

Guide to Doing Business in the Netherlands Antilles

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1 The Netherlands Antilles

1.1 Introduction

Location and Climate

The Netherlands Antilles consists of five islands in the Caribbean. The Leeward Islands Bonaire and Curaçao are located just off the Venezuelan coast in the South of the Caribbean Sea. The Windward Islands St. Maarten, St. Eustatius and Saba lay about 550 miles to the north, about 100 miles east of Puerto Rico and very close to the British island of Anguila and the French St. Bartolomey (St. Barth's). St. Maarten consists of a Dutch and a French part, the latter of which does not form part of the Netherlands Antilles.

The Netherlands Antilles time zone is four hours behind Greenwich Mean Time (GMT).

The Netherlands Antilles have a tropical maritime climate. Average annual precipitation is 560 mm (22 inches) on the Leeward Islands and 1,000 mm (39 inches) on the Windward Islands. There is also a short rainy season from October to January. Average temperature ranges are from 24 degrees Celsius (76 degrees Fahrenheit) to 32 degrees Celsius (90 degrees Fahrenheit) all year.

Languages

The official languages of the Leeward islands are Dutch, English and an own language called Papiamentu. Papiamentu is a Creole language based upon Spanish and Portuguese, with Dutch, English and African influences. On the Windward Islands the official and local language is English.

Currency

The monetary unit of the Netherlands Antilles is the Netherlands Antillean guilder (ANG). The Central Bank of the Netherlands Antilles (the Bank) is the only institution entitled by law to issue paper money in the Netherlands Antilles. The Bank also is charged with the circulation of coins. The exchange rate has been pegged to the U.S. dollar since 1971. The exchange rate is ANG. 1.79 per 1.00 U.S. dollar.

Transport

The Netherlands Antilles have good air travel links with Europe, the U.S., South and Central America and other Caribbean islands. Various airlines maintain facilities, both for passengers and airfreight.

Curaçao, Bonaire and St. Maarten have international airports and all have one or more port facilities.

1.2 Constitution and Governance

The Netherlands Antilles form part of the Kingdom of the Netherlands. The other members of the Kingdom are Aruba and the Netherlands. Apart from certain affairs that are considered to be affairs of the Kingdom (such as defence, foreign affairs and citizenship), the Netherlands Antilles have full autonomy. The Netherlands Antilles are a so-called associate member of the European Community. The purpose of such association is to promote the economic and social development of the Netherlands Antilles and to establish close economic relations between them and the European Community as a whole.

The system of government of the Netherlands Antilles is a parliamentary democracy based on the Dutch model and free elections are held every four years.

It is noted that the Netherlands Antilles currently are on the verge of profound constitutional changes; both St. Maarten and Curaçao are about to become autonomous countries in the Kingdom of the Netherlands.

1.3 Legal System

The Netherlands Antilles have a civil law system. The main body of law is the Civil Code. Nearly all laws and regulations are, to a large extent, based on their equivalent in the Netherlands.

The Netherlands Antilles have a Court of First Instance and a Court of Appeal which are both established in Curaçao. The Supreme Court for the Netherlands Antilles is the Supreme Court in The Hague, the Netherlands, which is also the Supreme Court for the Netherlands itself.

1.4 Economy

The economy of the Netherlands Antilles is based on tourism, telecommunication and transport, the financial service sector and trade and industry. Both government and private organizations have decided to concentrate on developing all these industries through various investment incentives including tax holidays.

Other than exchange control and currency regulations, there are no specific restrictions or authorisations required for foreign investment. However, authorisation may be required in certain regulated areas, such as banking and financial services.

The rate of inflation differs per island in the Netherlands Antilles. The rate of inflation for Curaçao for 2005 was 3,4%, for Bonaire 1,3% and for St. Maarten 3,1%.

2. Investment Incentives

2.1 Tax incentives for foreign investors

A number of investment incentives have been devised to stimulate prospective investors to start new business ventures in the Netherlands Antilles. These incentives apply to local as well as foreign investors.

For all businesses the following fiscal incentives are available:

- Accelerated depreciation (maximum 1/3 of the purchase value of business assets);
- Investment allowance of 8% of the total investments (new buildings and expansion renovations 12%) annually for the first two fiscal years.

The investment allowance cannot be applied to certain investments (e.g. in land).

However, if the investments are alienated within 6 years (15 years for new buildings, expansion and renovations) after the year of the investment, a disinvestment addition should be included to the taxable income of the year of the disinvestment and the following year.

For newly incorporated Netherlands Antilles companies that contribute to broadening the economic base of the Netherlands Antilles, a special tax facility is available. This so called 'tax holiday' consists of an exemption from import duties and income tax on dividends, while a profit tax of at least 2% will be applicable. In certain circumstances the rate may go up to 15%. The tax holiday is granted for a period of 5 years to 11 years.

Tax holiday exemptions may be obtained with an investment of at least ANG 250,000 (approximately USD 140,000) on the islands of Curaçao and St. Maarten, while on the other Netherlands Antilles islands the investment must be at least ANG 150,000 (USD 83,000). For an industry, the minimum investment in St. Maarten also amounts to ANG 150,000 (USD 83,000).

Businesses operating in a so-called economic zone are exempt from customs duties and enjoy a reduced tax rate of 2% on profits earned from economic zone sales.

Goods sold or services rendered to the domestic market from the economic zone, however, are subject to the normal profit tax rate.

The following forms of service are permitted in an economic zone:

- carrying out maintenance and repair work in the economic zone to the goods of businesses that operate outside the Netherlands Antilles;
- the execution of maintenance and repair work to machinery and other equipment located abroad with goods stored in the economic zone;
- other forms of services aimed at foreign clients, including the warehousing business, and new commercial enterprises and ancillary trades and other servicing activities new to the international marketplace that can be carried out using electronic communications and information technology options, insofar as these do not involve the so-called offshore sector (such as investment companies, patents, royalties etc.).

In order to qualify for the Economic Zone facilities a number of conditions must be met, including that the activities should be carried out from an area or building designated as an Economic Zone.

For the development of hotels and similar recreational businesses a tax holiday may be obtained if the minimum investment (not including the investment in land) amounts to at least ANG 1 million (USD 555,000) for Curaçao and St. Maarten, while for the other islands of the Netherlands Antilles the investment requirement is ANG 500,000 (USD 280,000). Similar tax incentives are also available for companies whose activities concentrate on development of uncultivated land.

Furthermore, there is an incentive for shipping and aviation companies. These companies are subject to a different and generally quite favorable tax treatment. The normal profit tax rate for international shipping and aviation activities is approximately 9%. Shipping companies can also elect to pay tax at the rate of ANG 0,40 per gross registered ton (minimum tax of ANG 1.000 per vessel) in lieu of being taxed on net income.

A private limited liability corporation (in Dutch: *Besloten Vennootschap* or *B.V.*) can obtain an exempted status for profit tax. To qualify for the exemption, a number of conditions must be met, including the disclosure of the ultimate beneficial owner, the management, the financials and the activities (in principle only investment and financing) of the relevant company.

A private foundation (in Dutch: *Stichting Particulier Fonds* or *SPF*) is a distinctive form of the ‘common’ foundation. The most important difference is that the purposes of a common foundation may not include making distributions (other than distributions of an idealistic or social nature). This restriction does not apply to private foundations, whose purposes may include making distributions to incorporators and others. A private foundation may not run a business or enterprise for profit. Acting as a holding company or investment company is not considered running a business. A private foundation is exempt from Netherlands Antilles profit tax, and its distributions are exempt from Netherlands Antilles gift tax, as are contributions of assets to the foundation by a non-resident. Gift tax in the contributor’s country may be applicable.

2.2. Regional tax incentives

In general, all the islands of the Netherlands Antilles are eligible for the incentives outlined in this chapter.

3. Structures for doing business

The statutory regulations with regard to legal entities under private law (such as the foundation and the (private) limited liability company) which can be used for doing business in the Netherlands Antilles are contained in Book 2 of the Civil Code (“CC”) of the Netherlands Antilles. The legal entities explicitly regulated in Book 2 of the CC are:

- the foundation (*stichting*),
- the Private Foundation (*stichting particulier fonds*),
- the association (*vereniging*),
- the cooperation (*coöperatie*),
- the mutual guarantee company (*onderlinge waarborgmaatschappij*),
- the limited liability company (*naamloze vennootschap*) (“NV”), and
- the private limited liability company (*besloten vennootschap*) (“BV”).

The limited liability company and the private limited liability company are the most common formal structures for the conduct of business in the Netherlands Antilles.

3.1 N.V.

The Netherlands Antilles “*naamloze vennootschap*” or N.V.” is a company limited by shares. The N.V. can act as a public company and as a closely held private company.

3.1.1 Incorporation

The N.V. is incorporated by notarial deed executed by one or more incorporators before a civil law notary in the Netherlands Antilles. This notarial deed of incorporation constitute the definitive statutes and regulations governing the company and conduct of its affairs and those statutes and regulations are generally referred to as the articles of association. The incorporation can take place quickly and without many formalities; there is a free choice of language and

currency for the capital; and no governmental approval or check will be needed for the incorporation in itself or the contents of the deed of incorporation setting forth the articles of association. With regard to the organization, there is a certain amount of freedom with respect to, among other things, rights of shareholders, the structure of the board of managing directors, and the capital.

3.1.2 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 (if any) and the identity of the managing directors, supervisory director (if any) and possible attorneys-in-fact acting under general powers of attorney (*procuratiehouders*). There is no requirement to disclose the identity of shareholders.

3.1.3 Share capital

From a company law perspective, there is no minimum share capital. Based on regulatory requirements, there are, however, minimum capital requirements for finance companies issuing publicly traded debt obligations, investment institutions, insurance companies and banks.

The nominal value of the shares can be stated in any currencies. Shares do, however, not need to have a nominal value. The shareholder should pay up at least the nominal value of the shares being purchased (if the shares have a nominal value) or the consideration as determined in the deed of incorporation or the deed of issue. Contributions of capital in excess of the nominal capital (if the shares have a nominal value) are treated as share premium (*agio*). There is no capital tax in the Netherlands Antilles. A Netherlands Antilles company can repurchase its own shares (on a limited basis).

3.1.4 Shares

Shares of a limited liability company can only be issued in registered form. Registered shares can be converted

into bearer shares provided the articles of association permit so. If shares are in registered form a share certificate can be issued. For bearer shares share certificates must be issued.

If shares are in registered form, the managing directors are required to maintain a register of shareholders which is open for inspection by all shareholders (to the extent it concerns the shares held by such shareholder) and, if so determined in the Articles of Incorporation, by such other persons as determined in the Articles of Incorporation.

The articles of association determine the rights attached to the shares. Non-voting shares and shares with limited voting rights and shares with no or a limited right to distribution of profits are permitted.

3.1.5 Management

A management board consisting of one or more managing directors (*directeuren*) who can be individuals or corporations, manages the N.V. 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). The other managing director can reside elsewhere. Although there is no requirement that a managing director has Dutch citizenship such Dutch citizenship and whether or not the managing director has been born in the Netherlands Antilles or has resided there for a certain minimum consecutive period are factors that are weighed in the process of obtaining the requisite director's license for the managing directors.

Under certain circumstances such resident managing director is required to have a license under the Ordinance on Supervision of Trust Business (*L.v. Toezicht Trustwezen*).

The Articles of Incorporation can determine that management duties are divided between a "general board" and an "executive board". In such event, the executive board is entrusted with the daily management

of the company. The civil code contains some further regulations as to the assignment of tasks between the general board and the executive board.

If provided for in the articles of association a limited liability company may 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. A board of supervisory directors can consist exclusively of natural persons. The N.V. can also opt for an "independent" board of supervisory directors. An independent supervisory director cannot be dismissed by the shareholders' meeting without reason. It should be noted, however, that if there is such an independent board of supervisory directors in place that the requirements applicable for the "large" NV as to financial statements and the auditing and publication thereof will become applicable for that N.V. (please also see 3.1.8 below).

Unless the articles of association determine otherwise, managing directors and supervisory directors are appointed by, and can be suspended or dismissed by, the general meeting of shareholders.

3.1.6 Shareholders meeting

The general meeting of shareholders of a limited liability company 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 and other capital distributions;
- the dissolution of the company; and
- all other powers that have not been assigned by law or in the articles of association to another corporate body.

An annual general meeting of the shareholders should be held at least once a year, usually within eight months after 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.

Unless the articles of association determine otherwise, shareholders meetings must be held in the Netherlands Antilles. Attendance by proxy is permitted. Unless the articles of association state otherwise, a simple majority of votes present and represented at meetings can validly adopt resolutions with no quorum requirements. Written resolutions can also be adopted outside of a meeting, provided that all persons that are entitled to vote with regard to the subject have cast their vote.

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 the management or supervisory board at the request of shareholders controlling 10% or more of the issued voting shares.

3.1.7 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 association.

Each year, the board of managing directors has to draw up financial statements within eight months after the lapse of the financial year, which statements consist of at least a balance sheet, a profit and loss statement, and an explanatory note to these statements. The general meeting may extend this period by six months at the most, based on “special circumstances”: the civil code does not state what would be considered special circumstances.

3.1.8 Accounting and financial statements

The financial statements have to comply with generally acceptable standards and have to give such insight that a sound opinion can be formed on the capital and the

results, as well as on the solvency and the liquidity of the company, in as far as the nature of the financial statements allows this. The civil code does not state what rules as to financial reporting are considered generally acceptable.

The general meeting is authorized but not required to appoint an external expert to supervise the bookkeeping on a regular basis and to report to the general meeting on the financial statements drawn up by the board of managing directors.

For the limited liability company, not falling under the regime of “large” limited liability company, and the private limited liability company no publication or filing requirements exist under civil law. Legal entities that are under the supervision of the Bank of the Netherlands Antilles, such as credit institutions, insurance companies, investment institutions and administrators, should, however, comply with specific requirements in this respect.

For limited liability companies designated by Book 2 of the CC as being “large”, specific and more stringent requirements apply with regard to the accounting principles and criteria for the composition of the financial statements, the publication of the financial statements, as well as with regard to the obligation to have them audited by experts.

Limited liability companies are designated as “large” if they meet all of the following criteria:

- (a) the company has twenty employees or more;
- (b) the value of the assets amounts to more than ANG 5 million as per the date of the balance sheet; and
- (c) the net turnover during the financial year amounts to more than ANG 10 million.

3.1.9 Profits and distributions

The net profits of a limited liability company are at the disposal of the shareholders who can either declare a dividend or reserve the profits. If the Articles of

Incorporation so provide, interim dividends may be declared from current year profits by the shareholders meeting or such other corporate body as appointed thereto in the Articles of Incorporation. Dividends and other capital distributions cannot be paid and made if the equity capital is or becomes negative as a result of such dividend or distribution. If the company has a nominal share capital that capital is considered the limit.

3.2 B.V.

The private limited liability company (*besloten vennootschap*, hereafter also “BV”) is a flexible form of company.

The BV is a company similar to the N.V. The main differences with the N.V. are:

- The B.V. has registered shares only;
- The articles of association can determine that the shareholders can be held liable for the debts of the B.V.;
- The articles of association of the B.V. can contain a different manner for dissolution of the company;
- If it is envisaged that preferential rights be attached to shares, such should be provided for in the articles of association of the B.V.;
- There is no distinctive financial regime such as for the “large” N.V.;
- On the initiative of an individual shareholder Shareholders meetings for the B.V. can be convened;
- The possibility of an independent supervisory board does not exist for the B.V.;
- The B.V. can be organized that it is “managed by shareholders”: no distinction between shareholders and managing director as corporate bodies.

The option of a company “managed by shareholders” has been introduced for the B.V. This form of the private limited liability company does not have a board of managing directors as a separate corporate body. The joint shareholders or the sole shareholder act as management, which simplifies the taking of corporate action and the management of this type of company in

general. Since no managing directors have been appointed as such, there are no formalities of appointment, suspension, and dismissal of managing directors, nor is there a difference between shareholders’ meetings and board meetings in this case. The shareholders may determine the details of the way in which they will manage the company and the division of tasks mutually agreed upon in a shareholders’ agreement. Using this type of company, a legal concept can be created that resembles the partnership (*commanditaire vennootschap*), the general partnership (*maatschap*), or the limited partnership (*vennootschap onder firma*), and at the same time benefits from the facts that, as opposed to partnerships, this company managed by shareholders is a legal entity with the ability to act, sue and be sued in its own name and the shareholders are only liable for such company’s debts up to the amount to be paid on those shares (if any).

3.3 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 foundation developed from capital being set aside for a special non-profit or charitable purpose and was originally used by religious and welfare groups. The foundation is still frequently used for religious and not-for-profit organizations. Distributions to incorporators or to those, who constitute its bodies, are not allowed – save in case of a private foundation as discussed further below – and its distributions are furthermore restricted by law to distributions with a charitable 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. As distributions are in such event not done out of the foundation’s own funds or out of its own income, such distributions are allowed. Also, the restriction does not apply to liquidation distributions: it is permissible to state in the articles of association that upon liquidation the assets shall be distributed to e.g. the incorporator.

The principal difference between a foundation and a corporation is that a foundation has neither members nor shareholders, nor a capital divided into shares. The board of a foundation, 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 board in office or by another person or body especially 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. An interested party can also request the competent court to dissolve the foundation.

3.3.1 Formation of a Foundation

A foundation is established by notarial deed executed before a civil law notary in the Netherlands Antilles. The Articles of Incorporation of a foundation must include the name of the foundation, including the word foundation or a translation thereof, its purpose, the first managing board and the manner how board members are appointed and dismissed, the Island Territory where the foundation has its seat, and the designation of the balance after liquidation in the event of dissolution of the foundation or the manner in which the designation shall be determined.

3.3.2 Assets of a Foundation

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

3.3.3 Management of a Foundation

A board (“*bestuur*”), consisting of one or more members manages a foundation. The powers of the board are set out in the articles of association of the foundation. A foundation may also have a supervisory board which supervises the board in accordance with the articles of association. The founder of a foundation and the members of the board and of the supervisory board can not participate in the assets and/or profits of a foundation.

3.4 The Private Foundation (Also known as SPF)

For purposes of international tax and estate planning the Private Foundation has been introduced as a flexible variant of the long existing “common” foundation which variant is comparable to a trust. The Dutch name is *Stichting Particulier Fonds*, abbreviated SPF.

As mentioned, the private foundation is a foundation but a specific and flexible form thereof. The private foundation is, like other foundations, a separate legal entity, with assets and liabilities in its own name. Furthermore, a private foundation neither has shareholders, members or the like. Beneficiaries do not have to be appointed if such appointment is not desired.

While it is not possible that a common foundation makes distributions (except distributions of an idealistic or charitable 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 of the founder, without serving a charitable or social purpose. Beneficiaries of such distributions can – but are not required to – be appointed/designated in the articles of association, and if such is done, either in very general or very specific terms. In most cases, the articles of association of private foundations do not provide for such designation and it is at the discretion of the board

of directors of the private foundation to designate beneficiaries.

Another major difference between common and private foundations is that the private foundation's purpose may not be to conduct a business or enterprise for profit. Managing its assets (investments, equities etc), to act as a holding corporation, or to participate as a partner in a limited partnership, will however not be regarded as "conducting a business". Under the provisions of Book 2 of the civil code, the foundation may, and should invest its assets, and may do so actively. There are no limits on the type of investments.

3.4.1 Taxation of the Private Foundation

As to taxation of the private foundation we refer to 6.3.5. By creating the private foundation, the Netherlands Antilles wanted to launch a product that could compete with certain products of other jurisdictions, like the Anglo-American trust. It has been the intention that there would be a minimum of formalities to be coped with. It is not necessary to make annual financial reports or statements summarizing the assets. The private foundation however is not allowed to include in the purpose clause of its articles of incorporation: "to generate profits by running a business or enterprise for profit".

The private foundation is tax exempt if its articles of incorporation include a statement that it is a private foundation. In addition, the purpose clause may not include to generate profits by running an enterprise. In principle, the private foundation should not receive an annual tax return. The Inspector of Taxes has the right to still send a tax return. If a tax return is received it has to be completed and subsequently filed, stating that it concerns a private foundation. Netherlands Antilles profit taxes will apply if Netherlands Antilles assets are involved.

3.4.2 Incorporation of the Private Foundation

Like the common foundation, a private foundation is incorporated as such by deed executed before a Netherlands Antilles notary. As to the requirements on the contents of the Articles of Incorporation we refer to 3.3.1 where this is described for the common foundation.

3.4.3 Applications for the Private Foundation

This concept of the foundation has proved to appeal to clients and practitioners from both civil law and common law countries who consider it in their overall tax, estate and/or asset planning structures and opportunities and use it instead of an Anglo-American Trust. 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.

3.5 Partnerships

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

3.5.1 General Partnership

A general partnership in which the individual partners are jointly and severally liable for the debts resulting from the enterprise of the partnership is referred to as the *Vennootschap onder Firma* ("VOF").

3.5.2 Limited Partnership

A limited partnership in which there is a distinction drawn between the limited partners and the general or managing partners is referred to as the *Commanditaire Vennootschap* (“CV”). 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 resulting from the enterprise of the CV. A limited or “silent” 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 resulting from the enterprise of the partnership, together with the general or managing partners.

Netherlands Antilles’ partnerships are formed by either a notarial or a deed executed under hand. The absence of a deed can, however, not be used to defeat the claims of third parties. The VOF and the CV must be registered at the Commercial Registry of the relevant Island Territory. 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.

3.5.3 Taxation of the VOF and CV

The VOF is not considered a separate entity for profit tax purposes. Therefore, the partners in the VOF are each of them individually subject to tax on their share in the profit of the VOF. The same applies to the CV.

The exception is the so-called CV with a capital divided in shares. The CV with a capital dividend in shares is considered a separate entity for profit tax purposes. The CV is then subject to tax, but only on the profit share of the limited partners. The general partner remains himself subject to tax on his profit.

In general terms, a CV is considered to have a capital divided in shares in case the partners are free to transfer their share in the partnership’s capital to another person or entity without prior consent of the other partners.

3.6 Licenses

Under Netherlands Antilles law, each company needs to have:

- a license for the managing directors to act as such;
- a license to carry out business.

These latter two licenses are issued by island governmental authorities and not by the central government. Although the application process may be lengthy, in anticipation of the issuance of license it is generally condoned that the company commences its operations.

For some international or cross border transactions a specific or general foreign exchange license or exemption may be required. In other cases, the acquisition of a business in the Netherlands Antilles by a non-resident requires a foreign exchange license or a notice; such licenses and notices are for the purpose of enabling the Bank van de Nederlandse Antillen to monitor the changes in local and foreign currency reserves.

3.7 Conversion, merger, and division of legal entities

The final chapter of Book 2 Civil Code deals with the newly introduced possibilities of conversion (change of legal form), merger, and division of legal entities. In case of a merger, a foreign legal entity with a similar legal form may also act as the legal entity to merge or merge into.

The conversion into or from a foreign legal entity from or into an Antillean legal entity (a cross-border change of corporation form) is worth mentioning. This replaces the transfer of registered seat and applies to all legal entities.

3.8 Liquidation

The voluntary liquidation of a legal entity starts with a resolution of the shareholders, members, an interested party, or the Court (as the case may be) to that effect. The liquidator needs not be a resident of the Netherlands Antilles and can be either an individual or a company. In the absence of the appointment of a liquidator, the board or the Chamber of Commerce (as the case may be) are to act as liquidators.

Once a company is in liquidation, the liquidator manages the affairs. The legal entity continues to remain in existence but only in so far as this is necessary for the liquidation and dissolution of its affairs. The liquidator converts the assets of the legal entity into cash, settles the relationships with third parties and pays the debts. The balance that remains after payment to the creditors is distributed to the persons that are entitled thereto by virtue of the Articles of Incorporation, or to the members or shareholders. If the assets are not sufficient to pay all debts, the liquidations must file the legal entity's bankruptcy and the liquidation is then converted into a bankruptcy subject to the court's supervision.

4. Intellectual Property

4.1 Trademarks

According to the Trademark Act 1995, a trademark owner can only claim exclusive rights to a trademark if the concerned trademark is duly registered with the Bureau for Intellectual Property in the Netherlands Antilles (“BIP”). To be registerable, a trademark must be capable of graphic representation and distinguishing the goods or services of one enterprise from those of other enterprises. The BIP cannot object to the registration of a trademark based on older rights. The current legislation does not provide for an opposition procedure with the BIP. Protection of a trademark lasts for ten (10) years following the date of application. A registration is renewable for a successive 10-year period.

The following remedies may be granted, if brought before the court by the owner of a trademark that has been registered with the BIP in the Netherlands Antilles: (i) injunctive relief, (ii) damages, (iii) payment of profits, (iv) seizure of the infringing goods, (v) provision of information on suppliers and/or customers, (vi) cancellation of the trademark registration.

Furthermore, upon the request of any interested party, the court may declare the right to a trademark to be null and void insofar as (i) without valid reasons, during an uninterrupted period of 5 years no normal use was made of the mark in the Netherlands Antilles for the goods or services for which the trademark was registered, (ii) after having been duly acquired, the trademark has become the common designation/description of a product due to the acts or omissions by the trademark owner or (iii) insofar the trademark, as a result of its use, can mislead the public particularly regarding the nature, the capacity or the geographic origin.

4.2 Copyright

According to the Copyright Act 1913, copyright is the exclusive right of the maker of a work of literature, science or art, to publish and reproduce such work, i.e.:

books, brochures, newspapers, magazines and other pieces of writing; drama and musical drama; choreographical works and pantomimes laid down in writing or otherwise; musical works, with or without text; drawings, paintings, buildings, sculptures, lithography, engravings and other illustrated works; geographical maps; designs, sketches and plastic arts with regard to architecture, geography, topography or other sciences; works of art applied to industry; and in general every product in the field of literature, science or art, in whatever manner of form it could be reproduced.

No formalities are required to obtain protection of a copyright in the Netherlands Antilles: such rights would be acquired through the mere publication of the concerned work. However, for purposes of evidence, the copyright owner can file the work with the BIP in an “I-envelope”, which registration is valid for a period of five (5) years, after which the registration can be renewed. A duly signed original power of attorney is required to file an application. Legalization or notarization thereof is not necessary. Protection of copyrights lasts for fifty (50) years following the death of the author or the date of first publication if the author is not a natural person.

With respect to the enforcement of copyrights, the following remedies are available, if brought before the court: (i) injunctive relief, (ii) damages, (iii) payment of profits, (iv) seizure of the infringing goods. Copyright infringement is also a criminal offense. The following criminal sanctions are available if an action is brought before the court by the prosecutor: (i) seizure of the infringing goods and their destruction, (ii) a fine of up to ANG 5,000 (approx. USD 2,817).

4.3 Patents

According to the Kingdom Patent Act 1995, an invention is patentable if it: (i) is new (an invention is considered new if it is not part of the state of the art on the application date), (ii) involves an inventive step, (iii) is capable of industrial application, and (iv) is not specifically excluded from protection.

A patent application must be filed with the Netherlands Industrial Property Office (“IPO”) in the Netherlands, or with the BIP of the Netherlands Antilles in Curaçao. A patent provides protection in the territories of the Netherlands and the Netherlands Antilles. Patent protection lasts for six (6) years without a search report (that is, an examination concerning the state of the art of the subject matter); or twenty (20) years with a search report.

If brought before the court, the following remedies are available: (i) injunctive relief, (ii) damages, (iii) payment of profits, (iv) seizure of the infringing goods.

4.4 Designs

A design cannot be registered in the Netherlands Antilles. However, designs can be protected under the laws on patents, trademarks and copyrights or under general tort law.

4.5 Know-how/data protection

There are no specific laws on the protection of know-how or data in the Netherlands Antilles. Certain laws provide for the protection of personal data when used under the specific circumstances set out in those laws (such as the State Ordinance Agreements Via Electronic Channels).

4.6 Confidential information

Confidential information, as such, is not protected under the laws of the Netherlands Antilles. When information that is confidential by nature and/or of which it is agreed that it would be kept confidential, is disclosed, damages could be claimed if an action based on wrongfulness (tort) or breach of contract is brought before the court.

4.7 Trade names/trade secrets

There is no separate law in the Netherlands Antilles which applies to the protection of trade names, neither is it legally required to register a trade name with the

trade register of the Chamber of Commerce. However, to a large extent, protection of a trade name can be claimed based on the law of tort.

Trade secrets are, as such, not protected under any specific law. It is recommended to provide for the necessary protection in (confidentiality) agreements.

4.8 International treaties and conventions

The Netherlands Antilles are a party to the following treaties and conventions with respect to intellectual property: (1) Paris Convention for the Protection of Industrial Property, (2) Berne Convention for the Protection of Literary and Artistic Works (3) Nice Agreement concerning the International Classification of Goods and Services for the purposes of the registration of trademarks, (4) WIPO Convention, (5) Strasbourg Convention on the unification of certain points of substantive law on patents for invention, (6) Strasbourg Convention concerning the international classification of patents, (7) Patent Cooperation Treaty, (8) European Patent Convention, (9) Budapest Treaty on the international recognition of the deposit of micro-organisms for the purposes of patent procedure, (10) Madrid Protocol concerning the international registration of trademarks and (11) TRIP’s Agreement.

5. Employment

5.1 Employer/Employee relations

Employer/Employee relations in the Netherlands Antilles are governed by:

1. The Civil Code of the Netherlands Antilles;
2. Separate Labor Laws;
3. Case Law;
4. Individual and/or collective employment agreements.

5.2 Employment regulations in relation to investors

In general the government has a policy that if these are nationals of the country that have the skills and the qualifications an investor is looking for the investor should hire a national instead of a foreigner.

5.3 Hiring requirements

For employees with a foreign nationality labor permits are required. These permits are obtained by filing an application with the governmental department in question. The length of this procedure varies and in general takes months. Employing employees without the requisite permit is an offense for the employer and is punishable with a fine.

5.4 Training of employees

In general there are no rules and regulations stipulating that an employer should train its employees. However based on the principal of good employership, depending on the circumstances of the case, an obligation for the employer to train its employees may arise.

5.5 Employment contract

There are no requirements as to the form of an employment agreement. The employment agreement can be made in writing or orally. However, for certain provisions e.g. trial period the written form is mandatory. The contract can be entered into for a fixed period of time or for an indefinite period.

5.6 Trial period

During a trial period both the employer and the employee have the right to terminate the employment agreement immediately without giving a reason and without taking into account any notice period.

This trial period may not exceed two months; any stipulation to the contrary renders the entire trial period stipulation null and void.

5.7 Minimum Wages

The Ordinance with respect to minimum wages (*Landsverordening minimum lonen*, PB 1962, nr. 110) regulates the minimum wages to be paid out by the employer. These minimum hourly wages may vary between ANG 5,49 and ANG 6,35 depending on which island in the Netherlands Antilles the work is performed. An employee is entitled to at least a wage that is based on the current hourly minimum wage.

5.8 Maximum working hours

The Ordinance containing rules and regulations with respect to duration of the employment, employment hours and overtime (*Arbeidsregeling 2000*, PB 2000, nr. 67) regulates the maximum number of working hours for employees with a certain annual income as defined in this ordinance. In this Ordinance (*Arbeidsregeling 2000*, PB 2000, nr. 67) distinction is made between schedule workers and non-schedule workers. Schedule workers are employees working (not overtime) in accordance with a recurrent schedule (timetable) outside of regular office hours.

For non-schedule workers the maximum working hours per week calculated over a 4 weeks period is 40 hours provided the employee does not work more than 9 hours a day. The period during which the employee has to work longer than six (6) hours each day has to be interrupted after at the most five (5) hours for a break of at least a half an hour.

For schedule workers the maximum working hours per week calculated over a 4 week's period is 45 hours provided the employee does not work more than 10 hours a day.

An employer is entitled to overtime payment of the employee works during his break or if the employee works longer than the maximum period per day. Employer and employee may agree in writing that instead of paying out the overtime in money that the overtime shall be compensated completely or partially in days off (time-back).

5.9 Vacation

Furthermore the Vacation Ordinance (*Vakantieregeling 1949, PB 1949, nr. 17*) regulates the minimum number of vacation days an employee is entitled to. The Vacation Ordinance applies to all employees. Every employee is entitled to an amount of vacation days equal to at least three times the contracted number of working days per week with the understanding that an employee who works six days a week is entitled to at least 15 vacation days.

5.10 Termination of employment agreements

For dismissing personnel the rules and regulations in the Civil Code of the Netherlands Antilles and the Ordinance on Termination of Employment Agreements (*Landsverordening Beeindiging Arbeidsovereenkomsten, PB 1996, nr. 38*) apply. Once the employment agreement is legally terminated there is no continuing obligation for the employer unless this was agreed upon between parties or awarded by the Court.

To terminate an employment agreement by giving notice the employer based on the Ordinance on the Termination of Employment Contracts needs to obtain

the prior consent of the Director of the Department of Labor Affairs. Without such consent of the Director of the Department of Labor Affairs any termination given will be considered null and void.

Notice period

The notice period to be taken into account is related to the years of service of the employee at the time of termination and is mandatory for the employer.

- In case of an employment of less than five (5) years the notice period is: one (1) month.
- If the employee has been employed more than five (5) but less than 10 years the notice period is: two (2) months.
- If the employment has lasted longer than 10 years but less than 15 years the notice period is: three (3) months.
- If the employment has lasted more than 15 years the notice period is: 4 months.

Without the consent of the Director of the Department of Labor Affairs an employment agreement can be terminated only with the consent of the employee or upon the court's judgment to rescind the employment agreement on serious grounds, which will be deemed to exist either when:

1. the circumstances are such that they would have amounted to "urgent reasons" sufficient for immediate dismissal; or
2. the circumstances have changed so significantly that the agreement should be terminated immediately or on short notice.

In case of such dissolution, in most cases a severance payment is awarded to the employee.

5.11 Cessantia

The employee whose employment agreement is terminated without fault on his part or for a reason that cannot be attributed to him is entitled to a onetime monetary compensation known as the "cessantia". This

severance payment is regulated in the Cessantia Ordinance (*Cessantia Landsverordening, PB 1983 nr. 85*). This cessantia payment is calculated based on the years of service.

The employee must claim his cessantia pay from the employer within one year after termination of the employment agreement.

5.12 Penalty clause

An employer can stipulate in the employment contract that if certain rules and regulations imposed by the employer are violated by the employee this will lead to a penalty for the employee. The rules concerning penalties should be clear.

5.13 Safety Standards

Based on the Civil Code of the Netherlands Antilles the employer has the obligation to do all that is necessary to ensure the safety of its employees.

5.14 Unions

Only if the union represents a majority of the employees of a certain company the employer is obliged to recognize this union. In general the unions in respect to private business have no political affiliations.

6. Tax

6.1 Tax on corporations

Unless otherwise noted, this chapter deals with resident companies only.

6.1.1 Corporate tax system

For tax purposes, corporations are classified as either resident or non-resident. No distinction is made between foreign and domestic ownership. A corporation is considered resident if it is incorporated in the Netherlands Antilles (an N.V. company) or if its place of principal management and control is in the Netherlands Antilles.

Corporations and shareholders

Dividends received by a resident company from another resident companies are not taxed. There are no withholding taxes on dividends paid to offshore shareholders.

Taxable income

Except for dividends, all sources of income are subject to normal corporate income tax rates. As noted above, dividends received from other resident corporations are not taxed. Dividends received from foreign participations are subject to tax for 5 percent of the amount at the normal tax rate. A shareholding qualifies as a participation under Netherlands Antilles tax law if it constitutes 5 percent or more of the invested company's paid-up share capital.

Dividends received from Dutch companies are tax exempt providing the Antillean company owns at least 25 percent of the Dutch company. In this case, Dutch withholding taxes are reduced to 8.3 percent (normal rate is 25 percent). If the Antillean company's interest is less than 25 percent, Dutch withholding tax will be 15 percent.

Territoriality

Resident corporations are taxed on worldwide income. Non-resident companies are taxed on the following Antillean-source income:

- Income attributable to a permanent establishment.
- Income from real property situated in the Netherlands Antilles.
- Interest on loans secured by a mortgage on property situated in the Netherlands Antilles.

6.1.2 Gross income

Accounting period

The tax year consists of a 12-month period, which typically ends on December 31, although another date will be accepted on request. The tax year should coincide with the company's fiscal year.

Accounting methods

Tax declarations are made on the accrual basis of accounting.

Business profits

Corporations are taxed on their income as reflected in the profit and loss account, less certain deductible items.

Intercompany transactions

Intercompany transactions should be made at arm's length to the extent they are not defined by specific tax rulings.

Inventory valuation

LIFO, FIFO, average cost, and specific identification are all acceptable inventory valuation methods. Provisions for obsolescence and damaged goods are deductible for tax purposes, provided they are based on the company's actual experience.

Capital gains

Capital gains are not differentiated from operating income and are subject to normal rates.

Interest

Interest is considered ordinary income.

Dividends

Unremitted profits of subsidiaries are not subject to taxation. Stock dividends and dividends-in-kind are treated as regular dividend income.

Royalties and service fees

Both royalties and service fees are considered ordinary income.

Exchange gains and losses

Foreign exchange gains and losses are also considered ordinary income.

Tax exempt income

Dividends from foreign participations and income from foreign branches are tax exempted for 95 percent. Income from foreign real estate is in general considered to be part of a foreign branch and therefore 95 percent tax exempt. Income from branches in the Netherlands or Aruba are exempt from taxation. All other sources of income are subject to taxation at normal rates.

6.1.3 Deductions

Business expenses

Netherlands Antilles tax law allows for the deduction of all business expenses, including intercompany charges, provided the expenses are within the general definition of good business practice. However, the Tax Inspector does retain the right to set an arm's-length value on intercompany charges. There are no prohibitions on payments to foreign affiliates, nor are there limitations on capital expenditures.

Depreciation

Depreciation of tangible fixed assets, excluding land, is taken over the estimated useful life of the asset. The depreciable base includes purchase price, customs duties, shipping costs, and installation costs, less residual value, if any. The straight-line method is customary, but the declining-balance method is also acceptable. In addition,

an accelerated deduction of one-third of the asset's depreciable basis may be taken. The asset's remaining cost basis (two-thirds) is depreciated using the normal method. The economic lives of the various types of tangible assets are not specified in the tax code.

There are no recapture rules on the sale of depreciated assets, as capital gains are treated as ordinary income.

The cost basis of certain intangible assets such as patents, trademarks and copyrights can be amortized over their expected useful lives. Goodwill and other intangibles resulting from the excess of purchase price over the cost basis of assets purchased are amortized over three to five years.

Investment allowance

See Chapter 2 Investment Incentives.

Asset replacement reserve

Gains on the sale of fixed assets can be recorded in a tax-free reserve, provided it is the intention of the company to purchase similar assets within four years. Upon purchase of the replacement assets, the reserve is used to lower the depreciable basis of the new assets.

Interest

Interest paid to third parties is deductible. However, because the law explicitly gives the Tax Inspector the authority to set an arm's-length cost on interest paid to affiliated parties, it is recommended that advance tax rulings be obtained. Interest on preferred shares is not deductible. There is no withholding tax on interest payments.

Royalties and service fees

There are no limits as to deductibility. However, the Tax Inspector does have the authority to impose an arm's-length cost if deducted charges are considered to be outside the boundaries of good business practice.

Employee remuneration

There are no limits on payments to foreign employees. However, if an employee is a shareholder, arm's-length principles apply.

Insurance premiums

There are no limits on payments to foreign affiliates or to captive insurance companies, provided such payments are at arm's length.

Intercompany charges

Intercompany charges should be on an arm's-length basis. Generally, the Tax Inspector will not challenge intercompany charges as long as they are reasonable as defined by good business practice. If such charges are expected to be significant, an advance tax ruling should be considered.

Charitable donations

Donations to charities that are qualifying entities within the Netherlands Antilles and other countries of the Kingdom of the Netherlands may be deducted to the extent that they exceed 1 percent of net income and US\$56 (NAf100) after utilization of tax loss carryforwards. The maximum deduction is 3 percent of net income.

Nondeductible items

Payments to managing and supervisory directors of the company that are related to profit and contributions to charity of less than 1 percent of net income are not deductible. Also, any valuation reserves made directly to equity are nondeductible.

Losses

Losses may be carried forward ten years. Start-up losses during the first four years for companies having tax holidays may be carried forward indefinitely (the first six years for shipping and aviation companies). Carrybacks are not permitted.

The compensation of losses with future profits is not allowed if the activities of the company have ceased completely or almost completely, unless the future profits will be mainly to the benefit of the individuals who were directly or indirectly entitled to such profits when activities ceased.

6.1.4 Tax computation

Net income

In general, net income consists of all benefits, gains and income received by a company net of all deductions for expenses and losses.

Tax rate

The corporate income tax rate is 30 percent. A 15 percent municipal surcharge is levied, which results in an overall tax rate of 34.5 percent.

Tax credits

There are no tax credits available.

Consolidation

A fiscal unity is possible for resident companies. Consolidation is possible if at least 99 percent of the capital shares of the subsidiary are held by the parent company and the same book year as well as the same tax regulations apply to each company in the fiscal unity.

6.1.5 Filing and payment requirements

Tax returns

All companies incorporated in or conducting business in the Netherlands Antilles are assigned a taxpayer identification number and must file an income tax declaration on an annual basis. The tax returns are filed based on a self assessment system. Each company is therefore required to pay the amount due on the tax return at the time of filing the return.

Provisional returns are due within three months from the end of the tax year. The amount to be declared, and paid, on the provisional tax return should be the same as the amount paid on the final return for the previous year. A lower amount may be filed on request. The company is in that case required to explain summarily why the amount to be paid should be lower.

Assessments

Because of the self assessment system, the Inspector will only send an assessment in case the company did not file a tax return on time or did not pay the self-assessed

amount on time, or in case other information leads the Inspector to the conclusion that the self-assessed tax amount was incorrect.

Payment and collection

Assessments sent by the Tax Inspector must be paid directly to the Tax Collector within one month of the date of issuance. If the assessment has been disputed, extension for the payment of the disputed amount can be requested.

Withholding taxes

There are no withholding taxes levied on dividends, interest and royalty payments made by corporations.

6.1.6 Other taxes

Social security

The employer's share of social security taxes, known as AOV/AWW (for old-age pension, widows and orphans), is calculated at 6 percent on each employee's first US\$ 27,212 of gross wages. The employee's share is 5 percent on the first US\$ 27,212 of gross wages. Gross wages in excess of US\$ 27,212 are not subject to social security taxes.

The so-called AVBZ is a national social insurance for medical care. The premium charged to create the necessary funds amounts to, in general, 2% of taxable income, with a maximum charge of USD 3,930. The employer's contribution is 0,5%, the employee's contribution is 1,5%.

Real estate taxes

Real estate taxes are levied annually at 0.3 percent of the value of the property. A transfer tax of 4 percent is levied on the transfer of real estate.

Capital tax

There is no capital tax on net worth.

Excise taxes (only Bonaire and Curaçao)

Gasoline, cigarettes, alcoholic spirits, beer and wine, and certain locally manufactured goods are subject to excise taxes.

Customs duties (only Bonaire and Curaçao)

Applicable import duties are applied to the CIF value. A general summary of the groups of goods to which import duties apply is provided below. However, it should be noted that the percentages applied are revised on a periodic basis.

- Basic goods (0 percent)—Foodstuffs not specifically subject to levies or prohibition, such as fresh chicken, whole milk, cheese, and tourist-related articles, including jewelry, perfume, chocolates, audio-video equipment, cameras, computers and accessories.
- General goods (5,5-13 percent)—boats and boating equipment, clothing, paper and steel, toys.
- Luxury goods (17-27 percent)—Air conditioners, microwave ovens.
- Transportation (27 percent)—Automobiles and motorcycles.

VAT

In 1999 the federal government of the Netherlands Antilles introduced a sales tax. The sales tax is levied on the following:

Delivery of goods.

Services rendered "within the territory" by resident or non-resident entrepreneurs within the scope of their business.

The importation of goods.

This sales tax is applicable to the Leeward Islands of the Netherlands Antilles (Curaçao and Bonaire). The sales tax rate is 5 percent.

On the Windward islands of the Netherlands Antilles (St. Maarten, Saba and St. Eustatius), instead of the sales tax a turnover tax is applicable. The turnover tax is a tax on business sales of goods or services realized by entrepreneurs or businesses (all persons having a business or self-employed trade) in accordance with their business in St. Maarten, Saba or St. Eustatius. The turnover tax rate is 3 percent.

Miscellaneous taxes

Certain taxes, such as stamp and registration taxes, relate primarily to incorporation and administration and are minor in amount except in case of the creation of a right of mortgage over real property located in the Netherlands Antilles in which case the stamp duty is based on the maximum secured principal amount. In that case the rate is 0.2%.

6.1.7 Tax treaties

Tax arrangement for the Kingdom of the Netherlands Antilles (TAK).

As part of the Kingdom of the Netherlands, the Netherlands Antilles is party to a federal tax agreement with the Netherlands and Aruba. Subject to this treaty, dividends, interest, and royalties paid out to a Netherlands Antilles recipient may qualify for reduced rates of withholding taxes in the subject countries.

Dutch dividend withholding taxes are reduced from 25% to 15%, if the Netherlands Antilles company owns less than 25% of the Dutch company. In the Netherlands Antilles, only 5% of these dividends will be taxed, at a rate of 34,5%, which results in an effective rate of 1,725%.

In case the Antilles company's interest is 25% or more, Dutch withholding tax can be reduced to 8,3%. These dividends will be fully exempt from profit tax in the Netherlands Antilles.

Capital gains derived from shareholdings in Netherlands corporations will be fully exempted from profit tax in the Netherlands Antilles, provided that the shareholding amounts to at least 25%. If the shareholding amounts to less than 25%, the capital gain will be tax exempt for 95%.

Norway

A tax treaty with Norway that reduces the withholding tax on dividends paid from a Norwegian company to a Netherlands Antilles company was ratified by both countries in June 1991. The dividend withholding tax of 25 percent is reduced to 15 percent if the Netherlands Antilles company has a participation of less than 25 percent in the Norwegian company and to 5 percent if the participation is 25 percent or greater. In general,

companies not having a Netherlands Antilles business purpose and offshore companies do not qualify for the benefits of this treaty.

6.2 Tax on individuals

Unless otherwise noted, this chapter deals with resident individuals only.

6.2.1 Territoriality and residence

An individual's specific circumstances determine residence for tax purposes. These circumstances include permanent home, habitual stay and centre of economic and social interests. Residents are taxed on worldwide income, while non-residents are taxed only on income generated within the Netherlands Antilles.

Individuals are taxed from their date of arrival. Accordingly, the timing of arrival makes no difference.

6.2.2 Gross income

Gross income of residents include gains, profits, and income derived from the sources below.

- A business or profession
- Employment
- Proceeds from immovable property
- Net income from capital
- Certain periodic receipts

Capital gains

Residents are not taxed on capital gains unless the gain results from a business activity or the shareholder has owned 5 percent or more of the capital stock of the company at any time during the five years preceding the sale. Liquidating dividends are taxable to the extent that they exceed paid-in capital.

Deemed income

For the individual income tax purposes, a resident taxpayer can be taxed on deemed annual income from capital if he owns shares in a Netherlands Antilles Exempt Company, or shares, memberships rights or an

interest in a non resident company, the activities of which, on a consolidated basis, mainly consist of lending, portfolio investments, and similar activities. Resident taxpayers are obliged to include the fair market value of such Exempt Company or foreign investment company in their annual taxable income. An amount equal to 4% of the fair market value of the shares, membership rights or interest at the beginning of the year will be considered as taxable income each year. In case the actual income received exceeds the deemed amount, this income actually received does not have to be included in the taxable income rather than the amount of the deemed income. The deemed income provision will also apply to the value of receivables on, profit sharing certificates in, and rights in an Exempt Company or in a foreign investment company.

Dividends

Dividends received are included in the individual’s taxable income. A special reduced rate of tax applies to dividends from or capital gains on the sale of ‘substantial share interests’ at 19,5%.

Foreign shareholders are subject to taxes on dividends only if they hold a substantial interest in a Netherlands Antilles company and if they have been resident in the Netherlands Antilles within the last ten years. A substantial interest is defined as a holding of 5 percent or more held by the taxpayer together with his spouse. In that case, the same tax rates apply as for domestic shareholders.

Other income

A self-owned residence situated in the Netherlands Antilles is tax exempt. If the owner rents the residence, 65% of the rental income is taxed but no deduction is allowed for maintenance expenses.

6.2.3 Deductions

Business

Normal business expenses, such as travel and lodging that are not reimbursed by the employer, are deductible. No deduction is allowed for expenses such as meals or entertainment that are not reimbursed by the employer.

Nonbusiness

In general, interest expense, including mortgage interest on property situated within the Netherlands Antilles, is deductible. Deduction is limited, however to the extent of related income. Deduction of interest on self-owned residence is limited to USD 18,250.

Donations to legitimate charitable institutions are deductible to the extent they exceed 1 percent of income. The maximum deduction is 3 percent of taxable income. Expenses related to medical treatment are deductible to the extent they exceed 5 percent of income.

Compulsory contributions to pension funds, including government-sponsored retirement plans (e.g., social security), are fully deductible.

Personal allowances

A tax allowance per child of between USD 47 and USD 476 is allowed, depending on the age of the child and other circumstances such as the level of education attended. Please note, this a deduction on tax payable, not an income deduction. Other personal tax credits are a basic tax credit for every taxpayer (USD 669), an additional credit for a married taxpayer with nonworking spouse (USD 446) and a credit for taxpayers aged 60 and older (USD 337).

6.2.4 Tax computation

Individual income tax rates (2006).

Taxable income		Tax rate (%)
Over	Not over	(Including municipal surtax of 30%)
USD 0	USD 12,921	13,0
12,921	19,101	20,8
19,101	26,966	27,3
26,966	40,449	35,1
40,449	56,741	41,6
56,741		49,4

A municipal surtax of 25% instead of 30% applies in Bonaire, Saba and St. Eustatius.

6.2.5 Special status for expatriate employees

Highly qualified expatriate employees who work exclusively in the international financial sector, oil industry, airline industry, tourism, telecommunication or educational universities and colleges that cater to foreign students, are eligible to apply for a special expatriate tax status, which entitles the expatriate employee to a number of benefits. Benefits are enumerated below.

1. wages in kind up to USD 8,400 can be excluded from taxable income.
2. Moving-in expenses of two months' salary up to a maximum of USD 6,740 may be excluded from taxable income in the year in which the employee enters the Netherlands Antilles.
3. Moving-out expenses of two months' salary up to a maximum of USD 6,740 may be excluded from taxable income in the year in which the employee leaves the Netherlands Antilles.
4. Tuition up to USD 14,045 for children attending the International School is not taxed.
5. Hotel expenses, excluding meals, during the first two months of an expatriate's stay are not taxed

6.2.6 Special status for pensioners

In 1989 a new tax status was enacted for certain individuals (primarily pensioners) who come to live in the Netherlands Antilles. To qualify, an individual must meet the following requirements:

- Must have resided outside of the Netherlands Antilles for the five-year period preceding the application to qualify for the special tax status.
- Must obtain a permanent residence permit.
- Must own a residence having a minimum value of USD 252,800.
- Must have reached the age of 50 years.
- May not be employed in the Netherlands Antilles, although certain exceptions to this restriction exist.

Individuals meeting the above qualifications can opt to be taxed in one of the following ways:

- Worldwide income is subject to a flat rate of 10 percent; or
- A deemed net income amount of USD 280,899 is taxed at ordinary rates.

6.2.7 Filing and payment requirements

Tax returns are filed on a calendar-year basis. Each spouse is taxed individually on his or her income (e.g. income derived from a business, a profession, or employment). Non-personalized income is, in principle, included in the taxable income of the spouse with the higher personal income.

The Netherlands Antilles employs the pay-as-you-earn system, so tax is withheld from salaries.

6.2.8 Other taxes

Social security taxes

The employer's share of social security taxes, known as AOV/AWW (for old-age pension, widows and orphans), is calculated at 6 percent on each employee's first USD 27,212 of gross wages. The employee's share is 5 percent on the first USD 27,212 of gross wages. Gross wages in excess of USD 27,212 are not subject to social security taxes.

The so-called AVBZ is a national social insurance for medical care. The premium charged to create the necessary funds amounts to, in general, 2% of taxable income, with a maximum charge of USD 3,930. The employer's contribution is 0,5%, the employee's contribution is 1,5%.

Real estate tax

Real estate taxes are levied annually at 0.3 percent of the value of the property. A transfer tax of 4 percent is levied on the transfer of real estate.

Gift and inheritance taxes

Gift and inheritance taxes are levied primarily on residents. The rates vary according to the relationship of the beneficiary to the donor. The lowest rates range from

2 to 6 percent for close family members and 8 to 24 percent for unrelated parties. Estate tax is levied at 8 percent upon the transfer of real property situated in the Netherlands Antilles from a non-resident owner.

Capital tax

No capital duties are levied in the Netherlands Antilles. There is no net wealth tax.

6.2.9 Tax treaties

As part of the Kingdom of the Netherlands, the Netherlands Antilles is party to a federal tax agreement with the Netherlands and Aruba. Subject to this treaty, dividends, interest, and royalties paid out to a Netherlands Antilles recipient may qualify for reduced rates of withholding taxes in the subject countries. For an individual recipient, the Dutch withholding tax amounts to 15%.

6.3 Tax on other legal bodies

6.3.1 Partnerships

Both limited and general partnerships are available in the Netherlands Antilles.

General partnership:

In a general partnership (*Vennootschap onder Firma*) the partners are jointly and severally liable for the debts of the partnership. This form of partnership would typically be used by public accountants and lawyers.

General partnerships are transparent for tax purposes. The partnership is not taxed. Net income from the partnership is allocated among the partners and is included in their taxable income.

Resident partners would be taxed on their share of the partnership's worldwide income. Non-resident partners are taxed only on their share of income derived in the Netherlands Antilles.

Limited partnership:

In a limited partnership (*Commanditaire Vennootschap*) the general partners, who represent the partners in third-

party dealings and manage the affairs of the partnership, are jointly and severally liable for the debts of the partnership. The limited partners are at risk for their contributed capital only. This form of partnership would typically serve as a joint venture, where one party supplies capital and another party provides management or technical services.

Some limited partnerships are transparent for tax purposes, while others are taxed as corporations. The method of taxation depends upon the form of the limited partnership, as defined in its articles or by tax rulings.

Resident partners would be taxed on their share of the partnership's worldwide income. Non-resident partners are taxed only on their share of income derived in the Netherlands Antilles.

6.3.2 Joint ventures

Joint ventures are rarely used in the Netherlands Antilles. Long-term joint ventures are usually organized as N.V. corporations. Short-term joint ventures are sometimes conducted as silent partnerships, in which one member manages the operations and deals with third parties and the other members contribute cash, equipment, labour, know-how, etc. The Profit Tax Ordinance contains no specific provisions regarding joint ventures.

6.3.3 Branch

A branch has no separate legal existence but in most respects it is similar to an N.V. For example, it is subject to the same tax rates as a domestic corporation if it is involved in onshore business.

6.3.4 Foundation/Private foundation

The Netherlands Antilles is a civil-law jurisdiction that does not recognize the common-law trust. However, a foundation or *stichting* is a legal entity that functions in the same manner as a common-law trustee. The main difference between an N.V. and a *stichting* is that the *stichting* has no shareholders. It is instead managed by a board of directors appointed by its articles. A *stichting* is

commonly used by charities and other nonprofit organizations. It can also be used to control and manage the investments of corporations. In this case, the shares of an investment are transferred by an investor to a *stichting*, which then issues the investor a certificate granting the right to all profits derived from such shares. The board has the responsibility of managing the investments, while the original investor receives the related profits.

The Private Foundation (hereafter: SPF) is a special form of the entity foundation. The founder enjoys a great deal of latitude to set up a SPF in the particular way that he sees fit. Very specific and requisite instructions may be put to management by the founding party on how to make disbursements from the equity of the SPF. The SPF is not subject to the disbursement restrictions, which a “normal” foundation is subject to. The SPF is very flexible in its set-up. This flexibility, in combination with the legal status, makes the SPF a very attractive alternative to the trust or for the purpose of asset protection.

tax, as are contributions of assets to the foundation by a non-resident. Gift tax in the contributor’s country may be applicable.

6.3.5 Taxation of foundations

1. Charitable *stichting*

A *stichting* that “serves the social interest” is exempt from taxation. Accordingly, these *stichtings* are used by contributors with long-term charitable goals to ensure that the related income is not subject to taxation.

2. Business *stichting* (*administratiekantoor*)

The business *stichting* is typically used by non-profit organizations such as employee savings funds and pension plans. These organizations serve the social interest and are not subject to taxation. Other business *stichtings* are subject to taxation at normal corporate rates.

3. SPF

The SPF is not allowed to operate an enterprise. Acting as a holding company or investment company is not considered running a business. A private foundation is exempt from Netherlands Antilles profit tax, and its distributions are exempt from Netherlands Antilles gift

7. Immigration Requirements

7.1 Immigration Controls

Foreign nationals require both a (temporary) residence and a work permit in order to legally reside (and work) in the Netherlands Antilles. The ‘National Ordinance on Admission and Expulsion’ (*Landsverordening Toelating en Uitzetting*, hereinafter referred to as “*LTU*”) addresses the terms and conditions of admission to the Netherlands Antilles. Under the regime of the *LTU* having sufficient means of existence, e.g. holding a job, is a prerequisite for receiving a residence permit. For reasons, which concern the public order or the public interest, economic reasons included, as on the grounds of the applicant’s lack of sufficient means of existence, a (temporary) residence permit may be rejected.

The ‘National Ordinance on Labour by Foreigners’ (*Landsverordening Arbeid Vreemdelingen*, hereinafter referred to as “*LAV*”) provides for rules with regard to the granting of permits for the employment of foreigners. A (temporary) work permit can be made subject to specific conditions, which encourage the employer to attract job-applicants from the local labour market. A (temporary) work permit may be rejected for reasons, which have to do with protection of the local labour market.

It should be set out that the applicant of a residence/-work permit must in principle remain outside of the Netherlands Antilles during the application procedure. There are no immigration quotas, nor are vaccinations and/or (other) medical certificates required.

When exiting the Netherlands Antilles definitively, various local authorities have to be notified, as any tax issues should be settled with the Tax authorities before leaving the country.

In the case of relocation outside of the Netherlands Antilles and/or obtaining residence outside of the Netherlands Antilles for more than a year because of

circumstances within the foreign national’s control – a (temporary) residence is terminated. As then, a re-entry permit would be required.

7.2 Immigration Requirements/Formalities

Residence permit

In the admission process distinction is made with regard to the nature of the profession of the applicant. In general, to start the process of entry to the Netherlands Antilles, the applicant must submit a written application form, accompanied by the following documents (other documents may have to be submitted depending on the nature of the profession):

- copy of a valid passport of applicant (and his/her family members);
- three (3) recent passport photographs of applicant (and his/her family members);
- birth certificate of applicant (and his/her family members) duly legalized at the Dutch Embassy/Consulate in the country of origin and apostilled;
- certificate of good conduct (not older than two (2) months) of applicant (and his/her family members);
- copy of marriage certificate of applicant (if applicable);
- copies of diplomas and/or other educational certificates, duly notarized, legalized at the Dutch Embassy/Consulate in the country of origin and apostilled;
- in the case of renewal of a permit, a copy of issued residence permit of applicant (and his/her family members).

After the Office of the Local Head of Police (*Bureau Plaatselijke Hoofd van Politie*) as well as the Immigration Authorities (*Vreemdelingendienst*) are satisfied that all submitted documents are acceptable, a (temporary) residence permit may be issued, valid for a period of one to three years.

When eligible for a (temporary) residence permit, a security deposit (*waarborgsom*) needs to be paid by the applicant, varying for each country of origin. For example:

- Argentina ANG 1,750.00
- Brazil ANG 3,500.00
- Peru ANG 800.00
- USA ANG 1,000.00

The security deposit is returned to the foreign national upon his/her departure from the Netherlands Antilles.

Work permit

In this case it is the employer who is obliged to submit all necessary documents. Among other things, an employment agreement or a guarantee letter from the employer should be submitted:

- in the case the employer is a limited liability company/company limited by shares (*naamloze vennootschap/vennootschap naar beperkte aansprakelijkheid*), a copy of the business licence (*vestigingsvergunning*) issued by the Office of Economic Affairs (*Dienst Economische Zaken*);
- completed form of a guarantee letter, in which the employer guarantees expenses incurred (by the government) in case the employee becomes destitute, as well as for expenses incurred by hospitalization of employee (and/or his family members), sealed with a stamp of ANG 5,00;
- completed form regarding the position in the company for reference of the Labour Office (*Dienst voor Arbeidszorg*), to be accompanied by an organization schedule, in which the structure of the organization is presented (*organogram*);
- copy of the front page of the company's profile in the Labour Registry of the Labour Office (*arbeidsregister*);
- proof of payment of the retribution fee of ANG 500,00 to the Labour Office, for the Company's research activities on the local labour market;
- written declaration stating the necessity of hiring a foreign applicant;

- statement of employed personnel, to be divided into Antillean nationals and non-Antillean nationals, as well as their job-descriptions.

Time frame

The application process of a residence/work permit takes approximately two to three months, depending not only on the expediency of the Bureau of the Local Head of Police, but also on the Immigration Authorities and the Labour Office. Extension or renewal of a residence/work permit may take up to two months.

According to the LAV an application for a (temporary) work permit must be decided upon within a period of six (6) weeks. If the authoritative body fails to do so, an administrative procedure can be followed to object to this indecision.

7.3 Visas

Tourists may enter the Netherlands Antilles without a temporary residence permit for a maximum period of fourteen (14) days. Such period is three (3) months for Dutch, Belgian and Luxembourg nationals, as well as nationals of countries with which the Kingdom of The Netherlands has entered into an agreement on the abolishment of the obligation to obtain a visa, the applicability of which agreement has been extended to the Netherlands Antilles. Therefore, whether a prospective visitor requires a visa depends on his nationality and how long he intends to stay in the Netherlands Antilles.

You can apply for a visa at a diplomatic mission (embassy or consulate) of a country which has permanent representation of The (Kingdom of the) Netherlands, even if you are not a national of the country where the mission is situated. The number and type of supporting documents to be enclosed, the time to process a visa application and the fees will depend on the circumstances in the country where you are applying and the nature of the visa application. Specific information should be obtained from the mission where a visa application is submitted.

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