

The Use of FGR's and STAK's in Estate and Wealth Planning

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Agenda

PEREIRA

- Pereira; a short introduction
- Fund for joint account (FGR): vehicle for asset pooling
- Depositary foundation (STAK): Dutch foundation and its role in planning for high net worth individuals

- Independent tax consultancy firm in the Netherlands
- Core competence: structuring solutions for high net worth individuals, private equity or corporates, including M&A
- Keeping in mind: governance, family law, corporate law, but always tax optimised
- Civil-law notarial practice
- 30 Academically skilled tax lawyers

Fund for Joint Account

Main Characteristics

- FGR: commonly used for the pooling of investments
- Contractual arrangement between the FGR manager and two or more participants in the fund under Dutch law
 - FGR manager manages investments on behalf of the participants
- No legal capacity
- Depositary
 - Independent foundation (non-licensed)
 - Third party (professional custodian)
 - Mandatory for some European asset managers
- In practice mainly used for (exchange traded) investments and real estate

Fund for Joint Account

Tax Attributes

Open FGR

- Fund participations are transferable
- Open FGR is non-transparent and as such subject to tax on income, capital gains, distributions
- Tax rate: 20% on EUR 200,000. 25% on profits in excess of that
- Withholding tax due on dividends
- Withholding tax on investment income creditable

Closed FGR

- Issuance and repurchase of fund participations via the fund itself
- No tax on income, capital gains, distributions as a result of tax transparency
- Tax treatment at level of investor
- Tax profile at level of investment

Fund for Joint Account

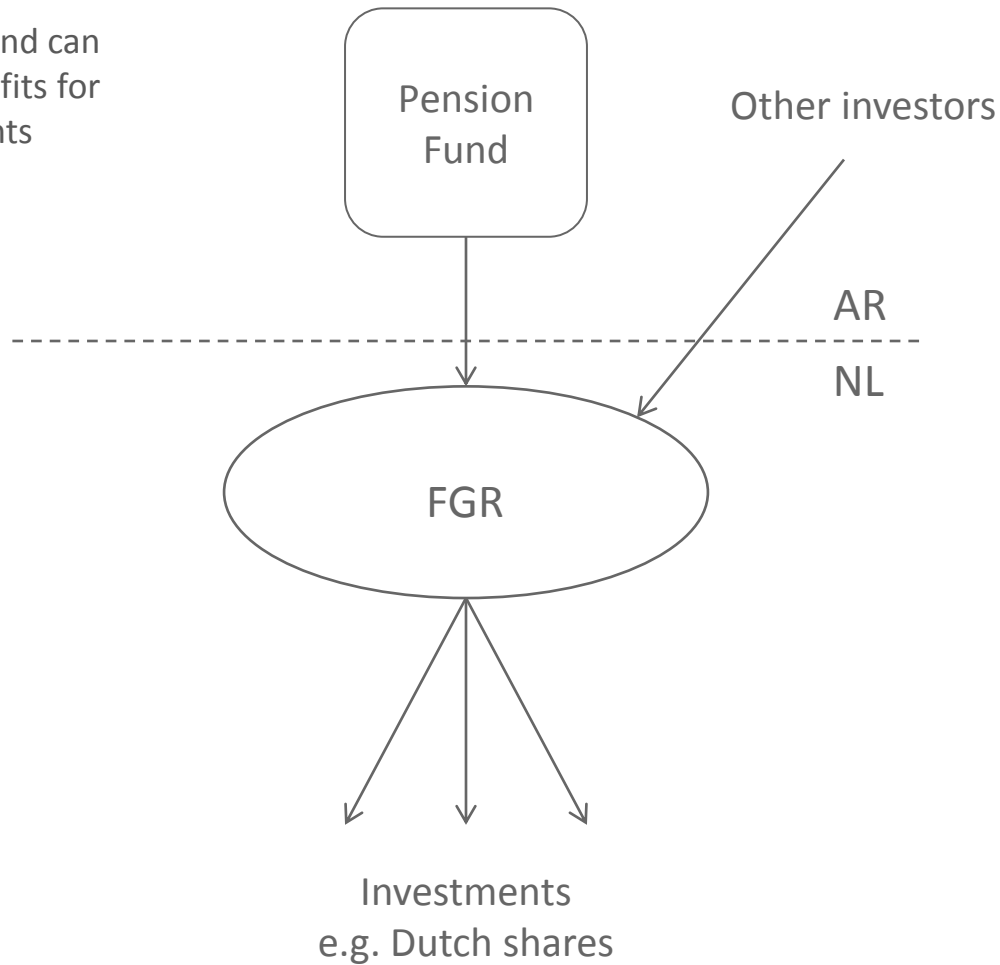
FGR in Wealth and Estate Planning

- Tax treatment of fund participations depends on the country of residence
- The Netherlands is not blacklisted
- Limited compliance requirements come along with FGR
- Closed FGR enables the pooling of investments without adjusting the tax profile of the investor and the investments
- Management fees on FGR exempt from VAT

Fund for Joint Account

Example

Argentine pension fund can claim tax treaty benefits for Dutch investments



Dutch Foundation

General Introduction and Main Purpose

- Some of the key challenges in national and international tax planning and asset protection:
 - Legal ownership vs. beneficial ownership;
 - Beneficial ownership vs. control;
 - Control vs. legal ownership
and
 - Sustainability of the structure.

- A useful tool: the STAK (depository foundation)

Dutch Foundation

Main Characteristics

- A corporate entity with legal capacity;
- Incorporated by a civil law notary;
- Initially meant as corporate entity to structure NGO's and charities, has become a means to asset protection, maintaining privacy, custodial function;
- With in principle a single tier decision making body (board of directors);
- With no shareholders or members;
- In a stable environment.

Dutch Foundation

STAK in Wealth and Estate Planning

- The purpose of a STAK is to:
 - separate beneficial ownership from legal ownership and control;
 - create the desired governance of assets under custody;
 - in a tax neutral manner.

- Principle of the STAK.
 - The STAK acquires and manages and owns assets in its own name.
 - It issues certificates that represent the full economic value of the assets.
 - The certificates are issued under a contractual, not a corporate legal, relationship. The terms for this relationship are written down down in the Trust Conditions.
 - The Trust Conditions can be drafted as desired for each particular case. There are no legal constraints/requirements apart from the general provisions in Dutch contract law.

Dutch Foundation

Privacy

- Public domain.
 - The articles of association can be obtained with the Dutch Chamber of Commerce and show, amongst others, the:
 - incorporator;
 - statutory powers of the Board of Directors and other parties involved (incorporator, Advisory Board, Supervisory Board, holders of certificates).
 - The directors are registered with the Dutch Chamber of Commerce

- Private domain.
 - The Identity of holders of certificates.
 - Members of Advisory Board or Supervisory Board.
 - Articles governing the Advisory Board or Supervisory Board.
 - No obligation to have financial accounts audited or published.
 - The Trust Conditions.
 - The place of management & control.

Dutch Foundation

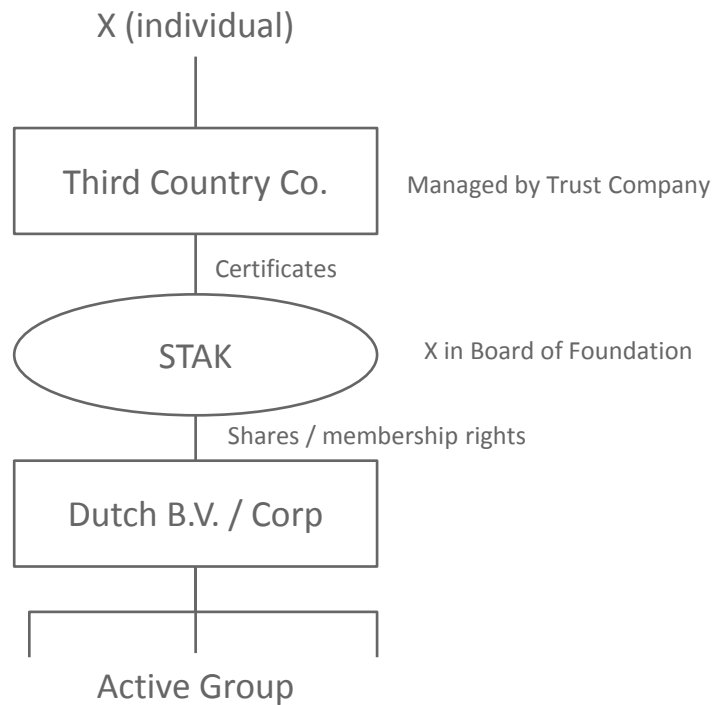
Tax Characteristics

- In many countries and under many tax treaties, the STAK is considered to be tax transparent. However a STAK is in some countries recognized as a tax resident of the Netherlands for treaty purposes; certificate of residence is possible.

- The STAK offers:
 - a solid and extremely flexible option to create a balance of powers that govern certain assets;
 - with very limited compliance requirements;
 - without the obligation to expose all parties involved to the outside world;
 - that in many countries is regarded as transparent for (income) tax purposes;
 - and thus:
 - the possibility to transfer full beneficial ownership without giving away any control;
 - while safeguarding privacy;
 - without having to rely too much on 'trust';
 - which has proven very useful in terms of asset protection, corporate structuring and wealth planning for wealthy individuals and families.

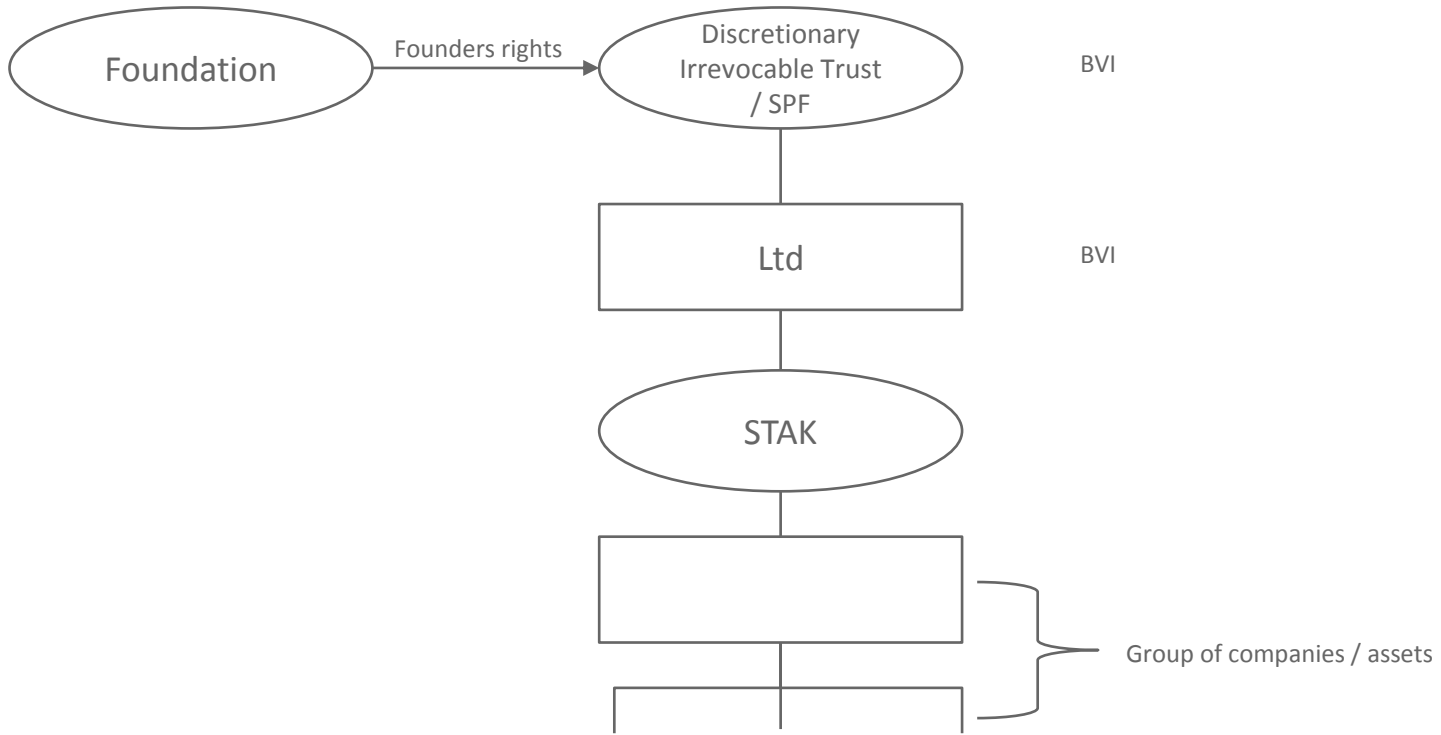
Dutch Foundation

Example A



Dutch Foundation

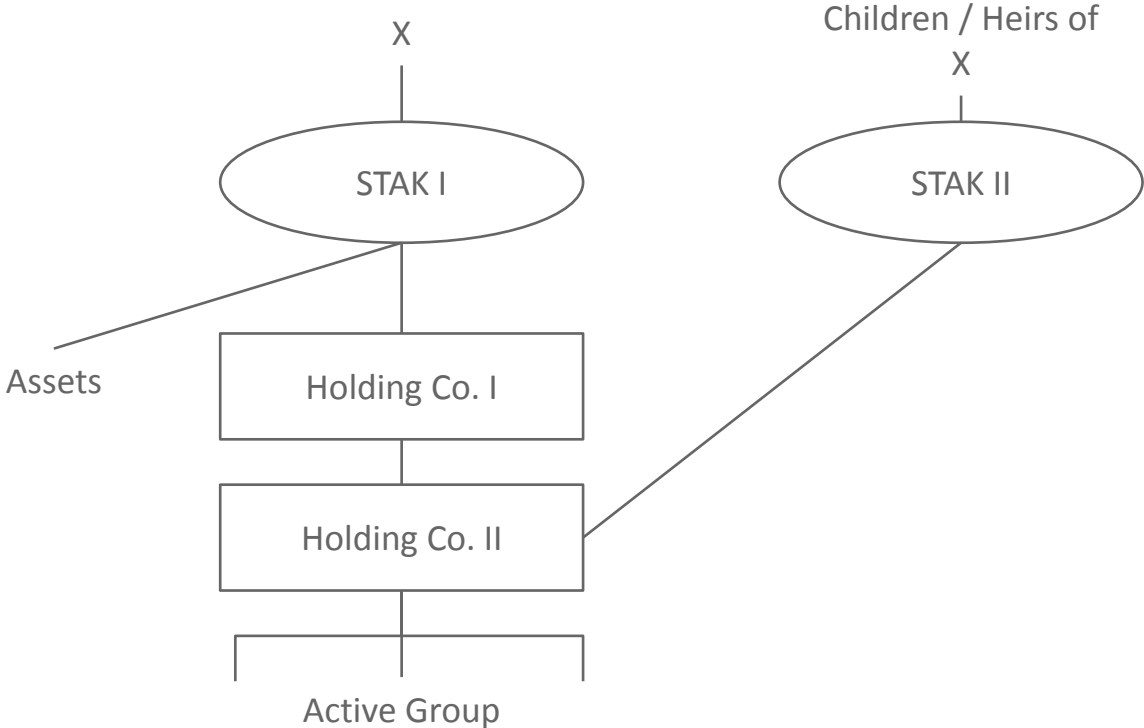
Example B



Dutch Foundation

Example C

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