

# THE PRIVATE FOUNDATION

The private foundation is incorporated by notarial deed before a civil law notary. The name of the founder and his/her specific rights are recorded in the Articles of Incorporation. It is possible to subsequently transfer the rights retained by the founder to a third person or entity (protector) by written agreement/deed and acknowledgement of the transfer by the director of the foundation.

A private foundation has no members or shareholders. Directors may re-distribute wealth to the founder, beneficiaries or other (third) parties. The founder can indicate his wishes as to the activities (and distribution goals) of the private foundation in a letter of wishes directed to the director(s).

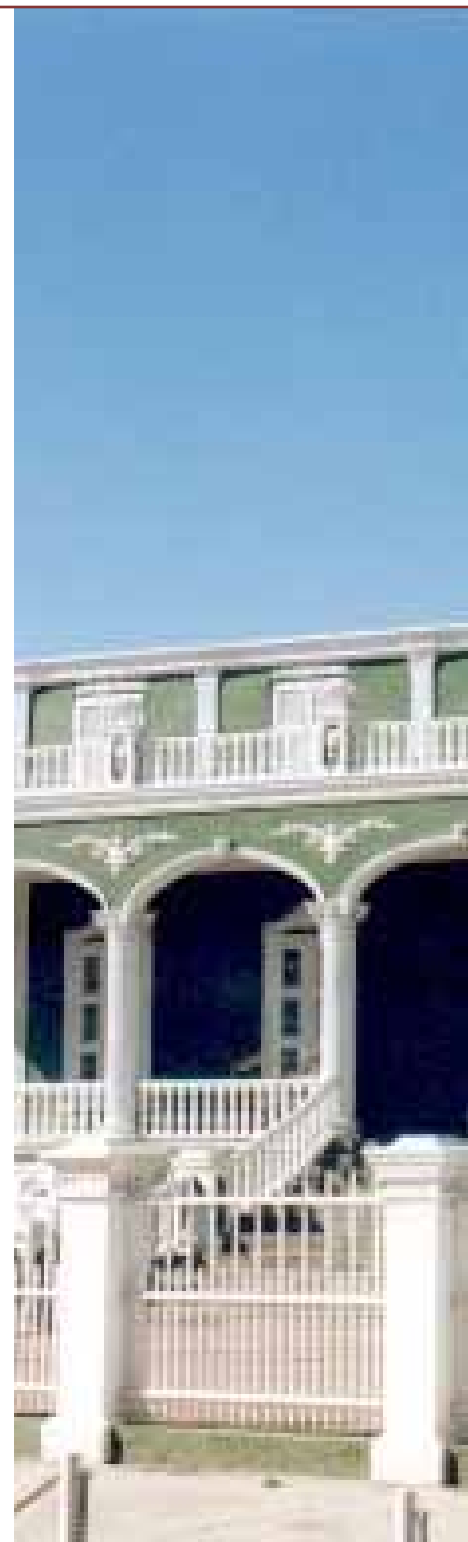
The Board of a private foundation consists of at least one local member. The first member is appointed at incorporation. Subsequently board members are appointed by either the Board, the founder or any other person or entity authorized thereto according to the Articles of Incorporation. It is also possible to install a Supervisory Board.

The purpose of a private foundation may include a number of activities, and is not limited to charitable purposes, provided that the private foundation does not engage any commercial activities (conduct a business). Asset maintenance (not management) and acting as a holding entity of participations in operating companies are not considered commercial activities, however certain limitations apply. A private foundation may also own assets that are expected to increase in value in the future (real estate, intellectual property or a stock portfolio). The Netherlands Antilles tax authorities may request the filing of a 'zero' - tax return in the name of the private foundation to have evidence of the not commercially active status.

The Netherlands Antilles law furthermore requires that the Board of a private foundation prepares an annual overview of income and expenses i.e. simple Financial Statements.

The name of the private foundation is registered in a specific Register of Foundations at the Chamber of Commerce. The name of the private foundation does not have to be approved by the Government prior to incorporation. However a name check is made to avoid identical names.

A private foundation may limit its activities in time to a certain period (i.e. up to a certain date or a specified event). It is also possible to transfer the statutory seat to another jurisdiction.



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### **New Fiscal Framework**

As from January 1, 2001 the New Fiscal Framework ("the NFF") came into force in the Netherlands Antilles. The NFF applies to all N.V. companies incorporated after that date and or already existing N.V. companies that have chosen to be taxed according to the NFF. The NFF has made the Netherlands Antilles amongst others compliant to current OECD standards. NV companies existing before January 1, 2001, that do not opt for the NFF have been grandfathered until 2019.

### **Participation exemption**

The NV company is subject to a flat profit tax rate of 34.5%. If all requirements are met a 100% participation exemption will apply in the Netherlands Antilles to dividends received from a Dutch subsidiary. The participation exemption will be 95% for dividends received from a non-Dutch source (providing an effective tax rate of 1,725%).

### **Dutch withholding tax**

Based on the fiscal agreement between the Netherlands, Aruba and the Netherlands Antilles there is an 8.3% Dutch withholding tax applicable on dividend from a Dutch legal entity to a N.V. company. However based on appropriate and timely tax planning there are alternatives on hand to reduce this Dutch withholding tax to 0%. Tax advice is required in such cases.

### **Capital gain tax**

The Netherlands Antilles does not impose taxes on capital gains derived from the sale of an investment.

### **Advance Tax Ruling**

It is possible to obtain an advance tax clearance from the Netherlands Antilles Tax Authorities (tax ruling) concerning the Netherlands Antilles tax position of a specific N.V. company/structure. This increases the degree of certainty non-residents seek in establishing a Netherlands Antilles intermediate and/or holding company.

### **Tax treaties**

Generally speaking there are three types of tax treaties between countries, a Tax Information Exchange Agreement, a Double Taxation Agreement and a so-called Minimum Agreement. In general it takes considerable time to finalize Tax Agreements.

The initiative to negotiate Tax Agreements lies within the Netherlands Antilles, however the Kingdom of the Netherlands (i.e. the Second (directly elected) and First Chamber (elected indirectly through provinces that are elected directly)) has the final say on such tax agreements.

The Double Taxation agreements are the most valuable to a jurisdiction. The Netherlands Antilles Secretary of Finance is committed to contract as many as possible Double Taxation agreements, targets are, among others China, Brazil, Chili, Belgium, Mexico, Sweden, Finland, Iceland, Denmark, and Greenland. The Netherlands Antilles currently has tax agreements with the following countries:

- Norway (double Taxation Agreement),
- The Netherlands and Aruba (double Taxation Agreement and Tax Information Exchange Agreement),
- Spain (Tax Information Exchange Agreement), which will be followed in due course by a double Taxation Agreement,
- United States of America (Tax Information Exchange Agreement),
- Australia (Tax Information Exchange Agreement), a further double Taxation Agreement on details is underway,
- New Zealand (Tax Information Exchange Agreement almost finalized).

The Netherlands Antilles has a tax agreement with Aruba and the Netherlands within the Kingdom of the Netherlands ('BKR'). Through the Netherlands, the Netherlands Antilles uses the extensive number of tax agreements the Netherlands has around the world, especially the double Taxation Agreements.



### Shelf companies

ANT Management (Curaçao) N.V. has so-called "shelf" companies readily available. These shelf companies are existing NV companies incorporated to be used by clients with specific requirements. We have NV companies that are old regime legal entities, that are grandfathered until 2019. In addition we have NV companies available that qualify for the New Fiscal Framework.<sup>1</sup>

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<sup>1</sup> Hyperlink to New Fiscal Framework



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