



Case study: Denied dividend tax exemption

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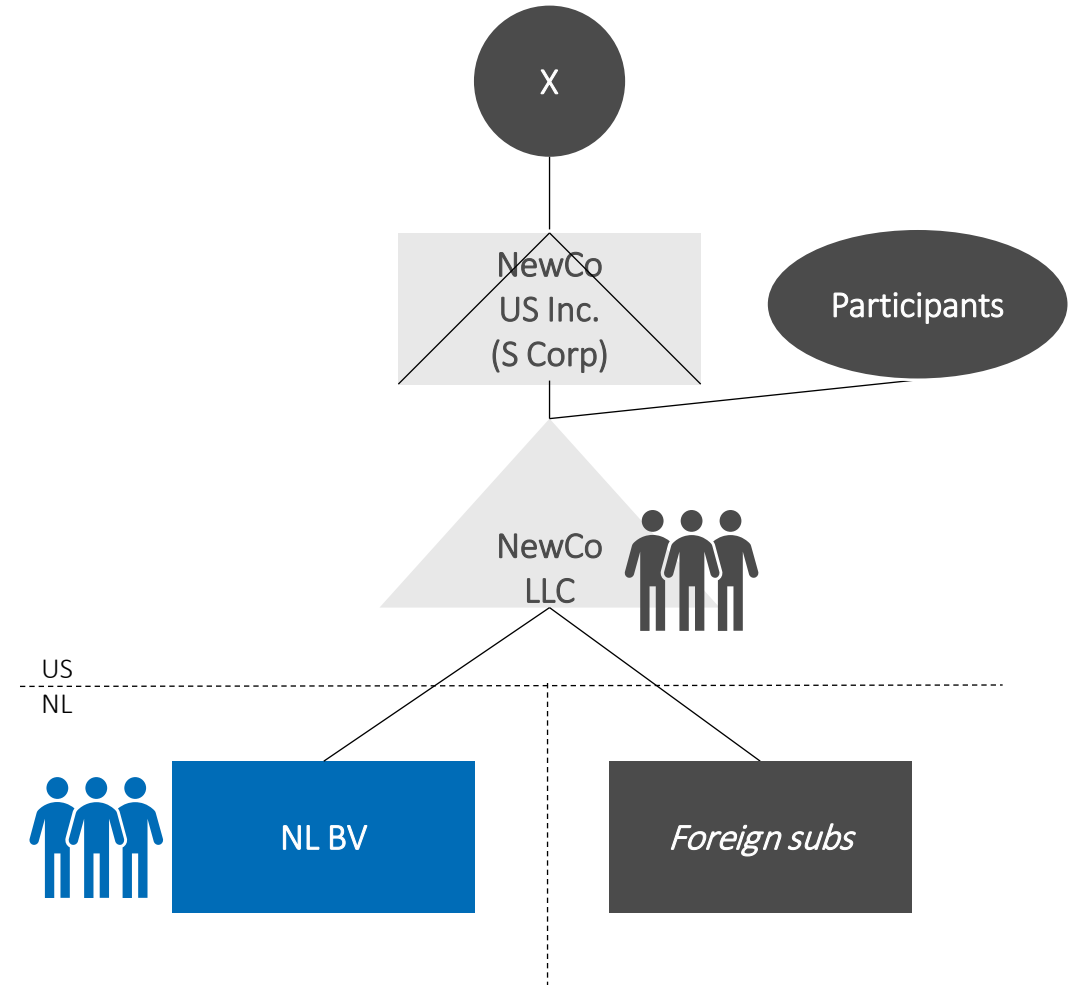
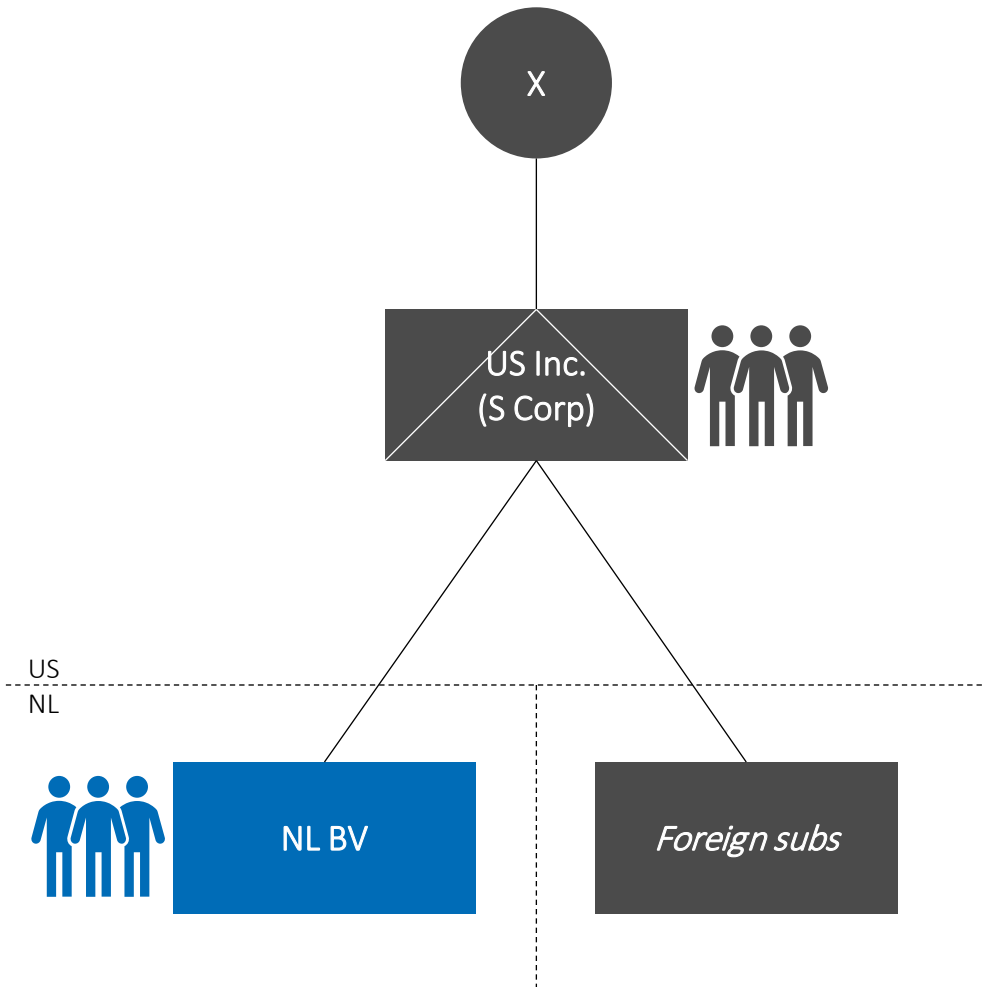
Collaboration with US firm

- Proposed restructuring US business
- Involving Dutch OpCo

Assessment

- Tax position pre- and post restructuring
- Impact of US decisions
- EU case law affecting domestic framework

Case study: Introduction (ii)



Focus on international business

- Extensive treaty network
- Treaties with 98 countries (per 1 January 2025)

Corporate income tax

- Classic systeem
- Two brackets; 19% / 25.8%

Dividend withholding tax

- In principle 15% rate
- Domestic exemption



Developments

- Abolishment topic of discussion 2017/2018
 - Unilever/Shell
- Amendments as 1 January 2018

Key changes

- Scope extended: EU and non-EU
- Treaty countries covered
- Unilaterally exempt (!)
- Introduction of “Holding Coops”:
 - Cooperative was not considered a taxpayer pre-2018

General conditions

- a. Qualifying interest (in general $\geq 5\%$ interest)
- b. Recipient *established* in a treaty country with a dividend article
- c. Beneficial ownership

Established

- Dutch tax classification as of 1 January 2025
 - Comparability
 - Fixed method (residents) / symmetrical method (non-residents)
- Both US LLC and US Corp/Inc treated as separate corporate taxpayer

Entity choice

- Difference between a single member US LLC and US S Corp (!)
- Specific rules apply to hybrid entities
- EU Anti-Tax Avoidance Directive 2: anti-hybrid mismatch rules

Advance Tax Ruling Team

- Certainty in advance
- Ruling practice + annual report
- S Corp continues to be a taxpayer for certain items of income
- Simplified information/tax return
- Inc. with S Corp status can therefore be considered *established*

Subjective test

- Obtaining a DWHT-advantage is (one of) the main purpose(s)

Objective test

- When the construction or arrangement can be considered artificial
- Artificial → if there are no valid business reasons reflecting economic reality

Directly linked to EU abuse concept

- Implementation of the Parent Subsidiary Directive

Toolbox EU:

- Regulations: binding in its entirety and directly applicable
- Directive: implementation required (in principle)
- Decisions (individual/limited scope)

Parent Subsidiary Directive

Smooth functioning in the taxation of groups of companies across the EU:

- exempt dividends from subsidiaries to their parent from withholding taxes
- eliminate double taxation of such income at the level of the parent company

Anti-abuse

Benefits shall not be granted to an arrangement which

- having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage (*subjective element*)
- that defeats the object or purpose of this Directive (*objective element*), are not genuine having regard to all relevant facts and circumstances.

Interpretation impacted by EU case law

Eqiom/Enka 2017

- A general presumption of fraud and abuse is not allowed
- Predetermined general criteria are not sufficient, an individual examination of the whole operation at issue must be carried out

Deister/Juhler 2017

- An irrebuttable presumption of fraud or abuse is not allowed
- On a case-by-case basis, an overall assessment of the relevant situation based on factors including the organizational, economic or other substantial features

Danish cases 2019

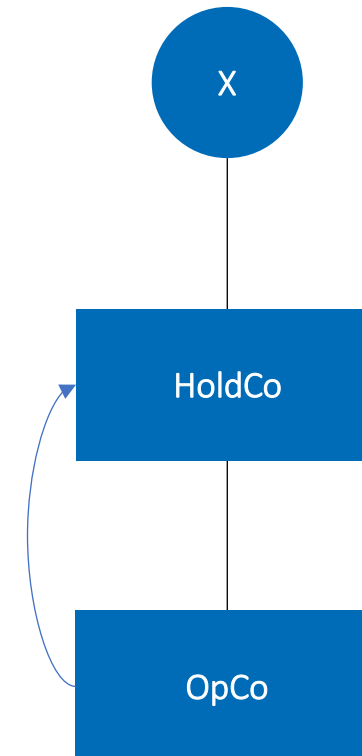
- Indicators of abuse (e.g. conduit companies)
- Member States are obliged to counter abuse
- Taxpayers should be able to demonstrate abuse is not present

Nordcurrent 2025

- A conduit company is an indicator of abuse
- Not limited to the relevant facts and circumstances existing at the time
- Overall tax effect in the jurisdiction should be considered

Belgian holding cases 2025

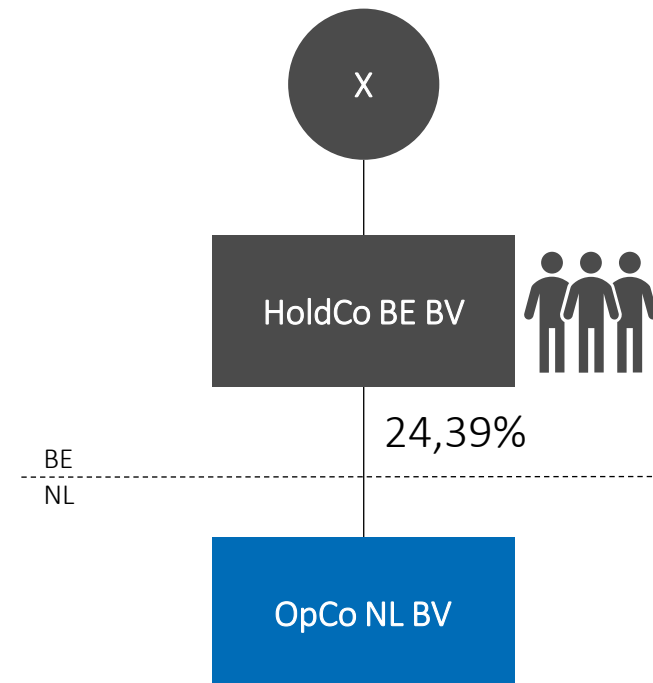
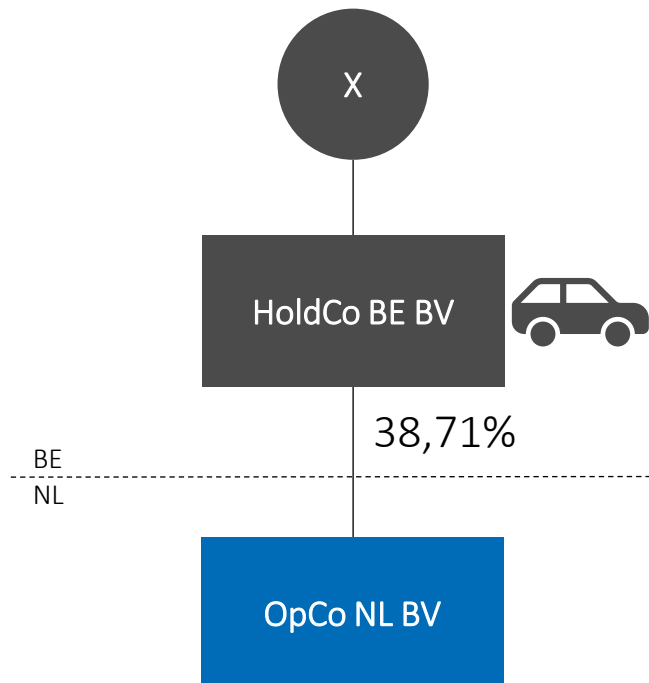
- Landmark decisions 18 July 2025
- EU case law forms the foundation



Domestic case law (ii)

Options

- A. Both have access to the DWHT exemption
- B. Only one has access to the DWHT exemption
- C. Neither has access



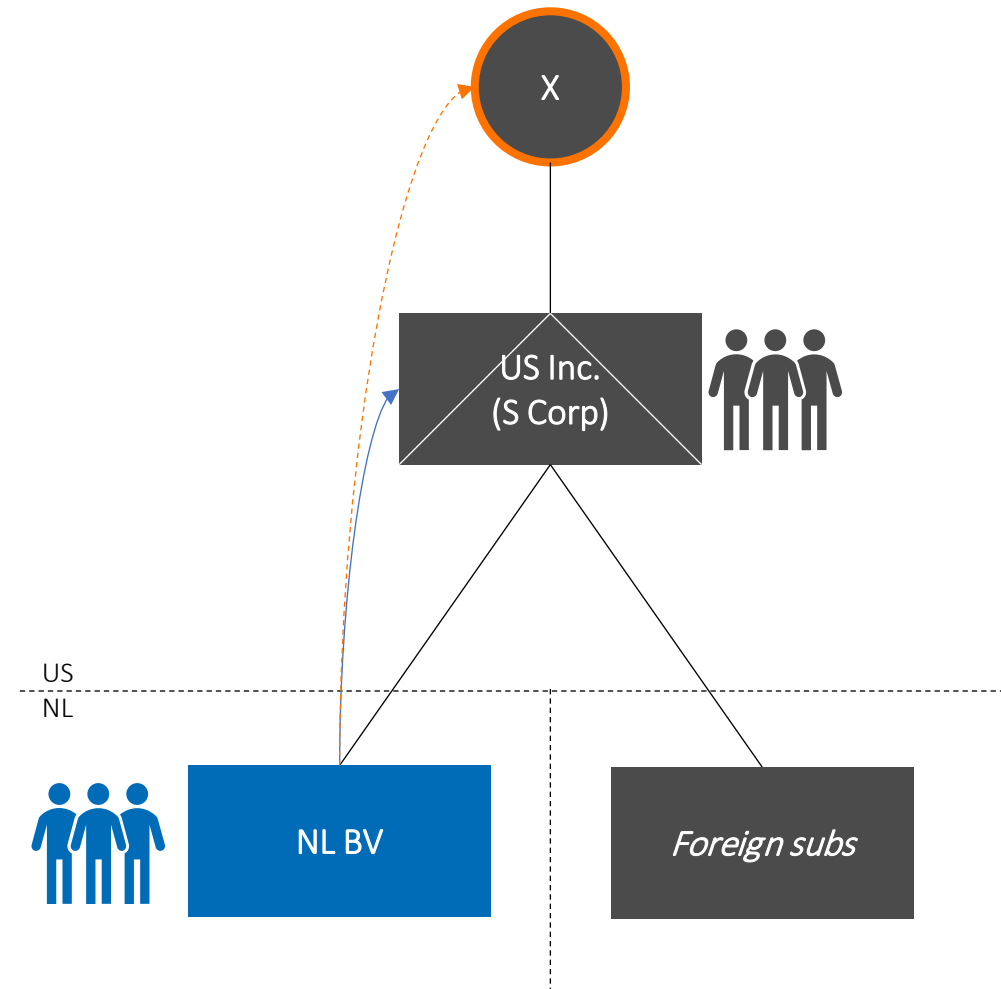
Case study: Pre-restructuring

Subjective test

- Look-through approach (orange)

Objective test

- Non-artificial
- “Valid business reasons”



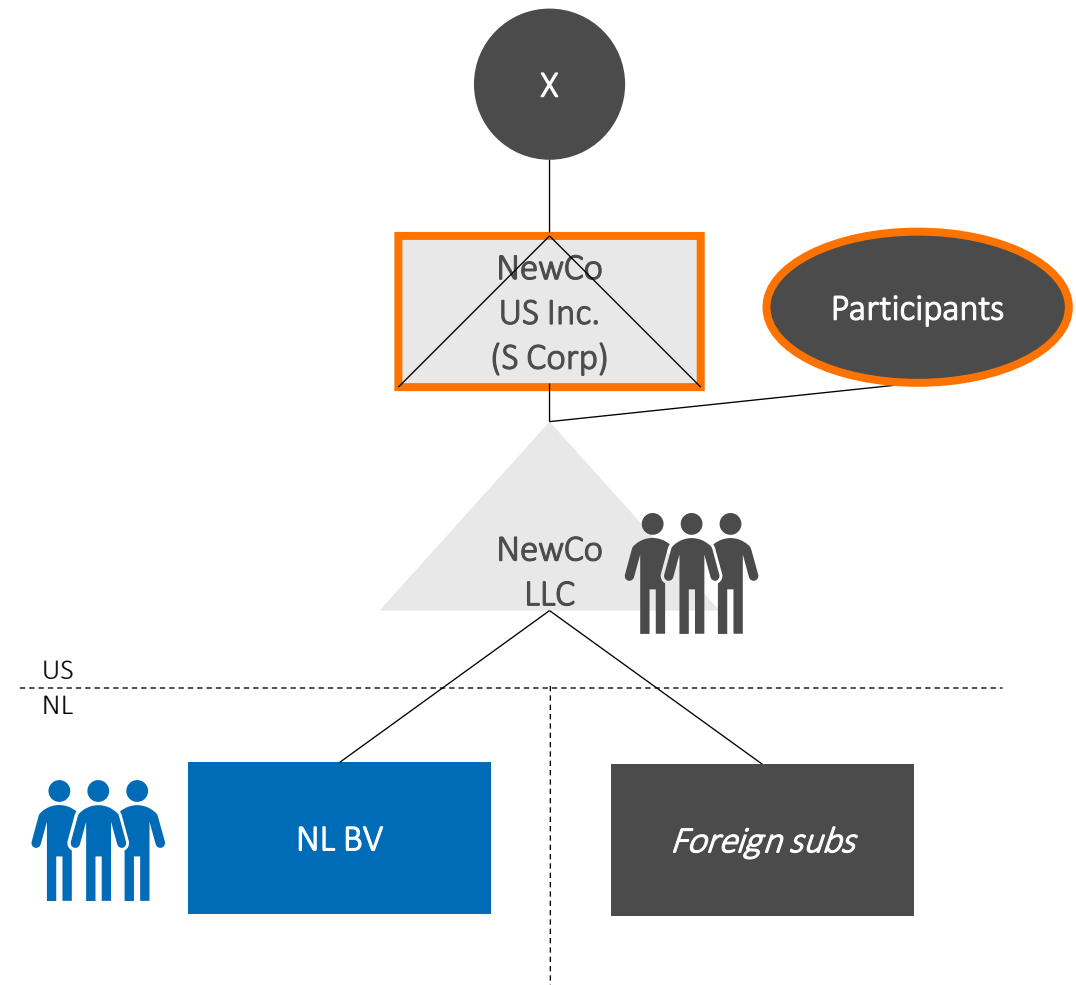
Case study: Post-restructuring

General conditions

- Qualifying interest
- Established?

Hybrid entity rule

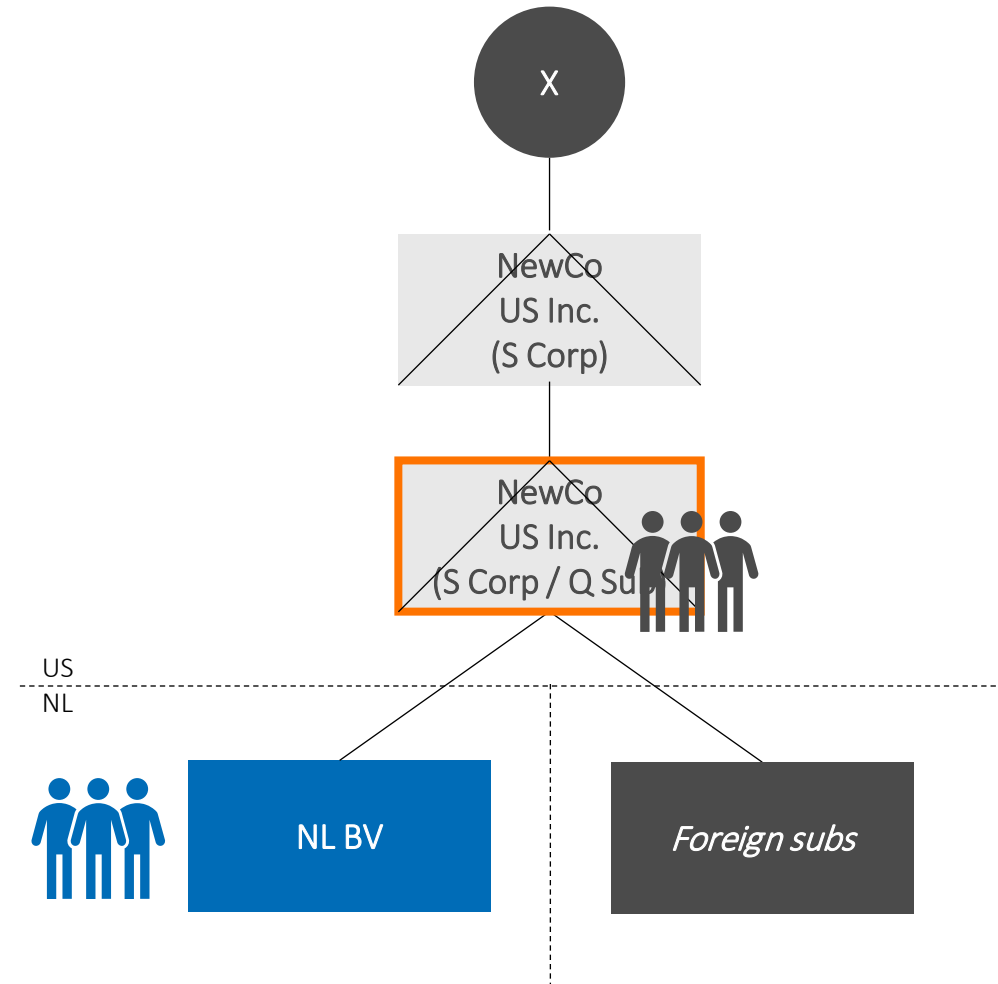
- All participants in the hybrid entity should have been eligible (!)
- DWHT exemption denied



Case study: Alternate structure

Difference

- LLC versus Inc
- Main rule can be followed!
- Access to DWHT exemption



Impact of US decisions

- Entity choice + classification can be decisive

Abuse concept is subject to change

- EU case law may greatly impact domestic rules

Interplay with Principal Purpose Test to be decided



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