



Accountants &
business advisers

Doing business in the Netherlands



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Preface



The purpose of this guide is to provide a rough overview of doing business in the Netherlands. It is not intended to be a comprehensive guide but it is designed to inform you if you want to do business in the Netherlands and the actions to be taken if you actually decide to start up the activities in the Netherlands.

If you decide to start up activities in the Netherlands we advise you to get expert advice on this.

The Netherlands, due to its excellent reputation, stable political (constitutional) system, location in Europe, the Harbour of Rotterdam, Schiphol Airport, possibility to get ATA/ATR-rulings from the tax department, extensive tax treaty network and the participation exemption in the corporate income tax, is an excellent choice for headquarters location for businesses wishing to expand into European and other markets as well as, of course, the Dutch market.

If you intend to establish a business in the Netherlands PKF the Netherlands will be very happy to assist you.

PKF the Netherlands is a partnership of dynamic chartered accountants and tax advisors.

PKF the Netherlands is active in the Netherlands under the local name PKF Wallast.

The partnership PKF Wallast is a consultancy organisation with accountancy and fiscal consultancy as its base. Thus, this partnership engages itself with a broad range of activities in the field of taxes, annual accounts, corporate law and automation of financial matters.

For its international professional practice, PKF Wallast is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

The PKF international Network is one of the leading networks of chartered accountants in Europe.

If you are seriously planning to establish (your) business in the Netherlands we are more than happy to assist you and look forward helping you to build up your business. You can find a short introduction of PKF the Netherlands on our website: www.pkfwallast.nl. At the back of this guide we included a list of offices.

Hans van Sonderen
Chairman

May 2009

Introduction



Geography

The Netherlands is located in north-western Europe and is bordered by Belgium, Germany and the North Sea. The Netherlands cover an area of about 35,000 square kilometres. The Netherlands is the “Port of Europe” and has been a member of the European Community from the start. Since 1993, the European Community has been established as one trading area with no internal tariffs and with common standards applying to virtually the full range of commercial life. The total population of the Netherlands is approximately 16 million. Amsterdam is the capital city, though the government resides in The Hague.

Political constitutional system

The Netherlands have a constitutional monarchy and a parliamentary system, which has produced long-lasting political stability.

Economics

The Netherlands are a major industrial and trading nation and Rotterdam is one of the world's biggest seaports. In addition to their membership of the European Community, the Netherlands also have strong trading links with virtually all countries over the world.

Language

The language used in day-to-day business is Dutch, but English is spoken and written by all business people. Other languages commonly used are German and French.

Communications

Internal and external communications are excellent both for people and for the transportation of goods. The telephone direct dialling system gives virtually instant communication with all parts over the world.

E-mail is a well integrated part of the day-to-day communication of most businesses.

Currency

The Dutch currency is the EURO (€).

The EURO is the official currency of the EMU (European Monetary Union) and replaces the national currency of the participating countries since 2002.

Services

As a major international centre the Netherlands have representations from the worlds financial institutions and consequently the full range of financial services are available.

Exchange controls

There are no exchange controls currently in force in the Netherlands.

Legal system

The legal system in whole of the Netherlands is the same. In the Netherlands the (administration of) justice is entrusted exclusively to judges who are appointed for life. There is no jury system. The Supreme Court ensures an uniform application of the law, but it cannot determine constitutionality. This is done in the legislative process itself, where the government and Parliament together pass judgement on the constitutionality of a bill under consideration. Laws that are at variance with the nation's international agreements cannot be enforced by the courts.

Major exports & imports

The Netherlands has an open economy, which relies heavily on international trade. Rotterdam Harbour is one of the world's biggest seaports.

The Netherlands is one of the world's largest exporters of agricultural products. Food processing, chemicals, oil refinery and the production of electrical equipment are the major industrial activities.

Government Policy on Foreign Investments in the Country

The Netherlands Foreign Investment Agency (NFIA) has been set up for the specific purpose of helping and advising foreign companies who wish to take advantage of the Dutch business environment as a strategic base to cover Europe. It provides information and practical assistance free of charge and on a confidential basis. The NFIA is an operational unit of the EVD, the agency for international business and cooperation, which in turn is part of the Dutch Ministry of Economic Affairs.

The Netherlands are a good choice to locate a pan – European operation, such as an Europeans headquarters, a Shared Service Center, distribution and logistic operations etc. The Netherlands pro – business environment creates a gateway to Europe that helps international companies succeed throughout the continent. An international outlook and openness to foreign investment is firmly engrained in the Dutch culture.

Import controls

A number of rules apply to goods that enter the customs territory of the EU from a non-EU country. The main rule is that these goods should be assigned to a 'customs-approved treatment or use'. These goods can be assigned to a customs-approved treatment or use by being placed under a customs procedure. There are different customs procedures.

Business entities



Companies

Limited liability companies registered in the Netherlands carry the suffix “besloten vennootschap” (private limited company, almost invariably abbreviated to B.V.) or “naamloze vennootschap” (public limited company, abbreviated to N.V.). Any B.V. or N.V. incorporated in the Netherlands is deemed to be resident in the Netherlands for tax purposes even though its central management and control might be situated elsewhere. It may also be resident in the country from which it is managed and controlled, but that will not prevent also having residence in the Netherlands. In broad terms a resident company is liable to Dutch tax on its worldwide profits.

The private limited company (B.V.) is the most common form of commercial enterprise in the Netherlands, and the one most frequently used by foreign investors.

For practical purposes, it is the equivalent of a British private limited company, a German GmbH or a French Sarl.

The liability of shareholders is limited to their capital subscriptions. However, directors of the company can be held liable to all debts of the company in case of malpractice.

Directors can also be held liable for unpaid payable taxes and social security premiums if the company goes bankrupt and in case the directors have not informed the tax authorities in due time that the company is unable to meet its obligations.

The company is an independent legal entity. This is a fundamental legal concept and means that the company is a legal person which carries its own rights and duties independent of natural persons c.q. its shareholders. Shares of the N.V. and B.V. can be transferred without effecting the continued existence of the company, although the shares of a B.V. may not be offered for public subscription or trading. The transfer of shares of a B.V. has to take place before a Dutch notary. A B.V. does not issue share certificates.

Proposals to simplify the B.V. law and to make it more flexible

At present a bill has been presented to Parliament containing proposals to simplify the B.V. law and make it more flexible. If this bill passes, it will be possible to integrate items in the articles of association of the B.V., which now have to be dealt with in a separate

shareholders agreement. When this bill is passed certain arrangements between shareholders can be implemented either in the articles of association or in a separate shareholders agreement. Implementation in the articles of association has the advantage that the right and obligations are directly connected to the shares and thus stronger to enforce, as the sanction of not complying can be suspension of shareholders rights. For instance it will be possible to connect finance demands to the shares. If a shareholder does not comply with these demands, his shareholder's rights can be suspended until he does comply.

Some other important items are:

- introduction of a dividend distribution test. If dividends are distributed without meeting this test, mainly related to the question whether or not the proposed dividend will not harm the financial position of the B.V., the management of the B.V. is personally liable in case the B.V. cannot meet its obligations
- no minimum share capital requirements anymore.

The bill is being discussed at this moment and it is totally unclear when it will be implemented. Therefore at this point in time we will have to deal with the present legislation and it is impossible to anticipate on the new law.

Incorporation of a B.V.

A B.V. must be incorporated in the presence of a notary by one or more individuals or companies. A notary in the Netherlands is officially appointed by Royal decree, whose legally prescribed functions include drawing up the articles of association and deeds for the transfer of property and mortgages. He may also act as legal advisor in certain matters. A founder does not need to be present at the signing meeting if he has given a power of attorney to a representative or acts through a nominee. A founder also does not need to be a Dutch resident or citizen. Initial shareholders have to pay in a minimum capital of € 18,000. Payment on shares can be made in cash or in other assets. If payment is made in other assets than cash an auditor's report has to present that the assets represent less value than required. Each method of payment has its special formal requirements.

For foreign corporations setting up a Dutch B.V., the following information is required:

- full corporate name of the founder
- name of the country of incorporation of the founder
- place of registered office and full business address of the founder
- legal prove of the existence of the founder e.g. statement of good standing issued by a lawyer and registration documents including articles of association

If the founder is a private person, details of the private person are required, such as:

- surname and forenames in full
- full residential address
- place and date of birth
- nationality
- occupation
- marital status

Further in both cases the following information is required:

- copies of the passports of the proposed directors and founders
- proposed name of the B.V.
- proposed objects of the B.V.
- authorised capital of the B.V.
- issued and paid-up capital of the B.V.
- par value of the shares of the B.V.

The minimum amount of the issued and paid-up capital for a B.V. is € 18,000.

This amount has to be paid into a bank account of the notary or into a bank account of a Dutch bank, before the company can be incorporated:

- the shares have to be registered shares
- the first financial year may be longer or shorter than twelve months
- registered office and place of business of the B.V. in the Netherlands
- founders have to state by writing that they do not have the intention to sell the shares within the first year after formation of the B.V.
- a letter of good standing for every founder provided by a bank or a notary.

A declaration of no objection of the Dutch Ministry of Justice is required before the B.V. can be incorporated. The Ministry will examine the draft articles of association to ascertain consistency with the law and will also verify the reliability of the founders. In case the founder is a legal entity, it needs to submit a copy of its latest annual accounts.

A B.V. is allowed to start up its activities before the actual incorporation takes place, but must signify this by adding the initials i.o. (for “in oprichting”: in incorporation) to the initials B.V. after its name. During this period founders are fully liable for the debts and obligations of the B.V. in incorporation. After its incorporation the company will have to confirm all acts performed on its behalf during the formation period. By this confirmation the company takes over the full liability of the founders during the period of incorporation.

Furthermore, the managing directors of the company are personally liable for its acts and obligations until:

- the registration with the Commercial Register has been effected
- at least 25% of the initially issued share capital has been paid in (with a minimum of € 18,000).

Registration in the Commercial Register is automatically reported in the Official Gazette (Nederlandse Staatscourant).

The incorporation process will take a minimum of four to eight weeks. As an alternative it is possible to purchase a company “of the shelf” from one of a number of firms, which specialises in such matters. Professional assistance will then be needed to tailor it to specific requirements.

Company capital duty

Capital tax is abolished since 2006.

Legal and accounting regulations of companies

Companies will have to comply with the following annual obligations:

- hold a general meeting of shareholders
- file accounts with the Chamber of Commerce.

It should be noted that the filed documents, once lodged, are available for public inspection against payment of a nominal fee.

For B.V.'s with only one shareholder some extra obligations exist:

- all decisions of the general meeting of shareholders have to be reported in written minutes, which have to be filed at the office of the company
- the name of the shareholder has to be filed at the Chamber of Commerce.

Branch

A branch or permanent establishment is a legally dependent part of a foreign company through which activities in the Netherlands are deployed. It is not a legal entity.

A permanent establishment can be a factory, office, shop, building site, etc.

A representative of the company who has the authority and uses this authority to enter into and to close agreements for fiscal reasons can also be considered as a branch.

Disclosure requirements

Branch or agency

In general there are no disclosure requirements for a foreign company, which operates through an agency, and has not established a branch or place of business in the Netherlands.

A company incorporated outside the Netherlands, which establishes a place of business in the Netherlands will have to be registered with the Chamber of Commerce. The Chamber of Commerce must also be notified of any change in the registered particulars. When the company has several places of business in the Netherlands it must deliver some information about the other branches to the Chamber of Commerce at which the main branch is registered.

Submission of accounts

Foreign companies trading through a branch have no obligation to submit to the Chamber of Commerce copies of annual accounts of the branch. The foreign company must submit to the Dutch Chamber of Commerce any information that is required for publication in the Commercial Register of its own country.

Foreign companies with its actual management in the Netherlands for publication purposes are considered to be equal to a Dutch company.

Company

When a subsidiary is incorporated in the Netherlands, mostly a B.V. or N.V., there are more extensive filing requirements. The requirements for the contents of the annual accounts, publication, disclosure and audit vary considerably, depending on the size of the company concerned. A company is classified as large, medium or small, by using three criteria: balance sheet asset value, net turnover and average number of employees. It belongs to a particular category when it has met at least two of the three criteria and changes category only if different criteria are met for two consecutive years, or when two out of the three criteria are met in the first year after incorporation.

	Small company	Medium sized company	Large company
Value of assets	< € 4,400,000	< € 17,500,000	≥ € 17,500,000
Net turnover	< € 8,800,000	< € 35,000,000	≥ € 35,000,000
Number of employees	< 50	≥ 50 and <250	≥ 250

When to publish

A company has to prepare its annual accounts within five months after the year-end. This period can be extended with a six months period after approval in the meeting of shareholders.

Annual accounts have to be adopted in the meeting of shareholders within two months after preparation.

A company must publish its annual report within eight days following the adoption of its annual accounts. If these have not been determined and approved in the manner prescribed by law within seven months (under certain conditions, a postponement to thirteen months is possible) after the financial year-end, management must publish them without delay; in that case they must clearly disclose that they have not yet been adopted.

How to publish

Publication is effected by filing a copy of the required information with the Chamber of Commerce where the company is registered according to its articles of association.

What to publish

The publication requirements differ considerably according to the size of the company. They can be summarized as follows:

Document	Small company	Medium company	Large company
Annual accounts:	condensed		
• balance sheet and notes	not applicable	condensed	full disclosure
• profit and loss accounts and notes	condensed	condensed	full disclosure
• special provisions concerning the notes and principles of valuation and determination of financial results		full disclosure exempt for minor exemptions	full disclosure
Management Report	not applicable	full disclosure or available at the company's office	full disclosure
Other information	not applicable	full disclosure	full disclosure

An exemption to the above is possible under certain conditions for a company in a group. A group is defined as an economic unit in which legal entities and partnerships are bound together by their organisational or economic structure. Dutch law provides that the basic financial statements of a legal entity which heads a group shall include consolidated annual accounts, showing its own financial information combined with that of its subsidiaries.

Dutch holding companies, owned by foreign mother companies are not obliged to publish consolidated accounts on certain conditions. The most important conditions are:

- the financial information of the legal entity has been consolidated by another company, the parent, in consolidated annual accounts to which, pursuant to applicable law, the Seventh Directive on Company Law of the Council of the European Communities applies

- this parent jointly and severally and in writing guarantees all debts arising out of the actions of its subsidiaries. You have to realize the consequences of using article 403 of book 2 of the Netherlands Civil Code. A holding structure to minimize liability will be overruled by the written guarantee of the mother company for all debts and liabilities of the subsidiaries for which the guarantee has been given.

Main difference between a subsidiary and a branch

By setting up an operation in the Netherlands one has the choice between setting up a subsidiary or a so-called permanent establishment (branch).

The main differences between a subsidiary and a permanent establishment can be summarized as follows:

- a permanent establishment forms one entity with the foreign company. Therefore a creditor/debtor relation cannot exist. Interest payments are impossible. Between corporations a creditor/debtor relation is very well possible.
- with a permanent establishment one faces the problem of double taxation. Problems can arise in the country of establishment of the legal entity.
- The subsidiary can repatriate profits to the home country by way of dividends. These dividends are subject to a withholding tax of 15%. Under tax treaty this rate is reduced to a far lower percentage for companies, which hold a minimum participation (25%) in the dividend paying company. If the subsidiary transfers dividends to a home country within the EC no withholding tax is due (due to the Mother-Daughter-Guideline). If the permanent establishment transfers dividends to the home country no withholding tax is due.
- another important difference is the liability. In the case of a permanent establishment the liability lies with the home country company. In the case of a subsidiary this company is liable for its own actions, not the home country company.

Shareholdings by non-residents

There is no special restriction on foreigners (companies or individuals) holding shares in Dutch companies.

Partnership

The usual form of commercial partnership is the general partnership (“Vennootschap onder firma” or “V.o.f.”), in which all partners are jointly and separately liable for all debts and obligations of the partnership. Partnerships are not legal entities separate from the individuals who compose them. Each general (or unlimited) partner may bind the partnership by his acts, within the scope of his expressed or implied authority. When a partner retires, he remains responsible for all liabilities incurred before his retirement. At present a bill has been presented to Parliament containing proposals to change the legal status of partnerships. In the future it very well can be possible to create a partnership with its own corporate entity and limited liability to its paid-in capital and reserves.

If one of the partners has limited liability, the partnership is called a limited partnership (“commanditaire vennootschap”). A limited partner (“commanditaire vennoot”) cannot take part in the management of the partnership’s business, nor may his name appear as part of the firm’s name unless he was previously a general partner. In the event he acts on behalf of the limited partnership, his limited liability changes into full liability.

Partnerships and certain details concerning individual partners must be registered in the Commercial Register at the Chamber of Commerce. For a general partnership a written partnership agreement, but not a notary deed, is required. The admission of a new partner requires the consent of the other partners to the extent specified in the partnership agreement. Any foreign company or firm entering into a partnership in the Netherlands should make sure that all rights and duties of the partners are recorded in writing. Partnership annual accounts do not have to be published.

Joint Ventures

Joint ventures (the same wording can be used in Dutch) are sometimes used in the Netherlands, not only for exclusively Dutch operations, but to allow co-operation between Dutch and foreign enterprises as well. The legal status of a joint venture can vary from that of a partnership formed by two or more companies to that of a separate company. It is often difficult to foresee many of the pitfalls that may arise when operating as a joint venture; it is especially important to obtain legal and financial advice about such matters as management, contribution to capital, and methods of covering losses. Consortiums (the same wording in Dutch) are multiparty joint ventures, usually temporary in nature, which are not separate legal entities.

Business finance



Equity finance

In general there are two different ways to finance a business activity: through equity (including intercompany loans) and through loans from third parties, mainly banks. In this brochure we do not enter into the question of the economical and financial aspects of loans from third parties.

In international business the split between equity and intercompany loans needs expert fiscal advice. This split probably will have tax consequences in your own country, but also has relevant tax consequences for the Dutch company. Since the Bosal-legislation the Netherlands also has thin capitalization rules, for which we refer to paragraph 4.6.

Given the nature of this brochure, we can only give you a few examples:

- Dutch companies are often used as a holding company for foreign subsidiaries to obtain the advantages of the Dutch extensive tax treaty network and the participation exemption in the corporate income tax. This enables foreign top holding companies to diminish withholding taxes on dividends from foreign subsidiaries and to receive the dividends in the Dutch holding company at a zero percentage rate. However, the interest on loans to finance the participation used to be non-tax deductible in the Netherlands. As of 1 January 2004 cost (thus including interest) related to all participations, regardless of location, are fully tax deductible as long as the thin capitalization requirements are met. See paragraph 4.6
- interest on non-excessive loans to finance Dutch activities or Dutch subsidiaries is tax deductible
- interest on borrowings to finance loans to foreign subsidiaries under normal circumstances is tax deductible, however see paragraph 4.6, which contains a short description of the thin capitalization rules the Netherlands have introduced since 1 January 2004. Expert fiscal advice on this subject is recommended before the set-up of the financial structure of a Dutch activity or holding company. At the same occasion the applicability of grants and incentives can be reviewed.

Grants and incentives

For many years the Dutch government has been offering substantial grants to companies. There are over one hundred schemes for grants! These schemes are often changed. Some major schemes are described below.

Guaranteed borrowing

The Dutch government participates in the financing of trade and industry in two ways. Firstly it may guarantee the credits of the commercial banks to companies and, secondly, it participates directly in the provision of loans through the National Investment Bank in the Hague, in which bank the Dutch government has a controlling interest. The National Investment Bank, which usually provides medium-term credits, is normally prepared to take more risk than commercial banks and is willing to finance new companies and innovations of all types.

Venture capital

Many different types of investment companies provide venture capital in the Netherlands. A great variety of private and institutional investors provide venture capital through investment or participation in companies.

The Dutch government encourages the financing of small and medium-sized companies by promoting “Private Participation Companies”. The incentives offered by the government are contained in the “Guarantee Arrangement for Private Participation Companies” and this arrangement aims to encourage investors to participate with share capital in small and medium-sized companies.

Special incentives for new technology

A number of schemes exist under this general heading aimed at encouraging the development and use of new technology. Some examples are:

- aid for biotechnology
- aid for the implementation of microelectronics
- special incentives for reducing the burden on the environment.

Research and development

Grants are available to stimulate scientific research. Also in the (wage) tax law there is a special arrangement for research and development. Under certain conditions a tax reduction is given.

Exchange controls

There are no exchange controls currently in force in the Netherlands.

Protection of Intellectual and Industrial Property



Copyright

In the Netherlands copyright is protected by the Copyright Act 1912 (“Auteurswet 1912”). The copyright is the exclusive right of a maker of a work of literature, science or art, or of its successor(s) in title, to publish this work or to multiply it, taken into consideration limitations set by law. According to the Netherlands Supreme Court any original creation in which the hands of the maker is to be recognized is a work protected by copyright.

Trademark

A trademark is a sign that distinguishes goods (products) or services from those of competitors. A trademark can be registered at the Benelux Office for Intellectual Property and gives the exclusive right to use the trademark for certain goods (products) and services within the Benelux, for a period of 10 years (extension is possible).

A trade name can also be registered as trademark

Trade name

Article 8 of the The Paris Convention stipulates that trade names are protected in all Member States of the EU, without any registration or deposit.

In the Netherlands, trade names are protected by the Dutch Trade Name Act of 1921 (Handelsnaamwet 1921).

Registration of a trade name in the Netherlands is no prerequisite for protection. A separate register of all trade names does not exist. The right to a trade name arises by the actual use of a trade name for ones company. Nevertheless, most company and business names are registered in the registers of the Chamber of Commerce.

Patent

In the Netherlands patents are protected by the Dutch Patent Act and/or by the European Patent Convention. In the Netherlands, patents can be obtained in two manners, a Dutch national application or a European patent application designating the Netherlands..

The different taxes within the Netherlands



Administration

The assessment and collection of direct taxes is in hands of “de Belastingdienst” (“the tax department”). All taxpayers subject to Dutch taxes (income tax, corporate income tax) are required to self-assess their own tax liabilities and make returns to “de Belastingdienst” on a timely basis.

Personal income tax

Individuals residing in the Netherlands will be liable to income tax on personal world income. All employees are subject to wage tax. This tax is withheld by their employers. The rates, deductions, exemptions etc. of the wage tax are in line with those applicable in the personal income tax. Wage tax in many cases does not form an advance levy in respect of income tax, but it is a final levy. Individuals at which the income tax to be paid exceeds the wage tax and dividend tax with more than € 43 (2009) or individuals with substantial tax-deductible items have to file an income tax return.

An individual in business as a sole trader or in partnership is taxable on total annual profits irrespective to whether or not those profits are withdrawn from the business.

Income tax is levied through a so-called “box-system”. This box system works as follows. There are three boxes of income with each their own tax rate, one of which is progressive (Box 1) and two of which are fixed (Box 2 and 3). If the income in a Box is negative, it cannot be set off against positive income in another Box (there is only one exemption to this rule. In very special circumstances losses of Box 2 can be offset against positive income of Box 1).

The boxes are:

Box 1: taxable income from work and home

Box 2: taxable income from substantial interest in B.V. or N.V.

Box 3: income from savings and investment.

Box 1:

The taxable income, which will be taxed in Box 1 includes business income, income from employment or former employment (pension), income derived from certain periodic payments and income from your own home. This income is reduced by a number of deductible items, which broadly speaking are associated with this income. An important one is the interest paid on a mortgage for your own home.

The taxable rates in Box 1 are (2009):

Taxable income in Euro's		age < 65	age > 65
0	- 17,878	33.50%	15.60%
17,878	- 32,127	42.00%	24.10%
32,127	- 54,776	42.00%	42.00%
54,776	- —	52.00%	52.00%

The 33.50% rate consists of 2.35% tax and 31.15% social security contributions and the first 42% rate consists of 10.85% taxes and 31.15% social security contributions, while the second 42% and 52% rates consist solely of tax. For taxpayers over sixty-five years old, the 15.60% tax rate consists of 2.35% tax and 13.25% social security contributions and the 24.10% tax rate consists of 10.85% tax and 13.25% social security contributions, since they are no longer liable for several social security contributions.

If an individual makes a property available to a B.V. (or N.V.), considered as a substantial interest, the resulting income and capital gains on that property are also taxed in this box.

Box 2:

The income from substantial interests is classified in this box. An individual who holds 5% or more of the shares (or profit-sharing certificates) of a private company with limited liability (B.V.) or a company limited by shares (N.V.) is considered to have a substantial interest.

To determine whether or not an individual has a substantial interest, the shares of his partner or his blood relatives or relatives by marriage, are taken into consideration as well.

Not only income on the shares, but also capital gains on these shares are taxed in Box 2.

The tax rate is 25%.

Box 3:

Income from savings and investments is taxed in this box and applies to both residents and non-residents. This box includes assets like investment portfolios, saving accounts and real estate (except the main residence, which is classified in Box 1). For non-residents only a limited set of investments is taxable, as for instance real estate property in the Netherlands. Income from assets in this Box is fixed at 4% of the total net value (assets minus liabilities). This fixed income is taxed at a fixed rate of 30%, so the effective rate in Box 3 is 1.2% of the net equity (assets minus liabilities). Actual dividends, interests and rental income is not taxed separately. Withholding taxes on dividends on shares taken into account in Box 3 are credited against the total income tax due.

There are no local income taxes.

Wage tax

All employers (and this includes companies, resident or non-resident, partnerships, individuals, trusts etc.) have a legal responsibility to pay the wage tax and social insurance contributions relating to emoluments paid to their employees. Emoluments include normal wages or salaries as well as benefits and other extras.

The combined wage tax return (payment of wage taxes and employee insurance contributions by means of a single tax return)

The withholding agents (an employer) have to submit a single combined wage tax return to the Tax Department. This return replaces (since 2006) the former wage tax and the social security contributions (LB/PVV) returns made to the Tax Department and the employed persons insurance scheme contribution return made to UWV (Employee Insurance Schemes Implementing Body). The new combined wage tax returns must be submitted electronically.

The combined wage tax return can be submitted on a monthly basis or a 4-week basis. Employers who pay their salaries on a 4 weekly basis must submit their returns every 4 weeks. In the case of all other employees, these returns must be submitted on a monthly basis from as of the beginning of 2006. Submission of returns on a quarterly or annual basis is no longer possible as from 1 January 2006. This requirement also applies to remuneration paid to directors and principal shareholders by their own companies with limited liability.

If a contractor hires a sub-contractor and the subcontractor goes bankrupt, the contractor can be held liable for the non-paid wage taxes and social security contributions of the

sub-contractor. However, the contractor can take precautions, such as paying a portion of the invoices to a special bank account (G-rekening) of the subcontractor, which can only be used to pay wage taxes and social security contributions.

Corporate income tax

Corporate income tax is charged on worldwide profits of companies resident in the Netherlands (and also on profits which arise from activities carried out in the Netherlands through a branch of a foreign company).

Company's residence

Companies registered in the Netherlands are regarded as being resident for tax purposes. Companies registered elsewhere will be regarded as resident in the Netherlands if central management and control is exercised here. In very broad terms central management and control is exercised at the location at which the directors hold their board meetings. A company, which is incorporated according to Dutch law (B.V. or N.V.), is deemed to be resident in the Netherlands even if the central management and control is exercised elsewhere. However, in tax treaties this assumption of residency is set aside by the common rule of the place of central management and control.

Tax rates (2009)

Taxable profit up to € 200,000: 20%

Taxable profit above € 200,000: 25.5%

In 2007 a group interest income box has been introduced in which interest income from group companies are taxed at 5%. However, this bill is still awaiting approval of the European Commission, so therefore is not in force yet (see hereinafter paragraph 4.7). Also a patent royalty income box has been introduced, in which royalties received are taxed at 10%. This royalty income box has been approved by the European Commission (see hereinafter paragraph 4.8).

The fiscal year is in principle the calendar year, unless a different year is adopted under a company's articles of association. Capital gains or losses are treated as normal income and taxed accordingly. There is no special tax rate for capital gains. A form of rollover relief on sale of fixed assets is available.

Dutch-source income of non-resident corporations is taxed at the same rates. There is no additional branch profits tax.

Losses

As of 1 January 2007 losses may be offset against the taxable profits of the preceding year and carried forward for a period of nine years.

The carrying over of losses may be subject to limitations when the ownership of the company changes.

Filing of tax returns

Tax payers are obliged to file a tax return every year, within six months at the end of the year concerned. An extension of this time limit may be permitted. Tax is payable within one month of the resulting assessment. A provisional assessment for the current year may be raised.

Taxable income

The main principle is that all profits generated during the lifetime of a business or trade are taxed. These lifetime profits are attributed to particular years on the basis of “sound business practice”. The computation of profits for tax purposes need not follow commercial profits unless law and jurisprudence provide otherwise.

Interest

From a formal point of view corporate income tax is payable on 1 July of the taxable year. As at that moment it is unknown what the taxable amount is, interest is payable at a rate that is decided by the Ministry of Finance quarterly. The interest percentage for the first quarter of 2009 is set on 4.9% and for the second quarter 2009 on 3.5%.

Investment deduction

Investments in qualifying fixed assets generate a deduction in taxable profits. This is a declining percentage of the invested amount in a year. The investment deduction reduces the taxable profit. The investment deduction varies from 1% to maximum 25% (2009) of qualifying investments. The investment deduction can be claimed if the total of qualifying investments made during the year is between € 2,200 and € 240,000 (2009).

The investment deduction does not reduce the cost of the asset for tax depreciation purposes. The investment deduction is subject to recapture if assets are disposed off within a certain period of time. Some fixed assets are ineligible for investment credits (e.g. land, private cars)

Participation exemption

An important advantage of the Netherlands is the participation exemption.

If the participation exemption is available, dividends and capital gains arising in respect of shareholdings by a Dutch parent company are free from corporate income tax.

Capital losses are only deductible under certain conditions, such as upon liquidation of the participation.

As of 1 January 2007 various amendments to the participation exemption came into force, the most important ones being:

- the number of requirements, under which a Dutch (parent) company can claim the participation exemption, is reduced to two:
 - » if the participation exemption is available, dividends and capital gains arising in respect of shareholdings by a Dutch parent company are free from corporate income tax (capital losses are only deductible under certain conditions e.g. upon liquidation of the participation)
 - » the parent must have a shareholding of at least 5% or more of the nominal paid-up share capital of the subsidiary
- the subject to tax test and the non-passive portfolio investment test are abolished and replaced by new requirements. The new requirements are that the participation exemption (a special definition for tax purposes) shall not apply if:
 - » the subsidiary is a passive portfolio subsidiary, which
 - » is subject to an effective corporate income tax of less than 10%. (based on Dutch tax principles).

In such cases, double tax relief is not given by way of the participation exemption but instead by way of a tax credit system. A passive portfolio subsidiary for this legislation is defined as a company of which the assets, on a consolidated basis, consist of 50% or more passive portfolio investments. Group financing is deemed to be passive as well as other forms of making assets available within a group of companies.

Expenses relating to a foreign participation that qualified for the participation exemption in the past were non-deductible for Dutch tax purposes. However, the ECJ decided in the Bosal-judgment that this regulation is discriminatory in terms of the EU treaty.

As a response to this judgment, three changes of law became effective on 1 January 2004. The three changes are:

- 1) amendment of the participation exemption: all cost in relation to foreign participations will be tax deductible
- 2) introduction of thin capitalization rules (see paragraph 4.6)
- 3) limitation of the possibilities of setting off losses for holding companies.

Depreciation

Depreciation of fixed assets for tax purposes is required by law. As of 1 January 2007 a major change in the (fiscal) depreciation-method of assets came into force.

Firstly, tax depreciation on real estate is limited. For real estate used in a business no further depreciation is allowed as from the moment the fiscal book value is lower than 50% of the value for real estate by tax purposes. Depreciation on real estate used for investment purposes is not further allowed as from the moment the book value of this real estate is lower than 100% of the value for real estate tax purposes. For more information about real estate taxes, please see paragraph 4.16. The value of real estate for real estate tax purposes will be (re)valuated every year on behalf of the local authorities. Secondly, depreciation of purchased goodwill is extended from an average term of 5 years to a maximum charge of 10% per annum.

Thirdly, the general depreciation of all other assets (like cars, computers etc.) is limited to a maximum charge of 20% per annum.

Stock valuation

The following stock valuation methods are permitted: valuation based on cost, valuation based on cost or lower market value, or the base stock method. The cost of the stock can be determined by either the FIFO or the LIFO method.

Interest deductions

Interest is generally deductible unless paid to shareholders as far as the interest percentage is considered to be excessive. Limitations on the deductibility of intercompany interest, inter alia, affects interest paid on debts arise from:

- a) dividends and capital repayments declared but unpaid
- b) dividends and capital repayments declared and paid when financed through an intercompany loan
- c) the acquisition of the shares of a company from a group company through an intercompany loan.

In cases b) and c) the interest deduction is not denied if the tax payer demonstrates either an overriding business reason for the transaction or that the interest received by the Dutch or foreign creditor is subject to tax at a rate, which is reasonable by Dutch standards ("compensatory tax requirement"). Limitation a) will not apply if there is an overriding business reason. If the creditor is based in a high tax jurisdiction, but has substantial tax losses, excess tax credits or similar claims, which effectively cause the creditor not to be subject to tax at a reasonable rate, the "compensatory tax requirement" cannot be met.

Foreign-sourced income

Foreign-sourced income is included in the worldwide income of Dutch residents. In most cases, foreign-sourced income is exempted from Dutch taxation unilaterally or under double tax treaties.

Foreign relief tax

A resident company is taxed on its worldwide income. Certain types of foreign source income (for instance, income derived through a permanent establishment abroad and income from foreign real estate) are exempt from tax, either unilaterally or pursuant to treaty provisions. The exemption is calculated as a pro rata reduction of the amounts of tax computed on worldwide income. Foreign losses can reduce current taxation on domestic income under certain circumstances.

Other types of foreign income are normally fully taxable in the Netherlands, but a credit for foreign tax may be granted under various tax treaties or, unilaterally, with respect to dividends, royalties and interest derived from certain developing countries.

Corporate groups

Under certain conditions, a parent company may form a "fiscal unity" with one or more "wholly owned" (95%) subsidiaries. For the purpose of corporation tax, this means that all companies in the fiscal unity are taxed as one. The main conditions are as follows:

- the parent company must own at least 95% of the shares of the subsidiary
- the parent company and the subsidiaries must have the same fiscal year
- creation and dissolution of the fiscal unity can take place at any moment within the year
- a fiscal unity with a company, which is established under the laws of a foreign country, but having its business in the Netherlands is possible: a fiscal unity with a non-resident company carrying on a trade through a permanent establishment in the Netherlands is also possible.

The main advantages of a fiscal unity are that the losses of one company can be offset against profits from another, that fixed assets can be transferred at book value from one company to another.

However, the disadvantage is that the lower tax rates can only be taken into account once.

Related party transactions

Transactions between related parties, which are not concluded on an arm's length basis, may be disregarded or may be adjusted appropriately.

Withholding taxes

Dividends, whether or not paid to resident or non-resident recipients are subject to withholding tax at 15% (used to be 25%, but is reduced since 2007). A further reduced percentage may be provided by a double tax treaty. Resident shareholders can offset this withholding tax against their corporate or personal tax liabilities. For non-resident shareholders the withholding tax is a final tax.

Dividends paid by a Dutch company to a Dutch mother-company, that owns more than 5% of the paid-up capital are not subject to withholding tax. Because of EC-regulations, a dividend paid by a Dutch company to an EC mother-company, that owns more than 25%, (under some circumstances 10%) of the paid-up capital or voting-rights of that company is no subject to withholding tax.

Interest and royalties paid by a Dutch corporation are no subject to withholding tax.

Thin-capitalization / Bosal-legislation

As of 1 January 2004 with the introduction of the Bosal-legislation the Netherlands know thin capitalization rules. However, the Bosal-legislation entails more than just an introduction of thin capitalization rules. In the scope of this brochure we give a short summarization:

1. Cost related to all participations, regardless of location, are fully tax deductible. This rule is also applicable concerning fiscal years before 2004, if the participation is located in the European Union, the European Economic Area or most countries with which the Netherlands have concluded a tax treaty, provided the tax assessment has not yet been finalized. Holding companies located in the Netherlands have significant benefits especially when they combine holding activities with taxable activities. From 1 January 2004 onwards thin capitalization rules are applicable for all taxpayers. A Dutch entity is not effected by the thin capitalization rules in the following situations:
 - the entity is not part of a group
 - there is no debt to a related party
 - interest income from related parties equals or exceeds interest expenses to related parties
 - the balance of all debts minus receivables is less than € 500,000
 - the entity and her creditor are joint in a fiscal unity

- the debt-to-equity ratio of the entity does not exceed 3:1 plus € 500,000; the fixed ratio test is passed
- the debt-to-equity ratio of the entity does not exceed the debt-to-equity ratio based on the commercial balance sheet of the group; this means the group ratio test is passed.

When thin capitalization rules apply, the interest related to the excess debt is partly non deductible. In order to determine the amount of excess debt, the entity can choose each year between two tests:

- fixed ratio test: to the extent the average net liability (balance of loans payable and receivable) of the entity exceeds 3 times its average fiscal equity, plus € 500,000, the difference is excess debt
- group ratio test: in order to determine the total amount of equity and debt of the entity and of the group, the (consolidated) commercial accounts of the ultimate parent company of the group are decisive. The group is not restricted to Dutch entities. In case both tests lead to excess debt, one of the tests has to be taken into account to determine the amount of excess debt.

In that case a related part of the intercompany interest is not tax deductible

2. in general, losses can be effectively offset against taxable profits from other years.

Losses can be carried back (1 year) and carried forward (for 9 years).

Losses from holding and financing companies can only be utilized in years in which the activities of these companies do not differ from the activities in loss-making years, i.e. years in which the companies were still pure holding and financing companies. Capital injections in these situations can be ignored.

Conclusion

The Bosal-legislation regarding deductibility of intercompany interest provides significant opportunities for Holding companies based in the Netherlands, such as the ability to tax-effectively finance foreign acquisitions (partly) with interest bearing loans, provided the holding activities are combined with taxable activities. Through custom made tax planning the thin capitalization rules can be avoided rather easily.

Group interest income box

In 2007 a group interest income box has been introduced in which interest income from group companies are taxed at 5%. However, this box is still awaiting approval of the European Commission, so it is not yet active. At this moment it is unlikely that this legislation will be approved by the EC.

If this box becomes active, it will be possible to have the balance of intra-group income and expense effectively taxed at a reduced rate of 5%, upon request. The box is optional,

which allows companies having more inter-company interest expenses than interest income to continue deducting their interest cost at the general tax rate. A condition for application of the interest box is that the entire (Dutch) group joins in the election for the interest box for a period of at least three years. The amount eligible for the 5% rate is capped at the legal interest (“heffingsrente”) on the average equity of the tax payer in the relevant year. Therefore, interest on group loans may, and in practice often will, be taxed at a higher effective rate than 5%.

Patent royalty box

The patent royalty box has become effective retroactively as of 1 January 2007. In 2006, the Dutch Parliament adopted the patent royalty box as a means to stimulate new innovation. For a clear understanding we mention that only patented (either in the Netherlands or elsewhere in the world) intellectual property rights qualify. However, patented trademarks and logos do not qualify for the patent royalty box.

The patent royalty box is only open to intellectual property developed after 2006. In case the turnover of a patent royalty company includes more than the bare remuneration for intellectual property, rather complex legislation is applicable.

In the patent royalty box, benefits, derived from self-developed intellectual property, will effectively be taxed at a corporate income tax rate of 10%.

Also the patent royalty box is optional. If the taxpayer does not choose for this box treatment then all royalties are taxable at the normal tax rate. However, the new law introduces a change compared to the past situation. All development cost can be charged to expense, i.e. it is no longer required to (partly) capitalize these cost. This in fact means that royalties received are at first considered to be a remuneration for the development cost and, after the turnover exceeds the development cost, are taxed at 10%. The 10% effective rate applies to all royalties received, whether or not from affiliated parties. Furthermore, the 10% rate is not limited to royalties received, but it applies to all benefits derived from the pertinent intellectual property.

The benefits from the patent royalty box are capped. In short, the profits realised with patents are only effectively taxed at 10%, as far as the turnover of the patents do not exceed four times the total development cost. Any excess of profits is taxed at the “normal” rate. This means that the patent royalty box is only interesting for patents with a relatively high development price. However, the development cost of failures can be set off against the development cost of successes.

Capital gains tax

Capital gains or losses are considered as normal corporate income and taxed accordingly. There is no special tax rate for capital gains.

Branch profits tax

Dutch source income of non-resident companies is taxed at the same rates as normal corporation income tax. There is no additional branch tax.

Taxation of partnerships

In chapter 2 we talked about partnerships. The their mentioned partnerships are fiscally transparent. This means that the partnership itself is not a taxable entity; it does not have to file income tax returns. Each partner of the partnership has to file his participation in the partnership in its own tax return.

Value added tax

Value added tax (VAT) is a general consumer tax, included in the price paid by consumers for goods and services. Consumers pay this tax indirectly and enterprises remit it to the Tax Department. In the Netherlands there are four taxable activities:

- the supplying of goods
- the rendering of services
- the acquisition of goods by entrepreneurs
- the importation of goods.

All enterprises, with a few exceptions, pay VAT. The VAT paid by one enterprise to another may be deducted from the VAT owed.

There are three rates of VAT (2009):

- the general rate of 19%
- the lower rate of 6%, which mainly applies to food, books, newspapers and drugs
- the zero rate, which mainly applies to goods and services involved in international-trade, so that goods can be exported free of VAT.

The period to which VAT returns relate may be a month, a calendar quarter or a year, depending on the amount of VAT to be paid. The VAT return must be submitted within a month at the end of the period to which it relates. The VAT owed must also be paid within this period.

Excise duty is levied on certain consumer goods, including petrol and other mineral oils, tobacco products, alcohol, alcoholic beverages and non-alcoholic beverages. Like VAT, excise duty is included in the price paid by consumers for these goods. The tax is remitted by the manufacturers and importers of the goods concerned.

Company capital duty

Capital tax is abolished since 2006.

Transfer tax

Transfer tax of 6% is levied on the acquisition of real estate situated in the Netherlands and of rights related to Dutch real estate. The purchaser is liable to this tax.

Tax treaties

The Netherlands have concluded tax treaties with more than 60 countries all over the world. The treaties can all be described as relatively favourable. As many countries levy source taxes on interest, dividends and royalties, a tax treaty that reduces this tax is desirable. A Dutch (intermediary) holding can therefore play a significant role in relation with countries like for example Israel and Hungary. The withholding source tax on dividends paid by a Dutch company to a company in Israel, holding at least 25% of the shares in the Dutch company, will be subject to 5% dividend withholding tax. Interest and royalties paid by the Dutch company will not be subject to Dutch withholding tax. In the appendix an overview is given of withholding taxes with treaty and non-treaty countries.

Transfer pricing

Transactions between affiliated companies should be at arm's length, as if they were transactions between third parties. In 2002, a provision was implemented in Dutch legislation to facilitate the tax authorities to check transfer prices.

The purpose of this provision was to avoid that non arm's length profit transfers between affiliated companies would affect the calculation of the taxable profit.

In 2002, a provision was implemented in Dutch legislation to facilitate the tax authorities to check transfer prices. The purpose of this provision was to avoid that non arm's length profit transfers between affiliated companies would affect the calculation of the taxable profit. Also an important administrative measurement has been implemented to secure availability of the required information to assess whether the agreed upon transfer prices are at arm's length. Dutch legislation entails stipulations, which require that the required information must be available to the tax authorities from the moment the transaction has taken place.

The company must keep a tax file with underlying documentation, which demonstrates that the transfer prices are at arm's length. It is important to comply with this administrative rule for if the information turns out not to be readily available to the taxpayer, in practice it must gather this documentation within 4 weeks minimum and 3 months maximum. If the taxpayer still fails to comply with the administrative requirement after this term, the burden of proof as regards the arm's length nature of the transfer prices applies will shift to it, and the tax payer will have to demonstrate that the transfer prices are at arm's length.

APA/ATR-rulings

For international groups it is possible to conclude rulings with the Dutch tax department. However, to be more in line with international practice and as a reaction on international critics the Dutch ruling practice is transformed in a system of Advance Pricing Agreements and Advance Tax Rulings (APA/ATR-practice). In this APA/ATR-practice agreements on transfer prices in (international) related relationships will form an essential part.

In case of "run-through"-activities (= receiving and passing on interest, dividends and royalties within a group) according to the APA/ATR-practice substance criteria will have to be met. If no real risks are attached to such activities a company will only receive a ruling from the Dutch tax department in case the company agrees to supply relevant information concerning interest, dividends and royalties spontaneously to the country of origin of the interest / dividends / royalties.

Although these stricter rules have been set up to make it less attractive to set up activities in the Netherlands with only fiscal and no real economic background, the Netherlands still have the very interesting possibility to conclude rulings in respect to intercompany pricing, loans and royalty activities.

Local taxes

There are several municipal taxes. The most important is real estate tax. Companies and individuals are subject to a municipal tax on the ownership of real estate in the Netherlands, based on the market value of this real estate. The amount of tax due varies widely among municipalities, but is generally a comparatively small percentage of value or income of the property in question.

In the Netherlands there are no local income taxes.

Inheritance tax

Individuals who reside in the Netherlands are liable to pay inheritance tax on certain lifetime gifts and on assets transferred at death. The rates (5% up to 68%) depend on the amounts received and the relationship of the beneficiary to the deceased or the grantor. There are several exemptions for both gift tax and inheritance tax depending on the circumstances.

A revision of the inheritance tax is contemplated.

Social security



General description

The Netherlands operate a comprehensive social security system, which includes health care, sickness benefit, unemployment benefit, old age pension etc.

All individuals residing in the Netherlands are required by law to be insured under the national insurance schemes. These schemes cover the AOW (general old age pension act), ANW (general surviving relatives act), AWBZ (general act on exceptional medical expenses) and the AKW (general child benefit act).

All individuals working in the Netherlands as an employee are also compulsory insured under the insurance schemes for employees. These schemes cover disablement benefits, health insurance and unemployment insurance.

Many employers provide their (senior) employees with independent pension plans. The state pension (AOW) is generally regarded as being the bare minimum required to support an individual in retirement and tax relief exist to encourage private pension funding.

Health Care Insurance Act

The Health Care Insurance Act applies to practically all residents of the Netherlands. Under the terms of the Act, a basic insurance policy must be concluded with a healthcare insurer. The contribution for the basic insurance policy (= the nominal contribution) may differ between healthcare insurers, but will amount to approximately € 1,100 per year. Persons under the age of 18 are required to have a basic health insurance policy, but do not have to pay the nominal contribution. Because the nominal contribution under the Health Care Insurance Act is higher than the former nominal contribution for the state health care fund, persons subject to this mandatory insurance cover may be eligible for compensation in the form of a healthcare surcharge. This healthcare surcharge must be applied for and the application submitted to the Tax Department. The amount of the healthcare supplement depends on income and the family situation.

Please see www.toeslagen.nl for further information on healthcare surcharges. In addition to the nominal contribution, everyone who receives an income from a (previous) employment contract, taxable operating profit, taxable results on other work or taxable periodic payments or allowances must pay an income-related contribution. Persons under the age of 18 who receive such income must also pay an income-related contribution depending on their income. We point out that personal deductible items, such as mortgage interest, do not count when determining the contribution for your income. The maximum contribution on income for 2009 will be € 32,369 and the premium will for 2009 will be 6.9% of the contribution on income, which means that the maximum income-related contribution for 2009 amounts to € 2,233.

The Tax Department is responsible for assessment and collection of the income-related contribution. For you as an employer, this means that you are responsible for calculating the income-related contribution, deducting it from the employee's net salary and paying it to the Tax Department via the wage tax return. The employer is required to reimburse this income dependent contribution to the employee. This reimbursement is taxed with respect to payroll tax and social security contributions, but remains untaxed for the purpose of other wage taxes. This means that the employee receives his income-related contribution back from the employer, but owes payroll taxes and social security contributions over the amount received. If an employer reimburses more than the income-related contribution deducted from the employee, this excess amount is subject to all wage related taxes.

The income-related contribution payable by self-employed persons (general partnerships, companies, sole proprietorships) is 4.8%. This contribution is levied by means of a separate tax assessment.

Individuals becoming resident in the Netherlands



Place of residence

An individual who is resident in the Netherlands will be liable to income tax on personal income. Residency is determined by actual circumstances. Leading criterion is a “durable bound” with the Netherlands. An individual can have a “durable bound”, even if the time spent in the Netherlands is short.

Actual circumstances important for the “durable bound” are:

- the place where you live (single)
- the place where the family lives
- the centre of social life, memberships of clubs, sporting clubs, etc.

Circumstances as the place where an individual receives his mail and his bank account for the day-to-day expenses are of secondary importance.

The answer to the question of the fiscal residency will be determined by the actual circumstances.

Fiscal importance of the place of residency

The place of residency determines whether or not an individual is fully taxable for the income tax (resident tax payer) or just for certain items (non-resident tax payer).

Furthermore the Dutch inheritance tax is applicable if an inheritance or gift is received from a person who at the time of death or gift had his residence in the Netherlands.

Inheritance or gift from a Dutch non-resident citizen, who has been a resident of the Netherlands within a period of 10 years before death or date of gift is taxed in the Netherlands at normal rates.

30% ruling

In the Netherlands there are special conditions for foreign employees working for a Dutch employer for a maximum of 120 months. They can obtain a 30% cost deduction from their taxable income, providing they perform activities in the Netherlands and they have a special knowledge or capability, which is not or hardly available in the Netherlands.

Employment in the Netherlands



Work and residence permits

Work permits and residence permits are not required for foreign nationals, temporarily making business trips to the Netherlands nor for citizens of countries in the EC. They are necessary for people from outside the EC, wishing to take up paid employment in the Netherlands and applications should be made in advance of arrival. Normally it must be demonstrated that there is no Dutch resident who could satisfactorily do the job and the salary to be paid is not below prevailing Dutch rates. Different rules apply to owners of businesses. A businessman who wishes to live in the Netherlands and wishes to establish a business will require a residence permit. To do so he will need to demonstrate that he will be bringing into the country sufficient funds to establish the business and that the business can realistically be expected to support him and his dependants without recourse to other employment.

Employee rights

There is significant legislation giving rights and protection to employees. Apart from legislation, many employers have to follow collective labour contracts (CAO's), which grant employees more rights. The following should be regarded as no more than a summary of the more significant matters:

- the employee is entitled to a written statement of the terms of his employment
- unless specified otherwise, the employer is obliged to give at least one month's notice to the employee to terminate the employment. This term may be extended up to a maximum of 26 weeks, depending upon the duration of employment and the age of the employee

- except where a contract was drawn up for a limited period of time, an employee cannot be dismissed without the approval of a special government agency, which will evaluate whether or not the dismissal is fair and reasonable. Employees cannot be dismissed when they are ill, pregnant and also in some other cases
- there is a legal minimum wage in the Netherlands
- holidays without reduction on salary are at least four weeks annually based on full time employment (legal minimum)
- Dutch law prohibits discrimination in employment on grounds of sex, race or nationality
- there are a number of laws specifying minimum standards for working conditions in factories, offices and shops. The Labour Commission organizes inspections of places of work to check on such matters as fire and safety hazards, cleanliness, lighting and ventilation
- although the rule is “no work, no pay”, many CAO’s oblige the employer to continue full payment of wage during the first two years of illness. Several important aspects of employees’ working conditions are not governed by statute
- many industries have conditions set as a result of negotiation between employers’ associations and trade unions or directly between employer and employees and are thereby reflected in the employment contract referred to above
- apart from those who are under 18 years of age there are a few legal limits on hours of work and type of employment. In practice most workers are employed on a five-day week averaging between 36 and 40 hours. Overtime is usually paid for at a premium rate
- many employers in the Netherlands supplement pay salaries with their own range of benefits including for example pension schemes. Company cars and private health insurances are commonly provided for executive and management staff. Such benefits are taxable.

Ceasing to have a presence in the Netherlands



Doing business in the Netherlands for most entrepreneurs is a pleasure and adding value to the company. There are circumstances however (e.g. change of activities) that lead to the sale or liquidation of the Dutch commercial activities. Direct consequence will be capital gains or losses on the assets of the company. For individuals with their actual place of residence outside the Netherlands under normal circumstances this will also lead to an end of their fiscal obligations in the Netherlands. For legal entities as the B.V. this will not lead to an end of its fiscal obligations as a Dutch B.V. is taxed in the Netherlands for its worldwide income.

Disposal of a subsidiary

After a B.V. (subsidiary of a foreign shareholder) ends its activities, the shareholder may end its Dutch tax consequences by selling the shares in the Dutch B.V. This involves various tax, commercial and legal issues.

Tax issues

If these shares are held by the foreign mother company, the sale of the shares will not have direct tax consequences in the Netherlands. The mother company will have to consider her own domestic tax laws in relation to this sale.

If the shares are held by a foreign individual and this individual holds more than 5% of the share capital the sale of the shares may be taxed in the Netherlands as Box 2-income (income from substantial interest, see paragraph 4.2). Tax treaties determine whether or not actual levy of taxes takes place.

Commercial issues

Before disposing the subsidiary, the commercial effects should be considered, such as what is the commercial effect on for instance the brand name, suppliers, customers etc.

Legal issues

For the sale legal documents should be drafted. These can be very complicated and in anyway should include provisions for indemnifying the purchaser should any unforeseen liabilities arise from the former activities. Therefore it is advisable to seek expert professional assistance (legal, accounting and tax) when considering a sale.

Winding-up a company

A foreign shareholder can end its business activities in the Netherlands by a decision that the Dutch B.V. will be liquidated after the business activities have been ended.

This decision involves various tax and legal issues.

Legal considerations on winding-up a Dutch B.V.

Sometimes the words “insolvency” and “winding-up” are used interchangeably, although a company can be wound up by its shareholders at any time without actually being insolvent. If the company is insolvent, a professional insolvency practitioner must be appointed to realise the company’s assets for the benefit of its creditors. Only when the creditors have been paid in full the company’s owners will be entitled to any remaining assets.

Where the company has not yet gone into liquidation, but the directors ought to know that the company has no reasonable prospect of avoiding such a situation, directors might considered to be responsible for additional liabilities of the company. This is the case unless they took every reasonable precaution to minimize the potential loss to the company’s creditors.

Tax considerations of insolvency and winding-up

The fact that a company goes into liquidation does not alter its obligation to pay tax or continue to file a tax return. In case of final payment to the shareholder, please be aware of withholding tax obligations.

There are no special tax rules for corporate insolvency or winding-up. A point of attention and planning in this case is amongst others to try to maximize the use of any trading losses.

Emigration of a company

It is possible for a company to become non-resident for Netherlands tax purposes. This could happen to a company incorporated under Dutch law as a result of the relevant tax treaty, which typically deems tax residence to be in the country of effective management. Alternatively, a company not incorporated under Dutch law, but under foreign law could move its place of central management and control outside the Netherlands. When emigrating, the company must be aware that Dutch taxes can be levied on silent reserves and goodwill in the company at the moment of emigration.

Individuals leaving the Netherlands

An individual who leaves the country permanently (at least for a period of more than a year with the intention to leave more or a less definite) and has no ties whatsoever with the Netherlands anymore (work, house, things that determine residency (see paragraph 6.1)) will not be taxed in the Netherlands anymore. When an individual leaves, he will have to file a final tax return. Depending on the personal circumstances other issues might have to be investigated.

APPENDIX



TREATY AND NON-TREATY WITHHOLDING TAX RATES

The Netherlands do not levy withholding taxes on interests, royalties and rentals nor on personal services. The Netherlands only levy withholding taxes on dividends.

	Individuals Companies	Qualifying Companies (1)	Participation Portfolio Requirement Minimum* %
	%	%	%
<i>Non-Treaty Countries:</i>	15	15	
<i>Treaty Countries:</i>			
Albania	15	0/5	50/25
Argentina	15	10	25
Armenia	15	5	10
Aruba	15	7,5	25
Australia	15	15	—
Austria	15	5 (1)	25 (2)
Bangladesh	15	10	10
Belarus	15	5 (3)	25
Belgium	15	5 (1),(4)	10
Brazil	15	15	—
Bulgaria	15	5	25
Canada	15	5	25/10 (5)
China	10	10	—
Croatia	15	0 (6)	10
Czech	10	0	25
Denmark	15	0 (1)	10
Germany	15	10	25 (5)
Egypt	15	0	25

Estonia	15	5	25	
Philippines	15	10	(4)	10
Finland	15	(7)	0	(1) 5
France	15	5	(1)	25
Georgia	15	0/5		50/10
Greece	15	5	(1)	25
Hungary	15	5		25
Ireland	15	0	(1)	25 (5)
Iceland	15	0	(9)	10
India	15	10		–
Indonesia	10	10		–
Israel	15	5	(10)	25
Italy	15	5/10	(1),(11)	10 – 50 (11)
Japan	15	5		25 (5),(12)
Kazakhstan	15	5		10 (2)
Korea	15	10	(4)	25
Latvia	15	5		25
Lithuania	15	5		25
Luxembourg	15	*		2½ (1)
Macedonia	15	0		10
Malawi	25/0	25/0	(22)	–
Malaysia	NL 15	NL 0		25 (2)
Malta	NL 15	NL 5		25
Mexico	15	0	(15)	10
Morocco	25	10	(6)	25
Moldavia	15	5	(16)	25
Netherlands Antilles	15	8,3		25
New Zealand	15	15		–
Nigeria	15	12½		10 (5)
Norway	15	0		25
Pakistan	20	10		25
Poland	15	5		10
Portugal	10	10	(1)	–
Romania	15	0/5		25/10
Russian Federation	15	5	(17)	25
Singapore	15	0		25 (2)
Slovakia	10	0		25
Slovenia	15	5		10

South Africa	15	0	10
Spain	15	5 (1)	25 – 50 (19)
Sri Lanka	15	10	25
Suriname	20	7½/15 (20)	25
Sweden	15	0 (1)	25
Switzerland	15*	0 (6)	25
Taiwan	10	10	-
Thailand	25	NL 5	25
Tunisia	20	0	10
Turkey	20	15	25
Ukraine	15	5 (16)	20
Uzbekistan	15	5	25
United Kingdom	15*	5 (1)	25 (2),(5)
United States of America	15	5/0	10/80 (5)
Venezuela	10	0	25
Vietnam	15	5/7 (21)	25 – 50 (21)
Yugoslavia	15	5	25
Zambia	15	5	25
Zimbabwe	20	10	25

NOTES:

* Unless mentioned otherwise, it must be a directly held participation.

- (1) Members of the European Community (EC) are covered by the Parent/Subsidiary Directive. Pursuant to this directive, Dutch company dividends paid to EC Companies are exempt from Dutch withholding tax provided the following conditions are met (from 1 January 2007 onwards):
 - a. the EU parent is subject to corporate income tax in its state of residence
 - b. the EU parent owns at least 5% of the capital (or, in some cases, 5% of the voting power) in the Dutch company.
- (2) Participation requirement: direct or indirect.
- (3) 0% in case of direct participation of at least 50% with a minimum investment of € 250,000. 0% in case of direct participation if there is a guarantee of the government of the home-state of the mother-company.
- (4) Portfolio rate in case the dividend receiving company must pay corporate income tax over the received dividends.

- (5) % of the votes.
- (6) Unless the participation is held or solely kept to make use of the exemption/reduction.
- (7) No withholding tax as long as Finland applies the imputation system.
- (9) Unless the dividend is set off against Irish profit: in that case 15%.
- (10) Israel levies 10% in special cases.
- (11) 5% in case of participations of more than 50% of the voting shares held at least 12 months before the dividend decision. 10% in such participations if 10% - 50% of the voting shares are held.
- (12) Participation must have been held at least six months in the book year over which the dividend is paid.
- (13) No withholding tax in case of a participation (direct or indirect) of at least 50% under certain conditions.
- (14) Maltese tax on profit is reduced to 15% in case investment incentives are applicable on the dividend paying company and the Dutch participation exemption is applicable on the dividend receiving company.
- (15) 5% in case the Dutch participation exemption is not applicable.
- (16) 0% in case of a government guaranteed investment. 0% in case of a direct participation of 50% and an investment of at least \$ 300,000.
- (17) Investment requirement of at least € 75,000.
- (18) 10% in case the dividend receiving company has to pay corporate income tax on the received dividends.
- (19) Participation requirement 50%, alone or together, if everyone at least holds 25%.
- (20) 7½% if the participation is not solely held for the reduction.
- (21) 5% in case of a direct, or indirect, participation of at least 50% and an investment of more than \$10,000,000. 7% in case of a direct, or indirect, participation of 25% - 50%.
- (22) 0% in case the dividend receiving company has to pay corporate income tax on the received dividends which is not possible to its method of territorial taxation.

OFFICE ADDRESSES

PKF Wallast Amsterdam

P.O. Box 74681
1070 BR AMSTERDAM
THE NETHERLANDS
Tel: +31 (0)20 653 18 12
Fax: +31 (0)20 653 18 47
E-mail: amsterdam@pkfwallast.nl

PKF Wallast Delft

P.O. Box 332
2600 AH DELFT
THE NETHERLANDS
Tel: + 31 (0)15 261 31 21
Fax: + 31 (0)15 261 53 82
E-mail: delft@pkfwallast.nl

PKF Wallast Rotterdam

P.O. Box 84030
3009 CA ROTTERDAM
THE NETHERLANDS
Tel: + 31 (0)10 450 40 20
Fax: + 31 (0)10 450 69 50
E-mail: rotterdam@pkfwallast.nl

PKF Wallast Woerden

P.O. Box 533
3440 AM WOERDEN
THE NETHERLANDS
Tel: + 31 (0)348 41 62 62
Fax: + 31 (0)348 41 42 80
E-mail: woerden@pkfwallast.nl

Our website: www.pkfwallast.nl

