

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

TTN Conference Sao Paulo, 13 November 2014

# Agenda

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- 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

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- 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

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- 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

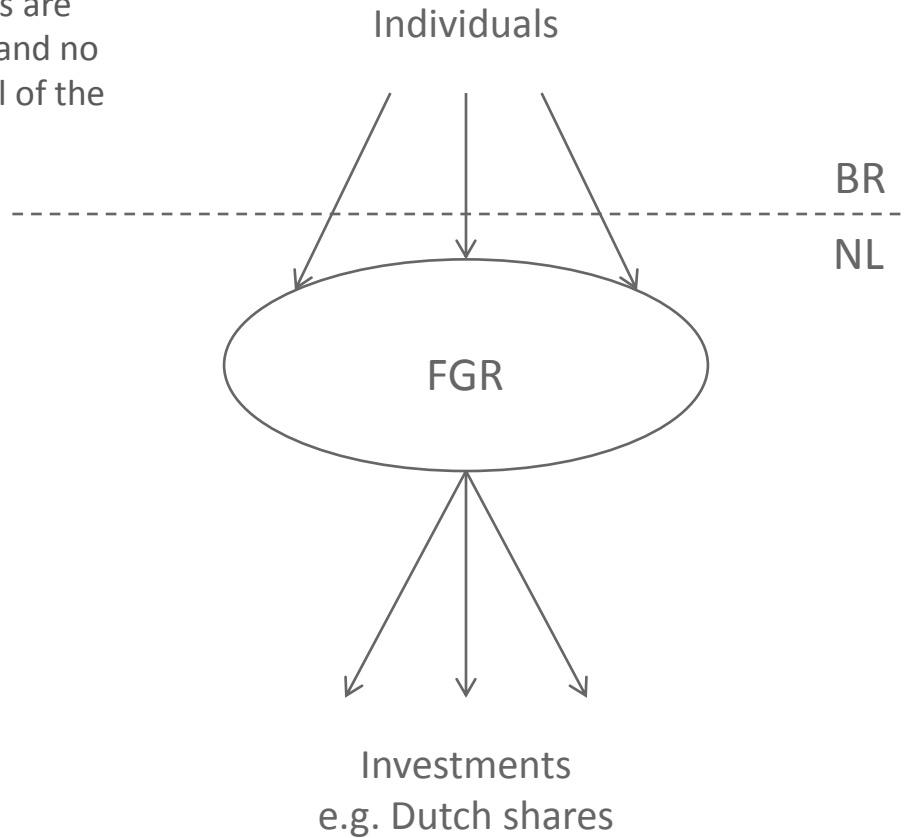
### *FGR in Wealth and Estate Planning*

- 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

In case of a non-transparent FGR for Brazilian tax purposes, dividends are received by the FGR and no tax is paid at the level of the individuals



# 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

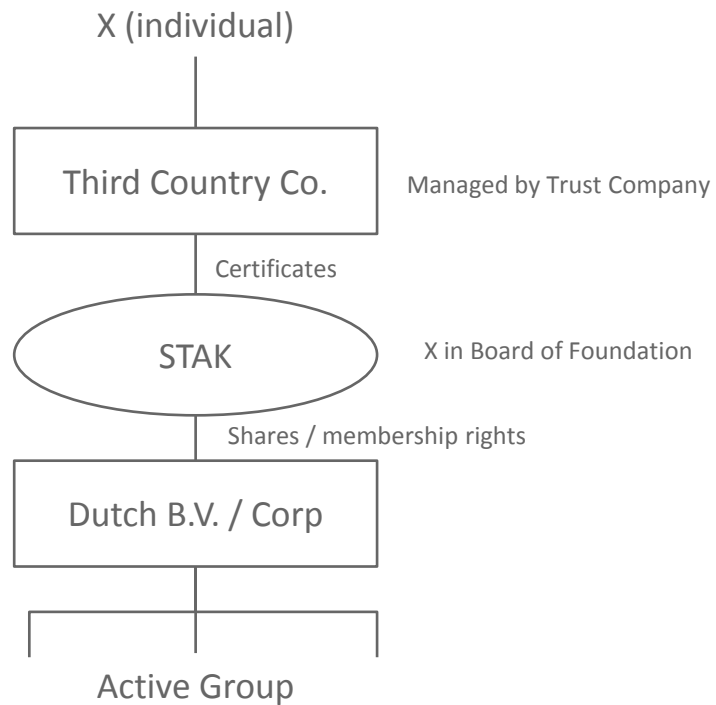
### *Tax Characteristics*

- 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.

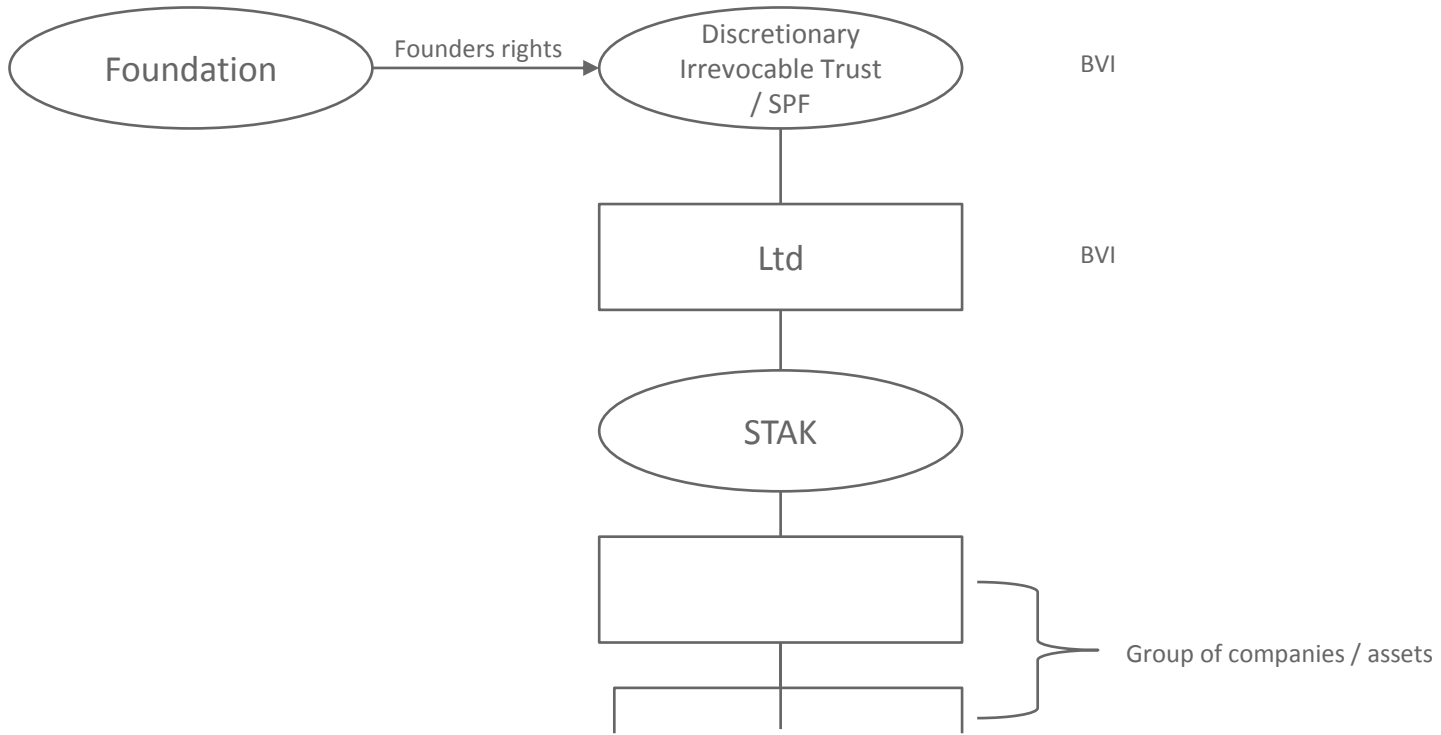
# Dutch Foundation

*Example A*



# Dutch Foundation

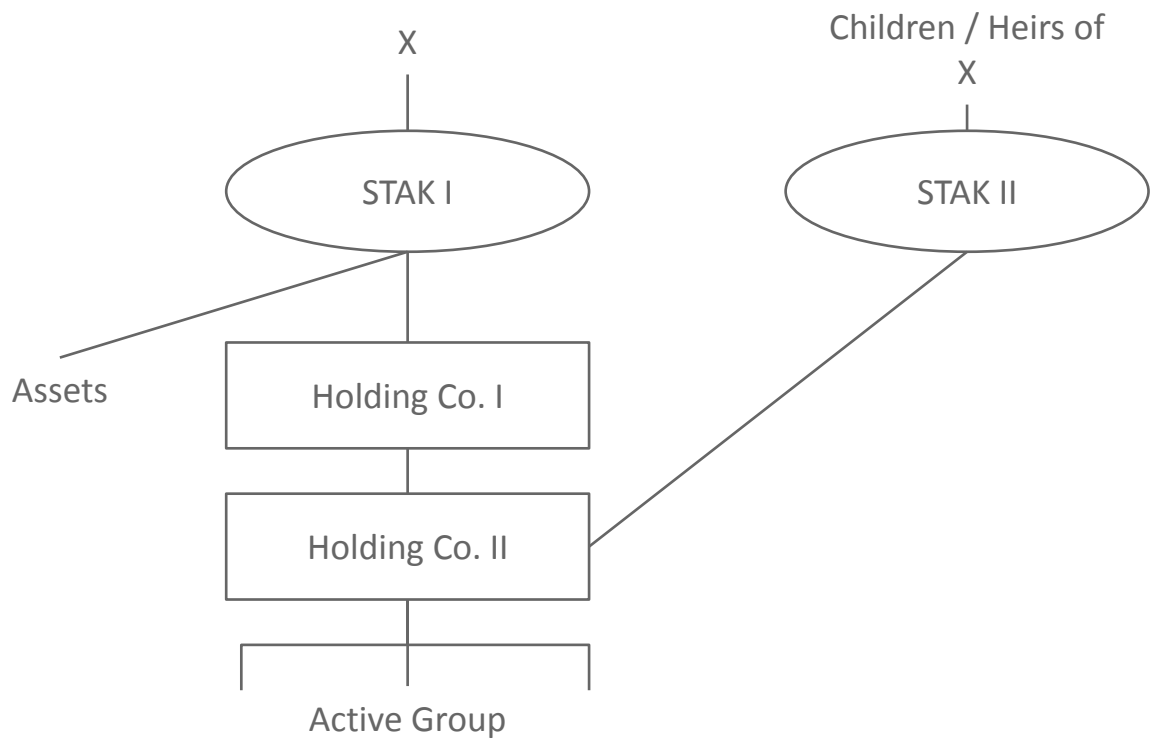
## Example B



# Dutch Foundation

*Example C*

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