

Newsalert

PricewaterhouseCoopers Netherlands Antilles

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Tax Information Exchange Agreement between Spain and the Netherlands Antilles

The Netherlands Antilles (NA) and Spain have signed a bilateral Tax Information Exchange Agreement (TIEA) on June 10, 2008. This TIEA will come into force on January 27th, 2010.

As a result the NA will be excluded from the Spanish "black list" of tax haven jurisdictions published by Royal Decree 1080/1991. This will create new tax efficient structuring opportunities for investors.

The Tax Information Exchange Agreement

The TIEA between Spain and the NA is the first such agreement entered into by Spain.

This Agreement arranges for the Spanish and the NA tax authorities to provide reciprocal assistance and cooperation for obtaining information that is relevant for the enforcement of the domestic tax laws.

The Agreement also contains a specific article according to which its entry into force will result in the NA being excluded from the Spanish "black list" of tax havens.

Tax efficient route for dividends

The TIEA will create new tax efficient structures and could be a reason to take a closer look at existing structures. This agreement provides opportunities to set up new structures through which dividends can flow from countries in the EU and/or with whom Spain has concluded a tax treaty to Spain and from Spain to the NA with a minimum of tax costs.

As illustrated hereafter these (re)structurings can be achieved by using vehicles such as the Spanish ETVE in combination with a NA entity that is treated as a legal entity for tax purposes such as a limited liability company or a Private Foundation.

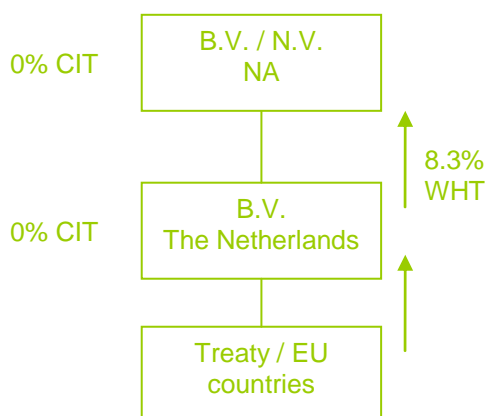
The ETVE stands for Entidades de Tenencia de Valores Extranjeros and is a special Spanish holding company which may hold shares in subsidiaries established in other countries.

Spain has concluded treaties to avoid double taxation with more than 60 countries e.g. USA, China, India, United Arab Emirates, Venezuela, Argentina, Mexico, Brazil and is a member state of the EU. The ETVE can benefit from reduced withholding tax rates on the basis of these treaties and on the basis of the EU directives, and is therefore an excellent option for holding shares in subsidiaries established in these treaty countries or EU member states.

Optimizing existing structures

Based on the TIEA it may be beneficial to restructure in order to reduce withholding taxes on dividends. For instance, the well known structure illustrated below may be optimized to avoid Dutch dividend withholding tax on dividends distributed from The Netherlands to the NA.

I. Dutch B.V. held by a NA limited liability company:



The tax consequences of this structure are:

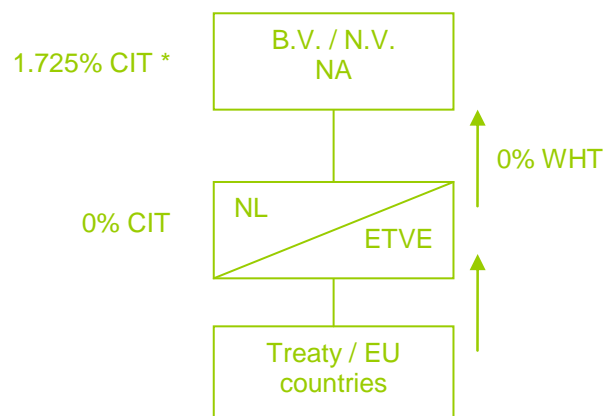
- Dividends / capital gains received by the Dutch B.V. from its participations may be exempt from corporate tax in The Netherlands based on the Dutch participation exemption.
- Dividends from The Netherlands to the NA are subject to 8.3% Dutch dividend withholding tax.
- The NA company may receive these dividends free of corporate tax based on the NA participation exemption.
- The NA entity can distribute dividends to the shareholders free of withholding taxes.

It may be possible to reorganize and optimize the structure illustrated above as follows.

The Dutch entity transfers its place of effective management to Spain and is converted into a Spanish ETVE while its statutory seat remains in The Netherlands. As of that moment the Spanish ETVE can benefit from the TIEA. Consequently, the withholding tax on dividend distributions to the NA can be reduced from 8.3% to 0%!

The structure after the reorganization is illustrated below.

II. Dutch B.V. / Spanish ETVE held by a NA limited liability company:



The tax consequences of this structure are:

- Dividends / capital gains received by the Spanish ETVE from its participations may be exempt from corporate tax in Spain based on the Spanish participation exemption.
- The ETVE may distribute these dividends to the NA company without Spanish withholding taxes as a result of the TIEA.
- The NA company may receive 95% of these dividends free of corporate tax based on the NA participation exemption. The remaining 5% is taxed against the NA corporate tax rate of 34.5% resulting in a levy of 1.725%.

* It should be noted that the NA Parliament has enacted legislation on the basis of which a 100% participation exemption may apply to dividends from foreign participations. The legislation will come into force retroactively to January 1, 2009 on the basis of an Ordinance that will be approved by Parliament before December 31, 2009.

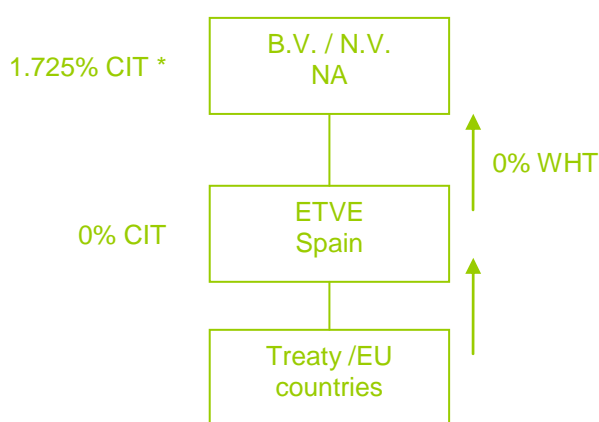
- The NA company can distribute dividends to the shareholders free of withholding taxes.

Creating tax efficient structures

The TIEA also creates the possibility to set up new structures whereby dividends can be distributed in a tax efficient manner.

Considering the broad treaty network of Spain it may be favourable to set up the structure illustrated below whereby a NA company incorporates a Spanish ETVE which will hold shares in subsidiaries in treaty or EU countries.

III. Newly incorporated Spanish ETVE held by a NA limited liability company:



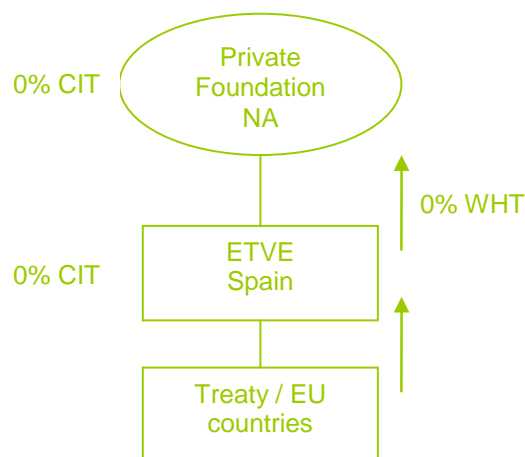
The tax consequences of this structure are:

- Dividends / capital gains received by the Spanish ETVE from its participations may be exempt from corporate tax in Spain based on the Spanish participation exemption.
- The ETVE may in its turn distribute these dividends to the NA company without Spanish withholding taxes as a result of the TIEA.
- The NA company may receive 95% of these dividends free of corporate tax based on the NA participation exemption. The remaining 5% is taxed against 34.5% NA profit tax resulting in an effective levy of 1.725%.
* In the near future this exemption will increase from 95% to 100%, reducing the 1.725% to 0%. See our remarks on page 2, structure II.
- The NA company can distribute dividends to the shareholders free of withholding taxes.

Since the TIEA is applicable to entities which are treated as legal entities for tax purposes, it may even be possible to set up an ETVE structure with a NA entity that is not subject to taxation.

As a result it will be possible to set up the structure illustrated below with a NA Private Foundation which is exempt from corporate tax. Depending on the rules for taxation of distributions from a private foundation in the country of residence of the ultimate beneficial owner, this structure may result in additional tax benefits for the ultimate beneficial owner.

IV. Spanish ETVE and a tax exempt NA Private Foundation:



The tax consequences of this structure are:

- Dividends / capital gains received by the Spanish ETVE from its participations may be exempt from corporate tax in Spain based on the Spanish participation exemption.
- The ETVE may in its turn distribute these dividends to the NA company without Spanish withholding taxes as a result of the TIEA.
- The NA Private Foundation may also receive these dividends free of NA taxes.
- The Private Foundation can make distributions to the ultimate beneficial owners free of NA taxes.

Conclusion

The removal of the Netherlands Antilles from the Spanish “black list” of tax haven jurisdictions as a result of the TIEA creates various opportunities for efficient international tax planning. Structures can be set up whereby dividends can flow from countries with whom Spain has treaties and/or EU Member States through Spain and the Netherlands Antilles to investors with a minimum of withholding taxes and in certain structures free of withholding taxes.

For more detailed information, please do not hesitate to contact your tax services team in the Netherlands Antilles:

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