

Translation (compiled from existing sources and new text)

Netherlands Antilles

National Ordinance on Profit Tax 1940¹

(As reading following amendment by Official Gazette 2001, no. 145,
(Act to implement the New Fiscal Framework - NFR))

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National Ordinance on Profit Tax 1940

(As reading following amendment by Official Gazette 2001, no. 145, (Act to implement the New Fiscal Framework - NFR)) ,

General provisions

Article A (Cancelled by O.G. 2001, no. 89)

Chapter 1 Object, amount and dueeness of the tax

Article 1

1. Under the name of "profit tax", a tax shall be levied
 - a. on the profit of the following entities established within the Netherlands Antilles: limited liability companies, private companies, joint stock limited partnerships, other corporations or associations, the capital of which is divided into shares, be this in whole or in part, cooperative organizations and mutual insurance companies;
 - b. on the profit of the following entities established within the Netherlands Antilles: associations, whereby the capital is not divided into shares, and foundations from businesses other than as exclusively dedicated to the promotion of a general social interest;
 - c. on the profit of entities not established within the Netherlands Antilles (including all companies and associations, whereby the capital is divided into shares, be this in whole or in part); from business operations to the extent and insofar as conducted by means of a permanent establishment domiciled within the Netherlands Antilles, from immovable property situated within the Netherlands Antilles or from any rights concerning such property, as also from non-commercial debt-claims which –as far as the principal sum is concerned– are secured by mortgage, established on such property. Immoveable property situated within the Netherlands Antilles or rights to which the same is subjected, belonging to the equity of a business of an entity established outside the Netherlands Antilles, shall always be deemed to belong to the equity of a permanent establishment situated within the Netherlands Antilles.
2. In case the incorporation or the setting-up was effected under the laws of the Netherlands Antilles, however, the Netherlands Antilles shall always be held to be the country of domicile.
3. The term "business" or "trade" ["*bedrijf*"] shall be held to include the performance of acts, activities or services of any nature whatsoever.
4. The entities referred to in the first paragraph, section a, shall be deemed to conduct a business with the aid of their entire equity.
5. The first paragraph and the second sentence of the second paragraph shall not apply in respect of an Exempted Company as referred to in article 1A, first paragraph, section f.
6. Permanent establishment shall mean:
 - a. a durable establishment in which or with the aid of which the activities of an entity are carried on in whole or in part, and shall comprise specifically:
 - 1st a place where management is conducted;
 - 2nd a branch;
 - 3rd an office;
 - 4th a factory;
 - 5th a workshop; and
 - 6th a place where natural resources are extracted;
 - b. a permanent representative.

7. The place where construction, building or assembly activities are carried out shall constitute a permanent establishment in terms of the sixth paragraph only if the duration of such activities exceeds twelve months.
8. The maintaining of a permanent establishment as referred to in the sixth paragraph shall not include:
 - a. the maintaining of a stock of goods solely for purposes of storage or display;
 - b. the maintaining of an accommodation solely for purchasing goods for the entity;
 - c. the maintaining of an accommodation solely for advertising purposes, for furnishing and gathering information, for scientific research and for similar activities, if the said activities are of a preparatory nature or are ancillary activities for the entity.
9. An entity shall not be deemed to possess a permanent establishment in the Netherlands Antilles solely based on the circumstance that it carries on business in the Netherlands Antilles through the medium of a broker, commission agent or any other independent representative, provided that such persons act in the normal conduct of their business.
10. The expression 'permanent representative' shall be taken to mean a person with a permanent authority to enter into agreements on behalf of an entity who regularly uses such authority in the country concerned.

Article 1A

1. In this national ordinance, the following terms shall have the following meanings:
 - a. concern: the assessable party together with the entities:
 - 1st in which the assessable party holds an interest for at least one third part;
 - 2nd that have an interest in the assessable party for at least one third part;
 - 3rd in which a third party holds an interest for at least one third part, while such third party also holds an interest in the assessable party for at least one third part;
 - b. internal profit: the profit as referred to in article 1, first paragraph, section c;
 - c. foreign profit: that which the party assessable earns from another country as profit from foreign business, being a business, or part of a business, that is carried on with the aid of a permanent establishment or a permanent representative within the territory of the other country; immovable property situated within the territory of the other country or rights to which the same is subjected, belonging to the equity of a business of the assessable party, shall always be deemed to belong to the equity of the foreign business;
 - d. subsidiary: a limited liability company or private company, set up under the laws of the Netherlands Antilles, the Netherlands or Aruba, in which at least ninety-nine percent of all the shares are held by another entity;
 - e. parent company: a limited liability company or private company set up under the laws of the Netherlands Antilles, the Netherlands or Aruba, holding at least ninety-nine percent of all the shares in another entity;
 - f. Exempted Company: a private company designated as such by the Inspector upon a written request in conformity with the fifth paragraph, set up under the laws of the Netherlands Antilles, that uninterruptedly fulfils the following conditions during the financial year:
 - 1st the management of the company shall keep a register with the names and addresses of the eventual beneficiaries with a stake of ten percent or more in the company;
 - 2nd the management of the company shall consist exclusively of one or several natural persons residing in the Netherlands Antilles, or certified trust offices established in the Netherlands Antilles, or managers of certified trust offices and other persons engaged by such trust offices;

3rd the management of the company shall prepare each year an annual account that shall be examined by an independent expert appointed by the general meeting and provided with an audit certificate within twelve months from the close of the financial year;

4th the objectives specified in the articles of association of the company and its actual activities shall exclusively, or almost exclusively, consist of lending out moneys, investing in securities and deposits; and

5th the company shall not be a bank or any other financial institution that is subjected to the supervision of the *Bank van de Nederlandse Antillen* [the Central Bank of the Netherlands Antilles].

2. Certified trust office in the first paragraph, section f under 2nd shall mean a trust office that meets the conditions to be made by the Minister of Finance.

3. Managers of certified trust offices and other persons engaged by such trust offices in the first paragraph, section f under 2nd shall mean the managers and persons who meet the conditions to be made by the Minister of Finance.

4. In case the Articles of Association of the company, referred to in the first paragraph, section f, provide that the management tasks be shared by a general management and an executive committee, then, in deviation from the first paragraph, section f under 2nd, the general management may also consist of one or several natural persons residing outside the Netherlands Antilles, provided that these persons, if authorized to represent the company, be so authorized only together with one or more of the persons referred to in the first paragraph, section f under 2nd.

5. The Inspector shall notify the private company within two months from his receipt of the request referred to in the first paragraph, section f, in writing of his decision on the request. If such notification is not sent within the said term, the request shall be deemed to have been granted.

6. When the request referred to in the fifth paragraph is granted, this shall take effect as and from the year following that in which the request was made, it being understood that if the request has been made within three months from incorporation, the granting shall take effect as and from such date. If a private company was an Exempted Company, however, and subsequently became a taxed company, the private company shall not be capable of again being deemed an Exempted Company within thirty-six months from it having become a taxed company.

7. If a private company requests the Inspector in writing to discontinue its qualification of Exempted Company, this company shall become a taxed company as and from the year following that in which the request was made. Should a private company no longer meet the conditions referred to in the first paragraph, section f, such company shall become a taxed company as and from the financial year in which the said paragraph is no longer complied with.

Article 2

1. The following shall be exempted from the tax:

a. the profit of the entities referred to in the first paragraph of article 1 sub c, earned with the conveyance of persons and goods, by sea or by air, between ports situated within and outside the Netherlands Antilles;

b. the profit of the entities referred to in the first paragraph of article 1, acquired with the purchase, sale, storage and supply of petroleum and petroleum products, if and insofar as such purchase, storage and supply is effected by or through the medium of an enterprise as referred to in article 7, first paragraph of the National Ordinance on Tax Credits for Industrial Enterprises (O.G. 1985, no. 146) to which enterprise, upon its request to the effect, exemption from the tax has been granted by the Governor, in consultation with the Executive Council of the island territory concerned;

- c. the profit of the following entities established in the Netherlands Antilles: incorporated pension funds, saving funds, provident funds, burial funds, sickness benefit funds and distress relief funds, which have been set up for the benefit of personnel, former personnel or their dependents. The question as to whether or not a fund meets the requirements for exemption, shall be decided to the extent necessary according to the circumstances;
 - d. the profit of a limited liability company or private company, all the shares in which are the property of the legal person the Netherlands Antilles and an island territory, if and to the extent that such profit has been earned with the extraction and sale of petroleum;
 - e. the benefits gained from the exemption from social charges due and the obligation to pay wage taxes withheld, as referred to in article 2 of the National Ordinance for the Promotion of Employment for Young Jobseekers (O.G. 1989, no. 74);
 - f. the profit of an entity as referred to in the first paragraph of article 1, earned with the operation of an oil refinery established in the Netherlands Antilles on January 1 1985 provided that, upon its request to the effect, such entity has been exempted from the tax by the Governor, in consultation with the Executive Council of the island territory concerned. Operation shall be held to include ownership and lease;
 - g. the benefits of a limited liability company, acquired from loans to the businesses established in the Netherlands Antilles for the construction or upgrading to luxury accommodations for staying and recreation in one or more island territories of the Netherlands Antilles;
 - h. (cancelled);
 - i. (cancelled);
 - j. the profit of a limited liability company established in the Netherlands Antilles:
 - 1st that fully or virtually fully aims at promoting the economic development of the Netherlands Antilles by means of participating in and granting loans to businesses established in the Netherlands Antilles; and
 - 2nd in which the legal person the Netherlands Antilles or one or more island territories hold more than fifty percent of the shares;
 - k. the profit of a foundation that according to its Articles of Association has been set up as a private fund.
2. The provision laid down in section g of the first paragraph shall apply only insofar as a limited liability company is involved in which the legal person the Netherlands Antilles or one or more island territories hold more than fifty percent of the shares and which uses at least seventy percent of its financial resources, acquired from bond loans issued, to grant loans to the businesses referred to in that section at a consideration lower than that as offered by credit institutions established in the Netherlands Antilles.
 3. By national decree constituting general measures, the conditions to be met by the accommodations for staying and recreation referred to in the preceding paragraph, in order for them to be deemed luxury accommodations for staying and recreation, shall be further specified.
 4. The first paragraph, section c, shall not apply to:
 - a. limited liability companies and other companies whose capital is fully or partially divided into shares and in which an employee or a former employee, his/her spouse or partner, provided that they have had a joint household for at least one year without any interruptions, one of their relatives by blood or affinity in the ascending or descending line or to the second degree of consanguinity in the collateral line, or one of their foster children, individually or jointly, directly or indirectly, holds shares for at least 10% of the nominal paid-up capital;
 - b. entities, not being the entities referred to in section a, whose activities mainly consist of the implementation of pension schemes or schemes for the early retirement of employees of former employees of limited liability companies or other companies whose capital is fully or

partially divided into shares and in which such employees or former employees, their spouses or partners, provided that they have had a joint household for at least one year without any interruptions, their relatives by blood or affinity in the ascending or descending line or to the second degree of consanguinity in the collateral line, or their foster children, individually or jointly, directly or indirectly, hold or have held shares for at least 10% of the nominal paid-up capital.

Article 3

1. The tax shall be levied on the calendar year. The financial year shall be taken to be the calendar year.
2. The profit earned in a financial year shall be determined according to good mercantile practice, with due observance of a stable line of action that shall be independent of the presumable results and that may be changed only if good mercantile practice warrants this.
3. Entities shall not be allowed to work with financial years that are not the same as the calendar year. This shall not apply to:
 - a. entities not established in the Netherlands Antilles;
 - b. entities to which article VI of the National Ordinance of 29 December 1999 in amendment of the National Ordinance on Profit Tax 1940 (O.G. 1965, no. 58) (O.G. 1999, no. 244) applies or has applied;
 - c. entities that already worked with a financial year that deviated from the calendar year prior to 1 January 1997;
 - d. other entities that have been given the permission to work with a financial year that deviates from the calendar year, subject to conditions to be determined by the Inspector.
4. If at any time a company that previously did not meet the conditions referred to in article 1A, first paragraph, section f, can be deemed an Exempted Company, then per ultimo of the financial year in which the said conditions are met:
 - a. the entity shall be deemed liquidated;
 - b. the remaining capital of the entity shall be deemed to have been distributed among those entitled to a share of such capital according to their entitlement; and
 - c. the capital to be brought in shall be deemed to have been brought into the entity by those entitled to a share of such capital.
5. If at any moment a company that previously fulfilled the conditions referred to in article 1A, first paragraph, section f, should no longer comply with such conditions, then per ultimo of the financial year preceding that in which the said conditions are no longer met:
 - a. the entity shall be deemed liquidated;
 - b. the remaining capital of the entity shall be deemed to have been distributed among those entitled to a share of such capital according to their entitlement; and
 - c. the capital to be brought in shall be deemed to have been brought into the entity by those entitled to a share of such capital.

Article 4

1. By profit shall be understood the sum of the benefits acquired net, under any name and in any form whatsoever, from business operations and from capital not used therein.
2. These benefits shall be held to include the profit obtained from the alienation of property which was not intended to be sold, and in general any benefit obtained with such property – even if obtained after operations were ceased.
3. Benefits from business operations as referred to in the first paragraph, which have not already been taken into consideration on the strength of this national ordinance, shall be reckoned as the

profit of the calendar year in which the assessable party ceases to earn profit from business operations within the Netherlands Antilles, taxable pursuant to this national ordinance.

4. The third paragraph shall also apply if business is withdrawn from a permanent establishment in the Netherlands Antilles. For the purposes of article 5A, the assets shall then be deemed to have been withdrawn from the concern.

Article 4A

The profit shall not include the amount by which the dividend tax to be paid has been reduced pursuant to article 11, second paragraph, of the National Ordinance on Dividend Tax 2000 (O.G. 1999, no. 246).

Article 5

1. For the purpose of calculating the net amount of the benefits referred to under article 4, the gross amount thereof shall be reduced by the cost of acquisition, collection and conservation of such benefits, as also by such amounts as shall be allowed under the second paragraph of this article as cost of incorporation and cost relating to the increase of capital of the entity.

2. Deduction of the cost relating to incorporation and to capital increase shall be allowed in conformity with the deduction according to the bookkeeping, it being understood that, for the respective years, such deduction in the aggregate shall not exceed the amount of such cost.

3. From the amounts of the gross benefits from business operations shall furthermore be deducted the amount to be written off, by reason of decrease of the useful value, on the property used for conduct of the business, as also the amount to be written off as irrecoverable on debt-claims relating to the business, all this according to good mercantile practice.

4. 1st In deviation from the provisions contained in the third paragraph, one third part of the costs of acquiring business assets may be written off at will, provided this be done in advance.

2nd. As for buildings, sea-going vessels or aircraft, such writing-off shall be possible as soon as obligations are entered into or production costs are made for acquisition or improvement, it being understood that prior to the putting into operation, with respect to any obligations entered into no more can be written off in advance than the amount paid in respect of such obligations. The Minister of Finance, in agreement with the Minister of Economic Affairs, may limit the application of, or may declare non-applicable, the writing-off referred to above, either generally or for specific groups of business assets.

5. From the amount of the gross benefits from capital not used in the business shall be deducted such amount as may be required for depreciation by reason of the termination of time-limited rights.

Article 5A

1. If in any financial year an amount of over f.5,000.- is invested in business assets, eight percent of the investment amount shall be charged both to the profit of that year and to that of the financial year subsequent thereto. By investment shall be understood the entering into obligations in respect of the acquisition or improvement of business assets used for the exercise of an enterprise within the Netherlands Antilles, and the incurring of production costs for same. If not all the obligations in this respect fall on the assessable party, only the amount that does fall on the assessable party shall be taken into consideration.

To the extent that in any year investments are made in new buildings – this to include the improvement of existing buildings – the rate stated in the first sentence of this paragraph shall be increased to 12 percent of the investment amount.

2. In case of alienation in any year of property, in respect whereof the preceding paragraph has applied, a percentage of the transfer price, equal to the percentage that in respect of the

investment in such property pursuant to the first paragraph may be deducted from the profit for the years thereby mentioned, shall be credited to both the profit of that year and that of the year subsequent thereto. Additions shall be made only insofar as the alienation takes place within 6 years from the start of the year in which the investment has taken place, it being understood that for buildings the term shall be set at 15 years. Additions shall take place up to a maximum of the amount for which a deduction had been granted at the time.

3. The following shall not be reckoned as business assets:
 - a. lands, including the foundation of buildings;
 - b. houses, including the parts of business premises used for residential purposes, unless the letting out of these houses is in keeping with the normal conduct of business;
 - c. passenger cars, unless such passenger cars are intended to be used for passenger traffic in the ordinary course of business;
 - d. pleasure craft;
 - e. securities, claims and goodwill;
 - f. bottles, cases and other packing materials;
 - g. objects of little value, insofar as such expenses are ordinarily reckoned as day-to-day expenses of the business or profession;
 - h. other business assets to be designated by the assessable party .
4. Unless the Minister of Finance shall provide otherwise for specific cases, the following shall not come into consideration:
 - a. obligations entered into in respect of the acquisition of an enterprise or part of the enterprise, against an issue of shares;
 - b. obligations entered into by the party who, directly or indirectly, is entitled for more than one fourth part to the nominal paid-up capital of a company, and such company ;
 - c. obligations entered into by joint stock companies, at least one shareholder of which, directly or indirectly, owns a considerable interest in terms of article 11, first paragraph sub three, of the National Ordinance on Income Tax 1943 .
5. On withdrawing property from the company, the selling value or, if same cannot be determined, the monetary value shall be reckoned as the transfer price.
6. In the event that an investment is cancelled or, with relation to an investment, a reduction, return or consideration is received, the same shall be reckoned as the alienation of a business and the amount of such investment, reduction, return or consideration shall be reckoned as the transfer price. If an alienation is cancelled or if, with relation to an alienation, a reduction, return or consideration is granted, the same shall be reckoned as an investment, and the amount of such alienation, reduction, return or consideration shall be reckoned as the investment amount.
7. In agreement with the Minister of Economic Affairs, the Minister of Finance can – save where entities referred to in article 9A are concerned –:
 - a. limit the reductions generally or for certain groups of business assets;
 - b. provide that the reductions shall not apply generally or for certain groups of business assets.

Article 5B

1. The provisions of articles 5, fourth paragraph, 5A, first paragraph, 6, third paragraph, article 9A, seventh paragraph and article 10, paragraphs two and five shall apply only if books are kept by the entity on a regular basis, with regular annual balancing. Should the entity cease thus to keep books, the reserves according to article 6, third paragraph and article 9A, eighth paragraph, shall be included in the profit of the last financial year on which books were kept on a regular basis.

2. The provisions in articles 5, fourth paragraph, and 5A, first paragraph, shall not apply to companies within the meaning of the National Ordinance to Promote the Establishment of Companies and the Construction of Hotels (O.G. 1953, no.194), the National Ordinance to Promote the Development of Land (O.G. 1964, no. 77), the National Ordinance on Tax Credits for Industrial Enterprises (O.G. 1985, no. 146) and to the companies referred to in the National Ordinance on Economic Zones 2000 (O.G. 2001, no.18).

Article 6

1. Outlays for the purchase, construction, improvement or alteration of lands, buildings, machinery, implements and other property, used for the conduct of the business, outlays for the takeover, expansion, improvement or modification of the business and other expenses of such nature, shall not be deducted unless such outlays and expenses can be deemed to be ordinary day-to-day operating expenses

2. No deduction shall be allowed:

- a. for the creation or augmentation of a reserve fund;
- b. for interest on the party's own capital;
- c. for interests on moneys raised – such to include charges and currency results – and considerations for the enjoyment of property yielded up in any form for use or consumption, paid to an entity belonging to the same concern or a natural person having a considerable interest in terms of article 11, first paragraph, sub 3 of the National Ordinance on Income Tax 1943, in the assessable party, insofar as the paying entity and the party earning the income in their trade relations or financial relations agree on terms that deviate from those which would have been agreed on between independent persons;
- d. for interest of moneys raised – such to include charges and currency results – when such interests are enjoyed directly or indirectly by an Exempted Company belonging to the same concern, insofar as during the year the average amount of the moneys raised from this Exempted Company exceeds three times the equity of the debtor;
- e. in respect of profit tax, and of taxes levied outside the Netherlands Antilles in any form according to the profit, whether or not at the source, insofar as an arrangement for the prevention of double taxation applies to the assessable party in that respect. On determining the profit of a permanent establishment that is exempted from profit tax pursuant to article 12, first paragraph, the tax levied abroad that relates to this profit shall be fully deductible;
- f. in respect of 10 percent of the tax paid on the turnover of the business as referred to in the National Ordinance Tax on Business Turnover 1997 (O. G. 1996, no. 210);
- g. for the cost of vessels used for representational purposes;
- h. for fines imposed by a criminal court judge of the Netherlands Antilles and sums of money paid to the country of the Netherlands Antilles or to one of the island territories to avoid prosecution in the Netherlands Antilles or to satisfy a condition attached to a decision to grant a pardon, and for fines and increases imposed by a government body on the grounds of a national or island ordinance;
- i. for expenses and charges related to criminal offences for which the assessable party has been convicted by a criminal court judge of the Netherlands Antilles by a final and conclusive sentence, including the criminal offences that were taken into consideration to determine the severity of the penalty imposed and concerning which the Public Prosecutor has declared to discontinue prosecution;
- j. for expenses and charges related to criminal offences concerning which the assessable party has met the conditions set to allow such party to avoid criminal prosecution in the Netherlands Antilles;
- k. in respect of twenty percent of the expenses and charges concerning:

1st donations and gifts to business relations;

2nd food, drinks and stimulants, representation - including receptions, festive meetings and entertainment-excursions, study trips etc.; always including the costs of travel and accommodation concerned;

3rd courses, congresses, seminars, symposiums etc, including the costs of travel and accommodation concerned;

l. in respect of the expenses and charges, with the exception of write-offs, of a house that forms part of the equity of the entity to the extent that the amount of such expenses and charges is higher than the amount stated to calculate the wage or income tax to be paid by the user for such use:

m. in respect of bribes;

n. in respect of profit distributions, including any surplus of the business or of any part of the business, regardless of the name under which and the form in which effected and whether or not due, with the exception of:

1st shares in the profit granted to supervisory directors, representatives, managers and personnel for work performed in the business;

2nd shares in the profit, accruing to those entitled to debt-claims which have not fallen to founders, shareholders, members, participants or parties entitled as such;

3rd shares in the profit constituting the quid pro quo for the granting of a concession or a license to a patent, or for any other similar performance, such as supplies or acquisitions, provided these shares in the profit have not fallen to founders, shareholders, members, participants or parties entitled as such;

4th shares in the profit of an insurance company, which accrue to the insured parties pursuant to their insurance;

5th the part of the profit of a joint stock limited partnership that accrues to the partners liable as such for the entirety.

3. In deviation from the provision contained in the second paragraph, letter a, in the event that considerations by reason of the loss of or any damage to a business asset not referred to at the end of the first paragraph, or that the proceeds on the alienation of such business asset should exceed the book value thereof or of the damaged part, as the case may be, on determining the profit earned in a financial year in each case, if and so long as the intention to replace or repair the business asset exists, any such difference may be reserved and held in reserve until the reduction of the cost of replacement or repair to be taken into consideration. The provision of the preceding sentence shall apply analogously if the intention to replace the business asset was carried into effect already before the alienation. To the extent that the reserve exceeds the difference between the costs of replacement or repair and the book value of the lost or alienated business asset, or the damaged part thereof, as the case may be, such reserve shall be included in the profit.

4. The reserve created in accordance with the third paragraph shall be included in the profit at the latest in the fourth financial year following upon that in which the reserve was created, unless for the replacement or repair a longer period of time will be required or, as the case may be, the replacement or repair has been delayed owing to special circumstances, provided, however, the execution thereof has been commenced.

5. For the purposes of article 5, fourth paragraph, the reduction of the costs of replacement or repair pursuant to the third paragraph shall not be reckoned with; the amount of such reduction shall be deemed written off in accordance with the writings-off possible under article 5, fourth paragraph.

6. In the event of liquidation, the reserve referred to in the third paragraph shall be considered a benefit within the meaning of article 4.

7. To the extent that expenses and charges relating to a criminal offence were taken into consideration to determine the profit during one or several of the five years prior to the year in which the conviction, referred to in the second paragraph, section h, became final and conclusive, or in which the conditions, referred to in the second paragraph, section i, were fulfilled, the amount equal to the sum of such expenses and charges shall be considered a positive benefit of the business profit of the latter year.
8. For the purposes of application of the second paragraph, sections h and i, anyone who has ordered the criminal offence to be committed on behalf of the assessable party or who has actually supervised the criminal offence shall be considered equivalent to the assessable party.
9. The second paragraph, section k, shall not apply with respect to such expenses and charges to the extent that the direct objectives of the company are the manufacture or trade of the goods referred to in the second paragraph, section k, or the performance of any corresponding services and such goods and services form part of the total sales.

Article 6A

1. On determining the profit, interests – such to include charges and currency results – in respect of money loans, due to an entity belonging to the same concern, shall not be deducted either, insofar as the money loan shall relate to any one of the following legal acts:
 - a. a profit distribution or a return of paid-up capital by the assessable party;
 - b. an acquisition of – such to include a payment of calls on – shares, certificates of participation or membership rights in an entity already belonging to the same concern, which entity is established in one of the other countries of the Kingdom or in a country with which the Netherlands Antilles effected a treaty for the prevention of double taxation, save insofar as an amendment is introduced in the ultimate interest or else the ultimate control in such entity;
 - c. a capital deposit or any other form of appropriation of capital by the assessable party in the entity to which the money loan is due.
2. The first paragraph shall not apply if the assessable party proves satisfactorily that:
 - a. for the most part business considerations constitute the basis of the debt relation; or
 - b. the party to whom the interest is due is subject to a tax according to the profit or the income which is reasonable according to Netherlands Antilles standards.
3. The debt relations to which this article applies shall be left out of consideration when article 6, second paragraph, section d is applied.
4. The provision of this article shall only apply to debt relations that came into being on or after the latter of the following times:
 - a. 1 January 2001;
 - b. the time when the obligation to pay taxes in this country starts;
 - c. the time when the National Ordinance on Profit Tax 1940, in its version of 31 December 1999, pursuant to article VI of the National Ordinance of 29 December 1999 to amend the National Ordinance on Profit Tax 1940 (O.G. 1965, no. 58), ceases to apply to the assessed party.

Article 7

1. An entity as referred to in the first paragraph of article 1 may deduct from the profit, gifts donated to religious, charitable, cultural, scientific institutions and public interest organizations established within the Netherlands Antilles. Any such gifts must be evidenced by written proof.
2. For the deduction referred to in the preceding paragraph, gifts shall come into consideration only if and insofar as exceeding in the aggregate one percent of the profit, with the exception of profit distributions pursuant to article 11, after such profit has been reduced by the still

unadjusted loss, referred to in article 10, and at the same time exceeding f.100.-.The deduction shall run to three percent and no more of the profit reduced in accordance with the preceding sentence.

3. For the purposes of this article, only and exclusively benefits given in generosity and non-obligatory contributions shall be considered gifts, if and insofar as no claim, measurable in terms of money, can be derived from any such benefit and contribution.

Article 8

1. The profit of an entity as referred to in the first paragraph of article 1 under a or b, which carries on the insurance business, shall be set, if so requested at the filing of the tax return, every time for a period of five years, at ten percent for a life insurance business and for the rest at twenty percent of the amount received in premiums and capital in any year, it being understood that premiums and capital received by an entity –other than by means of a permanent establishment domiciled abroad, as referred to in article 12–, in respect of risks run outside the Netherlands Antilles, shall be set at five percent for a life insurance business, and for the rest at ten percent.

2. The profit of an entity, as referred to in the first paragraph of article 1 under c, exercising the insurance business both in and outside the Netherlands Antilles by means of a permanent establishment, shall be set by the business being exercised in this place, as regards the life insurance business at ten percent and for the rest at twenty percent of:

- a. the amount received in premiums and capital from insured parties residing or established in the Netherlands Antilles or for risks run in the Netherlands Antilles, increased by
- b. the amount not included under a, received by the permanent establishment established in the Netherlands Antilles in respect of insurances effected by it.

3. An entity as referred to in the second paragraph shall be deemed to exercise the insurance business in the Netherlands Antilles by means of a permanent establishment, if it concludes insurance contracts in this country or causes this to be done, and collects the premiums due thereon or causes these to be collected.

4. In the cases referred to in the first and second paragraphs, no deduction shall be allowed in respect of brokerage, commissions, discounts, reinsurance or other cost.

5. In deviation from the second paragraph, and if so requested at the filing of the tax return, the profit shall be set, every time for a period of five years, at the sum which bears to the entire profit from the insurance business in the same relation as the amount received in the same year in premiums and capital, as referred to in the second paragraph, relates to the full amount received in such year in premiums and capital from insured parties, provided that the data required for the making of the assessment are supplied at the filing of the tax return and the correctness of such data is substantiated, if so requested, by supporting vouchers.

6. For the purposes of the preceding paragraph, the entire profit shall be determined according to articles 4 through 7.

7. The period of five years referred to in paragraphs 1 and 5 shall relate to the year in which the tax return is made and the four years subsequent thereto.

Articles 8A - 8B (Cancelled by O.G. 1999, no. 224)

Article 9 (Cancelled by O.G. 1985, no. 83)

Article 9A

1. Under the conditions laid down in the third, fourth and fifth paragraphs of this article, of the profit of the entities referred to in the first paragraph of article 1 under a, the object of which entities

is the exercise of the shipping or the aviation business – including the letting and freighting of seagoing ships or aircraft – earned with the exercise of the said business and determined according to the provisions of this national ordinance (with the exception of the profit earned with the conveyance between ports situated in the Netherlands Antilles), eighty percent shall be deemed to be profit earned outside the Netherlands Antilles.

2. On the profit earned outside the Netherlands Antilles as referred to in the preceding paragraph, tax shall be levied at the rate of one tenth of the rate stated in article 15.

3. The first and second paragraphs of this article shall apply only in respect of an entity that:

- a. has been set up under the laws of the Netherlands Antilles and
- b. has its seat, according to its Articles of Association, within the Netherlands Antilles, and furthermore
- c. to the extent that the entity itself engages in transportation, the day-to-day management of such transportation is conducted within the Netherlands Antilles

4. The first and second paragraphs of this article furthermore shall apply only if and so long as the seagoing vessels or aircraft belonging to the entity concerned are registered within the Kingdom of the Netherlands.

5. For the purposes of the provisions of this article it can be provided by national decree, at a request to the effect by an entity concerned, that a seagoing ship or aircraft belonging to its business, which is not registered within the Kingdom of the Netherlands, be reckoned as a seagoing ship or aircraft registered within the Kingdom of the Netherlands. The national decree may stipulate this only if the rules with respect to the safety of and care for the crew as prevailing in the country of registration can be held to be at least equal to those in force in the Netherlands Antilles.

6. For the purposes of this article, seagoing ships shall be: the ships referred to in article 2 of the "*Curaçaose Zeebrievenbesluit 1933*" [Curaçao Order on Certificates of Registry 1933]; and aircraft shall mean: the aircraft referred to in article 1 of the "*Curaçaos Luchtvaartbesluit 1935*" [Curaçao Aviation Order 1935].

7. On determining the annual profit, amounts can be reserved up to an equal division of costs and liabilities and to cover such risks as are regularly insured, but are not insured, all this insofar as such cost and liabilities and such risks relate to seagoing ships and aircraft.

Article 10

1. If the computation of the taxable profit or of the internal profit should lead to a negative amount, the same shall be deemed a loss. A loss shall be offset against the taxable profit or, as the case may be, the internal profit, of the subsequent ten years. This setoff shall be effected in the sequence in which the losses came about and the profits were earned.

2. Without prejudice to the provision contained in the first paragraph, when, on applying the rules concerning the determination of the profit for any financial year of an enterprise, which meets the stipulations and conditions laid down in the National Ordinance on Tax Credits for Industrial Enterprises (O.G. 1985, no. 146) or in the National Ordinance for the Promotion of the Establishment of Companies and the Construction of Hotels (O.G. 1953, no. 194 as amended), a loss is calculated, any losses suffered in the first four years from the coming into operation of such enterprise shall be deducted from the profit, to commence with the first year in which a profit is earned.

3. The setoff of the loss against subsequent profit, as referred to in the first and second paragraphs, shall not apply if the activities of the limited liability company have been ceased completely or virtually completely, unless the subsequent profit can mainly accrue to the natural persons who were also directly or indirectly entitled at the time the activities were ceased.

4. On applying the third paragraph, the Minister can meet inequities of a preponderating nature.

5. The provisions of the second paragraph shall apply *mutatis mutandis* to losses incurred during the first six years after the coming into being of the tax obligation of entities as referred to in article 9A.

Article 11

1. On determining the profit, the benefits received by reason of a participation, as also charges – including benefits resulting from changes in currency relations – connected directly or indirectly with a participation, shall be left out of consideration, save insofar as it should appear that such charges are directly instrumental in gaining profits taxable in the Netherlands Antilles. The above shall also apply in respect of benefits from legal acts that purport to cover the currency risk incurred with a participation.

2. Without prejudice to the provisions of the first paragraph, when determining the profit by reason of a participation in an entity not established within the Netherlands Antilles, only ninety-five percent of the benefits and charges referred to in the first paragraph shall be left out of consideration. The preceding sentence shall not apply to benefits in respect of a participation in an entity established in the Netherlands referred to in article 11, third paragraph, first sentence, of the Tax Scheme for the Kingdom (O.G. 1964, no. 178), in which entity the assessable party holds shares to an amount of at least twenty-five percent of the nominal paid-up capital.

3. For the application of this article, the following shall be considered an entity not established within the Netherlands Antilles:

- a. an Exempted Company, regardless of the place of establishment of the entity; and
- b. an entity established within the Netherlands Antilles that for the application of a National Act or a treaty for the prevention of double taxation is deemed a resident of another country.

4. There shall be a question of participation if the assessable party:

- a. is a shareholder for at least five percent of the paid-up capital of, or possesses at least five percent of the right of voting in a company, the capital of which is divided into shares, be this in whole or in part;
- b. owns at least five percent of the number of issued certificates of participation in a fund established in the Netherlands Antilles, for joint account, whereby the number of certificates of participation other than single ones is reduced to a corresponding number of single certificates; or
- c. is a member of a cooperative association.

5. By participation shall also be understood a corresponding holding of profit-sharing certificates. A participation shall be considered a shareholding or a holding of certificates of participation representing no participation because such holding amounts to less than the five percent referred to in the fourth paragraph, if the cost price of such holding at the moment of acquisition together with the cost price of the shares or certificates of participation already held by the assessable party amounts to at least NAF.1,000,000.

Article 11A

1. Insofar as a claim against an entity belonging to the same concern as the assessable party has been marked down to the charge of the profit, taxable in the Netherlands Antilles, of the assessable party, and is converted, alienated or transferred as referred to in the third paragraph, ninety-five percent of the amount of the mark-down shall be reckoned taxable profit in the year of the conversion, alienation or transfer.

2. If a claim as referred to in the first paragraph is abandoned in whole or in part, the said paragraph shall apply analogously in respect of this abandonment to the extent that such abandonment has not led with the debtor of the claim to realization of profit that is subject to profit tax or a foreign tax according to profit. The first paragraph moreover shall apply

analogously if the business or any part of the business of the entity referred to in that paragraph, or the debtor of the claim, is alienated to an entity belonging to the same concern or a natural person holding a considerable interest, in terms of article 11, first paragraph sub 3 of the National Ordinance on Income Tax 1943, in the assessable party.

3. A conversion, alienation or transfer as referred to in the first and second paragraphs shall take place if the marked-down claim:

a. is used for paying calls on shares, certificates of participation or membership rights in the debtor of the claim;

b. is alienated to an entity belonging to the same concern or a natural person holding a considerable interest, in terms of article 11, first paragraph under 3rd of the National Ordinance on Income Tax 1943, in the assessable party;

c. is transferred to the equity of a business conducted outside the Netherlands Antilles, or to the equity of a part of a business conducted outside the Netherlands Antilles, on the profit of which regulations for the prevention of double taxation apply.

4. In respect of an alienation as referred to in the third paragraph, section b, if the claim will come to belong to the equity of a business conducted in the Netherlands Antilles or of the part of a business conducted in the Netherlands Antilles, the Minister of Finance may deviate from the stipulations of the first paragraph if the acquirer fulfils the conditions to be made by the Minister.

5. For the application of the last sentence of the second paragraph and the third paragraph, section b, in case of alienation to an entity not established in the Netherlands Antilles or a natural person not residing in the Netherlands Antilles, such entity or, as the case may be, such natural person shall be deemed to be an entity belonging to the same concern or a holder of a considerable interest in the assessable party, respectively, unless the assessable party gives satisfactory proof to the contrary.

Article 12

1. An entity as referred to in article 1, first paragraph, sections a and b, shall be exempted from profit tax that relates to the amount earned by this entity as foreign profit.

2. The exemption referred to in the first paragraph shall be applied by leaving out of consideration ninety-five percent of the foreign profit, regardless of whether the same is positive or negative, as reflected in the worldwide profit of the entity, following the deduction of the foreign tax owed on balance on this foreign profit.

3. If a foreign business that was previously conducted by the assessable party, is converted into an independent entity, then article 4, third paragraph shall apply analogously.

Article 13

1. In case the assessable party transfers its business or an independent part thereof, within the framework of a business merger, to another entity that is already liable to pay tax or that through the take-over will become liable to pay tax, and that other entity cannot claim, pursuant to article 10, a setoff of losses, then, insofar as subsequent levy is secured, the profit earned with or at the transfer shall be left out of consideration provided that the shares, the certificates of participation or the membership acquired not be alienated within three years from the transfer, and provided that for the determination of the profit the same stipulations apply in respect of both the assessable parties. The Minister of Finance may grant an exemption from the alienation-prohibition referred to in the preceding sentence.

2. As regards business assets, transferred in accordance with the first paragraph, the assessable party to whom such business assets were transferred, for the application of article 5, fourth paragraph, article 5A, first and second paragraphs, and article 9A, eighth, ninth and tenth

paragraphs shall take the place of the assessable party who transferred his business or an independent part thereof.

3. A business merger shall be deemed to exist if an entity acquires exclusively or virtually exclusively against an issue of treasury shares or certificates of participation or against membership granted, a business or an independent part of a business of another entity.

4. If for the acquiring assessable party there is a claim to a setoff of losses, or if taxation can otherwise be secured only by means of additional terms and conditions, then the Minister of Finance at a joint request of the assessable parties may leave the profit earned with or at the transfer out of consideration, be this in whole or in part, subject to further conditions to be made by him. The request shall be made prior to the transfer.

5. The first and second paragraphs shall apply only if the acquiring entity has been incorporated or constituted under the laws of the Netherlands Antilles, the Netherlands or Aruba and is not deemed, for purposes of a National Act or a treaty for the prevention of double taxation, to be a resident of any country other than the Netherlands Antilles.

6. The first and second paragraphs shall not apply if the acquiring entity is an Exempted Company.

7. The terms and conditions referred to in the fourth paragraph may serve only to the securing of the levy and the collecting of the tax, which would be due or would become due in case the fourth paragraph would remain inapplicable. Such terms and conditions shall also include those that may relate to the determination of the profit of the acquiring assessable party, earned in a year, the allowable reserves, the setoff of losses, the alienation of shares or certificates of participation acquired and the transfer of the membership granted in the acquiring assessable party.

Article 14

1. So long as all the shares of a subsidiary, according to the circumstances deemed to be established within the Netherlands Antilles, are in the possession of a parent company, according to the circumstances deemed to be established within the Netherlands Antilles, then, at the request of both the assessable parties and at the earliest as and from the year in which the request has been submitted, the tax shall be levied as if the subsidiary were merged into the parent company. Without prejudice to the provisions of the preceding sentence the tax concerning the year 2001 shall be levied as if the subsidiary were merged into the parent company if the request to that effect is submitted by both assessable parties within three months of the end of the financial year starting in the year 2001.

2. The request referred to in the first paragraph shall be granted only if the periods of time on which the tax is levied coincide for both the assessable parties and furthermore if the terms and conditions further to be made by the Minister of Finance have been fulfilled.

3. The first paragraph shall not apply if for the determination of the profit the same stipulations do not apply in respect of both the assessable parties, unless the Minister of Finance should decide otherwise.

4. The terms and conditions referred to in the second paragraph may serve only to secure the levy and to collect the tax with a view to the circumstance that the entities referred to in the first paragraph form a unity exclusively for the application of this national ordinance, and in the event that this unity is terminated such terms and conditions shall include conditions that may relate to the determination of the profit earned in a year, the allowable reserves, the setoff of losses and the alienation of the shares referred to in the first paragraph.

5. If pursuant to the first paragraph the tax of a subsidiary is levied as if this subsidiary were merged into the parent company, interests – including charges and currency results – in respect

of money loans that by law or in fact are directly or indirectly payable to an entity belonging to the same concern and which relate to the acquisition of shares in such subsidiary, shall be deductible only up to the amount that the profit of the company that raised the money loan would have run to without the application of the first paragraph and without reckoning with the interests referred to above.

6. The Minister of Finance may stipulate additional rules with respect to the determination of the amount referred to in the fifth paragraph, to which the profit would have amounted.

7. Insofar as in any year interests have not been deducted pursuant to the fifth paragraph, these shall be regarded as interests that relate to the acquisition of shares in the subsidiary concerned of the following year.

8. The provision of the fifth paragraph shall not apply with respect to money loans that relate to the acquisition of shares:

- a. insofar as it appears that the entity to which the money loan is due, or another entity belonging to the concern, has raised capital by reason of money loan from an entity not belonging to the concern, with a view to the acquisition of the shares;
- b. if the parent company shows that the ultimate interest in the subsidiary has changed to a considerable extent; or
- c. if the parent company shows that the evasion of Netherlands Antilles tax does not constitute the basis of the money loan and the legal act connected therewith.

Article 14A (Cancelled by O.G. 1999, no. 224)

Article 15

1. The tax shall amount to thirty percent of the taxable amount or of the internal profit, reduced by the losses to be offset pursuant to article 10.

2. Extra tax is payable concerning dividends as referred to in article 11, third paragraph, first sentence, of the Tax Scheme for the Kingdom, received in 2001 and which were taxed in the Netherlands by virtue of that article.

3. The extra taxes, referred to in the second paragraph, shall be levied on the gross amount of the dividend paid.

4. The rate of the supplementary tax, referred to in the second paragraph, shall amount to 8/10 percent.

Article 15A

1. An entity as referred to in article 1, first paragraph, sections a and b, for the setoff of tax levied by order of a country other than the Netherlands Antilles, shall be granted a reduction of profit tax for income comprised in the profit, with the exception of the foreign profit referred to in article 12 and the portion of the benefits to be left out of consideration pursuant to article 11, which income is subject to a tax according to income that is levied by order of such country, whether or not at the source.

2. The amount of the reduction referred to in the first paragraph shall be the lower of the following amounts:

- a. the amount of the tax levied in the year concerned by order of countries other than the Netherlands Antilles, concerning a period after December 31, 2000, increased by such tax as levied in the ten preceding years though not falling before the time referred to in article 6A, paragraph 4, insofar as the same has not led to a reduction before;
- b. the amount that would bear to the tax that would be due in the year concerned pursuant to this national ordinance without the application of article 12 and this article, in the same relation as the amount of the income to be taken into consideration in that year pursuant to

the first paragraph, reduced by the charges directly pressing thereon, bears to the profit, reduced by the losses to be set off in accordance with article 10 of this national ordinance.

3. At the written request of the assessable party, the first and second paragraphs shall not apply in respect of the income earned in a year, as referred to in the first paragraph, and the tax levied thereon by order of countries other than the Netherlands Antilles. The request shall be made annually at the filing of the tax return, for each year separately.

Article 16

1. The tax shall be due by the entity.

2. The managers and managing partners, as also the representatives within the Netherlands Antilles shall be severally liable for this. On dissolution or liquidation, the persons in charge of the liquidation and their representatives within the Netherlands Antilles moreover shall be severally liable for this. The liability shall cease when, upon being summoned to pay, the said persons prove to the satisfaction of the Inspector that it was impossible for them, in their capacity, to see to the payment.

3. Any such proof shall be furnished and submitted to the Inspector, in writing.

4. If the proof is rejected, the Inspector's decision to the effect shall state the reasons for the rejection.

5. A copy of the decision shall be sent to the interested party by registered mail.

6. An appeal against that decision can be made to the Board of Appeal for Revenue Cases within two months from the copy having been sent

7. Collection of the tax in respect of the person, for whom proof as referred to in the third paragraph has been submitted, shall be suspended:

a. following the submission of such proof, until the Inspector shall have decided in that regard and in case of rejection of the proof during the two months' term referred to in the sixth paragraph, unless the interested party informs the Inspector in writing within such term that he will not take the decision to appeal;

b. in case of an appeal, until the Board of Appeal for Revenue Cases shall have decided the matter;

all this, however, subject to the proviso that the Inspector, while removing the suspension, can authorize that measures be taken to proceed with the collection of the taxes due, insofar and in such manner as deemed necessary by him, if in his judgment the interested party is misusing the suspension to perform acts that will jeopardize the possibility of recovering the taxes

8. The managers, managing partners, liquidators and representatives referred to in the second paragraph shall be held to include all persons and parties who, on or after the tax debt becoming due, were managers, managing partners, liquidators and representatives, also insofar as they have resigned or withdrawn, rendered accounts or been released from liability.

Article 16A (Cancelled by O.G. 2000, no. 76 and ratified by O.G. 2001, no. 94)

Chapter II Payment on declaration, additional levy and reduction

Article 17

The tax shall be levied by way of payment on declaration.

Article 18 (Cancelled by O.G. 2001, no. 89)

Article 19

The definite return shall be accompanied by:

- a. a copy of the balance sheet with the profit and loss account pertaining thereto, duly certified by the management of the entity, and the annual report of the entity, issued to shareholders, members or other interested parties for the year in respect whereof the tax is levied;
- b. a copy of the deeds of incorporation and of any amendment thereto, unless the same were already submitted along with a previous tax return

Article 20

1. Postponement for the filing of a preliminary tax return shall not be possible.
2. If the Inspector shall deem this necessary, he may grant a postponement of up to six months for submitting a definite tax return. The Inspector may attach further conditions to the granting of any such postponement. The assessable party shall submit a request to the effect to the Inspector, accompanied by an additional preliminary tax return.
3. The Inspector shall decide on the request in writing within 15 days from its receipt. If the request is refused, the reasons shall be stated.
4. Should the Inspector not have refused within fifteen days, the request shall be valid and the term for filing the definite tax return shall be extended by 3 months. If a decision is made, the date of the decision shall be the date on which the copy is mailed.

Articles 21A - 24A (Cancelled by O.G. 2001, no. 89)

Article 24B

1. The assessable party having a permanent establishment in more than one island territory shall be bound there to declare the profit earned on each island territory separately, and there to pay the tax due. Save in the case of a disposition as referred to in the second paragraph, only the results attained in each island territory separately for the taxation year shall thereby be reckoned with.
2. If for the permanent establishment in any one of the island territories a loss shall have been calculated for the taxation year, or if, based on article 10, there is a compensable loss of a previous year, the Inspector of the island territory where the main establishment is situated, shall determine by disposition the amount up to which such loss may be reckoned with in each of the island territories.
3. Pending the disposition referred to in the second paragraph the assessable party, on behalf of the permanent establishment, may lodge a request in each island territory to the Inspector concerned, for permission to declare only the amount in taxes that presumably shall be due following loss compensation.
4. The Inspector shall decide on the request in writing within 15 days from its receipt. If the request is refused, the reasons shall be stated.
5. If the Inspector has not refused within fifteen days, the request shall be valid. If a decision is made, the date of the decision shall be the date on which the copy is mailed.
6. Should it appear from the disposition that in respect of an island territory less has been declared than the amount that is due, whereas in respect of another island territory a like amount has been declared in excess of that as due there, an additional assessment shall be imposed without an increase for the amount paid short.
7. For the purposes of this article, several permanent establishments in one and the same island territory shall be deemed collectively to be one permanent establishment.

Article 24C

1. As advance levy shall be designated the dividend tax levied pursuant to the National Ordinance on Dividend Tax 2000, related to elements of the profit and of the internal profit, excluding any increase applied at additional levy.
2. The setoff of dividend tax shall not be effected unless the assessable party has made a definite tax return within the term stated in article 19, second paragraph, and possibly within the term extended pursuant to article 20, second and fourth paragraphs.
3. Without prejudice to the provisions of the first paragraph, the dividend tax to be set off concerning dividends governed by article 4, fourth paragraph, sections c and f, of the National Ordinance on Dividend Tax 2000 shall never be more than the tax due on such dividends, after deduction of the expenses directly chargeable against such dividends.

Chapter III Taxation method (Cancelled by O.G. 1999, no. 244)

Chapter IV Objections to the assessment (Cancelled by O.G. 2001, no. 89)

Chapter V Reassessment (Cancelled by O.G. 1996, no. 209)

Chapter VI Collection

Articles 37 - 38 (Cancelled by O.G. 2001, no. 89)

Article 39

1. If on the basis of an assessment, a tax amount is paid back to the assessable party, interest shall be paid at 6% per annum, to be reckoned as and from the date referred to in article 1, second or fourth paragraph of the General National Ordinance on National Taxes (O.G. 2001, no. 89), as the case may be, that of the subsequent payment, and up to the date of the assessment or the decision evidencing the right to repayment. However, the compensation amount shall be calculated on a maximum of 25% of the amount declared in the preliminary tax return.
2. The Minister shall be authorized to determine another percentage for the rate of interest, referred to in the first paragraph.

Chapter VII Special Provisions

Article 40

An entity not established within the Netherlands Antilles, having no permanent establishment within the Netherlands Antilles, shall be bound to state to the Inspector, in writing, the name and address of a representative residing or established within the Netherlands Antilles.

Article 41

1. A person who in this country is employed by – or works for – companies, associations, corporations, foundations or entities as referred to in article 1, or who, in the event of dissolution or liquidation, is employed by – or works for – the persons in charge of the liquidation, may be designated by the Director of Taxes to be their representative within the meaning of the General National Ordinance on National Taxes, after having been given the opportunity to make his objections.
2. Should persons other than those referred to in article 16 be designated, in respect of which other persons it must be assumed, however, that based on their relationship with the company, association, corporation, foundation or entity they are or were in a position to see to the payment

of the taxes due, they shall be so informed with such designation and the provisions of this national ordinance as regards liability shall also be applicable to them.

Articles 41A - 45 (Cancelled by OG. 2001, no. 89)

Chapter VIIa Obligations in favour of the taxation (cancelled by O.G. 2001, no. 89)

Chapter VIII Criminal provisions (Cancelled by O.G. 2001, no. 89)

Chapter IX Transitional and Final Provisions

Articles 52 - 53 (Cancelled by O.G 2000, no. 761 O.G. 2001, no. 94)

Article 54

The documents pertaining to the application of this national ordinance or issuing therefrom shall be free from stamp duty and, insofar as they are subject to the formality of registration, shall be entered free of charge.

Article 55

1. This national ordinance shall take effect on 1 May 1940.
2. It may be cited as: "National Ordinance on Profit Tax 1940".

Transitional and Final Provisions from other National Ordinances and Decrees

O.G. 2001, no. 145, (the Act to implement the New Fiscal Framework - NFR)

Article V

Notwithstanding the provisions of article 10, first paragraph, of the National Ordinance on Profit Tax 1940 losses incurred in financial years ending before 1 January 1996³ shall only be set off against the taxable profit, or the foreign profit, of the following five years.

O.G. 2001, no. 144, (the emergency act)

Article VII

At the request of the assessable party the National Ordinance on Profit Tax 1940, in its version of 31 December 2000, shall continue to apply during financial years that started on or before 1 January 2002 provided that the last one of these financial years does not exceed the period of twelve months. The preceding sentence shall not apply to the provisions laid down in the General National Ordinance on National Taxes (O.G. 2001, no. 89).

Article VIII

1. With the exception of articles III and IV [*editor: concerning the Guarantee Ordinance on Profit Tax 1979 and the Guarantee Ordinance on Profit Tax 1939*] this National Ordinance shall take effect from a time to be determined by national decree [*editor: see below*]. Different times may be set for the various articles or their constituents. Such national decree may stipulate that specific articles or their constituents shall be given retroactive effect and shall specify from which financial years the articles or their constituents are to be applied for the first time.
2. The articles III and IV [*editor: concerning the Guarantee Ordinance on Profit Tax 1979 and the Guarantee Ordinance on Profit Tax 1939*] shall take effect on 1 January 2000.

O.G. 2001, no. 145, (the Act to implement the New Fiscal Framework - NFR)

Article VI

1. Articles 8A, 8B, 14 and 14A of the National Ordinance on Profit Tax 1940, in their version of 31 December 1999, shall continue to apply to entities assessable in this country that exclusively or virtually exclusively invest in and obtain revenues from the assets referred to in said Articles on the last day of the last financial year ending before 1 January 2002.
2. The provisions referred to in the first paragraph shall also continue to apply to entities assessable in this country - including the permanent establishment of an entity as referred to in Article 1, first paragraph, subsection c, of the National Ordinance on Profit Tax 1940 - whose entire or almost entire profit is subject to one or several of the profit tax rates referred to in the Guarantee Ordinance 1993 and that, on the last day of the financial year referred to in the first paragraph, have an Agreement with the Inspector which has not expired and in which the Inspector has confirmed the application of one or several of the profit tax rates referred to above or if an application for such an Agreement or its renewal has been filed.
3. Article 12, first paragraph of the National Ordinance on Profit Tax 1940, in its version of 31 December 1999, shall continue to apply to entities assessable in this country that exclusively or

³ This article, which was also included in O.G. 1999, no. 244, was amended during the parliamentary discussion of the Act to implement the New Fiscal Framework (NFR), in the sense that the date 1 January 1995 was replaced by the date 1 January 1996.

virtually exclusively invest in real property outside the Netherlands Antilles or the rights vested in such assets and that obtain revenues from such property or such rights on the last day of the financial year referred to in the first paragraph.

4. The first, second and third paragraphs shall only apply to entities that were incorporated on or after 1 July 1999 if such entities commenced to carry on material activities of their own on or before the last day of the financial year referred to in the first paragraph; in this respect, subject to evidence to the contrary, such entities are considered not to have carried on any material activities of their own if the assets mainly consisted of deposits and/or shareholder receivables or receivables from affiliated persons. The entities referred to in the previous sentence are considered not to have carried on any material activities during the period when the holding of shares in such entities since their establishment can be designated as the maintaining of a stock of goods.

5. The entities referred to in the first, second and third paragraphs can submit a request for non-application of the provisions concerned. Such a request is to be submitted to the Inspector in writing. The application of the provisions concerned will stop with effect from the financial year in which the request was submitted or the next financial year, as specified by the assessable party, unless the assessable party revokes its request within three months. Article 3, fourth paragraph, of the National Ordinance on Profit Tax 1940 shall apply *mutatis mutandis* if the request concerns the next financial year. Article 3, fifth paragraph, of the National Ordinance on Profit Tax 1940 shall apply *mutatis mutandis* if the request concerns the current financial year. This latter provision shall also apply *mutatis mutandis* if the conditions referred to in the first, second and third paragraphs are no longer fulfilled during a specific financial year.

6. If, whether on the assessed party's request or not, application of the articles referred to in the first, second and third paragraphs was discontinued during any year, application of such articles shall no longer be possible at a later time. The preceding sentence shall not apply to a limited liability company as referred to in article 3A, fourth paragraph, of the Guarantee Ordinance on Profit Tax 1993, with the proviso that a request for re-application of the articles referred to shall only be granted once.

7. Application of articles 8A, 8B, 12, first paragraph, 14 and 14A of the National Ordinance on Profit Tax 1940, in their version on 31 December 1999, and application of the profit tax rates referred to in the Guarantee Ordinance on Profit Tax 1993 shall be discontinued, irrespective of the date on which the entity was established, if and as soon as the entity, at a time after the last day of the financial year referred to in the first paragraph, ceases to carry on any material activities of its own and all or virtually all shares in the entity have been sold to third parties, other than group companies or shareholders that have a substantial interest in the entity as stipulated in Article 11, first paragraph, under 3rd, of the National Ordinance on Income Tax 1943, and/or such shares are held on behalf of other than the original shareholders.

8. Application of articles 8A, 8B, 12, first paragraph, 14 and 14A of the National Ordinance on Profit Tax 1940, in their version on 31 December 1999, shall be discontinued for every individual assessed party referred to in the first, second and third paragraphs no later than on the date laid down in the Guarantee Ordinance on Profit Tax 1993

9. If, by application of the seventh or eighth paragraph the application of Articles 8A, 8B, 12, first paragraph, 14 and 14A of the National Ordinance on Profit Tax 1940, in their version on 31 December 1999, or the application of the profit tax rates referred to in the Guarantee Ordinance on Profit Tax 1993 is or are discontinued no rights may be derived from agreements with the Inspector even if their validity period has not expired yet.

10. The National Ordinance on Profit Tax 1940, in its version of 31 December 1999, shall continue to apply to entities referred to in the first and second paragraphs. For the application of the other National Ordinances and regulations of the Netherlands Antilles, provisions referring to

Articles 4, third paragraph, 8A, 8B, 11, 14, 14A and 15, fourth paragraph, 25 to 29F (inclusive), 39, second paragraph, 45E, fourth and fifth paragraphs, of the National Ordinance on Profit Tax 1940, in their version on 31 December 1999, shall continue to apply to entities referred to in the first and second paragraphs.

11. Notwithstanding the first sentence of the tenth paragraph, with respect to dividends referred to in article 11, third paragraph, first sentence of the Tax Scheme for the Kingdom, received on or after 1 January 2002, the entities referred to in the first and second paragraphs can opt for application of article 11 of the National Ordinance on Profit Tax 1940 in its version of 1 January 2001. If the assessable party opts for application of such article, the articles 8B and 14 of the National Ordinance on Profit Tax 1940 in their version of 31 December 1999, shall not apply with respect to the dividends referred to in the preceding sentence.

O.G. 2001 No . 146 (National decree dated 20th December 2001, No 1)

Article 1

The National Ordinance of 29 December 1999 to amend the National Ordinance on Profit Tax 1940 (O.G. 1965, no. 58) (O.G. 1999, no. 244), with the exception of article I, sections E [*editor: article 4A National Ordinance on Profit Tax*] and R [*editor: article 24C National Ordinance on Profit Tax*], and the National Ordinance of 20 December 2001 amending the National Ordinance amending the National Ordinance on Profit Tax 1940 (O.G. 1965, no. 58), the National Ordinance of 29 December 1999 amending the National Ordinance on Profit Tax 1940 (O.G. 1965, no. 58) (O.G. 1999, no. 244), the National Ordinance on Income Tax 1943 (O.G. 1956, no. 9), the National Ordinance on the Collection of Taxes on Income, Profits and Net Wealth 1943 (O.G. 1942, no. 248), the Guarantee Ordinance on Profit Tax 1979 (O.G. 1976, no. 282), the Guarantee Ordinance on Profit Tax 1993 (O.G. 1995, no. 83), the National Ordinance on Dividend Tax 2000 (O.G. 1999, no. 246) and the General National Ordinance on National Taxes (O.G. 2001, no. 89) (O.G. 2001, no. 145), with the exception of the articles I, section E [*editor: amendment of article 4A National Ordinance on Profit Tax*], VII [*editor: constituting amendments to the National Ordinance on Dividend Tax 2000*] and VIII, item B [*editor: constituting amendments to the General National Ordinance on National Taxes*], shall take effect on the day after the day of publication of the Official Gazette in which this national decree is published and shall have a retroactive effect until 1 January 2001, with the proviso that they shall apply to financial years starting on or after 1 January 2001.