

**Deloitte.**

# **The Netherlands: As an intermediary**

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# Content

- I. Investment climate in The Netherlands
- II. Summary of the Dutch tax system
- III. Comparison of Double tax treaties
- IV. The Netherlands as a holding jurisdiction
- V. Planning ideas using The Netherlands

# Question

The Netherlands is known for?

- Field hockey
- Speed skating
- Playing darts

# Question

The Netherlands is known for all three mentioned sports.



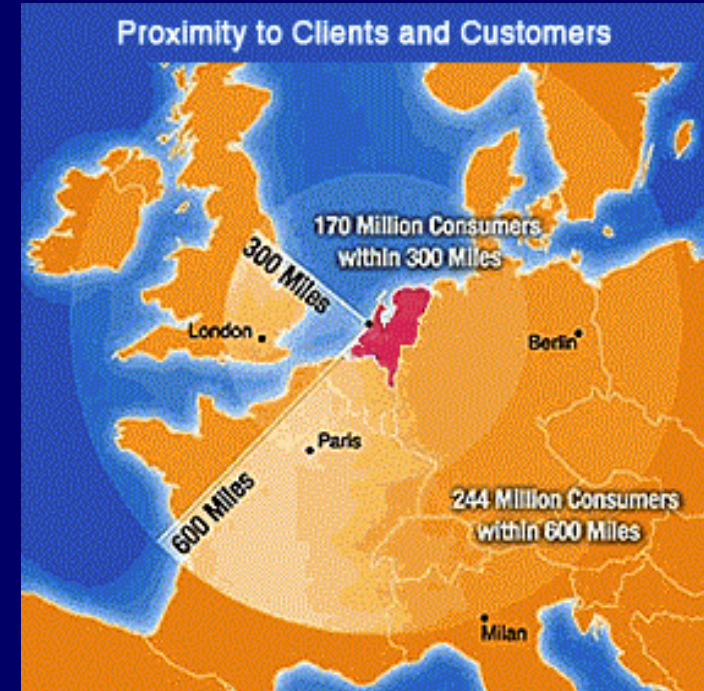
# I. Dutch investment climate



- Dutch open economy historically focuses on global trade
- Member of the EU / Eurozone / Schengen Agreement

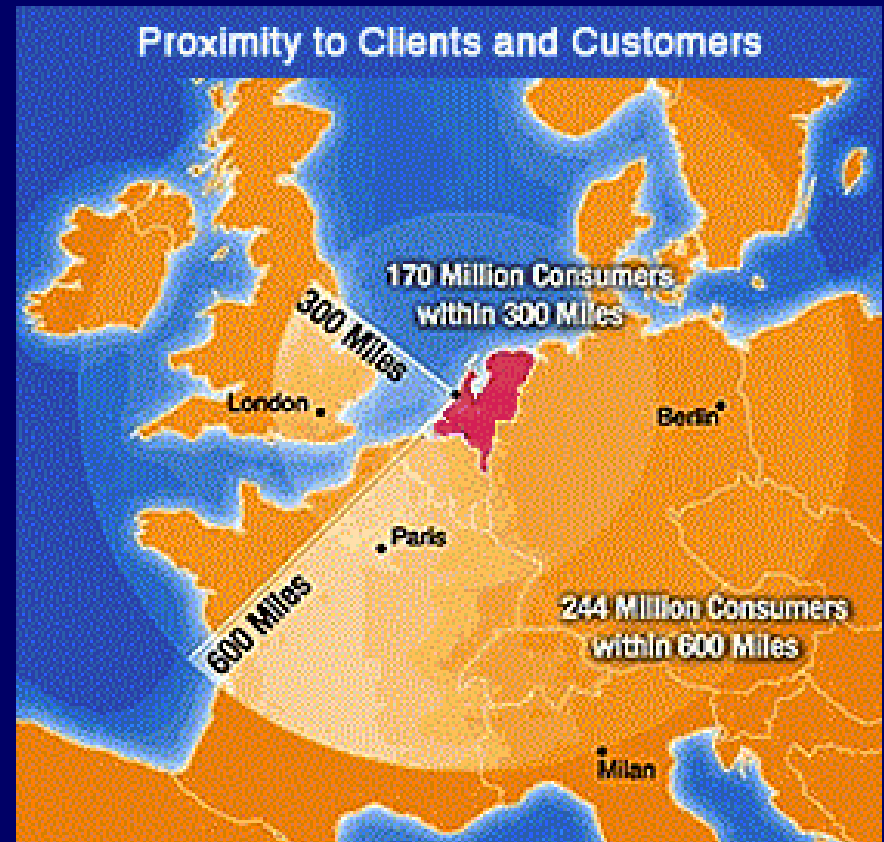
# I. Dutch investment climate

- Europe is the largest consumer and industrial market in the world and home to the world's largest trading block (60% of world trade).
- Over 170 million consumers (more than half the population of the European Union) reside within a 300-mile radius of Amsterdam and more than half the Netherlands' GDP is generated by activities beyond its national borders
- Access to commercial and industrial centers such as London, Paris, Brussels, Frankfurt and Hamburg, and the Ruhr Valley, is just a few hours' drive from Amsterdam



# I. Dutch investment climate

- Highly strategic commercial location that makes it the “Gateway to Europe”
- Easy access to Dutch and major European markets through Amsterdam Schiphol Airport and the Rotterdam harbor
- Reasonable domestic market
- Natural hub for logistics and headquarter functions
- High educated, multi-cultural and multi-lingual workforce



# Question

The Netherlands is the x largest investor in Russia

1. 50<sup>th</sup>?

2. 17<sup>th</sup>?

3. 2<sup>nd</sup>?

# Question

The Netherlands is the x largest investor in Russia?

2<sup>nd</sup>

The Netherlands is the second largest foreign investor in Russia.



# II. Summary of the Dutch tax system

## GENERAL

- Corporate Income Tax rate = 25%
  - Taxable income  $\leq$  EUR 200,000 = 20%
  - Innovation box income taxed at 5%
- Average ETR of Dutch multinational: between 8% and 20%
- No withholding tax on interest and royalty payments
- Dividend withholding tax = maximum 15%
  - Qualifying dividends to EU or 0% treaty country = 0%
  - Qualifying dividends to or from Azerbaijan Company = 5%

# II. Summary of the Dutch tax system

## GENERAL

- No capital taxes
- VAT = 19% / 6%
- Real estate transfer tax = 6% (only on Dutch real estate)
- Minor duties at municipality level and Chamber of Commerce registration fees
- Environmental taxes, when operations in The Netherlands qualify

# II. Summary of the Dutch tax system

## CORPORATE INCOME TAX SPECIFICS

- Extensive Dutch treaty network (90 tax treaties) reduces foreign withholding taxes with many other countries → The Netherlands is generally not viewed by other countries as a tax haven, like Kazakhstan, Russia and Ukraine.
- Appropriate tax planning can make The Netherlands equally attractive and on a longer term more sustainable
- Ruling policy: possibility of obtaining advance certainty on Dutch tax position with the Dutch tax authorities

# II. Summary of the Dutch tax system

## CORPORATE INCOME TAX SPECIFICS

- Tax loss carry forward: 9 years
- Tax loss carry back: 1
- Thin cap: 3 to 1 or the group's debt-to-equity ratio
- Interest deduction limitations when eroding the Dutch taxable basis of operating subsidiaries → these rules do not affect international structuring

# II. Summary of the Dutch tax system

## CORPORATE INCOME TAX SPECIFICS

- Flexible rules allowing the following types of income to be treated under the participation exemption:
  - PPL income
  - Value fluctuations on earn-out liability/receivable
  - Currency exchange instruments linked to subsidiary
- Liquidation losses of subs are deductible

# II. Summary of the Dutch tax system

- **INNOVATION BOX**

- Offers attractive opportunities to lower the ETR for income allocable to intangible assets to 5% if:
  - the intangible assets are self developed, which includes contract research for the risk and benefit of the tax payer and participation in R&D activities by means of cost - contribution arrangements (but excludes marketing intangibles created by the tax payer, such as brand names, logos and assets alike)
  - the intangible assets are purchased, provided the purchased intangible asset loses its independence and is merged into a new self developed intangible asset
  - At least 30% of expected income can be attributed to patents/registrations obtained for the intangible asset
- Test per intangible asset, to be met at the end of the first year of applying for the Innovation Box for an intangible asset
- No upfront approval of Dutch tax authorities is required, so Innovation Box can be applied for by ticking a box in the Dutch corporate income tax return. However, in order to determine income to be allocated to Innovation Box, consultation with Dutch tax authorities upfront is highly recommended

# II. Summary of the Dutch tax system

- **PARTICIPATION EXEMPTION**

- 100% income (dividend income and capital gains) exempt from Dutch corporate income tax if it concerns an investment in shares of at least 5% of the nominal paid-in capital, unless it concerns a portfolio investment company
- No portfolio investment if it meets either:
  - Objective Test,
  - Asset Test or
  - Subject-to-Tax Test
- The Netherlands aim for export neutrality to enable international competitiveness of Dutch multinationals, which explains why:
  - It's simply a full exemption of the income component, not a (potential/partial) credit
  - There is no minimum holding period
  - Companies that are predominantly active qualify, even if not subject to tax at all
  - Predominantly passive companies may qualify if reasonably taxed themselves, or blended with other active companies

# II. Summary of the Dutch tax system

## **RULING PRACTICE**

- Not in accordance with law, (international) tax policy, jurisprudence (case-law)
- Consequences would lead from a Netherlands perspective to an abuse of law
- Conduit companies performing financial services without real economic substance in the Netherlands
- On conduit companies that meet the substance test, but the functions performed do not include any real risks only certainty in advance is given when the taxpayer agrees to spontaneous exchange of information.  
(Additionally: in this situation no credit for foreign (withholding) tax will be given!)

# II. Summary of the Dutch tax system

## SUBSTANCE REQUIREMENTS

Focus should be on substance requirements set by the jurisdiction that pays to a Dutch holding company;

- Presence of local operations
- Key executives' agenda for travel to the holding company jurisdiction

The Dutch tax authorities published the following list with minimum substance requirements that should be met by so-called financing flow-through ruling companies:

- At least 50% of the Board of Directors (BOD) members should be Dutch residents (live and work there) and of a certain professional level and the company has adequate staff (itself or from 3rd parties) for performing the functions;
- All key strategic/material decisions of the BOD should be taken in the Netherlands, such as the entering into contracts and signing of documents;
- The (main) bank account should be held in the Netherlands;
- The bookkeeping is maintained in the Netherlands;
- The address of the company should be in the Netherlands and the company is not considered a resident in another state on the basis of a tax treaty;
- The company has sufficient equity considering its activities and the risks to be absorbed by the company.

# III. Comparison of Double Tax Treaty rates

# Azerbaijan

## Azerbaijan: withholding tax rate under tax treaty

	Ownership	Dividends	Interest	Royalties
Domestic rate: to a non-resident		10%	10%	14%
Netherlands	25	5/10	10	5/10
Luxembourg	30	5/10	10	5/10
Cyprus	No treaty			

# Kazakhstan

## Kazakhstan: withholding tax rate under tax treaty

	Ownership	Dividends	Interest	Royalties
Domestic rate: to a non-resident		15% - 20%	15% - 20%	15% - 20%
Netherlands	10	5/15	10	10
Luxembourg	Treaty pending			
Cyprus	No treaty			

# Russia

Russia: withholding tax rate under tax treaty				
	Ownership	Dividends	Interest	Royalties
Domestic rate: to a non-resident		15%	20%	20%
Netherlands	25	5/15	0	0
Luxembourg	30	10/15	0	0
Cyprus *		5/10	0	0

\* Protocol to the Cyprus-Russia DTT still not effective

# Ukraine

## Ukraine: withholding tax rate under tax treaty

	Ownership	Dividends	Interest	Royalties
Domestic rate: to a non-resident		15%	15%	15%
Netherlands	50/20	0/5/15	2/10	0/10
Luxembourg	Treaty pending			
Cyprus	Treaty pending			

## IV. The Netherlands as a holding jurisdiction

# Question

How many people live in The Netherlands?

- 4,3 million

- 16,5 million

- 20,2 million

# Question

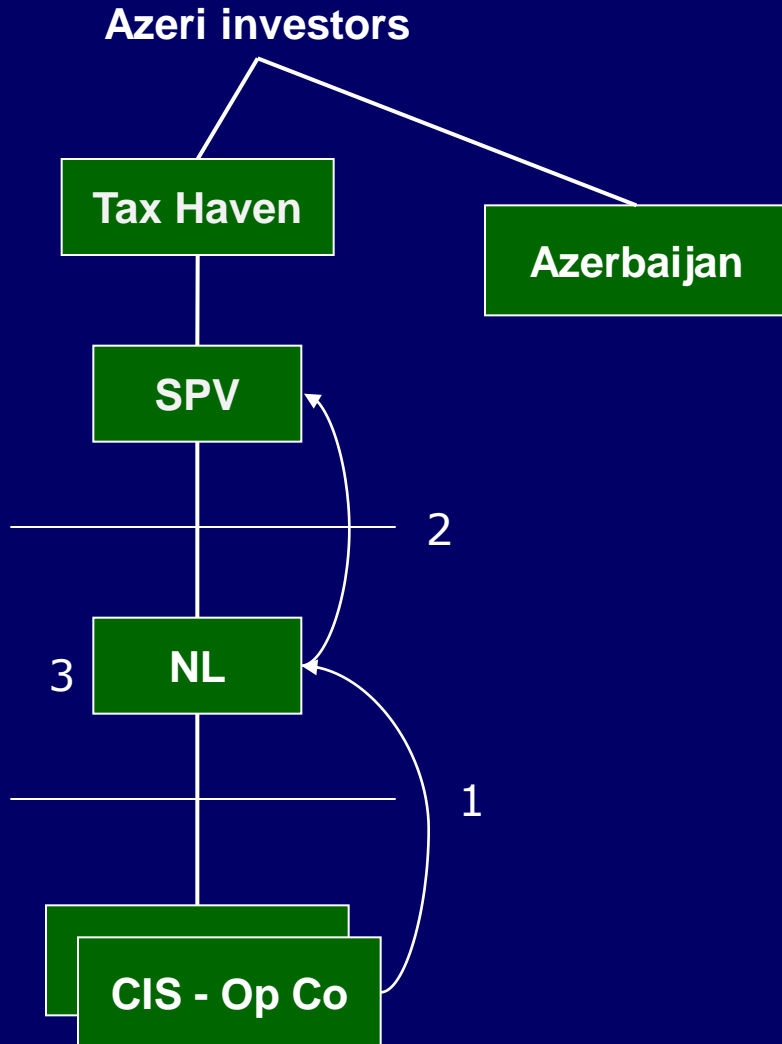
How many people live in The Netherlands?

16,5 million

Calculated per square kilometre, The Netherlands has 395.6 inhabitants (compared to 105.8 inhabitants per square kilometre in Azerbaijan)



# DIVIDEND



## DIVIDEND PAYMENTS

1. 0%, 5% or 10% under a Dutch tax treaty, CIS countries levy usually 5% if a qualifying investment is made.
2. 0% under EU Parent-subsidiary directive or tax treaty
3. Dividend income exempt under Dutch participation exemption.

## AZERBAIJAN

- Albeit that a 5% WHT applies for dividends to DutchCo, Azeri investors are subject to ultimately 30% income tax over their earnings from Tax Haven Company. Also AZN CFC considerations apply.
- In the picture Azerbaijan Company is directly held by Azeri investors. As a result they keep the beneficial treatment of dividends (taxed at 10% overall).

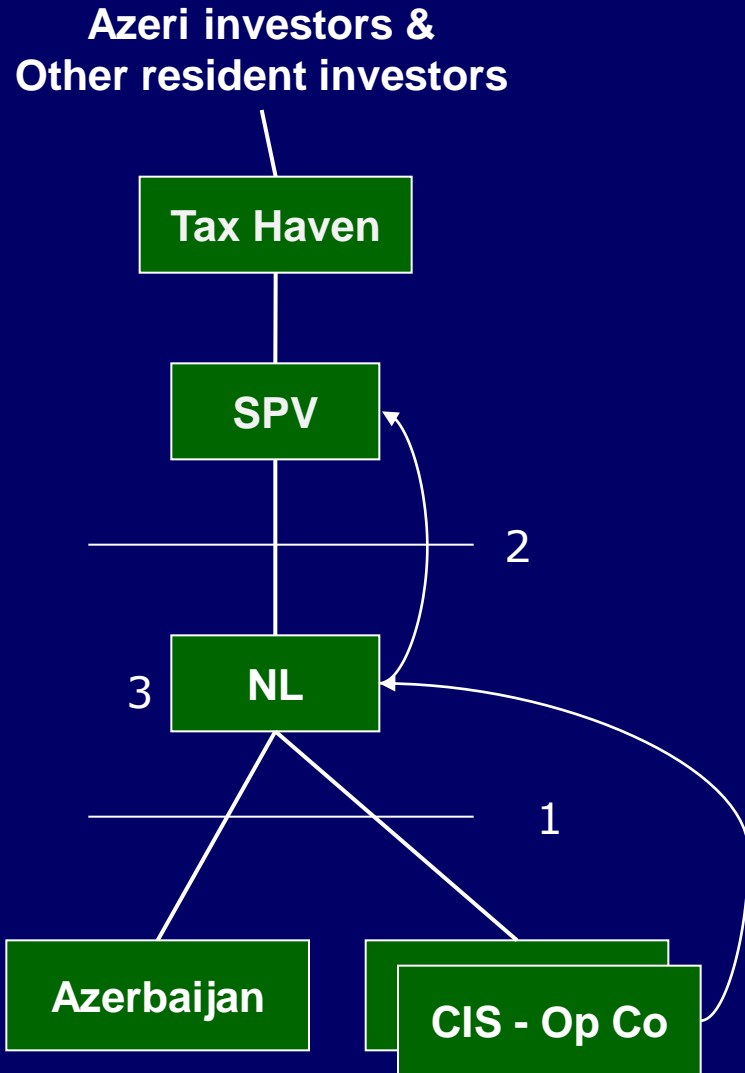
# DIVIDEND

## DIVIDEND PAYMENTS

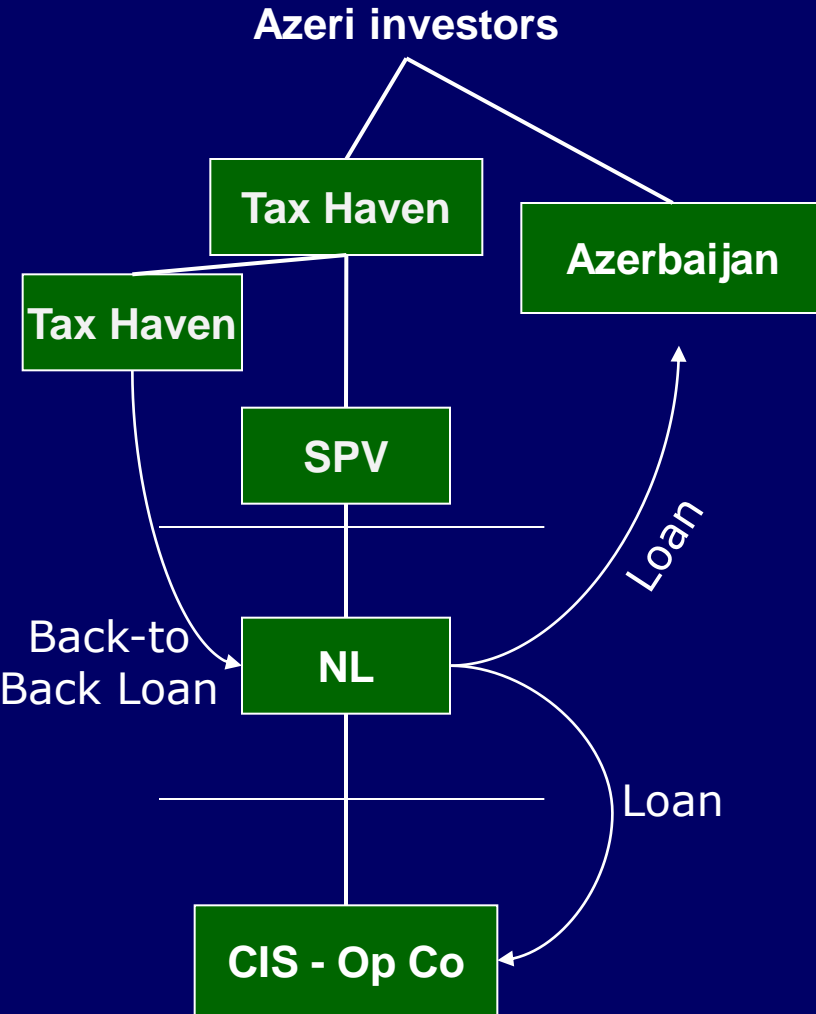
1. The consequences are the same as in the previous slide.

## AZERBAIJAN

- Azerbaijan company as OpCo of Dutch holding could make sense in case of combined investment with non-resident investors or in case it is possible to postpone distributions to the Azeri investors semi-permanently.



# INTEREST



## AZERBAIJAN

1. 10% WHT on Azerbaijan debt funding: deductible against 20% CIT rate (subject to AZN interest limitation).
2. No or low taxation in The Netherlands on debt flow-through financing function.
3. This structure should only be considered if the AZN Company is consistently profit making.

## OTHER CIS COUNTRIES

1. 0% - 10% under a Dutch tax treaty
2. Hybrid debt financing possible in certain jurisdictions: Kazakhstan + Ukraine.

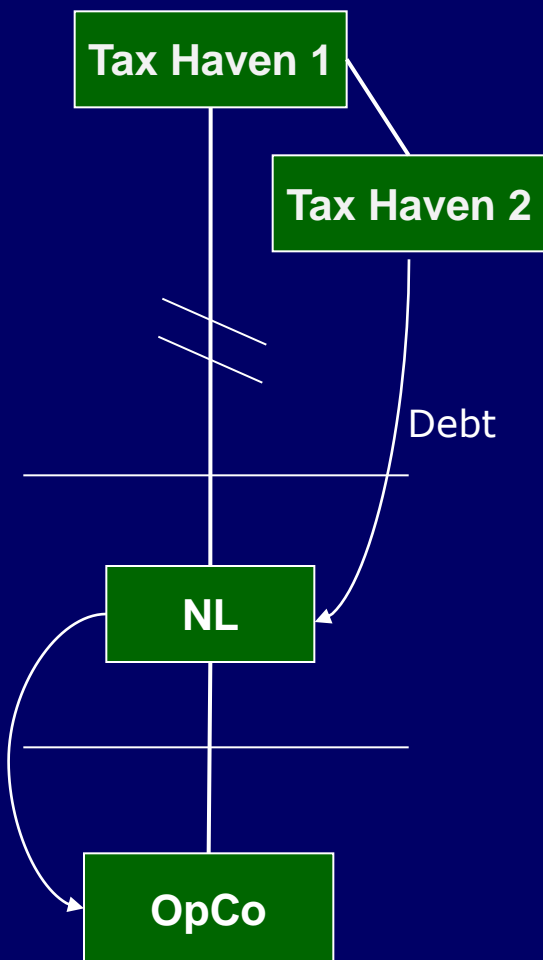
# BACK-TO-BACK FINANCING: SPREAD

## BENEFITS

- Small interest spread: in between 4 and 10bp as annual taxable income (Max EUR 200 CIT per EUR 1 Million)
- No withholding tax on payments by The Netherlands
- Dutch tax treaty network usually reducing foreign interest withholding tax to nil or 5%

## CONSIDERATIONS

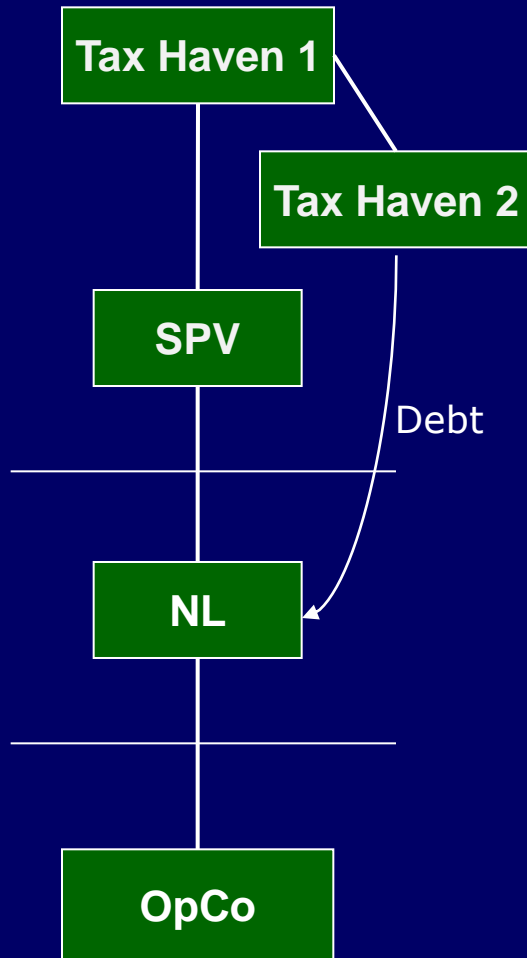
- Minimum equity condition preferably to be met: being 1% of average funds lent onwards or max EUR 2 Million (usually automatically met if combined with holding activities)
- Substance requirements (in case of ruling): most important condition being 50% or more of the directors must be Dutch resident professionals



# OTHER DUTCH TAX CONSIDERATIONS

1. Substantial interest risk, usually protected by tax treaty or EU directive
2. Dutch Budget 2012:
  - Some limitations for the use of the Dutch COOP's in international tax planning.
  - Anti-abuse concept introduced as a condition precedent for substantial interest taxation.

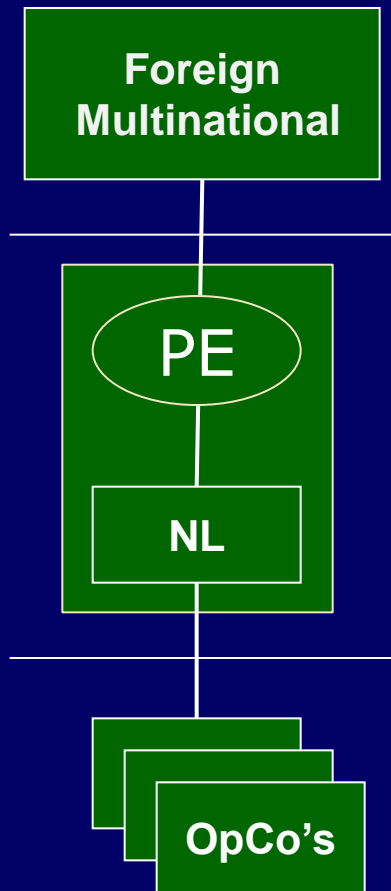
# DIVIDEND: OpCo → Netherlands → Exit



## AVOID DUTCH DIVIDEND WITHHOLDING TAX

- Always consider dividend exit upon implementation and not after implementation
- Tax planning is only necessary if the structure anticipates retained earnings to be generated in The Netherlands
- Watch the so-called Dutch substantial interest rules upon choosing the SPV location
- SPV locations can be Sweden, Luxembourg and many others (possibly to be amended in view of proposed legislation).
- Practical benefits of The Netherlands such as interim dividends, relatively low fees for maintenance

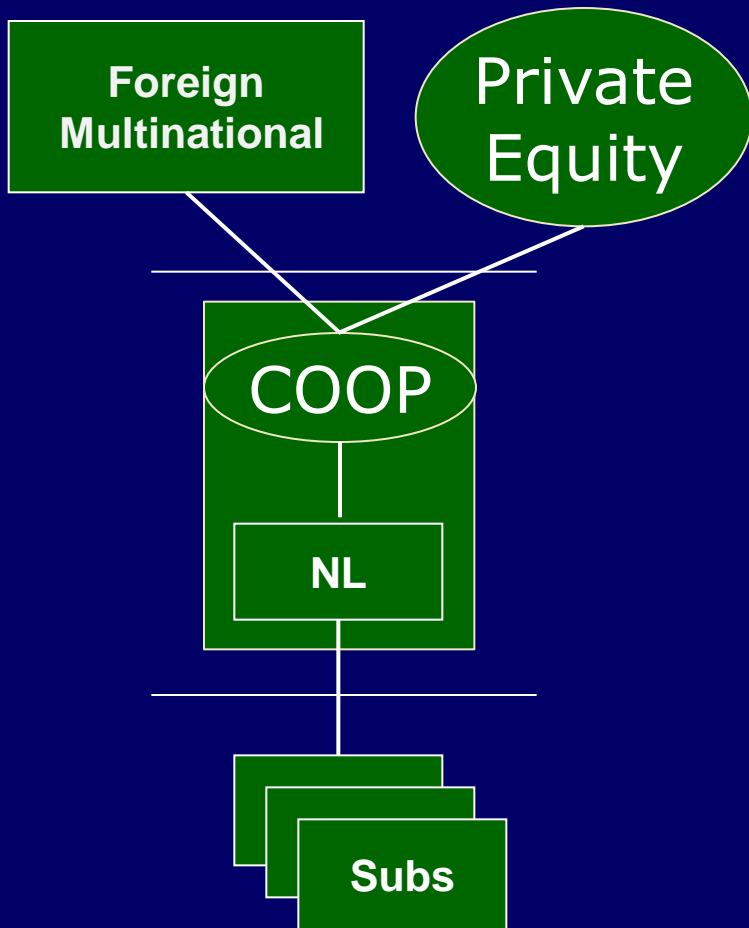
# DIVIDEND: Subs → Netherlands → FM



## AVOID DUTCH DIVIDEND WITHHOLDING TAX

- Provided there are (a few) actual employees in The Netherlands with decision power a so-called PE structure can be considered allowing for 0% exit
- Known concept for US multinationals investing via The Netherlands
- Ruling can be obtained and is recommended
- By forming a fiscal unity for CIT purposes only one tax return must be filed

# DIVIDEND: Subs → Netherlands → Azerbaijan



## AVOID DUTCH DIVIDEND WITHHOLDING TAX

- COOP can also be used to achieve the same as in the PE structure.
- Benefit: no actual employees in COOP required.
- Disadvantages: not easy to obtain ruling in The Netherlands.
- A hand-out of the comparison between a Dutch COOP and Dutch BV/NV is available.

# V. Planning ideas using The Netherlands

# Question

The Netherlands is also known as Holland. What did Holland originally mean?



# Question

The Netherlands is also known as Holland.  
What did Holland originally mean?

Holland probably derives from the old Dutch *holt land*, meaning "woodland" as the North-West of The Netherlands was once covered with trees.

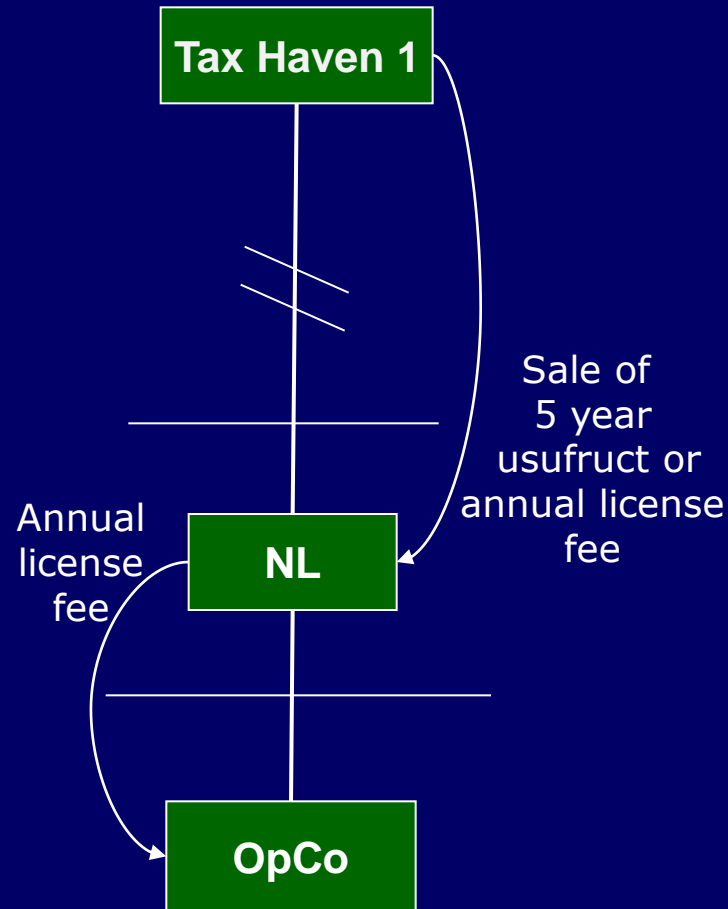
# LICENCE STRUCTURES: SPREAD OR USUFRUCT

## BENEFITS

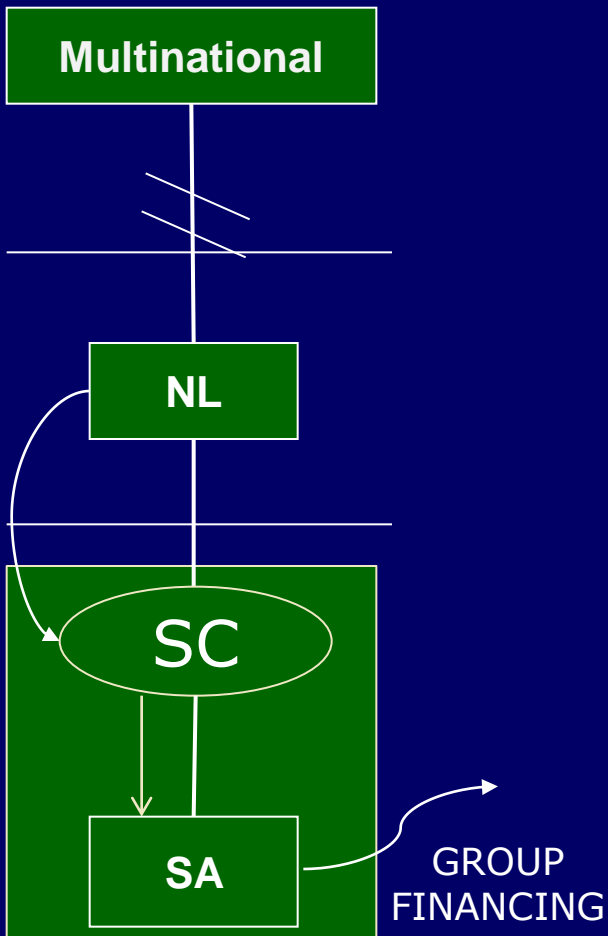
- A spread should be reported depending on the risks and function performed (transfer pricing exercise). In general terms spreads are shown of 4% up to 7%. This is the same in a usufruct structure. The benefit of such structure is that an asset is shown on the Dutch balance sheet.
- No withholding tax on royalty payments by The Netherlands.
- Dutch tax treaty network usually reducing foreign royalty withholding tax.

## CONSIDERATIONS

- Recommend to meet substance requirements: most important condition being 50% or more of the directors must be Dutch resident professionals



# HYBRID ENTITY STRUCTURES



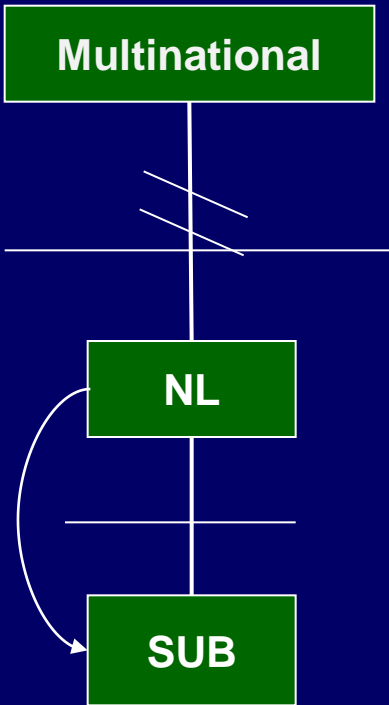
## GENERAL

- Often used by multinationals and investment funds
- One can rely on hybrid entity treatment as defined in a Resolution of the Dutch State Secretary of Finance
- Rulings are possible

## BENEFITS

- Low CIT on financing income: overall less than 0.2% over the interest income (combined Netherlands and Spain/France and other jurisdictions)

# HYBRID FINANCING STRUCTURES



## GENERAL

- Often used by multinationals and investment funds
- One can rely on Dutch jurisprudence for reclassification of debt into equity (so-called PPL's)
- Rulings are possible

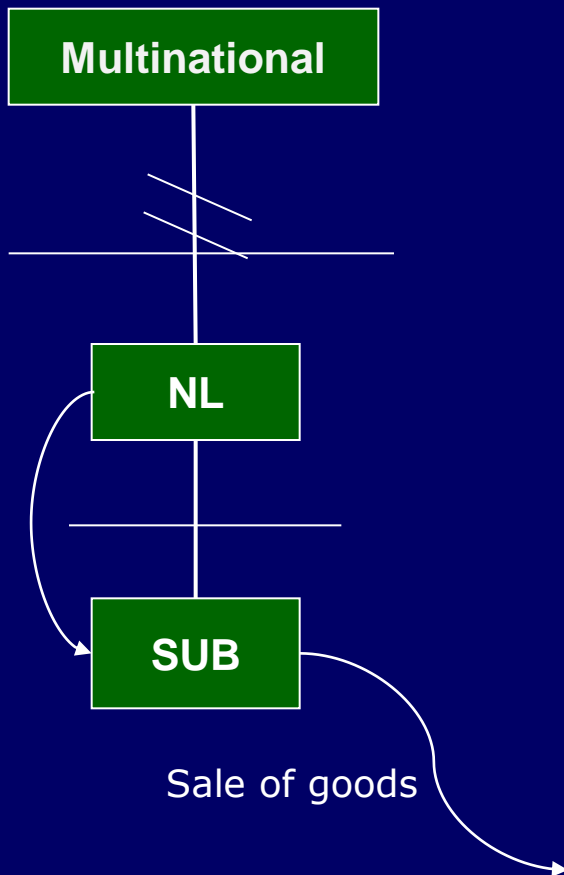
## BENEFITS

- No CIT on financing income

## CONSIDERATIONS

- Interest deductibility at the level of the SUB
- PPL conditions: 51 year term of debt, subordinated and profit dependent interest
- Works with France, Belgium, Spain, Finland and many other countries

# CENTRAL ENTREPRENEUR STRUCTURE



## GENERAL

- Multinationals that start significant operations in The Netherlands.
- Greenfield rulings possible, allowing part of the income to be treated as informal capital
- ETR around 10% possible and even lower depending on the circumstances

## BENEFITS

- Combination of innovation box (5%) and informal capital treatment (0%)

## CONSIDERATIONS

- Sufficient operational substance in The Netherlands and qualifying R&D activities or coordination of R&D

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