

(Tax) planning & Asset protection through The Netherlands

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In national and international tax planning and asset protection some of the key challenges are:

- Legal ownership vs. Beneficial Ownership;
- Beneficial Ownership vs. Control;
- Control vs. Legal Ownership.

and

- Sustainability of the structure.

A useful tool, the Dutch Foundation as an Administrative Office ('FAO')

Some questions and points of interest.

1. What is a Foundation?
2. What is the purpose of an FAO and how is this accomplished?
3. Privacy.
4. What are the tax characteristics?

1 What is a Foundation?

- A Foundation under Dutch law is:
 - 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.

2a What is the purpose of an FAO and how is this accomplished?

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

2b What is the purpose of an FAO and how is this accomplished?

- Principle of the FAO.
 - The Foundation 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.

3 Privacy

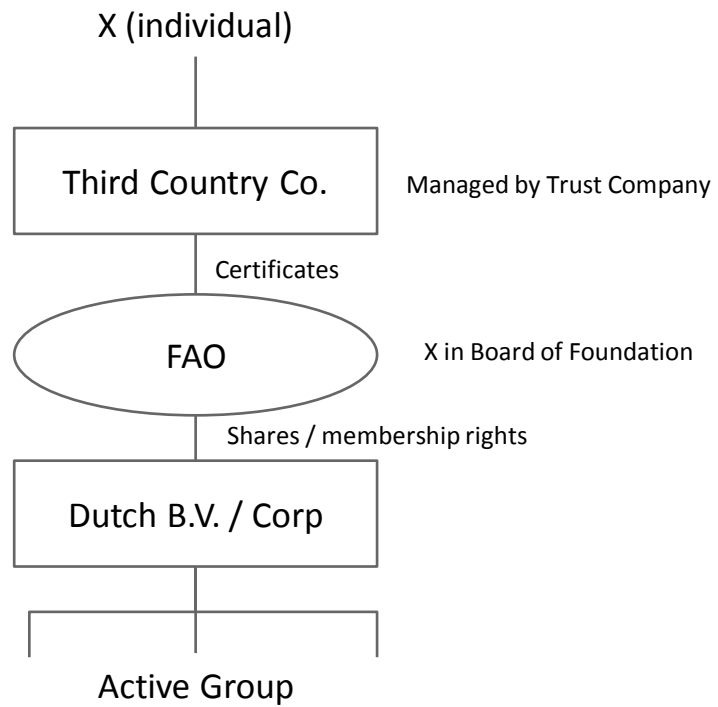
- Public domain.
 - The articles of association can be obtained with the Dutch Chamber of Commerce and show, amongst others, the:
 - incorporator;
 - statutory powers of the Board of Directors and other parties involved (incorporator, Advisory Board, Supervisory Board, holders of certificates).
 - The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

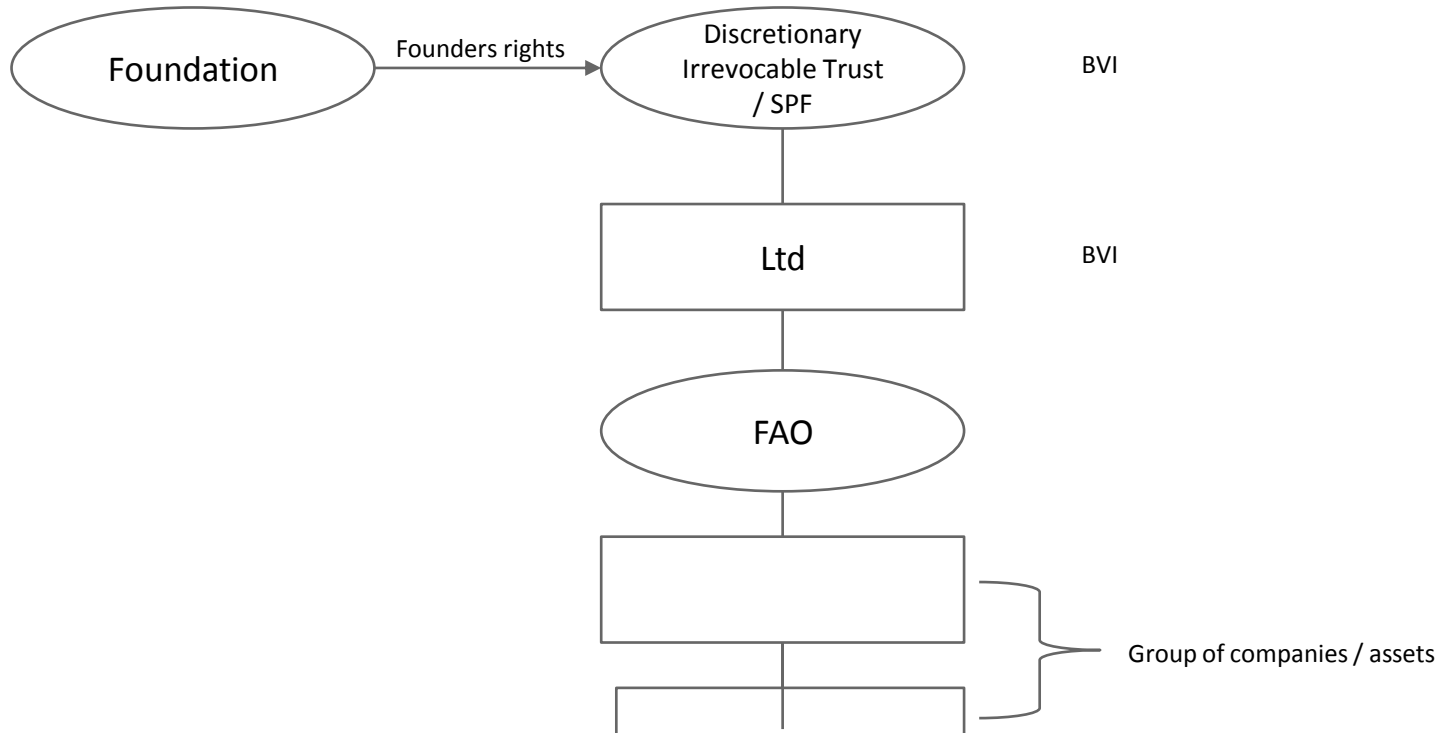
4 Tax characteristics.

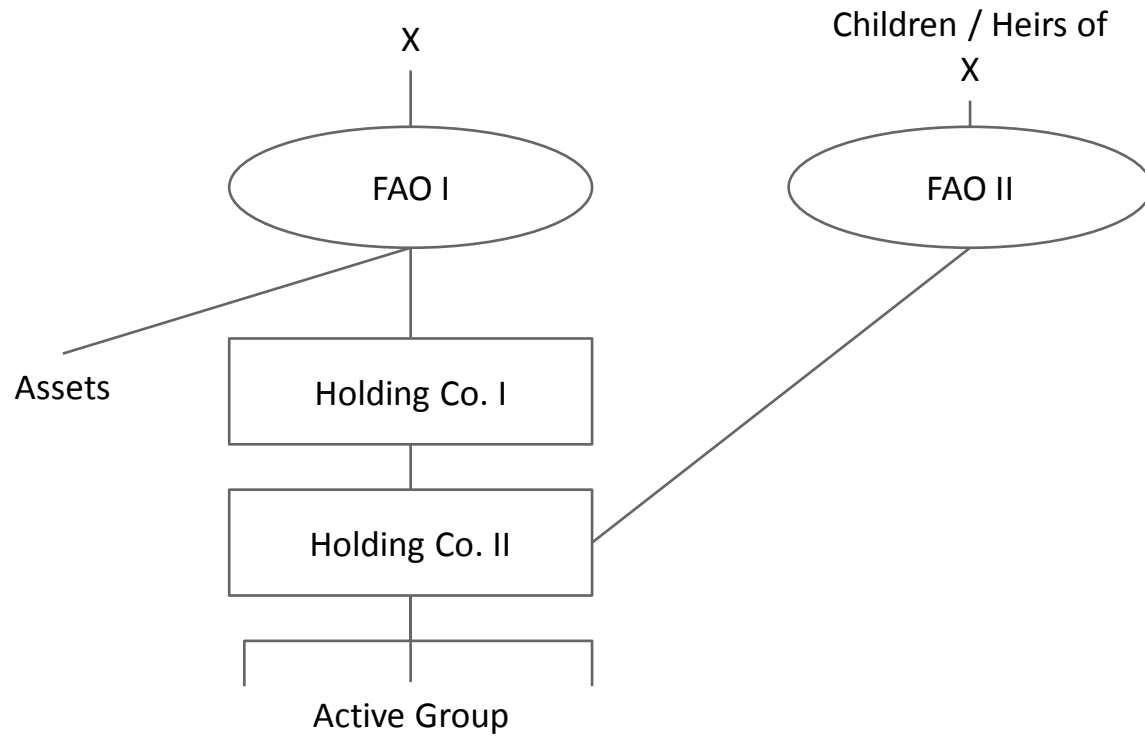
- In many countries and under many tax treaties, the FAO is considered to be tax transparent. However an FAO is in some countries recognized as a tax resident of the Netherlands for treaty purposes; certificate of residence is possible.

- The Foundation Administrative Office 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.



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