

SEGREGATED TRUST COMPANY

Curaçao in the Dutch Caribbean



Segregated Trust Company ('STC')

Introduction

A STC is a company that has the ability to create one or more trust cells with assets and liabilities that are legally segregated from the assets and liabilities of other trust cells and the STC itself. As a result, profits and losses of one trust cell have no impact on the other trust cells. The STC is a single legal entity and the creation of a segregated trust cell does not create, in respect of the trust cell, a legal person separate from the company. A STC is created in the same way as any other company. The STC is set up by means of a deed of incorporation of a limited liability company or private limited liability company, which deed also contains the settling of the trust cells. The deed of incorporation needs to be executed before a civil law notary in Curacao. The deed may be executed in English, Spanish, Dutch or Papiamentu (the local language). A new trust cell can be added or removed by amending the deed of incorporation of the STC. The deed of amendment needs also be executed before the civil law notary. The STC will be registered with the commercial register of the Curaçao Chamber of Commerce (the "Commercial Register").

Issue of shares

Shares will be issued in the share capital of the STC. Shares can be created which are linked to the proceeds of a specific trust cell, for example shares A are entitled to profits made in trust cell A, etc. Curaçao corporate law is very flexible: a share structure can be created with shares with or without nominal value, and with or without voting power or dividend rights. Shares can be denominated in different currencies. In that event the beneficiaries of a trust cell will also be holder of shares in the capital of the STC. However, this is not a requirement under the laws of Curacao. There is no need to create shares with respect to a specific trust cell. Shares in the capital of the STC can for example also be issued to a special purpose vehicle, a (private) foundation or another legal entity. The settlor of the STC can appoint family members, investors or other persons as beneficiaries of a specific trust cell without shares being issued to that person.

In determining whether or not a distribution to beneficiaries of a specific trust cell can be made, the profits and losses of other trust cells of the STC, or the STC's general non-trust cell estate shall not be taken into account.

Management and administration

Directors

A STC will have a board of directors. The STC will need to have at least one director or local representative who is licensed in Curaçao. The STC itself will act as the sole trustee of the different trust cells.

Contract with third parties

Third parties must be informed that they are dealing with a STC. The STC must at all times make clear to third parties in case it is acting on behalf of a specific trust cell.

Administration and Financial Statements

A STC has the legal obligation to conduct an administration in accordance with the standards included in Curaçao corporate and trust law. The STC must prepare financial statements in respect of each trust cell. The financial statements of the trust cell will be made available to shareholders/beneficiaries of the respective trust cell at least once a year, unless the articles provide otherwise.

There are no statutory obligations to file the annual accounts of the STC and/or to file documents relating to the administration of the trust cells with the Commercial Register.

Segregation

A creditor of a specific trust cell will only have recourse to the assets of that specific trust cell. Trust cell assets are therefore protected from the creditors of the STC or another trust cell who are not creditors in respect of that specific trust cell.

Regulatory treatment

A regulatory consent will be required from the Central Bank of Curaçao and Sint Maarten. In addition the STC can be subject to regulatory legislation depending of the specific use of the STC, for example in case the STC is used as an investment fund or insurance company.



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General tax aspects of the STC

Tax aspects of the STC, transferring funds into the STC / trust cells

A transfer of funds to a trust cell, can be achieved via two routes: the funds could be transferred directly into the trust cell or the funds could first be contributed on the shares that are issued by the STC, and are subsequently transferred by the Trustee into the trust cell.

If the funds are transferred by non-residents (of Curaçao), no gift tax should be due under both routes.

Tax aspects of income generated in the STC / trust cell

Trust cells are in principle fully tax exempt from Curaçao profit tax. The Curaçao profit tax ordinance provides for a full exemption, unless the trust cell runs a genuine business. In that case, the profits are fully subject to the Curaçao profit tax. However, in case of passive investments, the trust cells should be tax exempt.

A trust cell may opt to be subject to Curaçao profit tax at an effective rate of ten percent. If the trust cell would opt for this possibility, it will be subject to this rate for a period of (at least) three years. This option has been introduced as a result of foreign safe harbor rules, specifically in the European Union. An effective tax rate of 10% is considered to be an acceptable tax rate, in combination with a regular tax system. This avoids foreign CFC or anti abuse rules to be applicable, as a result of which the trust could be neglected or be treated as a look through entity. Note that the trust cell opting to be subject to the ten percent rate may benefit from the regular tax facilities and incentives. For instance, the Curaçao profit tax ordinance contains a full participation exemption regime under which capital gains realized upon the disposal of qualifying shareholdings and dividend income received from qualifying shareholdings are fully tax exempt.

The STC itself will be subject to Curaçao profit tax over the remuneration it receives as Trustee (and all other income it realizes).

Tax aspects of distributions out of the STC/trust cells

The profits realized in the trust cells can be distributed to non-residents without triggering negative tax consequences in Curaçao. Curaçao tax law does not contain a withholding tax on distributions at all. If the STC has been granted a foreign exchange license by the Central Bank of Curaçao and St. Maarten, the license fee of 1% applicable to all transfers of funds outside Curaçao, should not be due as well.

In case the funds are first contributed as capital on the shares of the STC followed by a transfer to the trust cell, the “repayment” of the initial fund transferred to the trust cell should not trigger negative tax consequences on Curaçao. The subsequent repayment of the initially contributed funds on the shares in the STC should not be subject to Curaçao taxation as well. As indicated, Curaçao does not levy withholding tax at all. It is recommendable that the profits realized in the trust cells, are distributed to the beneficiaries directly.

Taxation of non-residents beneficiaries or shareholders in the STC

Unlike other jurisdictions, Curaçao tax law does not contain provisions through which non-resident shareholders or non-resident beneficiaries could become subject to Curaçao taxation. This may only differ in case the non-resident shareholder or non-resident beneficiary has been a resident of Curaçao in the past.

Information to be submitted to the Curaçao tax authorities and the exchange of information with foreign tax authorities

Based on Curaçao tax law, the board of directors of a STC is obliged to register the beneficiaries of the trust cells. However, in case of a discretionary trust, the settlor needs to be registered. Upon the request of the Curaçao tax authorities, the information about the beneficiaries or settlor needs to be submitted to the Curaçao tax authorities.



The Curaçao profit tax ordinance provides for a full exemption, unless the trust cell runs a genuine business

Curaçao has concluded many tax information exchange agreements (hereinafter “TIEA”). A TIEA enables foreign tax authorities to request for certain information. As a result, if all conditions as mentioned in a TIEA and all conditions mentioned in Curaçao tax law are met, information can be exchanged between the Curaçao and foreign tax authorities.

Practical use of a segregated trust company

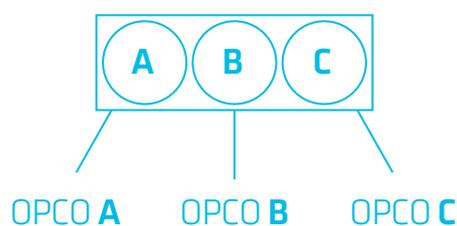
The STC is a flexible planning tool, providing for asset protection and privacy as described in the previous paragraphs. In this paragraph, we will describe four possibilities being

- 1 – the STC as a multiple holding company,
- 2 – the STC as an investment fund,
- 3 – the STC to manage family office businesses for multiple families,
- 4 – the STC as a family fund and estate planning tool.

The STC as a multiple holding company

In general, a holding company functions as the (indirect) shareholder of various operating companies. By setting up a holding structure, excess cash can be distributed to the holding company, leaving the risk sphere of the operating company. Another way to distribute the excess cash, is creating leverage in the operation companies through loans. Excess cash can then be distributed as interest payments. Once the excess cash has been distributed to the holding company, these funds itself will generate income at the level of the holding company as well. Assuming that the holding company is a regular taxpayer in its country of residence, this income will be subject to profit tax. Only through additional planning, this negative consequence may be avoided or minimized.

The shares in the STC can either be held directly by individual shareholders or indirectly through an entity. Under the above described scenario, all assets, shares in the operating companies and the excess cash, within the group are held by one single holding company. Through the implementation of a STC as a holding company, a segregation can be realized between the various assets and activities. The new structure can be depicted as follows:

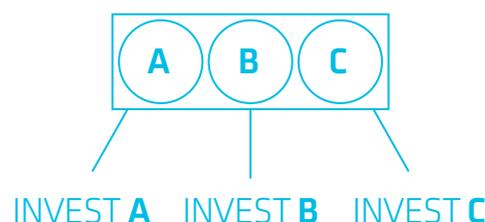


The STC as an investment fund

The STC can be set up as an investment fund as part of risk management. As a result of the segregation, the investment fund manager can offer to the investors a flexible investment portfolio consisting of a mixture of various cells or one cell only. Hence, various investors with various investment profiles can invest through one investment fund.

By segregating the various investments in separate cells, the results of the various investments are segregated as well. Hence, a negative investment result in one cell, for instance caused as a result of investments in floatable shares, cannot influence a positive investment result, for instance caused as a result of investments in government bonds, in another cell. This enables distributions of profits to investors in good performing cells, even if the total result of all cells through which the investments are made is negative. The shares in the STC can either be held directly by individual shareholders or indirectly through an entity.

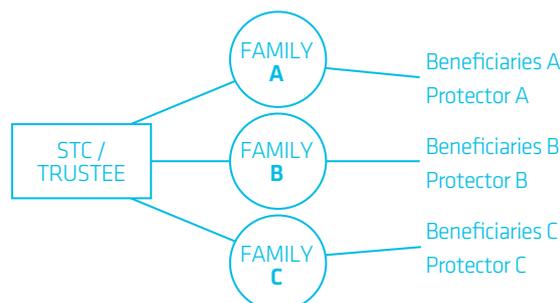
A STC structure is for example often used for umbrella funds. An umbrella fund is divided into separately administered sub-funds. Each sub-fund may have its own investment policy and risk profile. If a STC is used, sub-funds are not only administratively separate funds but also legally segregated from each other. The structure can be depicted as follows:



The STC to manage family office businesses for multiple families

The STC can be a framework for family office businesses who arrange the financial and family affairs for multiple families. By creating separate trust cells for each family, the wealth of these families cannot mix and is segregated in a family trust cell. If so desired, a family may of course opt to segregate their wealth in multiple cells. The shares in the STC can either be held directly by individual shareholders or indirectly through an entity.

Each family trust cell can have its own beneficiaries, letter of wishes and protectors. The multiple family office structure can be depicted as follows:



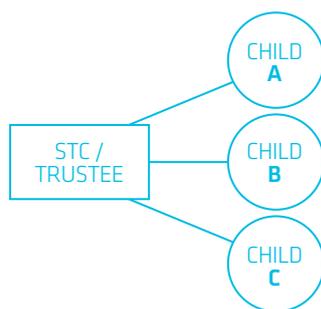


The STC can be the framework for a family fund and estate planning tool

The STC as a family fund and estate planning tool

The STC can be the framework for a family fund and estate planning tool. For example, a family with three children would like to set up a family fund. Through a STC, four trust cells can be set up, one for each child and one for the surviving parent. According to a letter of wishes, until a certain age, the children are not entitled to dispose of the funds segregated in the trust cell created for him or her. Upon the age of twenty five for example the child is entitled to dispose of the funds segregated and may determine what to do with the funds. The funds for the other two children are still 'locked'. Advantages of this structure are that each child can choose its own investment policy and risk profile and that the assets segregated in a trust cell can easily go to the siblings of that child, rather than having one trust or private foundation in which the assets are not yet legally segregated for a child and their siblings.

The shares in the STC can either be held directly by individual shareholders or indirectly through an entity. For privacy purposes, the shareholder could also be a foundation or private foundation organized under the laws of Curaçao.



Other possible uses

In addition the STC can be used to hold in each trust cell assets such as real estate, aircraft or vessels, which will make huge corporate structures unnecessary.

Conclusion

In this article we explored the possibilities the use of a Curaçao Segregated Trust Company has to offer. The main advantages of a Curaçao Segregated Trust Company are the reduced risks of STC itself becoming insolvent and that the trust cell assets are not available to meet liabilities and shall be protected from the creditors of the STC or another trust cell who are not creditors of that particular trust cell. Curaçao corporate law is very flexible and a share structure can be created with shares with or without nominal value, and with or without voting power. The beneficiaries of a trust cell can be shareholders or not. There is no statutory limitation upon the uses of the STC. Furthermore, if structured properly, no negative tax consequences will be triggered in Curaçao.

Curaçao is part of the Kingdom of the Netherlands and has its Supreme Court in The Hague, the Netherlands. Curaçao has a more than 200-year history as a financial center. The country's Central Bank, founded in 1812, is the oldest in the Western Hemisphere. With its connectivity to Europe and stable political environment, the island of Curaçao is the ideal financial and logistical point for doing business.

Spigt Dutch Caribbean – Legal and Tax



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