

To be or not to be; the transparent corporation in Curaçao tax legislation

CIFA and VAB Seminar

“Practical interpretation of the Tax plan 2011”

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WHAT IS A TRANSPARENT CORPORATION?

A transparent corporation (*transparante vennootschap*, or *TV*) is, briefly summarized:

- a “normal” legal entity (BV or NV)
- which has elected to be treated as a
- partnership (*maatschap*) for Curaçao tax purposes, and
- which meets all relevant criteria.

Consequently, a TV:

- “is” (exists), from a corporate law point of view, a legal person,

but

- “is not” for Curaçao profit tax (*winstbelasting*), personal income tax (*inkomstenbelasting*) and dividend tax (*dividendbelasting*) purposes, because it is for Curaçao tax purposes considered “transparent”, a “look through company”.

CRITERIA (briefly summarized, not exhaustive)

- *Naamloze vennootschap* (NV) or *besloten vennootschap* (BV);
 - also: foreign company converted into NV or BV
 - not: art. 14/14A-company (“offshore-company”)
- Only registered shares allowed (thus: no bearer shares)
- Statutory pre-emptive clause: shares may only be transferred to co-shareholders or shareholders who explicitly agree with the transparent status
- Management keeps a UBO-register ($\geq 10\%$ UBOs)
- no participations in non/low taxed “passive” investment vehicles
- Formal request (timely!), proxy from all participants, data about identity participants
- Annually: (i) a declaration about the participants, (ii) declaration that there are no bearer shares and (iii) copy balance sheet and profit and loss account.
- Please take into account the sanction when not in compliance with all conditions (*i.a.*, profit tax at a rate equal to 125% of the statutory rate).

The TV is transparent for purposes of the Curaçao

- profit tax (*winstbelasting*),
- personal income tax (*inkomstenbelasting*), and
- dividend tax (*dividendbelasting*).

WHAT DOES, BRIEFLY SUMMARIZED, THE STATUS OF TV MEAN FOR CURAÇAO TAX PURPOSES (2/5)?

A qualifying TV is not subject to Curaçao profit tax

WHAT DOES, BRIEFLY SUMMARIZED, THE STATUS OF TV MEAN FOR CURAÇAO TAX PURPOSES (3/5)?

Income, assets and liabilities of the TV are for Curaçao tax purposes attributed to the participants (the shareholders) on a pro rata basis of their respective interests in the TV

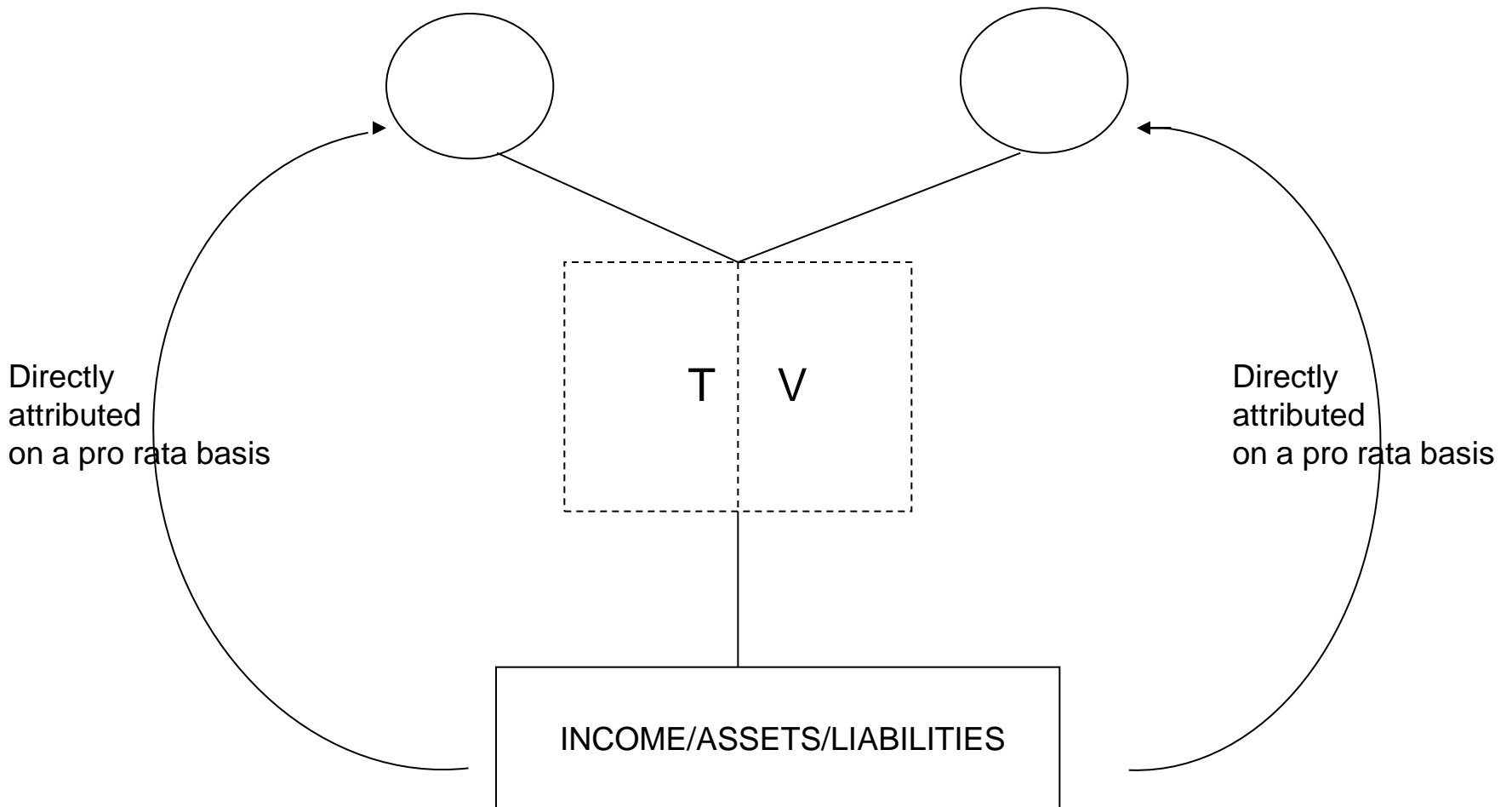
WHAT DOES, BRIEFLY SUMMARIZED, THE STATUS OF TV MEAN FOR CURAÇAO TAX PURPOSES (4/5)?

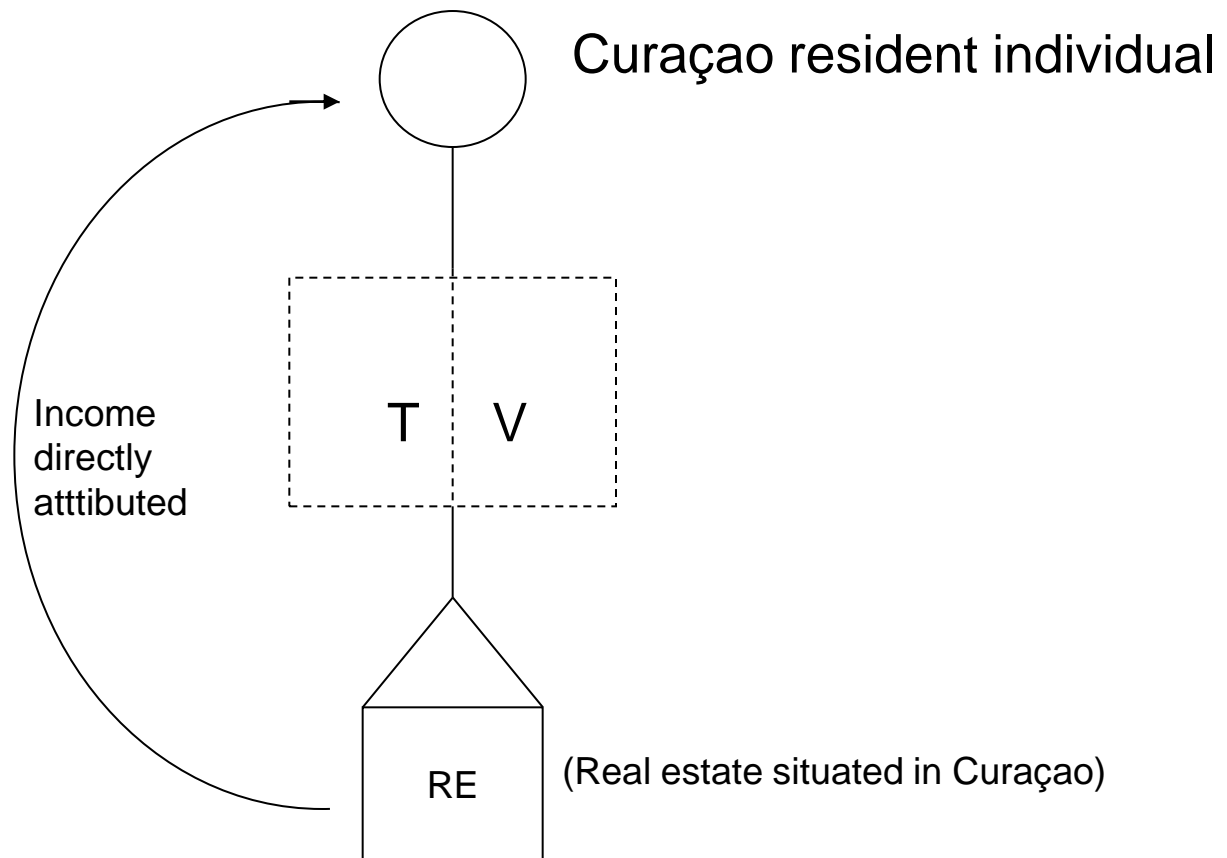
From a Curaçao tax perspective, taxation of the income takes place at the level of the participants, depending on the individual tax position of each participant

WHAT DOES, BRIEFLY SUMMARIZED, THE STATUS OF TV MEAN FOR CURAÇAO TAX PURPOSES (5/5)?

The TV is jointly and severally liable for the Curaçao taxes due by the participants with respect to the income of the TV attributed to them

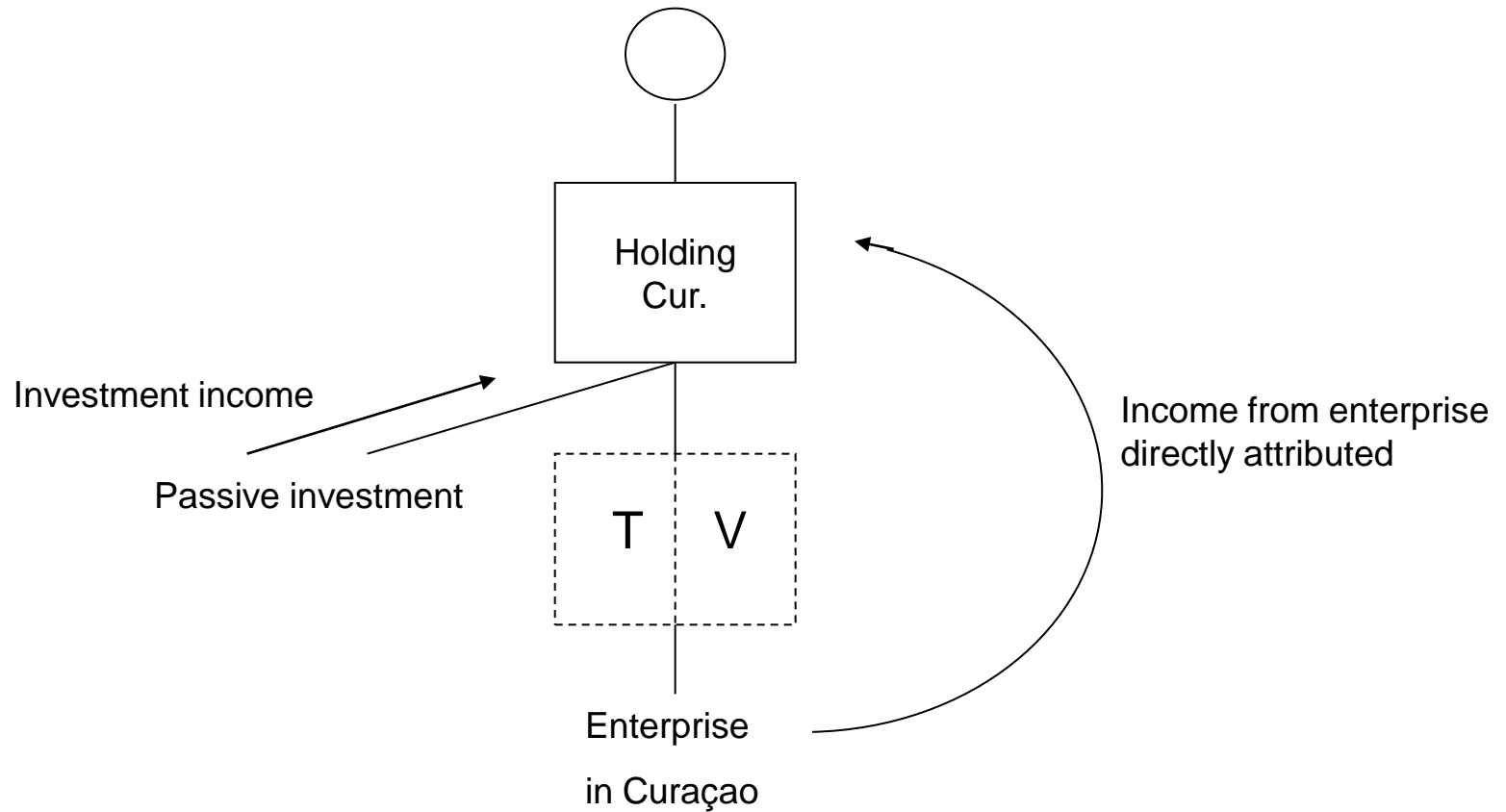
Participants

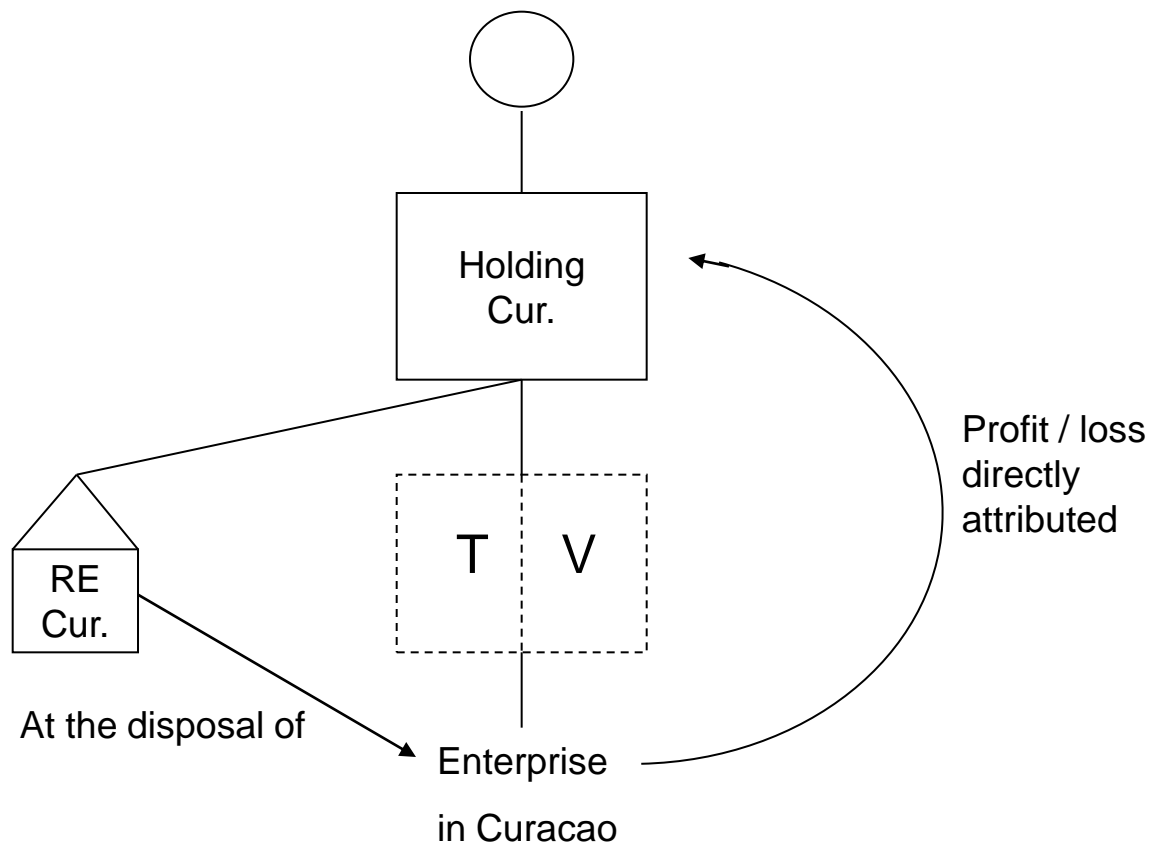


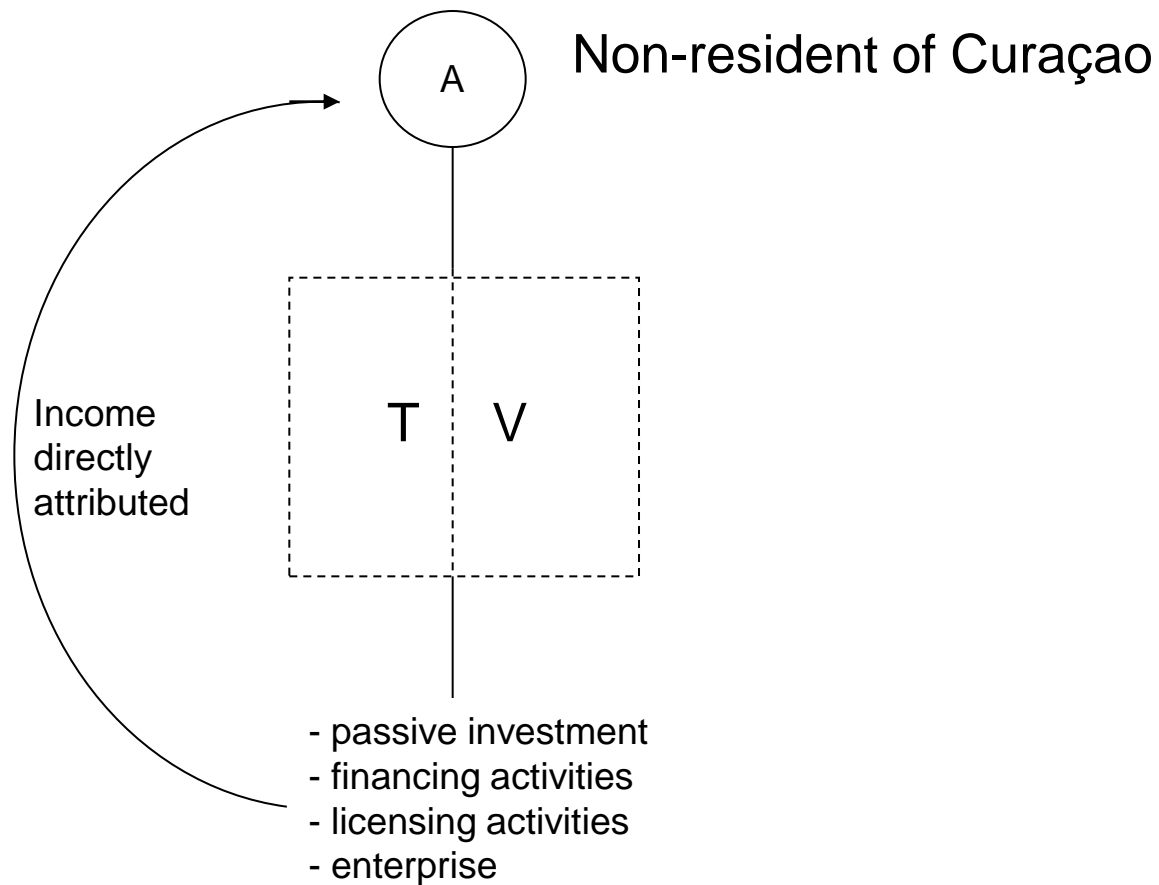


- Enterprise?
- passively renting out?

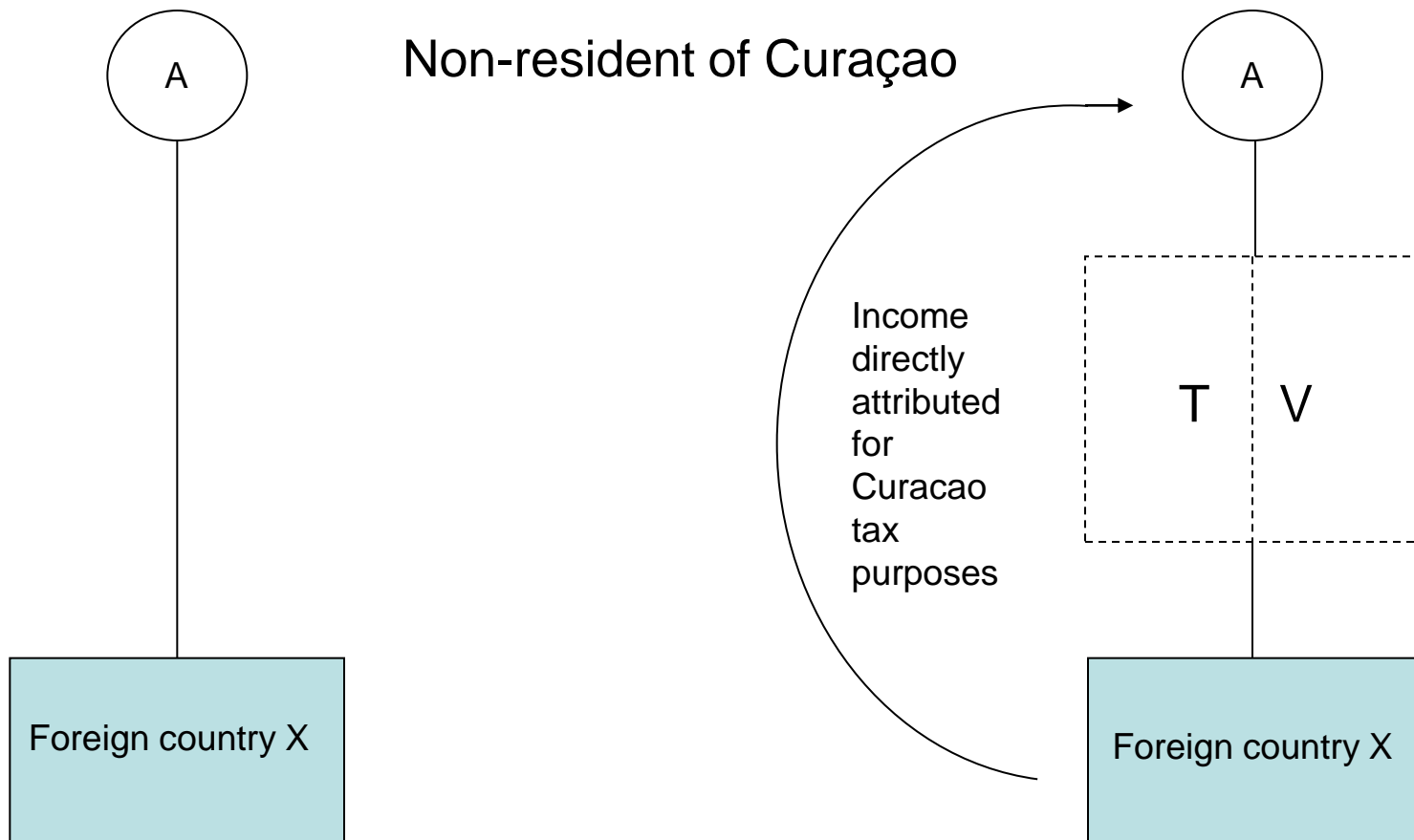
TV = not transparent for sales tax (OB) purposes



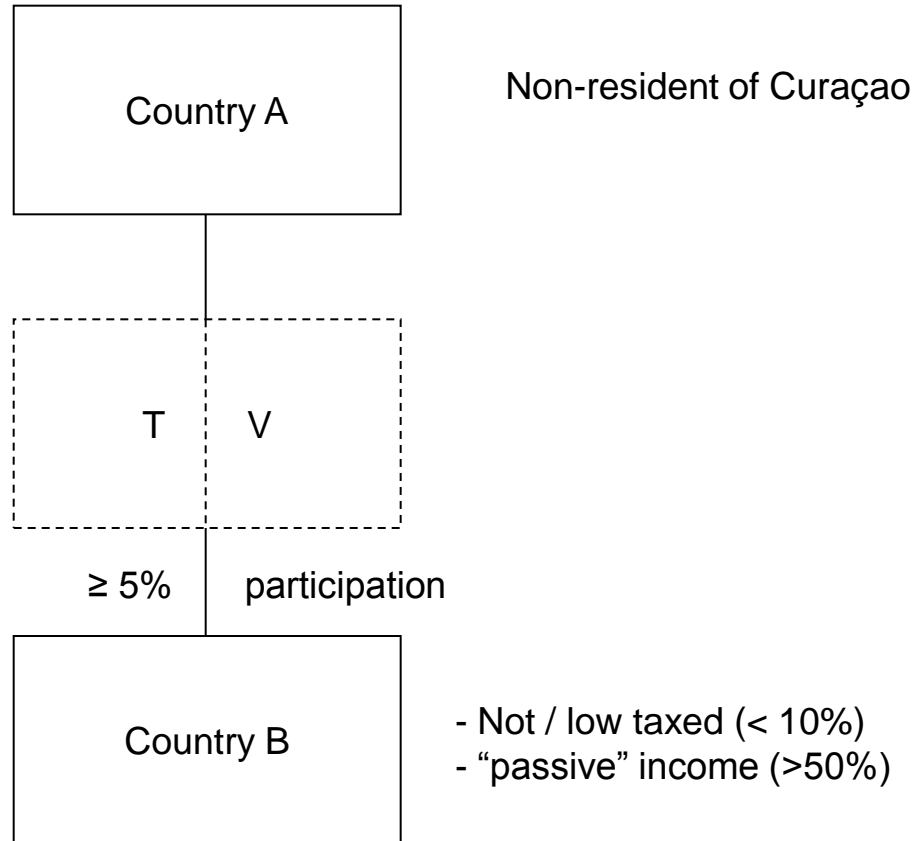




Analyze whether, as a consequence of the transparency, "A" may be considered to earn taxable income from Curaçao sources!
This could be the case e.g. if "A" could be considered to earn income through a permanent establishment/permanent representative in Curaçao!



Not possible?



THANK YOU FOR YOUR ATTENTION

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