

CORPORATE LAW IN THE NETHERLANDS

SEPTEMBER 22, 2009

Vooruit denken. Vooruit handelen.

DIFFERENT TYPES OF COMPANIES

- Partnerships → VOF/CV/maatschap
- Legal entities

(limited) partnerships

VOF → partnership

- Each of the partners jointly and severally liable
- Closed-end → tax transparency
- Open-end → partnership liable to pay taxes itself

(limited) partnerships

CV → limited partnership

- A partnership with one or more limited partners → liability limited to the amount contributed

(limited) partnerships

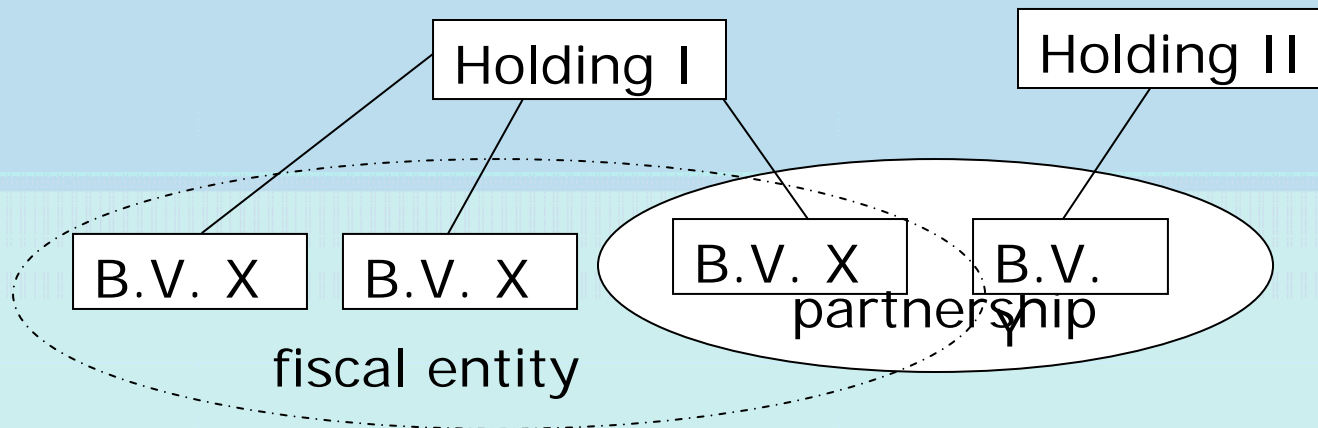
Partnership often used by:

- Small companies, private persons
- Joint ventures
- Tax structures → fiscal transparency

Advantages:

- Contract based → hardly any mandatory law
- Fiscal transparency → each partner has its own fiscal position

EXAMPLE



LEGAL ENTITIES

Closed system

- BV/NV
- Foundation
- Association
- Cooperative society

BV/NV – JOINT STOCK COMPANIES

- NV → public company → all listed companies
- BV → private company with limited liability

CHARACTERISTICS BV/NV TYPE COMPANIES

- Authorized capital dividend into shares with a nominal value



distinction

→ authorized capital

→ issued capital

→ paid up capital

- Minimum issued and paid up capital

BV € 18.000,00

NV € 45.000,00

CHARACTERISTICS

- Payment issued capital:
 - cash payment in foreign currency allowed → rate of exchange;
 - in kind.
- Shares:
 - registered shares BV
 - bearer shares optional NV
- Shares always → voting right
 - ↕
 - profit right
- Shares → preference shares/priority shares

CHARACTERISTICS

Capital protection:

- bankstatement (EU bank) → issued/paid up capital at incorporation
- auditors statement contribution in kind → value of assets -/- liabilities \geq payment obligation
- repurchase of shares → free distributable reserves
- financial assistance by the company to its shareholder related to the acquisition of the company
 - securities not allowed
 - loans → free distributable reserves
- dividends → free distributable reserves
- capital reduction, merger, split-up, liquidation
 - special procedure in order to enable creditors to safeguard their interests

CHARACTERISTICS

- Restrictive clause for transfer of shares:

BV → mandatory

NV → optional

- right of first refusal; or
- approval procedure

- Two tier board:

- separate board of management and supervisory board (optional unless dual board regime)

- members board of management

→ private persons

→ legal entities



resident/foreign

- members supervisory board → private persons only → resident/foreign

- Annual accounts adopted by meeting of shareholders as well as distribution of dividends → disclosure of annual accounts (recapitalisation) commercial register

INCORPORATION PROCEDURE

- Notarial deed of incorporation → articles of association
- Declaration no-objections → ministry of Justice (takes 1 till 2 weeks) (fee)
- Bankstatement/auditors statement
→ issued paid up capital
- Registration Commercial Register (fee)
 - name company
 - sharecapital
 - adress
 - sole shareholders (if any)
 - members board of management/supervisory board

COSTS INVOLVED

- Notary EUR 1,000.00 – EUR 3,000.00
- Fees Ministry of Justice EUR 90.76
- Fee Commercial Register EUR 15.00 + annual membership fee < EUR 500.00
- Trust office nominee board
(EUR 3,500.00 – EUR 10,000.00)

DISCLOSURE OF INFORMATION

- WWFT (law against money laundering and terrorism) → identification by bank, notary, lawyer
→ incorporators, managing directors, ultimate beneficial owners
- Ministry of Justice → incorporators, managing directors, UBO'S
- Disclosure of a sole shareholder → Commercial Register
- Disclosure annual accounts → Commercial Register

TAXATION OF COMPANIES

- Corporate income tax 20-25.5%
- Capital tax abolished
- Participation exemption. Income from subsidiaries free for taxes
 - $\geq 5\%$ sharecapital subsidiary
 - sharecapital must be held at beginning of fiscal year
 - profits of subsidiaries must be taxed
 - active participation in management of subsidiary

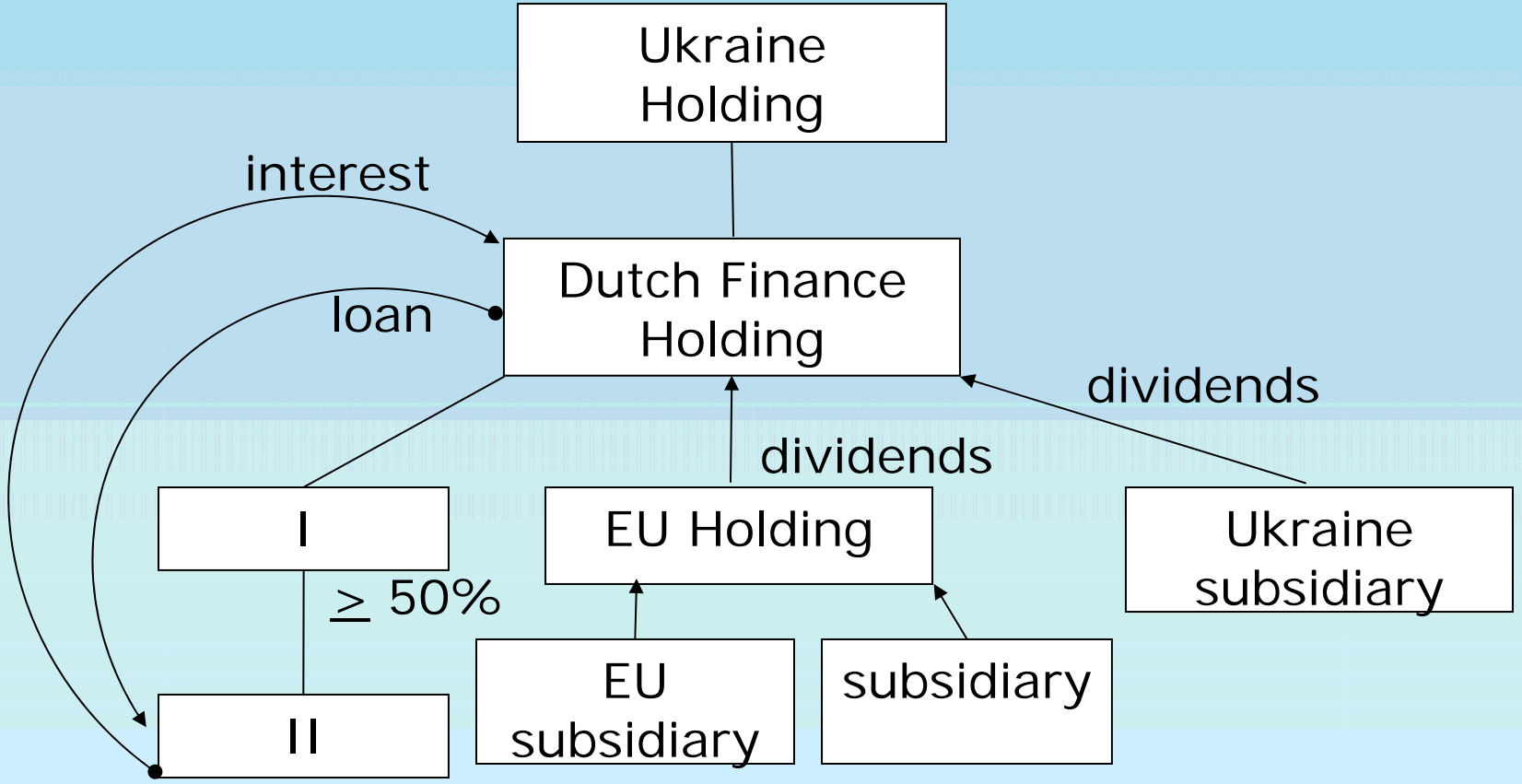
GROUP INTEREST BOX

Group finance company

- Balance of interest received and paid loans of subsidiaries (>50%)
- Effective tax rate (5%)

Tax Treaties

- Extensive network tax treaties
- Amongst which Ukraine
 - prevent double taxation
- Preliminary opinion tax authorities



QUESTIONS?