.
Dutch Nordic Life Insurance Company N.V.
Dutch Nordic Insurance Company N.V.
DVB Nedship Bank (Americas) N.V.
Ernst & Young Caribbean, Accountants
Ernst & Young, Tax Advisors
FERMENTASS N.V.
First Columbus Trust (Curaçao) N.V.

First Curaçao International Bank N.V.
First Independent Trust (Curaçao) N.V.
Forum Administrations N.V.
Fortis Bank (Curaçao) N.V.
Fortis Fund Services (Curaçao) N.V.
Fugro Curaçao N.V.
Hagemeyer Caribbean Holding N.V.
HAL Holding N.V.
HB Management N.V.
Heineken Trading N.V.
Hunter Douglas International N.V.
ICAF Antillen N.V.
ING Barings
ING Trust (Antilles) N.V.
Insinger de Beaufort Trust
Intertax N.V.
Intertrust (Antilles) N.V.
KPMG Accountants
KPMG Tax and Legal services
F. van Lanschot Management Company N.V.
Latruco N.V. (Latin Trust Company)
LOYENS & LOEFF, tax advice
Maduro & Curiel's Trust Company N.V.
Maliebaan Management N.V.
Mazars Paardekooper Hoffman Curaçao N.V. Auditors
MeesPierson Trust (Curaçao) N.V.
MeesPierson Private Wealth Management N.V.
Van Melle Latin America Inc
MIDO Trust & Management N.V.
Muller & Associates, Tax Lawyers
The Noro Group of Companies
Notariskantoor Alexander & Simon
Notariskantoor Mr. H.Th.M. Burgers
Notariskantoor Palm & Senior

Notariskantoor Mr. M. van der Plank
Notariskantoor Mr. A.P. van der Pluijm-Vrede
ORCO Bank N.V.
De Paus & Vesseur, Auditors
PricewaterhouseCoopers, Auditors
PricewaterhouseCoopers, Tax Consultants
The Lawfirm of Promes Van Doorne
ProStaff (Curaçao) N.V.
Rabobank Curaçao N.V.
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