

# Tax Planning Opportunities in Curaçao

## *Linking Spanish ETVE and a Curaçao NABV*

By Peter Muller (Taxand)

A “Tax Information Exchange Agreement” (TIEA) between Spain and Curaçao has come into force allowing the Spanish ETVE to act as the perfect exit vehicle out of Europe to take advantage of tax treatment in Curaçao.

Until recently, The Kingdom of the Netherlands consisted of three countries: The Netherlands (in Europe), Aruba, and the Netherlands Antilles. The Netherlands Antilles were dissolved on October 10, 2010 and now consists of: (1) The Netherlands; (2) Curaçao; (3) Aruba; (4) St. Maarten; and (5) three islands that are now named Caribbean Netherlands (Bonaire, Saba and St. Eustatius).

The Netherlands Antilles became an offshore jurisdiction in the 1950s and has played a major role in international tax planning for many decades. Curaçao in particular, the largest island in the Dutch Caribbean, has been at the center of progression in this arena over this period. Though the offshore system has now been shredded, Curaçao still boasts a modern tax system that has a lot to offer multinationals across the globe. This article outlines three possible tax planning initiatives that multinationals could take advantage of.

Curaçao can be seen as the hot spot in the Caribbean for financial expertise. We have outlined three tax planning opportunities below:

- the tax exempt company
- the E-Zone company
- exit out of Europe through Spain

### **The Netherlands Antilles Tax Exempt Company**

The Netherlands Antilles limited liability company (also known as the Netherlands Antilles Besloten Vennootschap, NABV) is a legal entity established in Curaçao. The NABV can be structured as a tax exempt company for profit tax and dividend withholding tax purposes and we therefore see the below mentioned activities being performed by an NABV:

- mutual funds
- group financing activities
- portfolio investments
- licensing activities

The NABV is very easy to incorporate as, among other items, a declaration of no objection is not required. The articles of association can be drafted to resemble a company under civil law or common law.

The NABV should engage almost exclusively in investing in debt instruments, securities and deposits.

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Peter Muller (peter.muller@taxandcuracao.com) is with Taxand, Curaçao.

Licensing of intellectual and industrial property rights and comparable property or usage rights has recently also become possible. If the company pursues other activities it will lose its tax exempt status.

In order to operate in a tax-exempt manner, the board of directors must consist of one or more Curaçao residents.

The rule of law will always be guaranteed through the Supreme Court in the Hague, the Netherlands.

There are no minimum capital requirements with respect to the formation of a NABV. Only registered shares, with or without par value, can be issued and the liability of the shareholder is limited to the respective

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## **The NABV can be structured as a tax exempt company for profit tax and dividend withholding tax purposes.**

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capital contribution. The shares can be denominated in any valid currency.

The NABV is incorporated by notarial deed before a civil law notary and the name of the NABV must be approved by the Government. The incorporation can be executed in about three days.

Unless the articles of incorporation state differently, decisions are made by a simple majority of votes and annual accounts should be audited by an independent expert.

### **E-Zone Companies**

In Curaçao many so-called Economic Zones (E-Zones) provide interesting opportunities for international trade, services or e-commerce activities. An E-Zone is a designated area in Curaçao in which international trade, services or e-commerce activities and services supportive to the foregoing, may be executed whether or not supported by electronic means.

An E-Zone has a manager who coordinates admittance to the E-Zone with the Curaçao authorities. E-Zone companies are met with a very favorable profit tax rate of 2 percent. Further advantages are obtained with regard to custom duties, turnover tax and expatriate tax facilities. Only legal entities with a capital divided into shares may perform activities in an E-Zone. The entity can either be a local company or a foreign entity. The focus of such companies must primarily be on trading goods or

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providing services to non-domestic clients.

Business generated on the local market may not exceed 25 percent to 30 percent of the total turnover. The profit generated from local activities is subject to the normal profit tax rate of 34.5 percent. Special conditions must be met however. The taxable profit of an E-Zone company is calculated on the same principles as that of non E-Zone company.

Requests should be filed with the Curaçao authorities. Through the E-Zone legislation, the local authorities are entitled to impose certain conditions. The Manager of the specific the E-Zone area in general plays a supportive role in acquiring the license to operate within an E-Zone.

An E-Zone company that does not meet the conditions can face penalties and/or the withdrawal of their license to operate as an E-Zone company.

E-Zone companies will be taxed at 2 percent until January 1, 2026 with respect to income that falls under the scope of E-Zone activities as described above. Local income will be taxed at the normal profit tax rate.

No import duties and turnover tax are due on goods entering the E-Zone or on services rendered by local companies to an E-Zone company. Moreover, import duties and turnover taxes are not due on products delivered to or services rendered to other companies located in the E-Zone.

Under certain circumstances, employees of E-Zone companies can qualify for the expatriate status that allows for a smaller gap between the gross and net salary and also opens possibilities for net benefits for the employee. The total package allows for lower salary costs for the employer while on the other hand providing for a higher net salary for the employee.

### Exiting Out of Europe Through Spain

Here we connect a Spanish company, falling under the scope of the ETVE regime, with a Curaçao Holding company and a Netherlands Antilles tax exempt company.

It is important to note that, as a consequence of the TIEA between Spain and Curaçao, a country which has come into existence recently, Curaçao is no longer blacklisted in Spain.

With the above in mind we will outline the impact of combining the ETVE status for a Spanish *Sociedad de responsabilidad limitada* (S.L.) with the Curaçao tax exempt BV (BV status is comparable to a *Sociedad de responsabilidad limitada*). A “normal” Curaçao NV or BV can act as a holding company for both entities.

The idea is that, for example, a company falling under the scope of the ETVE regime holds a qualifying participation(s) in non Spanish resident subsidiaries. As we understand, the ETVE can, in such a situation, distribute the dividends that are obtained from these subsidiaries to her parent company without having to withhold tax on these dividends. However, this parent

company cannot be resident in a tax haven. Curaçao has shed its tax haven status with the Spanish tax authorities and therefore, it is possible for the parent company to be a Curaçao taxable resident company.

However, the dividends from the ETVE may be exempt from taxation in Curaçao using the participation exemption rules. The Curaçao participation exemption has undergone changes which have come into force as of January 1, 2009:

- The 95 percent participation exemption for qualifying interests has been replaced by a 100 percent participation exemption, subject to certain conditions.
- For the 100 percent participation exemption to apply, the qualifying participation must be either “subject to tax” or have “enterprise activity / non-portfolio investment.”
- If neither condition is met, the participation exemption on dividends will be limited to 70 percent.

Furthermore, a new, restricted, definition of dividends has been introduced. The new participation exemption allows for consolidation of the ETVE results with the results of its subsidiaries before applying for the 100 percent participation exemption. Additionally, the limitation to 70 percent participation exemption is not applicable on situations where dividends are distributed from subsidiaries of which the assets consist of 95 percent or more of real estate.

In order to reinvest the funds received by the Curaçao parent company, the next step is that the Curaçao parent company establishes a tax exempt BV. This BV is capitalized with the dividends that originate from the non-Spanish subsidiaries. (For obvious reasons it is important that the Curaçao parent company does not lend the dividends received to the tax exempt subsidiary as there is no fiscal deduction from interest payments whereas the interest income received by the parent would be taxed.)

The tax exempt Curaçao BV could then, for example, lend the capital to third parties or to group companies. Because of the tax exempt status of the BV, the interest paying companies may not be able to deduct the interest paid from their respective taxable income, as local anti-abuse legislation may be in place, but as the Curaçao tax exempt BV receives the interest tax free, this will make the transaction fiscally neutral. A withholding tax may, however, be due on the outgoing interest payments.

### Perspective

The opportunities detailed above demonstrate the developed nature of Curaçao’s tax systems and how they can become useful, innovative tools for multinational companies operating in the region. The island is likely to remain as the central hub for international tax planning in the Caribbean for the foreseeable future.

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