

Dividends from the EU to the US: The S-Corp and its Q-Sub

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kiveld[®]
INTERNATIONAL LAWYERS

◀ The Inc:

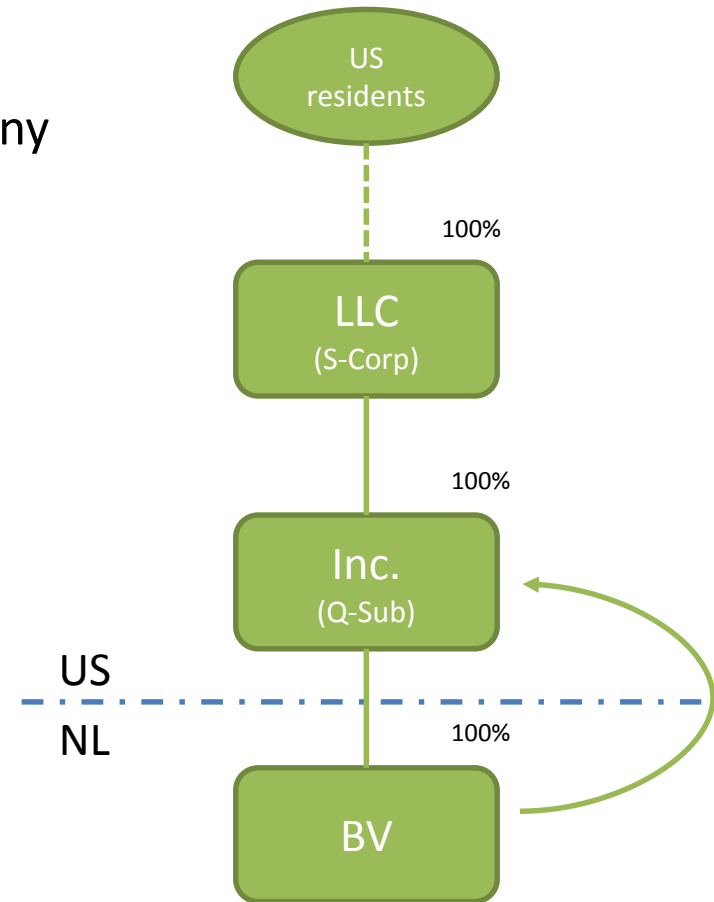
- large multinational manufacturing company

◀ The LLC:

- holding company
- owned by US tax residents

◀ The BV

- active company; and
- European holding company



S-Corps

- ⌂ Sub Chapter S Corporations are “small business corporations”
- ⌂ Income is passed on to shareholders for federal income tax purposes
- ⌂ All S-Corp shareholders must be US tax residents
- ⌂ The income is calculated and decisions regarding depreciation and the use of tax incentives are taken at the level of the S-Corp.
- ⌂ S-Corps file federal income tax returns and take care of reporting the attribution of its income to its shareholders.



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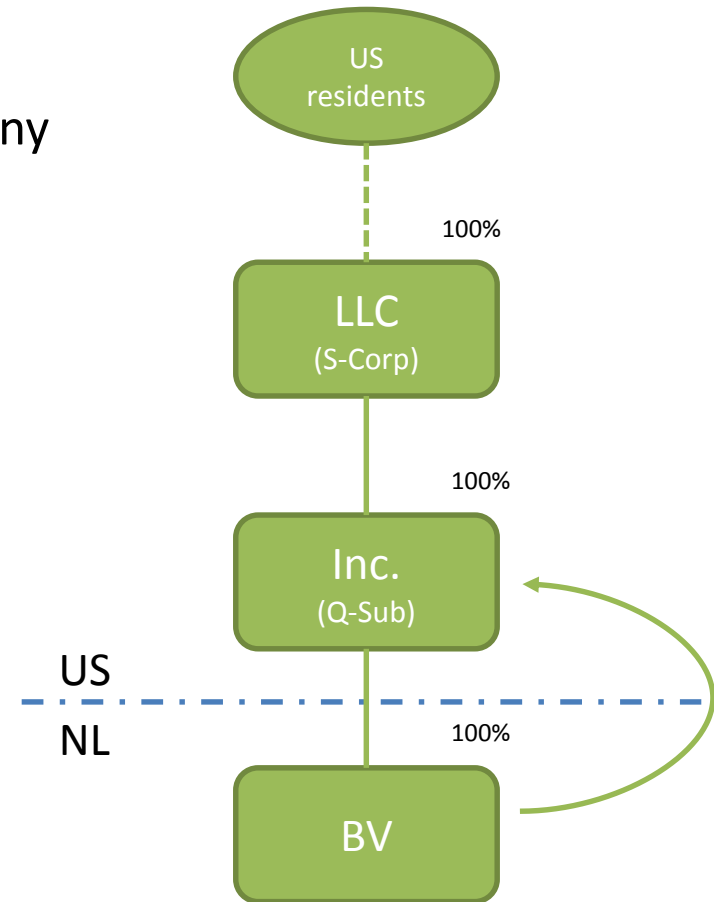
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Q-subs

- ⌂ Q-subs are qualifying Subchapter S subsidiaries. Q-subs must be wholly owned by one or more S-Corporations.
- ⌂ The Q-sub election results in a deemed liquidation of the subsidiary into the parent.
- ⌂ Following the deemed liquidation, the Q-sub is for US Federal tax not treated as a separate corporation and all of the subsidiary's assets, liabilities, and items of income, deduction, and credit are treated as those of the parent.



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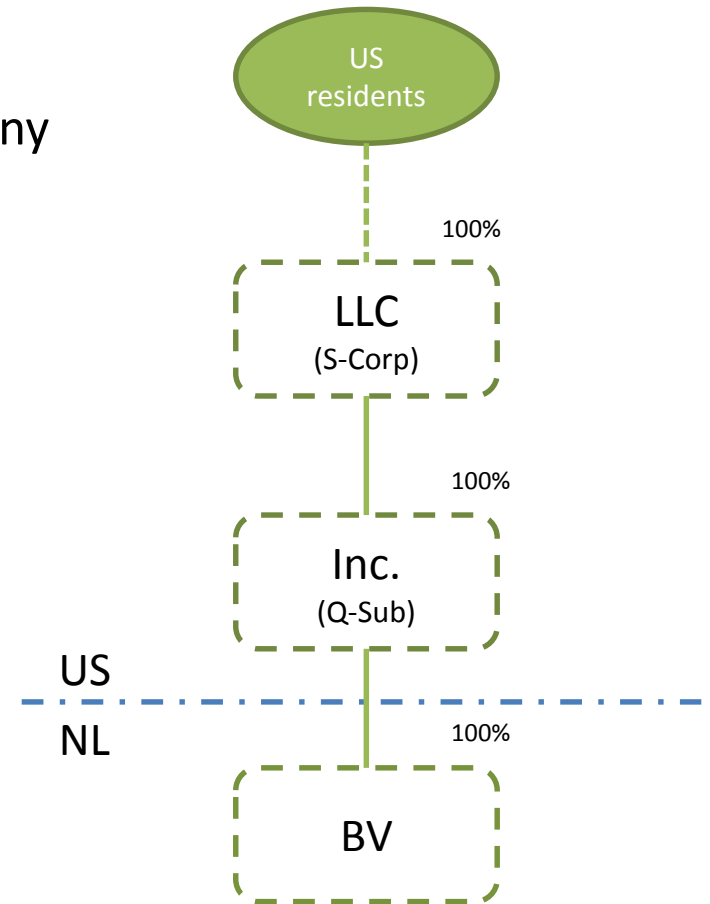
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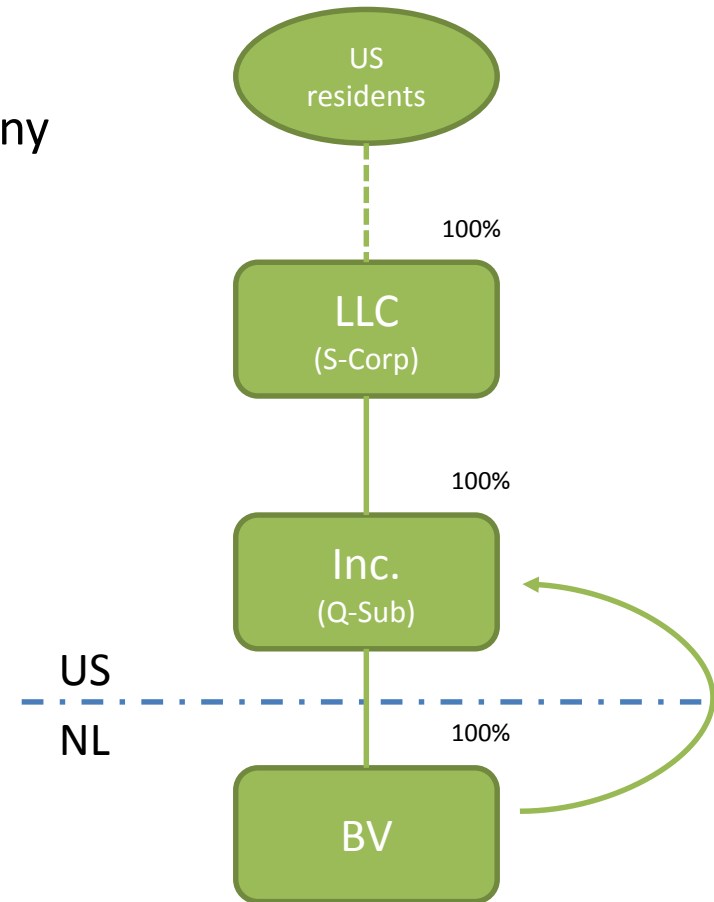
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Dividends under the US/NL Tax Treaty

Art. 10 (2)

- ⌂ NL domestic dividend withholding tax rate: 15%
- ⌂ Reduced rate of 5% if the Inc:
 - Holds directly at least 10% of the voting power ✓



Dividends under the US/NL Tax Treaty

Art. 10 (2)

- ⌂ NL domestic dividend withholding tax rate: 15%
- ⌂ Reduced rate of 5% if the Inc:
 - holds directly at least 10% of the voting power ✓
 - is the beneficial owner of the dividends



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Art. 3 (2) DTT:

unless the context otherwise requires → NL law



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NL Supreme Court 1994/217:

The recipient of the dividend cannot be regarded as the beneficial owner if he is legally obliged to pass on the dividend to another person.



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 - is a company

Art. 3 (1) (e): the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes



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Art. 4 (1): any person who, under the laws of US,
is liable to tax therein



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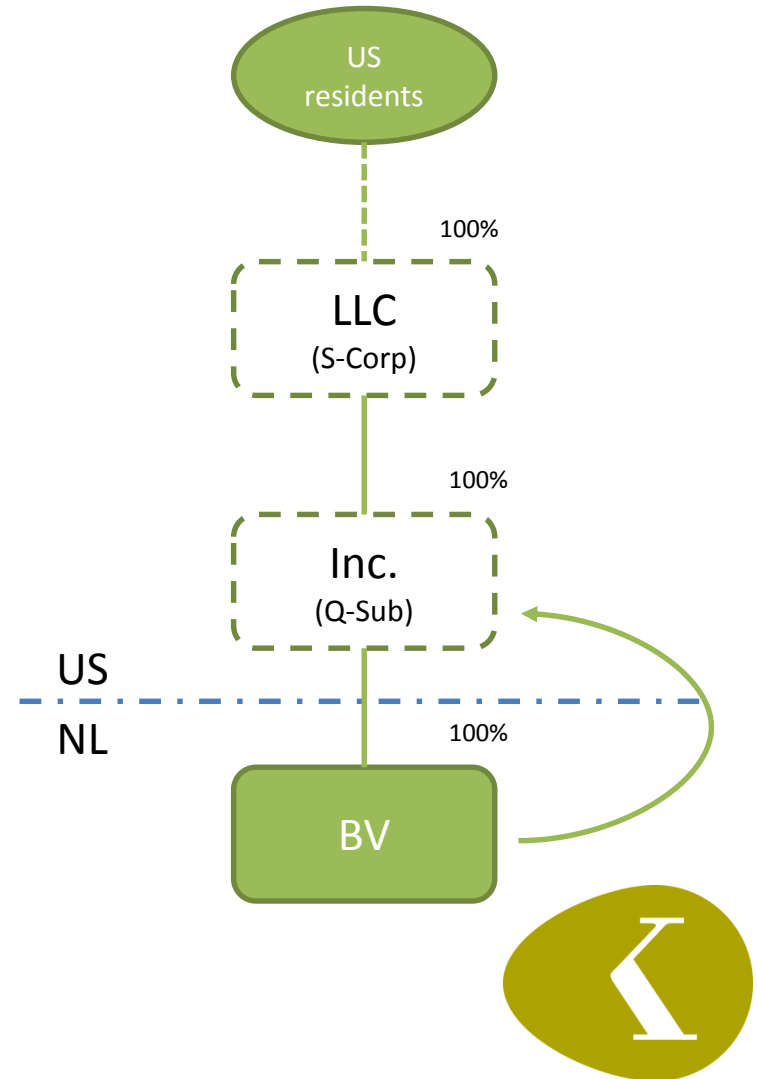
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Hybrids under the US/NL Tax Treaty

Art. 24 (4)

- ◀ If income is derived through a US entity that is
- ◀ fiscally transparent under the laws of the US
- ◀ that income shall be considered to be derived by a resident of the US
- ◀ to the extent that the item is treated for the purposes of US tax as income of a US resident.



Hybrids under the US/NL Tax Treaty

Art. 24 (4)

US Model tax treaty 2016

~~US/NL~~ 2016-model-tax treaty ¶

~~In~~ For the case purposes of this Convention, an item of income, profit or gain derived by or through ~~a person~~ an entity that is treated as wholly or partly fiscally transparent under the taxation laws of either Contracting State, ~~such item~~ shall be considered to be derived by a resident of a Contracting State, but only to the extent that the item is treated for ~~the~~ purposes of the taxation ~~law~~ laws of such Contracting State as the income, profit or gain of a resident. ¶



Hybrids under the US/NL Tax Treaty

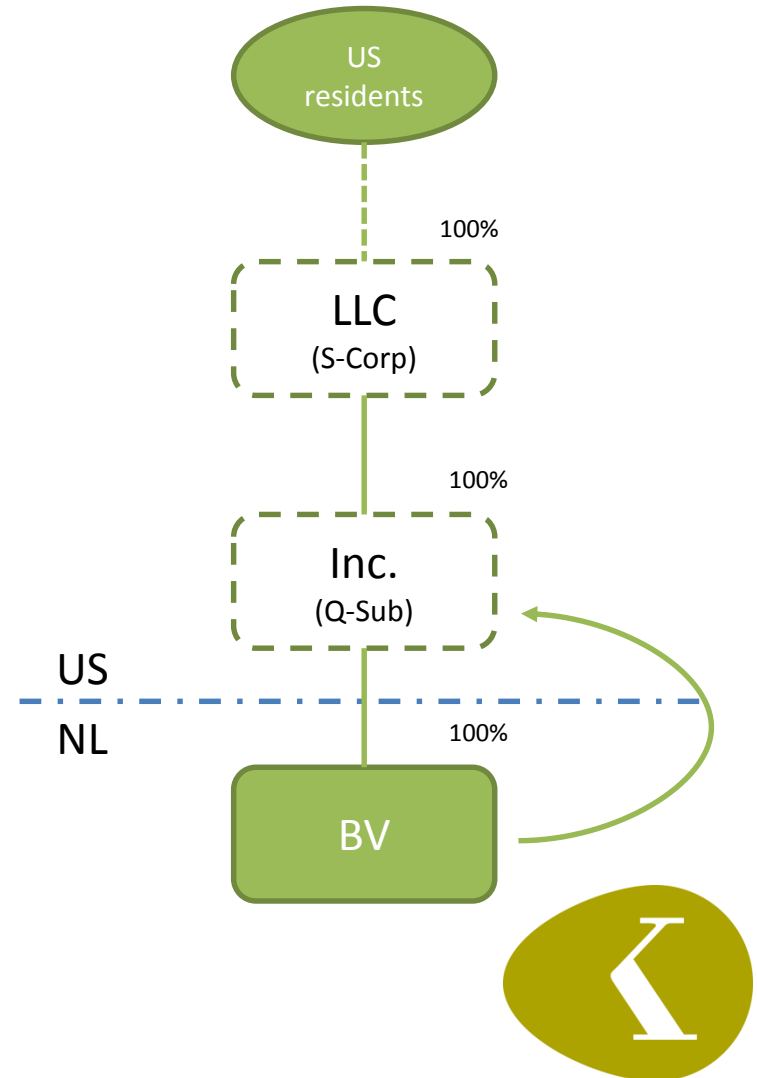
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- ◀ Solve conflicts in qualification of entities (transparent/non-transparent)
- ◀ Source state follows the qualification of the resident state (S-CORPS and Q-subsubs are therefore also transparent for Dutch tax purposes)

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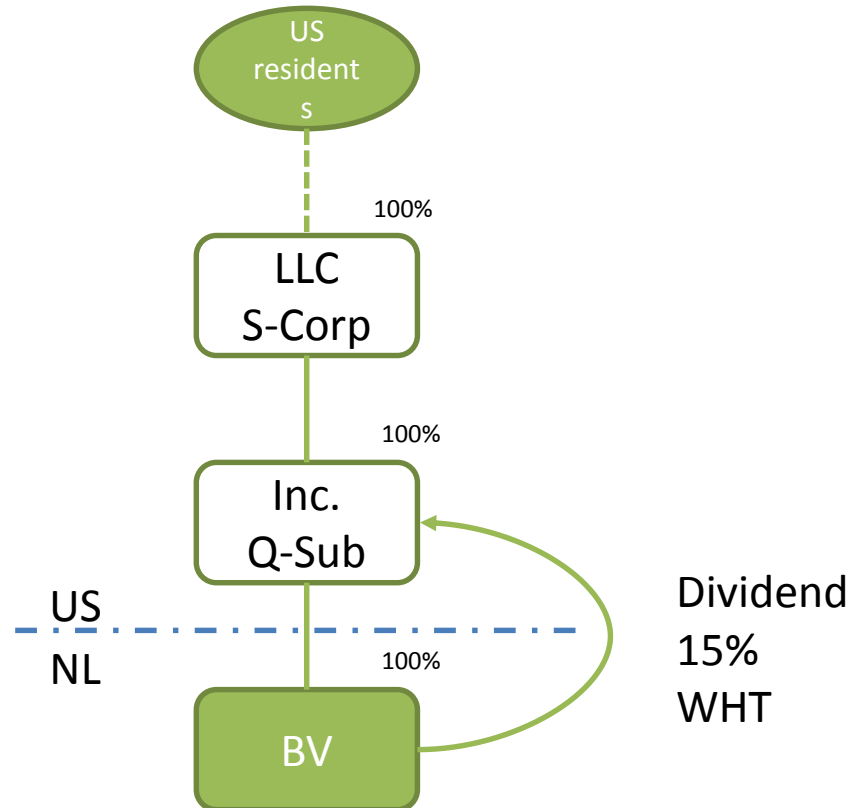
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 - ◀ that income shall be considered to be derived by a resident of the US
 - ◀ to the extent that the item is treated for the purposes of US tax as income of a US resident.
- ◀ If income is derived through a US entity and
 - ◀ treated as income of the beneficiaries under US law
 - ◀ that income shall be considered to be derived by that beneficiary
 - ◀ to the extent those beneficiaries are US resident for US tax.

Hybrids under the US/NL Tax Treaty

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- that income shall be considered to be derived by that beneficiary
- to the extent those beneficiaries are US resident for US tax.



Other EU tax treaties with the US?

Similar as NL (8):

- Belgium
- Bulgaria
- Denmark
- Finland
- France
- Germany
- Malta
- United Kingdom

Similar as IT (?) (13):

- Austria
- Cyprus
- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Luxembourg
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain

Other EU tax treaties with the US?

ITALY

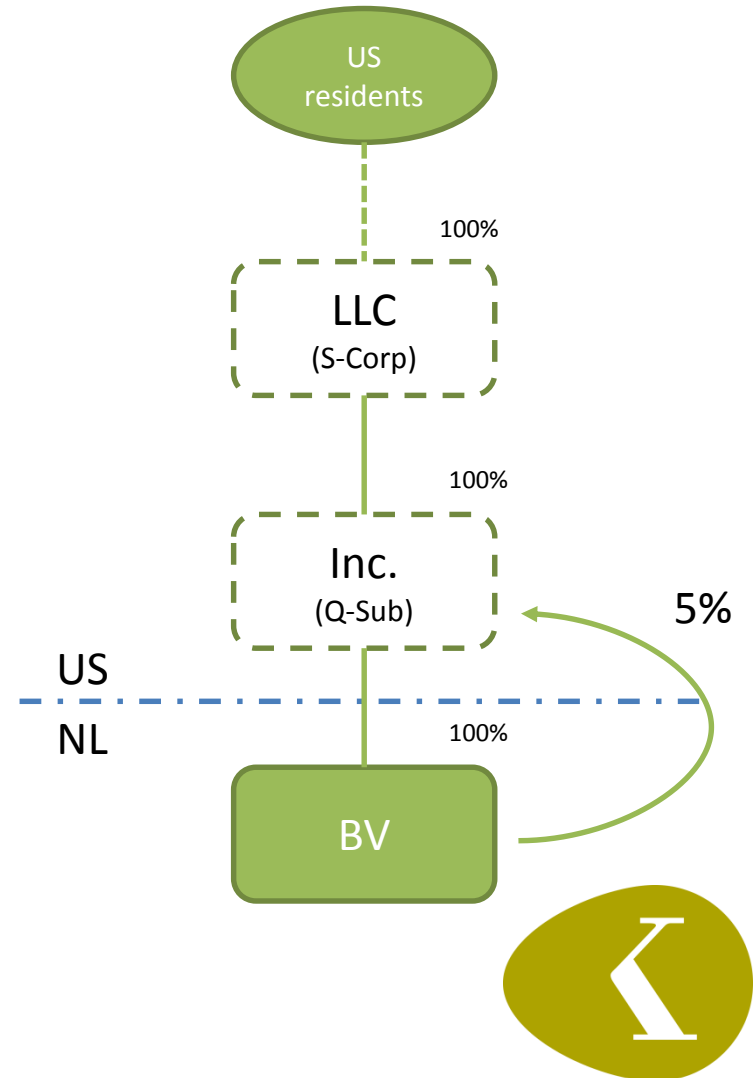
"resident of a Contracting State" means any person who, under the laws of the US, is liable to tax therein (...), provided, however, that (...) in the case of income derived or paid by a partnership (...) this term applies only to the extent that the income derived by such partnership (...) is subject to tax in the US, either in its hands or in the hands of its partners or beneficiaries.

The above provision shall apply to determine the residence of an entity that is treated as fiscally transparent under the laws of either Contracting State.



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