

# DOING BUSINESS IN THE NETHERLANDS

Edition 2016



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*Ambitie • Ondernemingszin • Resultaat*

Edition 2016

# Doing business in the Netherlands

## Van Oers International

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## 1. Introduction

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*Doing Business in the Netherlands is published by your accountant who is a member of the SRA network. The purpose of this detailed manual is to guide you through the investment environment in the Netherlands. It offers practical information into the country and how to set up a business, adopting the ideal legal form, the subsidy schemes, the tax system, labour law and much, much more. For more detailed information, please do not hesitate to contact your personal SRA consultant.*

### Economy

The Netherlands is an open economy, carried along by international economic trends. International economic or financial crises mainly affect the Dutch economy through exports, as a result of a reduction in world trade. However these have a relatively limited direct real impact on Dutch exports. The financial situation of companies (profitability and solvency) is on average in good heart, enabling companies to withstand the ups and downs in global economy.

### Country and Government

The Netherlands has a total population of 16.9 million inhabitants (December 2015) and is governed by a monarchy. The ministers are the people's representatives with respect to the actions of the government. The head of state does not bear political responsibility and can therefore not be held politically accountable by the parliament. The Netherlands has 12 provinces, each with its own local authorities.

### Location

Most of the major industries in the Netherlands are situated in the country's western regions. The Port of Rotterdam is one of the biggest ports in the world. The railway line, the 'Betuweroute', ensures fast and efficient transport from the port to the European hinterland. Utrecht is a central traffic junction and Schiphol, the Dutch airport, is growing at a rapid rate. The Low Lands, as the Netherlands is also known, play an extremely important role in the functioning of the transport artery.

## Export

The country's perfect location and healthy financial policy have helped to ensure that the Netherlands has grown into an important import and export nation. The country's most important industrial activities include oil refineries, chemicals, foodstuff processing and the development of electronic products. Germany, Belgium-Luxembourg, China, Great Britain, France and the United States are the country's main import partners. All the above-mentioned countries, including Italy, are also the country's most influential export partners.

## Finances

The Dutch National Bank (De Nederlandsche Bank, DNB) is responsible for the money flow in the Netherlands. One of the government's most important objectives is to keep prices stable and thereby to contain inflation. Dutch banks offer an extensive range of financial services: some are specialized, while others offer an extremely wide range of services. Dutch banks are reliable: most financial institutions use organizational structures that prevent the possibility of entanglement of interests. The general prohibition on commission also contributes to this from 1 April 2014.

## Right to establish a business

Foreign companies wishing to set up shop in the Netherlands can set up the existing foreign legal entity in the country without the need to convert it into a Dutch legal entity. They will however be required to deal with both international and Dutch law. All foreign companies with establishments in the Netherlands must be registered with the Chamber of Commerce.

## A most competitive economy

The Netherlands is an attractive base for doing business and for investment. Its open and international outlook, well-educated work force and strategic location are contributors. The attractive fiscal climate and technological infrastructure create favourable propositions for international business.

## 2. Starting business

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*Under Dutch law, a foreign individual or company may operate in the Netherlands through an incorporated or unincorporated entity or branch. Dutch corporate law provides a flexible and liberal framework for the organization of subsidiaries or branches. There are no special restrictions for a foreign entrepreneur to do business in the Netherlands.*

The business operations can be set up in the Netherlands with or without a legal personality. If a legal entity has legal personality, the entrepreneur cannot be held liable for more than the sum it contributed to the company's capital.

Dutch law distinguishes two types of companies both of which possess legal personality: the private limited liability company (besloten vennootschap met beperkte aansprakelijkheid - BV) and the public limited liability company (naamloze vennootschap - NV). These forms of legal entities are most commonly used for doing business in the Netherlands. Other commonly used legal entities in the Netherlands, are the cooperative (coöperatie) and the foundation (stichting). The foundation is a common form used within the non-profit and health care sector.

Other common business forms are sole proprietorship (eenmanszaak), general partnership (vennootschap onder firma - VOF), (civil) partnership (maatschap) and limited partnership (commanditaire vennootschap - CV). None of the latter forms possesses legal personality and, as a consequence thereof, the owner or owners will be fully liable for the obligations of the entity.

All entrepreneurs engaged in commercial business and all legal entities have to register their business with the Trade Register (Handelsregister) at the Chamber of Commerce (Kamer van Koophandel). This section covers the abovementioned legal entities for doing business in the Netherlands from a legal perspective. After dealing with the distinction between a subsidiary and a branch, the above mentioned entities will be described in greater detail. This will be followed by a summary of the status of intellectual property rights in the Netherlands. Finally, this manual will explain the advantages and disadvantages of doing business through a subsidiary or a branch.

## Branch, subsidiary

### *Branch*

A branch is not a separate legal entity. A branch is a permanent establishment of a company from which business operations are carried out. As a result, the company that establishes a branch in the Netherlands is liable for claims incurred by actions carried out by the branch.

### *Subsidiary*

A subsidiary is a separate legal entity that may be established by one or more shareholders. The subsidiary is a legal entity that is controlled by the (parent) company. Control of a subsidiary is mostly achieved through the ownership of more than 50% of the shares in the subsidiary by the (parent) company. However, under certain circumstances it is also possible to obtain control by special voting rights or diversity of the other shareholders. These shares or rights give the (parent) company the votes to determine the composition of the board of the subsidiary and thereby to exercise control. Since a subsidiary has limited liability, a shareholder (the parent company) is generally only liable to the extent of its capital contribution.

## Private limited liability company (BV)

### *Incorporation*

A BV is incorporated by one or more incorporators pursuant to the execution of a notarial deed of incorporation before a civil-law notary. The notarial deed of incorporation must be executed in the Dutch language and must at least include the company's articles of association and the amount of issued share capital.

While the BV is in the process of incorporation, business may be conducted on its behalf provided that it adds to its name the letters, 'i.o.' (for 'in oprichting'), which means in the process of being incorporated. The persons acting on behalf of the BV i.o. are severally liable for damages incurred by third parties until the BV (after its incorporation) has expressly or implicitly ratified the actions performed on its behalf during the process of incorporation. A similar liability arises for the persons responsible if the BV is not incorporated or if the BV fails to fulfil its obligations under the ratified actions and the responsible persons knew that the BV would be unable to do so. In the event of bankruptcy within 1 year of incorporation, the burden of proof lies with the persons responsible.

Members of the board of directors are also severally liable to third parties for legal acts performed after incorporation, but preceding the registration of the BV with the Trade Register.

### *Share capital*

A BV must have a share capital, divided into a number of shares with a par value expressed in Euro, or a currency other than Euro. There are no requirements for a minimum share capital for a BV. It will be sufficient if at least one share with voting rights is held by a party other than the BV.

Payment for shares can be in cash or in kind. Payments in kind are contributions of property and/or other non-cash items. These payments are restricted to items that can be objectively appraised. If these payments take place upon incorporation of the BV, the incorporators must describe the contributed assets.

### *Shares*

A BV may only issue registered shares. Besides ordinary shares, a BV may also issue priority shares, to which certain (usually voting) rights are allocated in the articles of association, and preference shares, which entitle the shareholder to fixed dividends that have preference over any dividends on ordinary shares. Within a given type of share, the articles of association may also create different classes of shares (e.g. A, B and C shares) to which certain specific rights are allocated (e.g. upon liquidation).

The voting right is linked to the nominal value of the share. However it is possible to attach different voting rights to classes of shares (even when the nominal values of the various classes are equal). Moreover, it is possible to create non-voting shares and shares without any profit right. Non-voting shares must give a right to profit.

It is not mandatory to include share transfer restrictions in the articles of association. However, if a BV opts to include such restrictions in its articles of association, it will be also be able to include detailed rules on how the price of the shares will be determined. The articles of association may also include a lock-up clause prohibiting the transfer of shares for a specific period. Furthermore, it is possible to include provisions in the articles of association imposing additional obligations on shareholders (e.g. the obligation to extend a loan to the BV or to supply products to it).

Shares in a BV are transferred by a deed of transfer executed before a civil-law notary.

The board of directors of a BV must keep an up-to-date shareholders' register, which lists the names and addresses of all shareholders, the number of shares, the amount paid-up on each share and the particulars of any transfer, pledge or usufruct of the shares.

### *Management structure*

The management structure of a BV consists of the board of directors and the General Meeting of shareholders. A BV can, in addition, under certain circumstances have a supervisory board.

### *Board of directors*

The board of directors is responsible for managing the BV. The members of the board of directors are appointed and removed by the shareholders (unless the BV is a large BV). The articles of association generally state that each director is solely authorized to represent the company. However, the articles of association may provide that the directors are only jointly authorized. Such a provision in the articles of association can be invoked against third parties.

The articles of association may provide that certain acts of the board of directors require the prior approval of another corporate body such as the shareholders' meeting or the supervisory board. Such a provision is only internally valid and cannot be invoked against a third party, except where the party in question is aware of the provision and did not act in good faith.

A member of the board of directors of the company can be held liable by the BV, as well as by third parties. The entire board of directors can be held liable to the BV for mismanagement. An individual member of the board of directors can be held liable with respect to specific assigned duties. The shareholders can discharge the members of the board of directors from their liability to the company by adopting an express resolution barring statutory restrictions. Besides the aforementioned liability prior to incorporation and registration, liability towards third parties can occur in several situations. For example, in case of the bankruptcy of the BV, the members of the board of directors are severally liable for the deficit if the bankruptcy was caused by negligence or improper management in the preceding 3 years. An individual member of the board of directors can exonerate himself by proving that he is not responsible for the negligence or improper management. In order to combat possible bankruptcy fraud, more effectively there are now several draft laws pending, among other things with the aim of strengthening the position of the official receiver in a bankruptcy.

As an alternative to the two-tier board structure where there is a management board and a separate supervisory board, Dutch law provides statutory provisions on the one-tier board structure, a single board comprising both executive and non-executive directors. The law provides a one-tier board structure for NV companies, for BV companies and for companies that are subject to the Large Companies Regime (structuurregime). In a one-tier board the tasks within the management board are divided between executive and non-executive members of the management board. The executive members will be responsible for the company's day-to-day management, the non-executive members have at least the statutory task to supervise the management performed by all board members. The general course of affairs of the company will be the responsibility of all board members (executive and non-executive). The non-executive members in a one-tier board are part of the management board and are therefore subject to director's liability.

### *General Meeting of shareholders*

At least one shareholders' meeting should be held each year. Shareholders resolutions are usually adopted by a majority of votes, unless the articles of association provide otherwise. As a rule, the shareholders may not give specific instructions to the board of directors with respect to the management of the company, but only general directions.

### *Supervisory board*

The supervisory board's sole concern is the interest of the BV. Its primary responsibility is to supervise and advise the board of directors. Pursuant to the Large Companies Regime (Structuurregime), the supervisory board is only a mandatory body for a Large BV; however this is optional for other BVs.

### *Liability*

The management board and supervisory board may under certain circumstances be held personally liable for liabilities of the BV (directors' liability). For this to apply mismanagement must be involved. This may arise among other things if the management has harmed the creditors' interests by deliberately and knowingly entering into unsecured financial obligations.

In the absence of the minimum capital requirement in the BV creditors may be faced with limited security. In addition to the option of legal redress, in case of directors' liability the law on BVs also offers other legal redress options.

Upon any distribution of funds whether this involves repayment of capital or a profit distribution, the management board must first check whether the distribution is not at the expense of the interests of creditors. To do this there is first of all the equity test. Dividend distributions are only possible when the shareholders' equity of the BV is greater than the statutory reserves or the reserves that must be kept according to the articles of association. Secondly a check must be made that after the distribution the BV can continue to pay its debts payable (distribution test). If the general meeting of shareholders decides to distribute a dividend the board must in principle approve the distribution. If in the light of a distribution test the board does however conclude that after distributing the dividend the BV can no longer meet all its debts payable, the board must refuse to cooperate. If the distribution still takes place, the directors and shareholders may be held liable. They must reimburse the deficit. The law does not define any specific timeline for the amount of the debts repayable. It is assumed that this involves debts over a period of at least 12 months after the distribution.

## Public limited liability company (NV)

In general, everything mentioned above that applies to the BV also applies to the NV. This section will outline the most significant differences between the NV and the BV.

### *Share capital and shares*

An NV must have an authorized capital. At least 20% of the authorized capital must be issued and at least 25% of the par value of the issued shares must be paid up. The issued and paid-up capital of an NV must amount to at least € 45.000.

Besides registered shares, an NV may also issue bearer shares. Bearer shares must be fully paid up and are freely transferable. Registered shares have to be transferred by executing a deed of transfer before a civil-law notary. An NV is authorized to issue share certificates (certificaten).

If payment on shares is made in kind upon incorporation of the NV, the incorporators must describe the contributed assets and an auditor must issue a statement to the effect that the value of the contribution is at least equal to the par value of the shares. The auditor's statement is to be delivered to the civil-law notary involved prior to incorporation.

The articles of association of an NV can stipulate limitations on the transferability of the shares. Dutch law provides for two possible restrictions, which require the transferor either to:

- offer his shares to the other shareholders, the right of first refusal, or;
- obtain approval for the transfer of shares from the corporate body, as specified in the articles of association.

## Large NVs and BVs: special requirements

A company is considered a 'large NV or BV' (structuurvennootschap), and thus subject to the 'structure regime' (structuurregime), if:

- the company's issued share capital, reserves and the retained earnings according to the balance sheet amount to at least 16 million Euro;
- the company, or any other company in which it has a controlling interest, has a legal obligation to appoint a works council; and
- the company, alone or together with a company (or companies) in which it has a controlling interest, normally has at least 100 employees in the Netherlands.

Unless an exemption applies, such a company is required to appoint a supervisory board (Raad van Commissarissen) which is given specific powers, which are not granted to the supervisory board of a relatively 'small' B.V. Such a supervisory board has the following powers:

- appointment/dismissal of the management board; and
- approval of major amendments with respect to governance, including the proposal to amend the articles of association, a proposal to dissolve the company, the issuance of new shares, a proposal to increase the issued share capital.

This structure regime is also not compulsory for companies whose holding company is established in the Netherlands and the majority of whose employees work abroad. In fact, such multinationals do have the option to apply the structure regime voluntarily.

The regulations of the structure regime may also apply for the Coöperative (coöperatie) to be discussed below.

## Coöperative (coöperatie)

The cooperative is an association incorporated as a cooperative by notarial deed executed before a Dutch civil law notary. At the time of incorporation the cooperative must have at least two members. These members can be legal entities or natural persons.

The objective of the cooperative must be to provide certain material needs for its members under agreements, other than insurance agreements, concluded with them in the business it conducts or causes to be conducted to that end for the benefit of its members. The articles of association of the cooperative may stipulate that such membership agreements may be amended by the cooperative.

The name of a cooperative must contain the word 'coöperatief' or 'coöperatie'.

In general, the members of the cooperative are not liable for the obligations of the cooperative during its existence. In case of dissolution or bankruptcy of the cooperative the members and the members who ceased to be members less than 1 year prior thereto, are liable for a deficit on the basis provided for in the articles of association of the cooperative. If a basis for the liability of each member is not provided for in the articles of association, all shall be equally liable. A cooperative may, however by its articles of association (i) exclude or (ii) limit to a maximum, any liability of its members or former members to contribute to a deficit. In the first case it shall place at the end of its name the letters 'U.A.' (Uitsluiting van Aansprakelijkheid – exclusion of liability). In the second case it shall place at the end of its name the letters 'B.A.' (Beperkte Aansprakelijkheid – limited liability). In all other cases the letters 'W.A.' (Wettelijke Aansprakelijkheid – statutory liability) shall be

placed at the end of its name. Most cooperatives choose a system of excluded or limited liability. It is also possible to create different classes of members who are each liable to a different extent (or not at all). If the liability is not excluded 'U.A', a copy of the list stating the members must be filed with the Trade Registry of the Chamber of Commerce. Any changes must be filed within 1 month after the end of each financial year.

The cooperative has no minimum capital requirements and the capital does not have to be in Euro. The profits may be distributed to its members. The articles of association of the cooperative must also provide for a provision regarding the entitlement of any liquidation balance.

The cooperative is also used as a holding and financing company. The main reasons are the international tax planning opportunities via a cooperative and its corporate flexibility.

## Foundation (stichting)

A foundation is a legal entity under Dutch law with two main characteristics:

- a foundation does not have any members or shareholders and is therefore governed solely by its board; and
- a foundation is incorporated with the aim of realising a specific goal by using capital designated for that purpose. The goals or objective of a foundation are stipulated in its articles of association.

A foundation is incorporated by means of the execution of a notarial deed of incorporation, which deed is executed before a Dutch civil law notary.

Pursuant to mandatory law a foundation may not make distributions to its incorporators and the members of its corporate bodies and may only make distributions to other persons if such distributions are of an ideal or social nature.

The management board of the foundation may consist of individuals and legal entities. After incorporation, members are appointed by the board itself, unless otherwise stated in the articles of association of the foundation. The foundation is represented by the entire management board or by board members acting individually.

Foundations are often used to create a separation between legal ownership and beneficial ownership of assets.

## Trust

Under Dutch civil law the trust is unknown. Dutch civil law is familiar with the distinction between personal rights and real rights, however is unfamiliar with a distinction between legal interests in property and beneficial interests in property rights. On the other hand the Netherlands signed the 1985 Hague Treaty on the law to trusts and their recognition.

## Other common business forms

### *Sole proprietorship (eenmanszaak)*

In the case of a sole proprietorship (eenmanszaak), one (natural) person is fully responsible and liable for the business. A sole proprietorship does not possess legal capacity and there is no distinction between the business assets and private assets of the (natural) person.

### *General/commercial partnership (VOF)*

A general partnership can be defined as a public partnership that conducts a business instead of a profession. A VOF and its partners must be registered in the Commercial Register at the Chamber of Commerce.

### *Partnership (maatschap)*

Entrepreneurs in the liberal professions (such as doctors, lawyers and graphic designers) often set up partnerships (maatschap).

A partnership is an arrangement by means of which at least two partners, who may be individuals or legal entities, agree to conduct a joint business. Each partner brings money, goods and/or manpower into the business. Each partner is personally, either jointly or severally, liable for all the obligations of the partnership. A partnership does not possess legal personality. Registration with the Chamber of Commerce is required for a partnership (maatschap), only if it enters into a business.

A public partnership (openbare maatschap) participates in judicial matters under a common name. The possessions of a public partnership are legally separated from the possessions of the partners.

### *A limited partnership (CV)*

A limited partnership is a special form of the general partnership (VOF) which has both active and limited (or sleeping/silent) partners. An active partner is active as an entrepreneur and is liable, as in the case of the general partnership. The silent partner, however, tends to finance the

business and stays in the background. The silent partner is liable only up to the amount of his capital contribution. He is not allowed to act as an active partner and his name cannot be used in the name of the partnership. If the silent partner enters the business (to provide extra finance for growth) he becomes liable as an active partner.

### Trust company

A trust company is entitled to perform corporate trust services for payment, such as the administration and management of a company that conducts business in the Netherlands. A trust company can take care of (required) administrative services, such as the preparation of annual reports. In certain instances the trust company is the (sole) director of the company for which it provides the services. A trust company offers expert guidance to tax beneficial international structures and opportunities to foreign legal entities and private persons for their holding-, finance- or investment activities in the Netherlands.

### Intellectual property

The Benelux Convention on Intellectual Property regulates the provisions regarding the registration, use and protection of trademarks and designs in the Netherlands, Belgium and Luxembourg.

Trademarks can be names, drawings, stamps, letters, numbers, shapes of goods or packages and all other signs used to distinguish the goods of one company from those of others. A registered trademark is protected for a period of 10 years from the registration date and the protection can be extended by a further 10 years. Renewal must be requested and all due fees paid. The rightful owner is entitled to claim damages for infringement of its rights (such as the use of the trademark by another party).

A design is the new appearance of a utility product. A registered design is protected for 5 years from the registration date onwards and the protection can be extended by 4 periods of 5 years each, up to a maximum of 25 years. Renewal will be effective upon timely settlement of all fees due. The rightful owner is entitled to claim damages for any infringement of its rights (such as the use of the model or design by another party).

Copyright Act 1912 (Auteurswet 1912) contains provisions regarding the protection of copyrights. Copyright does not require registration in the Netherlands and applies (amongst other things) to literature, dramatic, musical and artistic work, sound recordings, films and computer programs. A copyright expires 70 years after the author's death. Films, games, music and other works that fall under copyright may only be downloaded from legal sources. Downloading from an illegal source is not permitted, not even for own use.

Council Regulation (EC) No 40/94 on the Community trademark introduces a system for the award of Community trade marks by the Office for Harmonisation in the Internal Market (OHIM). The Community trademark system of the European Union enables the uniform identification of products and services of enterprises throughout the European Union. Requiring no more than a single application to OHIM, the Community trade mark has a unitary character in the sense that it produces the same effects throughout the Community. The Community trade mark contains provisions concerning the registration and use of Community trademarks by (legal) persons and the protection of the rightful owners of such Community trademarks. From 2017 the unitary patent for Europe offers protection in 26 countries. The countries of Spain and Croatia are not participating in this system for the present.

### Branch or subsidiary

Many foreign companies make use of a subsidiary rather than a branch. The main legal reason to set up a subsidiary, instead of a branch, is limitation of liability. As a shareholder of a subsidiary, the foreign company's liability is basically limited to the extent of its capital contribution; whereas, if the foreign company makes use of a branch, it is fully responsible for all the obligations and liabilities of the branch.

One major advantage of setting up a branch is that it does not generally require the same legal formalities required for setting up a subsidiary. However, the simplification and flexibilization of the Dutch limited company law (as mentioned above) may well diminish this advantage.

Another important aspect to consider with respect to the choice of setting up a branch or a subsidiary in the Netherlands is the matter of local tax regulations. The choice of setting up a branch or a subsidiary will be determined based on the circumstances and relevant factors with respect to the business as such, and the Dutch tax regulations and tax treaties.

For more detailed information on tax legislation and participations, we refer to Section 5.



### 3. Finding a location

#### The Dutch office market

The office market in the Netherlands is decentralized, which results in each city having a more or less specific office market. Amsterdam (approx. 6.1 million sq.m. office stock) focuses on finance and international trade, The Hague (approx. 4.1 million sq.m.) is the national administration centre where the government and public departments are the main users of the local office buildings. Rotterdam (approx. 3.5 million sq.m.) has one of the largest ports in the world, as a result of which the office market has a traditional focus on insurance and trade. Utrecht (approx. 2.7 million sq.m.) is located in the heart of the country with a focus on transport and domestic commercial services. In Eindhoven (approx. 1.5 million sq.m.) occupiers of office space have strong ties with electronics, chemicals and energy supply.

Location	Prime rent (Dec. 2015) Euro/sq.m./yr
Amsterdam	75-425
Rotterdam	60-235
The Hague	60-210
Utrecht	65-195
Eindhoven	65-160
Breda	130-150

#### Town planning

The Netherlands has applied strict regulations with respect to the development of offices, retail, industrial and residential schemes since 1950. The municipal system of zoning plans determines in detail what can and cannot be built. In general, developers are only granted building permits if their plans fit in with the zoning plans or if an exemption has been granted. The zoning plans also apply to all redevelopment projects. It is therefore not easy to change the use of the building without the cooperation of the local authorities. Municipal approval is mandatory with respect to zoning plan changes. Procedures for obtaining permits are scheduled according to strict timetables. It can take several years to obtain approval for complex building plans in which public authorities have a dominant role.

#### Lease or buy

The general practice in the Netherlands is to lease office space: approx. 65% of all office buildings are owned by investors. Owner-occupier situations are more common in the industrial real estate market, although this has also changed over the past 10 years as a result of sale-and-lease back transactions. Leasing has advantages, such as a positive impact on the company's cash flow, flexibility, the possibility of off-balance presentation and negotiation on incentives with landlords. Lease contracts can be subject to VAT; which may result in VAT savings in specific situations. Depreciation is an important consideration with respect to the ownership of real estate. Since the beginning of 2007, the tax depreciation on real estate is limited, both for BVs and for IB entrepreneurs (natural persons). Depreciation for tax purposes is exclusively permitted where and in as far as the book value of the building exceeds the so-called base value. The level of the base value depends on the intended use of the building.

#### Leasing practises and taxes

##### Offices and industrial

Typical lease length	Negotiable, but the common practice is 5 years + auto-renewals for 5 years
Typical break options	Negotiable
Frequency of payment	Negotiable, but generally quarterly in advance
Annual index	Linked to consumer price index (CPI; all households)
Rent reviews	To market prices only if agreed upon (frequency usually 5 years, by expert panel)
Service charge	Depending on contract
Tax (VAT)	21%
Tax (others)	Property tax, water tax and sewer tax

*In all instances:*

The tenant has security of tenure as the lease automatically renews at expiry, bearing in mind the notice period. The exception to this is if the landlord wishes to occupy, tear down or redevelop the building. These conditions are rather strict and in reality the landlord's options of terminating the lease are limited.

- The tenant pays for internal repairs and utilities.
- The tenant is responsible for insurance of contents.
- The landlord pays for the external and structural elements of the building.
- The landlord is responsible for building insurance and non-recoverable service charge items.
- The landlord provides property management services that are not recoverable through service charges.

*More about taxes*

The landlord and the tenant are each partly responsible for the property tax levied by the local authority. Each property is assessed for taxation purposes, known as 'onroerende zaak belasting' (OZB). The local government gives a value for the property and that value applies for 1 year. Each year the authorities collect the tax. The rate depends on the local authorities and this is a percentage of the value according to the Immovable Property Act.

*Purchase practises and taxes*

The purchaser is responsible for the so-called 'kosten-koper', which means that the buyer is liable for the payment of all additional costs. Those costs include transfer tax (6% for offices and industrial buildings), notary costs (0.2-0.4%), legal costs (negotiable) and some minor administration costs, such as land registration (Kadaster).

General building costs	
Operational Costs	10.0%
Maintenance	7.0%
Management	1.5%
Property tax	Depending on the municipality
Others	1.0%
Insurance	0.3%

## 4. Subsidies and financing

*The Dutch government offers a number of incentive schemes in various sectors to support companies in their business operations. Foreign entrepreneurs who set up companies in the Netherlands and who register their companies with the Dutch Chamber of Commerce can also apply for a number of incentive schemes.*

The most important subsidy agency in the Netherlands is RVO (Rijksdienst voor Ondernemend Nederland), which is based in The Hague. The latter organization is responsible for the execution of most of the schemes available in the Netherlands. In addition, there are also a number of important regional and provincial schemes available, as well as a number of international schemes offered by the Ministry of Foreign Affairs, the Ministry of Economic Affairs and Brussels.

This section will outline a number of the schemes that are currently available. Obviously this is not an exhaustive list, so we recommend that you contact your consultant for more detailed information.

### Innovation subsidies

*Top Sector policy*

The Dutch government has defined 9 Top Sectors in which the Netherlands is strong worldwide and to which the government is paying special attention. The Top Sectors are: AgroFood, Horticulture, High Tech, Energy, Logistics, Creative Industry, Life Sciences, Chemicals and Water. More venture capital and extra fiscal support should ensure more research and development in companies and institutions that fall within the above sectors. To achieve this, each top sector has signed an innovation contract in a PPS arrangement with the Dutch government, setting out the innovation agenda. Special programs (MIT-programs) are open for SMEs in each Top Sector for feasibility studies, research and development, cooperation arrangements and research vouchers. If you are active in or with a project in a Top Sector, contact your adviser about the current subsidy options.

#### *WBSO (Wet Bevordering Speur & Ontwikkeling)*

WBSO stands for the Dutch Research and Development Act. Technological innovation is extremely important. The competitor never rests. The WBSO will help you if you wish to renew your technical processes or develop new technical products or software by tax allowances for research and development expenditure. With effect from 2016 the WBSO offers a tax benefit for wage costs and other R&D costs by setting off a percentage of the costs against the wage tax to be deducted. Up until 2016 the WBSO only provided tax allowances for wage costs while other R&D costs, such as the purchase of equipment, were subsidised by the so-called RDA (Research & Development Allowance). The RDA offered a tax benefit, namely an allowance in the income tax or corporate tax return. The WBSO and RDA have been combined into one scheme under the name WBSO. The tax benefit under the WBSO can now only be effected via a wage tax rebate (R&D rebate - S&O-afdrachtvermindering). The level of the R&D rebate depends on the total qualifying R&D costs. From 2016 costs for work regarding an analysis of the technical feasibility of R&D work carried out in-house and for carrying out technical research into a substantial change in production processes or modelling of processes by software, no longer qualify as R&D costs within the meaning of the WBSO. There is a transitional regulation for R&D costs still outstanding from the previous RDA, where these can be entered in the new scheme as R&D costs in phases.

The level of the R&D rebate depends on the total R&D costs. On the first tranche of € 350,000 the rebate is 32% and above this level 16%. For start-up entrepreneurs with a personal enterprise the rebate is 40% on the first € 350,000.

#### *Innovation box*

The innovation box provides for a special tax regime for innovation profits to stimulate R&D-activities. This regime is explained under section 5.

### **Regional subsidies**

Under the European EFRD (European Fund for Regional Development) programme for 2014-2020, different regions in the Netherlands are conducting their own incentive policy. Within this programme the focus will be on subsidising projects on innovation and research, digital agenda, SME support and low-carbon economy.

### **Investments**

#### *MIA (Milieu Investerings Aftrek) (Environment Investment Deduction Scheme)*

The purpose of the Environment Investment Deduction scheme (MIA) is to stimulate investment in environmentally friendly capital equipment. Companies that invest in the environment are entitled to additional tax deductions at a percentage of the investment cost. The Environment Investment Deduction scheme is only available for capital equipment listed on the Environment List 2016 (Milieulijst 2016), which is updated on an annual basis.

#### *EIA (Energie Investerings Aftrek) (Energy Investment Deduction Scheme)*

The purpose of the Energy Investment Deduction scheme (EIA) is to stimulate investment in energy-saving technology and sustainable energy, i.e. so-called energy investments. Companies that invest in the energy industry are entitled to additional tax deductions at a percentage of the investment cost. The energy investment deduction is only available for capital equipment that complies with the specified energy performance requirements. The energy performance requirements and the capital equipment that are subject to the energy investment deduction are available in the Energy List 2016 (Energijlijst 2016), which is updated on an annual basis.

#### *KleinschaligheidsInvesteringsAftrek (Small-scale Investment Deduction)*

The Small-scale Investment Deduction entitles the entrepreneur to make deductions from investments in capital equipment between € 2,300 and € 311,242 in 2016. You invest in capital equipment in the year in which you buy it and therefore incur a payment obligation. The investment deduction can be applied in the year in question. If you do not intend to use the capital equipment in the year in which the investment is made, then part of the investment deduction is sometimes carried forward to the next year.

### **Finance**

#### *BMKB (Borgstelling MKB Kredieten) (Credit Guarantee Scheme for SMEs)*

The purpose of the Credit Guarantee Scheme for SMEs (BMKB) is to stimulate credit provision to small and medium-size enterprises (SME or MKB in Dutch). The scheme is designed for companies with a maximum of 250 employees (fte) with a year turnover up to € 50 mln or a balance sheet total up to € 43 mln and includes most professional entrepreneurs. If the entrepreneur is unable to provide the bank with sufficient security or collateral to secure a loan, the bank can appeal to the BMKB for the necessary guarantees. The government will then, under certain conditions, provide the security for part of the credit amount. This reduces the level of the bank's risk exposure and increases the creditworthiness of the entrepreneur. The maximum amount guaranteed by the government has been temporarily increased until 30 June 2016 from € 1.0 million to € 1.5 million.

Because the banks are in a restructuring phase and additional requirements are being laid down for capital and liquidity, business finance for starters and other small businesses, fast growers and innovative companies is becoming more difficult and long term finance is under pressure.

*GO (Garantie Ondernemingsfinanciering) (Corporate Credit Guarantee)*

With the Corporate Credit Guarantee large and medium companies can borrow large amounts more easily. Financiers who provide capital get a 50% guarantee from the government. The maximum term of the guarantee is 8 years. You are only eligible for this scheme if your company is established in the Netherlands and if the business activities take place mainly in the Netherlands. You can borrow an amount from 1.5 to 150 million Euro.

*MKB+ (Innovation Fund SME+)*

The SME+ Innovation Fund enables the businessman to convert ideas more easily and quickly into profitable new products, services and processes. The + means that this scheme is also open to companies bigger than the SME. The SME+ Innovation Fund includes financial instruments that are available for innovation and finances rapidly growing innovative enterprises. The fund comprises three pillars:

*1. The Innovation Credit*

The Innovation Credit is granted directly to enterprises. This encourages development projects (products, processes and services) associated with substantial technical and as a result financial risks. Enterprises have no or insufficient access to the capital market for these projects.

*2. The SEED Capital scheme*

The SEED Capital scheme makes it possible for investors to help technostarters and creative starters to convert their technological and creative know how into usable products or services.

*3. Fund-of-Funds*

Fund-of-Funds also improves access to the risk capital market for rapidly growing innovative enterprises.

**Environment and energy**

*SDE (Stimulerende Duurzame Energieproductie) (Stimulation of Sustainable Energy production)*

The SDE is an operating subsidy. This means that producers receive a subsidy for sustainable energy generated and not for the purchase of the production installation, as with an investment subsidy. The SDE is aimed at companies and (non-profit) institutions that want to produce sustainable energy. The cost of sustainable energy is higher than that of grey energy, so the production of sustainable energy is not always profitable. The SDE reimburses the difference between the cost of grey energy and that of sustainable energy over a period of 5, 8, 12 or 15 years depending on the nature of the subsidized technology. This involves a phased opening up of the different technologies. For each phase the subsidy amount increases per kWh, but the chance that the subsidy will actually be obtained falls. This challenges applicants to invest for the lowest possible operating costs. The SDE+ subsidy excludes the tax benefit of the EIA (see above).

## 5. Tax legislation

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*The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Dutch government is that the tax system may under no circumstances form an impediment for companies wishing to incorporate in the Netherlands. In that framework, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings. In addition, the Netherlands has also signed tax treaties with many other countries to prevent the occurrence of double taxation. At the same time, its vast network of tax treaties offers instruments for international tax planning.*

The following are a few of the benefits offered by the Dutch tax system:

- The Netherlands does not charge withholding tax on interest and royalties.
- In most cases all the profits that the Dutch parent company receives from foreign subsidiaries are exempted from tax in the Netherlands (participation exemption).
- The Netherlands offers attractive tax-free compensation in the form of the 30% rule for some foreign personnel who are temporarily employed in the Netherlands.

The Dutch tax system can be divided into taxes based on income, profit and assets, and cost price increasing taxes.

## Corporate income tax

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples of such legal entities are the Dutch NV and BV. Companies based in the Netherlands are taxed on the basis of the companies' local revenues. The question as to whether a company is in effect based in the Netherlands (resident companies) for tax purposes is assessed on the basis of the factual circumstances. The relevant criteria are issues such as where the actual management is based, the location of the head office and the place where the annual General Meeting of shareholders is held. Entities set up under Dutch law are deemed to be established in the Netherlands. A resident company is in principle subject to Dutch corporate income tax for its profits received worldwide. Non-resident companies may be subject to corporate income in the Netherlands on Dutch-source income. This is outlined later.

### *Non-resident companies*

Non-resident companies may be subject to corporate income tax in the Netherlands on Dutch-source income. A non-resident company receives Dutch-source income in three ways.

The first way is if the non-resident company operates in the Netherlands using a Dutch permanent establishment or permanent representative. The determination of taxable profits of a permanent establishment/representative is similar to the rules applicable to a subsidiary. A second way to receive Dutch-source income arises if a non-resident company has a so-called substantial interest representing at least 5% of the shares in a company established in the Netherlands, if the main aim or one of the main aims of holding a substantial interest is to avoid the levying of Dutch personal income tax or dividend withholding tax from another company and this involves an artificial scheme or series of artificial schemes without valid business reasons that reflect the economic reality.

Also non-resident companies could be liable to corporate income tax on the remuneration for formal directorship of companies residing in the Netherlands as well as for fees received for executive management services. Under a tax treaty the taxation right for these remunerations are mostly allocated to the state of residence of the non-resident company.

### *Tax base and rates*

Corporate income tax is charged on the taxable profits earned by the company in any given year less the deductible losses. The following are the applicable corporate income tax rates for 2016:

Profit from	Profit up to and including	Rate
-	€ 200,000	20.0%
More than € 200,000		25.0%

If a company incurred a loss in any given year, that loss can be deducted from the taxable profit of the previous year or from the taxable profit over 9 subsequent years. The company profits must be determined on the basis of sound commercial practice and on the basis of a consistent operational pattern. This entails, among other things, that as yet unrealized profits do not need to be taken into consideration. Losses, on the other hand, may be taken into account as soon as possible. The system of valuation, depreciation and reservation that has been chosen must be fiscally acceptable and, once approved, must be applied consistently. The tax authorities will not subsequently accept random movements of assets and liabilities.

As a general rule all business expenses are deductible when determining corporate profits. There are however a number of restrictions with respect to what qualifies as business expenses.

### *Valuation of work in progress and orders in progress*

In work and/or orders in progress profit taking may not be postponed. Work in progress should be valued at the part of the agreed payment attributable to the work in progress already carried out. The same applies for orders in progress.

### *Arm's Length Principle*

The Dutch corporate income tax legislation includes an article that determines that national and foreign allied companies are entitled to charge one another commercial prices for mutual transactions. This is however subject to an obligation to keep due documentation of all relevant transactions. This enables the Dutch tax authorities to determine whether the transaction between the applicable allied companies are conducted based on market prices and conditions. It is possible to obtain prior assurance of the fiscal acceptability of the internal transaction with the use of the so-called 'Advance Pricing Agreement'.

### *Limited depreciation on buildings*

The annual depreciation is deductible from the annual profits from business operations. The taxpayer is entitled to depreciate the building until the book value has reached the so-called base value. The base value is determined with reference to the WOZ value. The base value is equivalent to the WOZ value (WOZ for 'Wet waardering onroerende zaken' or Real Estate Valuation Regulations). Based on the latter regulations, the value of a building for tax purposes is determined, to the greatest extent possible, on the basis of its value in the economic environment. The tax base value for owner-occupied buildings is 50% of the WOZ value. The tax base value for buildings used as investments is 100% of the WOZ value.

#### *Arbitrary depreciation*

In the Netherlands the rule is that no more than 20% per year of acquisition or production costs may be depreciated on operating assets, other than buildings and goodwill. The minimum depreciation period is therefore 5 years. Under certain conditions goodwill can be depreciated by a maximum of 10% per year.

#### *Innovatiebox (Innovation box)*

Companies that have developed intangible assets (an invention or technical application) can deduct the development costs from the company's annual profits in the year in which the asset was developed. As soon as a patent has been granted for the intangible asset, the company can opt to place the benefits in the so-called innovation box. Plant variety rights also fall under this. The innovation box also applies to intangible assets for which a patent has not been granted but which have arisen from a research and development project. The taxpayer must have received an R&D declaration for this from RVO.

The rate for corporation tax for innovative activities is 5% (2016). Losses on innovative activities can from now on be deducted at the normal corporate income tax rate. The outsourcing of R&D work is also possible if the principal has sufficient activities and knowledge present. It is also possible to include innovation advantages obtained between the application for a patent and the granting of a patent in the innovation box. There is no maximum to the profit taxed at the special rate of 5%.

The company has the option to declare an innovation box benefit equal to 25% of the company's total profit instead of complex profit allocation to the qualifying intangible asset(s). The benefit is however limited to the amount of € 25,000. The option is valid in the investment year and in the following 2 years.

A number of conditions must however be fulfilled to be able to qualify for the aforementioned tax benefits: For example, to make use of the innovation box the intangible assets must contribute at least 30% to the profit that the company receives from the intangible asset. The innovation box does not apply to brands, logos, TV formats, copyrights on software and so on. The choice must be specified in the corporate income tax declaration.

#### *Participation exemption*

Participation exemption or substantial holding exemption is one of the main pillars of corporate income tax. The scheme was introduced to prevent double taxation. Profit distribution between group companies is exempted from tax.

A participation refers to a situation where a company (the parent company) is the owner of at least 5% of the nominal paid-in capital of a company that is based either in the Netherlands or abroad (the subsidiary). A cooperative membership qualifies as well regardless its share in the cooperatives capital.

Under the participation exemption, all benefits derived from the participation are tax exempt. The benefits include dividends, revaluations, profits and losses in the sale of the participation and acquisition and sales costs. The participation exemption also applies to revaluations of assets and liabilities from earn-out and profit guarantee arrangements. If the value of the participation falls due to losses incurred, devaluation by the parent company is in principle not permitted. Losses arising on liquidation of a participation can under certain conditions be deducted.

As a general rule participation exemption does not apply if the parent company or subsidiary is an investment institution. It is however possible to appeal for a 'reduced tax investment participation'. To determine whether the participation exemption applies an intent test is used. This means looking at whether or not the participation is held as an investment. A participation in a company whose balance sheet consists for example of liquid assets, debentures, securities and debts is regarded as an investment. In the latter case the participant is not entitled to participation exemption, but is however entitled to appeal for a participation settlement. It is common practice to apply for an Advance Tax Ruling on the qualification of the participation under the participation exemption provision.

Because a number of conditions have to be satisfied in order to apply for the participation exemption, factual and circumstantial changes can affect the tax (exempt) status of a participation. In this case, the capital gains or losses on this participation must be partitioned into a taxable and non-taxable part (partitioning doctrine). This doctrine has been codified with the Partitioning Reserve Act (Wet compartimenteringsreserve). In addition, this law provides for a participation to be revalued at fair market value once the participation tax regime changes. The revaluation result (positive or negative) is, amongst other qualifying occurrences, added to a separate reserve (partitioning reserve). The reserve must be released upon disposal of the corresponding participation. A partial disposal triggers a pro rata release. The rules under this law apply retroactively as from 14 June 2013.

As a result of an amendment in the European Parent/Subsidiary Directive intended to combat abuse and undesirable schemes, with effect from 2016 the participation exemption no longer applies to benefits from foreign enterprises, if these benefits consist of fees or payments that can be deducted by the participation when determining its profit for tax purposes and are hence regarded as deductible interest charges. The place of establishment of the participation is not relevant here. The exclusion of the participation exemption is also aimed at benefits received that serve to replace the fees referred to in the previous sentence. This relates to so-called hybrid finance. This restriction of the participation exemption does not in principle apply for the benefits obtained with the disposal of the enterprise and currency results obtained.

#### *Property exemption for permanent establishment*

With effect from 1 January 2012 a property exemption has been introduced for foreign permanent establishments of companies based in the Netherlands. As a result the profits and losses of a foreign permanent establishment no longer affect the Dutch tax basis. Final losses of foreign permanent establishments that remain upon cessation (termination) can however still be deducted. The property exemption does not apply for profits from so-called passive permanent establishments in low-taxation countries. There is an offset system for these. Based on the transitional law existing rights and claims that were present upon the introduction of the property exemption are respected. These are dealt with in accordance with the existing system.

#### *Fiscal unity*

If the parent company owns at least 95% of the shares of a subsidiary, the companies can submit a joint application for fiscal unity to the tax authorities, whereby the companies will be viewed as a single entity for corporate income tax purposes. The 95% shareholding should represent 95% or more of the voting rights and at least a 95% entitlement to the subsidiary's capital. The subsidiary is thereby effectively absorbed by the parent company. One of the most important advantages of fiscal unity and its tax consolidation of companies, is the fact that the losses of one company can be set off against the profits of another company in the same group. The companies are thereby also entitled to supply goods and/or services to one another without fiscal consequences, and they are also entitled to transfer assets from one company to another.

Fiscal unity is only permissible where all of the companies concerned are effectively established in the Netherlands. The current legislation provides the option to include in the tax consolidation of the fiscal unity a Dutch permanent establishment of a non-resident group. In addition, the parent company and the subsidiaries must also use the same financial year and be subject to the same tax regime. On the basis of legal precedents in 2014, Dutch legislation must provide the option to also permit fiscal unity via a foreign company. Prior to the amendment to the law to be implemented in 2015 approving policy has been published where on certain conditions it is possible to also form a fiscal unit between:

- a Dutch parent company and a Dutch sub-subsidiary with a foreign intermediate company established in an EU/EEA member state;
- between two Dutch sister companies with a foreign parent company established in an EU/EEA member state.

#### *Restriction on deduction for interest paid on holdings taken over*

Within the fiscal unity regime there is a restriction on the deduction for interest paid on a take-over liability. If a Dutch company is taken over with borrowed money, the interest on the take-over liability can in principle no longer be set off against the profit of the company taken over. The take-over interest can however still be deducted up to an amount of 1 million Euro or in the case of healthy financing. This is the case if the take-over liability in the year of take-over is not more than 60% of the take-over price. This percentage is then reduced over 7 years, by 5% per year, to 25%. Several exceptions as well as thresholds may be applicable to this restriction rule.

#### *Interest deduction restrictions*

Over the years the tax legislator has been increasingly aiming at discouragement of the (international) financing of Dutch operating activities through excessive debt. Effectively the corporate income tax law provides for certain restrictions to the deduction of financing costs.

#### *Anti-base erosion regulation*

The anti-base erosion rules in Dutch corporation taxation restricts the deduction of financing costs of intragroup loans if these loans in essence relate to the conversion of equity into financing through debt without sound business motives. This comprises loans relating to inter alia dividend distributions, repayment of formal and informal capital and capital contributions. On the other hand, the anti-base erosion rules also entail the possibility to overrule this restriction in tax deduction of the relating financing costs if the taxpaying company can demonstrate that the sound business motive for this debt financing or the interest payment is effectively taxed at a rate of 10% or more. However, the Dutch tax authorities may demonstrate that in the case of a group transaction no business considerations are involved, even if the recipient pays 10% or more tax abroad. In that case the interest paid within the group is not deductible. The interest for ordinary business transactions does however remain deductible. Evidence to the contrary is however possible with the so-called evidence to the contrary ruling. If the requirements for this ruling are met, the deduction of interest is restored.

#### *OESO standard transfer pricing documentation and country-by-country reporting*

Commencing in 2016 additional documentation obligations apply for multinationals regarding their internal transfer prices used between enterprises in the different countries. New obligations relating to the submission of a country-by-country report, a master file and local file. This applies if the consolidated group revenue is more than € 750 million. The ultimate parent company submits the country-by-country report in the country where it is established. The master file contains a summary of the transfer pricing policy of the group. The local file sets out the intracompany transactions of the local enterprise(s). These documentation obligations apply for financial years commencing on or after 1 January 2016.

#### *Restriction on loans for investments in participations*

To restrict the deduction of interest on loans for investments in participations qualifying for the participation exemption provision, a new rule has been introduced in the corporate income tax act with effect from 1 January 2013. The restriction rule takes effect for the financial (tax) years commencing on or after 1 January 2013. With this new rule the legislator aims to revoke the deduction of interest insofar as the financing costs for investment participation loans are deemed excessive and offensive.

In general the financing costs are considered to be non-deductible for the amount in excess of € 750,000. The non-deductible interest is determined by a mathematical rule. The amount of the non-deductible interest is under this rule calculated by considering the amount of the historic investment cost of the qualifying investments, the sum of the fiscal equity and the amount of loans taken up by the participating taxpayer.

The rule excludes from this restriction loans for an acquisition of a participation as well as a capital contribution into a participation that relate to an increase in operating activities of the group to which the company belongs in the time frame of 12 months before or after the participation investment. This exclusion claim is to be substantiated.

#### *Tax declarations*

The corporate income tax declaration must be submitted to the tax authorities as a rule within 5 months of the end of the company's financial year. If a firm of accountants submits the return a post-ponement scheme applies. This means that the return may be submitted later in the year.

### **Income tax**

Income tax is a tax levied on the income of natural entities with domicile in the Netherlands (domestic taxpayers). They are taxed on their full income wherever it is earned in the world. Any natural person who is not domiciled in the Netherlands, but earns an income in the Netherlands, is liable to pay income tax on the income (foreign taxpayers). Foreign taxpayers may be eligible for the status of 'qualifying foreign taxpayer' if at least 90% of their world income according to Dutch assessment principles is taxable in the Netherlands. This status gives an entitlement to the same deductions as applicable for domestic taxpayers, like the own home scheme discussed below. One of the conditions is to submit the annual report on non-Dutch income using an income return format signed by the tax authority of the country of residence.

In principle, income tax is charged on an individual basis: Married persons, registered partners and unmarried cohabitants (under certain conditions) can however mutually distribute certain joint income tax components.

#### *Tax base*

Income tax is charged on all taxable income. The different components of taxable income are broken down into three 'closed' boxes; each at a specific tax rate.

Each source of income can only be entered in one box. A loss in one of the boxes cannot be deducted from a positive income in another box. A loss generated in Box 2 can be deducted from a positive income in the same box in the previous year (carry back) or in one of the 9 subsequent years (carry forward). Where a loss in Box 2 cannot be compensated, the tax law offers a contribution in the form of a tax credit. This means that 25% of the remaining loss is deducted from the tax burden payable, on condition that no substantial interest exists in the current tax year and the previous year. The tax credit amounts to 25% of the remaining loss.

A loss in Box 1 can be deducted from a positive income in the same box in the 3 preceding years or in one of the subsequent 9 years. Box 3 does not recognize a negative income.

### **Box 1: Taxable income from work and home**

The income from work and home is the sum of:

- The profit from business activities;
- The taxable wages;
- The taxable result of other work activities (e.g. freelance income or income from assets made available to entrepreneurs or companies);
- The taxable periodic benefits and provisions (e.g. alimony and government subsidies);
- The taxable income derived from the own home (fixed amount reduced by a deduction equivalent to a specified interest paid on the -mortgage bond);
- Negative expenditures for income provisions (e.g. repayment of specific annuity premiums); and
- Negative personal tax deductions.

The following allowances apply to the above-mentioned income components:

- Expenses for income provisions (e.g. premiums paid for an annuity insurance policy or a disability insurance); and
- Personal deductions. This concerns costs related to the personal situation of the taxpayer and his family that influence his ability to support himself and his dependents (e.g. medical expenses, school fees and specific living expenses for children).

The tax rate in Box 1 is progressive and can accumulate to a maximum of 52%.



#### *Profit from business activities*

A natural person who derives income from business activities qualifies for tax allowances for entrepreneurs under certain circumstances. The tax allowances for entrepreneurs include self-employed allowance, research and development allowance, tax deductible retirement allowance (FOR Allowance), discontinuation allowance and SME allowance. In addition, a starting entrepreneur is also entitled to a start-up allowance.

The SME Allowance (MKB-winstvrijstelling) means that entrepreneurs will be entitled to an additional exemption of 14% (2015) of the profits following deduction of the above entrepreneur's allowance (tax allowances).

The fiscal profit concept in income tax is virtually identical to the profit concept in corporation tax. For example the provisions discussed under Corporation Income Tax relating to the valuation of work in progress and orders in progress, arm's length principle, limited depreciation on buildings, arbitrary depreciation and research & development allowance (RDA) apply accordingly.

#### *Private house and the Own Home Scheme (Eigenwoningregeling)*

A private house is viewed as the complete unit of the house with the garage and other buildings on the property. Houseboats and caravans are also viewed as private houses. The only condition being that they are permanently bound to a single address.

A private house is only considered as such where the house is owned by the occupant (taxpayer) and where it serves as permanent domicile and not as temporary domicile. The purchase of a private house is subject to transfer tax of 2%.

Once it has been determined that a house can be viewed as an 'Own Home', the house automatically qualifies for tax purposes for the Own Home Scheme based on Box 1 (Work and Home: maximum tax rate 52%).

The Own Home scheme works as follows: The fixed sum assumed by the legislator for the enjoyment derived from the own home is expressed for tax purposes in the Own Home fixed sum. The Own Home fixed sum is determined on the basis of a fixed percentage of the value of the house in question. The basis for determining the value of the Own Home is the value of the property, as determined on the basis of the WOZ value. The WOZ value is determined by municipal decree. Certain costs like financing costs (for example interest paid on the mortgage) are under certain conditions deductible from the above-mentioned Own Home fixed sum. The financing costs (including interest paid on a mortgage bond) are tax deductible where the loan qualifies as an Own Home Debt. The tax deduction is restricted to mortgages with a minimum annuity repayment scheme of 30 years. In other words to qualify for tax deduction the mortgage scheme should guarantee full mortgage payment within 30 years or less.

The Own Home financing costs are tax deductible at a tax rate of up to 50,5% (2016). Starting in 2014 the tax deduction of Own Home costs is being reduced in stages. Each year the maximum deduction rate is being reduced by 0.5% until the deduction rate reaches 38%.

### **Box 2: Taxable income from substantial interest**

Substantial interest applies where the taxpayer, with or without his partner, is a direct or indirect holder of a minimum of 5% of the issued capital in a company of which the capital is distributed in shares.

The income from substantial interest is the sum of the regular benefits and/or sales benefits reduced by deductible costs. Regular benefits include dividend payments and payments on profit-sharing certificates. Sales benefits include the gains or losses on the sale of shares. Examples of deductible costs include the following: consultancy fees and the interest on loans taken out to finance the purchase of the shares.

A non-resident taxpayer is subject to tax for income from substantial interests if the interest is held in a company residing in the Netherlands. If this company was resident in the Netherlands for a minimum of five years in the past ten years, the company is regarded to be resident in the Netherlands.

The tax rate in Box 2 is 25%.

### **Box 3: Taxable income from savings and investments**

Box 3 charges tax on the taxpayer's assets. This assumes a fixed return on investment of 4% of the yield base. The yield base is the difference between the assets and the liabilities. The yield base is determined on 1 January of the calendar year. The reference date of 1 January also applies if a taxpayer does not yet owe any inland tax on 1 January or if the inland tax obligation ends during the calendar year for reasons other than death.

The assets in box 3 include: Savings, a second house or holiday house, properties that are leased to third parties, shares that do not fall under the substantial interest regime and capital payments paid out on life insurance.

Liabilities in box 3 include: Consumer loans and mortgage bonds taken out to finance a second house. Per person, the first € 3,000 (2016) of the average debt is not deductible from the assets.

#### *Untaxed assets*

All taxpayers are entitled to untaxed assets in Box 3 of € 24,437 (2016). Under certain conditions the allowance for untaxed assets of the elderly is being increased. The amount is intended to reduce the yield base. A fixed return of 4% is then calculated on the amount remaining after deduction of the exemption. The tax rate is then paid on this return. The tax rate in Box 3 is 30%. From 1 January 2017 the fixed return will depend on the assets. In the first tranche with tax-free assets of € 25,000 for taxable box 3 assets the fixed return is 2.9%. In the second tranche (€100,000 - € 1,000,000) the fixed return is 4.7% and above this the fixed return is 5.5%. These fixed returns are adjusted annually in the light of the statutory returns in prior years. The notional returns for 2017 will be determined later this year.

#### *Tax allowances*

Once the due tax has been calculated for each box, certain tax allowances are deducted from those amounts. All domestic taxpayers are entitled to a general tax allowance of € 2,242 (2016). The general tax allowance is reduced by 4.822% of the taxable income from work and home exceeding € 19,922 (2016), as a result of which the general tax credit may ultimately be zero. Depending on the personal situation of the taxpayer and the actual amount of the annual income, the taxpayer may also be entitled to specific tax deductions.

#### *Advance tax payments*

Tax is withheld in advance over the course of the tax year for income deriving from work activities and from dividends. Both wage withholding and dividend tax are advance tax payments on income. The withheld amount may be deducted from the income tax due.

#### *Tax declaration*

The income tax declaration for any given tax year must be submitted to the tax authority in principle before 1 April of the next year. For the return for 2015 the deadline has been extended until 1 May 2016. If a firm of accountants produces the return an extension scheme applies. This means that the return may also be submitted later in the year.

### **Dividend tax**

Companies often pay out profits to the shareholders in the form of dividends. The following are further examples of dividend situations:

- Partial repayment of the moneys paid-up on shares by shareholders;
- Liquidation payments above the average paid-up equity capital;
- Bonus shares from profits;
- Constructive dividend. This concerns payments made by a corporation primarily for the benefit of a shareholder as opposed to the business interests of the corporation;
- Interest payments on qualifying hybrid debt as such debt is treated as informal equity of the borrowing company.

For cooperatives there may also be an obligation to deduct dividend tax on profit distributions to a holder of a membership right. This is the case if the main objective or one of the main objectives of the membership of the cooperative is to avoid dividend tax or foreign tax and the chosen structure has not been set up for business reasons that reflect the economic reality. The structure with a cooperative may be submitted to the tax authority beforehand and assessed for an obligation to deduct tax.

#### *Exemption*

No tax is withheld, among others, in the following situations:

- Where, in inland relationships, benefits are enjoyed from the shares, profit-sharing certificates and cash loans of participations to which the participation exemption applies;
- If a Dutch company pays out dividends to a company established in a member state of the European Union and the company holds at least a 5% share of the Dutch company.

#### *Step-up tax basis of cross-border legal merger and division*

In the case of a cross-border merger or division an unintentional Dutch dividend tax claim on foreign profit reserves may arise. To prevent this on certain conditions the value of the assets that are transferred as a result of a legal merger or division to the acquiring corporate body in the Netherlands is regarded as (untaxed) paid-up capital for dividend tax purposes. This does not apply for assets that consist of shares in a Dutch corporate body.

#### *Tax rate*

The tax rate for dividends is 15%. The tax is withheld by the company that pays out the dividends and pays it to the tax authorities. The dividend tax withheld serves as an advance tax payment on income and corporate income tax.

The Netherlands has signed tax treaties with various other countries, as a result of which a lower tax rate will apply in many instances.

### **Prevention of double taxation**

Residents of the Netherlands and companies that are registered in the Netherlands must pay tax on all revenue generated worldwide. This could result in any given income component being taxed both in the Netherlands and abroad. To prevent this kind of double taxation, the Netherlands has signed tax treaties with many other countries. The treaties are largely modelled on the OESO Model Treaty for the prevention of double taxation.

If an income tax component is nevertheless double-taxed as income or corporate income tax, the taxed amount is reduced based on the exemption method. The method entails a reduction of the Dutch tax related to the foreign income. The exemption on the income tax is calculated per box.

Double taxation of dividend payments and interest payments and royalties is prevented with the use of the settlement method. The use of this method means that the Dutch tax is reduced by the amount of tax charged abroad.

In certain situations it is also possible to deduct the foreign tax directly from the profits or as costs related to income.

## Wage tax

As explained earlier in this section wage withholding tax is an advance tax payment on income tax. Anyone deriving an income from employment in the Netherlands is liable to pay income tax on the income. In addition, employees in the Netherlands are generally covered by social security. The employer withholds the social security premium and wage tax due from the wages as a single amount and subsequently pays this to the tax authorities. The combined amount is referred to as wage tax. The wage tax is subsequently settled against the amount of income tax due.

### *Withholding obligation*

The Wage Tax Act links the withholding obligation with the presence of an employment relationship, whether or not a notional one. One of the characteristics of an employment relationship is the employer-employee relationship. With the big increase in the labour market of freelancers and self-employed sole traders (ZZP), the importance of delimiting 'whether or not' there is an employment relationship and the associated withholding obligation and social security obligation has grown considerably. To this end, the Government has come up with the draft law on the Deregulation of the Assessment of Employment Relationships (DBA) to replace the so-called Declaration of Independent Contractor Status (VAR). The planned commencement date of the DBA system is 1 May 2016. The VAR in principle indemnifies the client from the risk of a withholding obligation. Under the DBA the client can only still get an indemnification for the absence of a withholding obligation when using the (model) agreements assessed and approved by the tax authority. With the introduction of the DBA there will be a habituation period up to 1 May 2017, within which the client and contractor must endeavour to adapt their employment relationship to the new regulations.

### *Tax rate*

The wage tax rates in 2016 are:

- On the first € 19,922 of taxable income: a percentage of 36.55% is withheld (8.40% wage tax and 28.15% social security premium);
- On the next € 13,793 of taxable income: a percentage of 40.40% is withheld (12.25% wage tax and 28.15% social security premium);
- On the next € 32,706 of taxable income: 40.40% is withheld;
- On all additional income: a percentage of 52% is withheld.

When withholding the wage tax, the employer must also take into account the general tax allowance and the labour allowance. The latter discounts are discussed above.

### *Taxable wage*

For wage tax a broad wage definition is used. Dutch tax legislation allows numerous options for rewarding personnel in fiscally friendly ways. Wage tax is calculated on the full value of the remunerations received by the employee based on the employment contract. The remuneration may take the form of cash, such as a salary, holiday allowances, overtime, commissions and payments for a thirteenth month. Employees can however also receive remuneration 'in kind', such as products from the company or holiday trips. The concept of remuneration also includes various other claims, compensations and provisions.

All compensations and provisions from the employer to the employee form the taxable wages. Exceptions to this are:

- fringe benefits (e.g. attention in case of illness);
- intermediary costs, being costs incurred by the employee on behalf and for the account of the employer;
- exempt claims and benefits (e.g. pension claims and benefits on death);
- benefits with payment of reasonable compensation.

The other compensations and provisions in principle form part of the taxable wage. Depending on the category of the compensations and provisions the employer has the option to include compensations and provisions in the final levy payment. Wage tax is then paid by the employer.

### *Work expenses scheme*

Since 1 January 2015 compensations and provisions to employees are subject to the work expenses scheme. Through this scheme an employer may in 2015 spend a maximum of 1.2% of the total wage for tax purposes (the 'free scope') on untaxed compensations and provisions for employees. On the amount above the free scope, the employer pays wage tax in the form of a final levy of 80%.

Not all compensations and provisions are or can be included in the free scope. Under the work expenses scheme compensations and provisions are only included in the free scope and successively qualify as final levy payment (taxed at 80%) where and insofar as the compensations and provisions do not belong to the following categories:

#### 1. *Compensations and provisions that are exempted from final levy payment*

This includes among other things private use of company car and reimbursement of fines.

#### 2. *Compensations and provisions belonging to another final levy payment*

This category includes for example gifts and provisions to a third party and additional assessments not recovered from the employee.

#### 3. *Specific exemptions of work expenses*

Exempted work expenses include compensations and provisions for business travel expenses by public transport (100% compensation), travel expenses by own transport (max. € 0.19 per km), course costs, study and training, meals during overtime and business travel (see below), extraterritorial costs (e.g. 30% rule; see below), costs of tools and ICT equipment (see below) and products from the company's own sector (see below). For some of the specific exemptions a lump sum applies (see below).

#### 4. *Provisions to be valued at zero*

This includes provision of work clothing, provisions in the workplace, refreshments provided in the workplace.

If and insofar as compensations and provisions do not fall under the above-mentioned exemptions, the employer then has the choice of regarding the (remaining) compensations and provisions as final levy payment or as regular wage (with the deduction of wage tax from the employee). For some work expenses such as meals at the workplace, which are taxed by the employer as regular wage different lump sum valuations apply in addition. The final levy payment is then first deducted from the free scope and the additional amount taxed by the employer at 80%.

#### *Group scheme*

The final levy under the work expenses scheme is in principle calculated per employer. With effect from 2015 there is the option to calculate the final levy at group level. For an employee who works for more than one group member, groups no longer have to calculate the compensations and provisions per group member (employer). In addition under this scheme the use of the free scope can be optimized for all group members by paying all compensations and provisions designated as final levy payment from the total free scope. The final levy payable on the total amount that exceeds the collective free scope is then paid by the group member with the highest pay taxed for the employees.

#### *Tools and ICT equipment*

Compensations and provisions relating to this equipment are exempt if they meet the 'necessity criterion'. This means that the exemption applies if in the opinion of the employer the compensation or provision is necessary for proper performance of the work. The costs must be paid by the employer without being charged on to the employee. In addition the employee must return the equipment used or pay the employer the residual value once the equipment is no longer necessary for the work.

#### *Company products*

Employers are entitled to offer their employees discounts or compensation for purchasing products produced or manufactured by the company. This can be done tax-free subject to the following conditions:

- These must be products that are not from another sector;
- The maximum discount or compensation per product must be 20% (2015) of the market value (including VAT) of the product;
- The total value of the discount or compensation may not exceed € 500 (2015) per calendar year.

This may also extend beyond the termination of the employment contract due to disability or retirement.

#### *Relocation*

If an employee is required to relocate for work purposes, the employer is entitled to compensate the employee free of tax for the moving costs for his household goods. In addition the employer may give a tax-free moving expenses allowance of a maximum of € 7,750 (2016). The condition is however that this is a move that is entirely related to the employment. This in any case applies if the employer gives the allowance within 2 years after the employee accepts the new employment (or after transfer) and the employee lives more than 25 kilometres from his work and moves, as a result of which the distance between his new home and his work is reduced by at least 60%.

### **The 30% ruling**

Foreign employees who come to work in the Netherlands temporarily qualify for the 30% ruling under certain circumstances. The ruling entails that the employer is entitled to pay the employee a tax-free remuneration to cover the extra costs of their stay in the Netherlands (extraterritorial costs). The disposition is only valid for a maximum period of 8 years. The compensation amounts to 30% of the salary, including the compensation, or 30/70 of the salary excluding the compensation. The condition is that, based on this salary, the employee is not entitled to prevention of double taxation. If the employer reimburses more than the maximum amount, this salary is subject to wage tax. The employer may deduct a final levy on this additional amount.

The current 30% ruling was introduced as of 1 January 2012 and includes stricter conditions compared with the previous ruling. A 'grandfather clause' applies for the 30% ruling existing as from 1 January 2012. Upon the expiry of a 30% ruling existing on 1 January 2012, the 'grandfather clause' also lapses and a reassessment is carried out of whether the employee meets the stricter conditions of the new ruling.

#### *Conditions for qualification for the 30% rule*

1. The employee has a permanent job; and
2. The employee has a specific expertise that is scarce or not available at all on the Dutch employment market. This is called the scarcity and expertise requirement. For this the specific expertise the legislator introduced a salary norm.

An employee is regarded as fulfilling the conditional specific expertise if the employee's remuneration exceeds a defined salary standard. The salary standard is indexed annually. For 2016 the salary standard is fixed at a taxable annual salary of € 36,889 (2015: € 36,705) or € 52,699 including the 30% allowance (2015: € 52,436). This salary standard of € 36,889 (2016) is excluding the final levy components and thus excluding the 30% allowance. In most cases no more specific check is made for scarcity, but this is done if for example all the employees with a particular expertise meet the salary standard. The following factors are then taken into account:

- a. the level of the training followed by the employee;
- b. the experience of the employee relevant for his job;
- c. the pay level of the present job in the Netherlands in relation to the pay level in the employee's country of origin.

For scientists and employees who are physicians in training as specialists there is no salary standard. For employees coming in who are aged under 30 years and have completed their Master's degree there is a reduced salary standard of € 28,041 for 2016 (2015: € 27,901) or € 40,059 including the 30% allowance.

The 30% ruling contains a rule on post-departure remuneration. As a result the 30% rule also applies effectively until the end of the wage tax period that follows the wage tax period in which the employment has ended.

#### *150 Kilometre limit*

Under the 2012 legislation the 30% rule only applies if the incoming employee can substantiate that the employee has lived for a minimum period of two thirds of 24 months (i.e. 16 months) outside the 150 kilometre area from the Dutch border preceding the start of the employment in the Netherlands. Since the introduction of this kilometre limit as of 1 January 2012 it has been found that employees on a brief assignment abroad (i.e. for 16 months or less) would be excluded from renewal of the 30% ruling after returning to the Netherlands. Therefore, with effect from 1 January 2012 the kilometre limit rule has been redefined in line with the purpose of this kilometre limit. According to the new definition relief from the 150 kilometre restriction is granted if the employee stayed outside the 150 kilometre area on a renewed Dutch assignment for more than 16 months (of the 24 months) preceding the last Dutch assignment. In addition it is required that the previous Dutch assignment did not commence more than 8 years prior to the start of the renewed Dutch assignment.

The 150 kilometre limit is now under discussion. In the meantime in the Supreme Court there is a case pending with the question whether Article 45 TFEU (Free movement of workers within the EU) precludes the application of the 150 kilometre limit as a condition for the 30% rule. The Supreme Court has asked preliminary questions of the Court of Justice of the European Union (CJEU), where the CJEU has considered that in certain situations the 150 km limit may mean over-compensation of the actual extra-territorial costs (see below) and may conflict with the free movement of employees within the EU. The Advocate General of the Supreme Court has meanwhile concluded that this does not involve over-compensation. The judgment from the Supreme Court is expected in mid-2016.

#### *Extraterritorial costs*

The extraterritorial costs consist of the following, among other things:

- extra cost of living because of the higher cost of living in the Netherlands than in the country of origin (cost of living allowance);
- the cost of an introductory visit to the Netherlands, with or without the family;
- the cost of the application for a resident's permit;
- double housing costs (for example hotel costs), because the employee will continue his or her residence in the country of origin.

The following aspects are not covered by the extraterritorial costs and can therefore not be compensated or granted untaxed:

- the overseas posting allowance, bonuses and comparable compensations (foreign service premium, expat allowance, overseas allowance);
- loss of assets; the purchase and sale of a house (reimbursement of house purchase expenses, agent's fee);
- the compensation for higher tax rates in the Netherlands (tax equalization).

If the employee has children, the employer is entitled to offer the employee tax-free compensation for school fees at an international school in addition to the 30% rule. Other professional costs can be compensated untaxed based on the normal rules applicable to the Wages and Salaries Tax Act (*Wet op de loonbelasting*).

If the extraterritorial costs add up to more than 30%, then the actual costs that have reasonably been incurred can also be compensated tax-free. It must however be possible to demonstrate that the costs incurred are justifiable.

To be able to make use of the 30% rule, the employer and the employee must jointly submit an application to the Foreign Office of the tax authorities in Limburg (*Belastingdienst/kantoor Buitenland*). If the application is approved, the tax authorities will issue a decision.

The decision is valid for a maximum period of 8 years. Should the request be made within 4 months after the start of employment as an

extraterritorial employee by the employer, the decision shall be retroactive to the start of employment as an extraterritorial employee. If the request is made later, the decision shall apply starting the first day of the month following the month in which the request is made. The eight-year period is reduced by previous periods of stay or employment in the Netherlands.

In addition, the employee with the 30% ruling can also submit an application for registration as a partial foreign taxpayer for tax purposes in the Netherlands. This entails that he will be entered as a foreign taxpayer in Box 2 and 3. In that case, as a foreign taxpayer the income to be reported is limited to Dutch source income and not to its worldwide (investment) income.

## Value Added Tax (VAT)

The Dutch turnover or value added tax system is based on the European Directive concerning tax on added value. Tax is due the Added Value (VAT or 'BTW' in Dutch). This entails that tax is charged at each and every stage of the production chain and in the distribution of goods and services. Businesses charge one another VAT for goods and/or services provided. The company that charges the VAT is required to pay the VAT amount to the tax authorities. If a company is charged VAT by another company, it is entitled to deduct the VAT amount from VAT due on the company's part. By doing so, the system ensures that the end user is effectively responsible for paying the VAT.

Foreign companies that perform taxed services in the Netherlands are in principle also liable to pay VAT. Those companies, too, will be required to pay the VAT due in the Netherlands and will therefore also be able to claim the VAT invoiced to it by Dutch companies. The VAT system entails strict invoicing rules. The rules are determined by the mandatory EU Directive on VAT Invoicing rules and implemented by EU Member States in their national VAT Law.

### *Exemptions*

Not all goods and services in the Netherlands are subject to VAT. The following services are VAT exempt: medical services, services provided by educational institutions, most banking services, insurance transactions, services performed by sports organizations and property rentals. Companies that provide exempted services are not entitled to charge VAT for their services. In addition, they are also not entitled to claim the VAT charged to them for goods and services. Companies that perform both VAT liable and VAT exempt services will assign VAT to those specific services on which VAT is due.

### *The VAT system in the internal European market*

The European Union has recognized the free traffic of goods, persons, services and capital in the EU. Performances within the European Community are referred to as the intracommunity supply and acquisition of goods and intracommunity services. VAT is charged based on the destination country principle. This means that goods that cross the border to another EU country are taxed in the destination country. For business to business services (B2B). The rule applies that these services are taxed in the country where the customer is established or has a permanent establishment.

### *Digital services*

From 2015 the European VAT rules for digital services (communication, broadcasting and electronic services) have changed. These digital services are now taxed in the country whether the customer is resident. It is not relevant whether or not the customer is (a business) registered for VAT. To facilitate the administration of this, at the same time the 'mini One Stop Shop scheme' has been introduced. This scheme offers the business registered for VAT the option to declare the VAT in an EU member state for the digital services provided to customers not registered for VAT.

### *VAT deferment*

The Netherlands has implemented a so-called deferment system. This system offers cash-flow advantages. This system's benefit involves payment of VAT to be moved from the time of import to when the company declares taxes, usually monthly. The VAT due for the import will be recorded in the declaration as payable, while at the same time, amounts will be subtracted as pre-paid taxes. To obtain this deferment, the importer must apply for a license at the tax department under 'Article 23.' To obtain this license the company (importer) has to be registered for VAT in the Netherlands as a domestic entrepreneur or as a foreign entrepreneur with a permanent establishment for VAT in the Netherlands. In addition this company (importer) should have regular imports to the Netherlands and the bookkeeping is subject to meet specific requirements.

### *Tax rates*

The general VAT tax rate is 21%. The Netherlands also has a low VAT rate of 6%. Goods and services falling under the low tax rate are specified in Table 1 of the Turnover Tax Act (Wet op de omzetbelasting 1968). This applies, among other things, to foodstuffs and medicines. The zero rate is mainly intended for goods exported to outside the EU and for goods exported to other EU members states.

All companies are bound to submit VAT declarations. If the company also supplies goods or services to elsewhere in the European Union, it is also bound to fill in the 'Opgaaf Intracommunautaire Prestaties' (Intracommunity Supplies) tax form.

## Excise and other duties and taxes

### *Excise duty*

The Netherlands charges excise duties on alcohol-containing beverages, tobacco, fuel and other mineral oils. Manufacturers, traders and importers pay excise duties to the tax authorities. The Excise Duty Act (Wet op de accijns) in the Netherlands is fully harmonized with the applicable EU directives.

### *Environmental taxes*

The Netherlands charges the following environmental taxes:

- Tax on mains water
- Fuel tax
- Energy tax
- Waste tax

### *Tax on mains water*

The Netherlands charges tax on mains water. All companies and households pay tax on a maximum amount of 300 cubic metres of water per connection per annum. The rate is € 0.335 (2016) per m<sup>3</sup>.

### *Fuel tax*

Fuel tax is paid by the producers and importers of coal. The rate is € 14.47 (2016) per 1,000 kg coal. From 2016 coal use in coal-fired power stations for generating electricity has been exempted from tax.

### *Energy tax*

The purpose of energy tax is to reduce CO<sub>2</sub> emissions and to reduce energy consumption. The energy tax is charged to the user of the energy (natural gas, electricity and certain mineral oils). The rates are related to the amounts used, whereby the rates are progressively reduced as consumption increases.

### *Waste tax*

The tax rate for 2016 is € 13.07 per 1,000 kg of landfill.

### *Bank tax*

Legal entities carrying out banking activities inside the Netherlands are subject to bank taxation. The bank tax is levied on unsecured debt. The rate is 0.044% (2016) for short term debt (term of less than 1 year) and 0.022% for longer term debt.

### *Insurance premium tax*

The insurance premium tax is levied upon the conclusion of an insurance contract with an insurer. The insurance premium tax rate amounts to 21% of the premium due. Some types of insurance contracts are exempt from this taxation, such as health insurance, unemployment insurance, accident, transport, disability and life insurance. The insurance premium tax imposed is paid by the designated intermediaries and insurers.

## 6. Personnel

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*Finding and retaining personnel is an essential condition for the existence and growth of an organization. Companies stand out through the personnel they employ. Dutch tax legislation (see section 5) allows numerous options for rewarding personnel in fiscally friendly ways.*

The Dutch legislation includes various provisions to secure the rights and obligations of both employer and employee in the Dutch employment market. As a general rule, the employer and employee should behave according to the standard of good employership or employeeship respectively. The employer has a number of specific legal obligations with respect to work and rest times, leave and working conditions.

### Employment relationships

According to Dutch law, three different general types of agreements are used to determine the rights and duties of persons performing activities in the course of a business for another party. The employment agreement ('arbeidsovereenkomst') is the most common agreement. The assignment agreement ('overeenkomst van opdracht'); for example, a freelance agreement, consultancy agreement or a management agreement is used often in an attempt to avoid an employment agreement coming into being. A third agreement is the contracting agreement ('aannemingsovereenkomst'). This agreement is concluded between parties if the purpose of the activities is to construct an item with a physical nature.

Essential features of the employment agreement are: the obligation to perform labour in person in return for pay, and the authority of the other party to give instructions as to how the labour is to be performed. Other agreements lack one or more of these features.

The employment agreement itself is not subject to rules as to its form (oral agreements are perfectly valid, although problems as to proof may

arise). However, according to Dutch labour law the employer is under the obligation to provide certain information in writing to the employee with respect to the employment agreement. This relates among others to place of work, job title, the date the employment agreement enters into force, remuneration, working hours, terms and conditions relating to holidays and the applicability of any collective labour agreement.

Furthermore, Dutch labour law takes the legal presumption of an employment agreement as a starting point if a person has performed labour every week for 3 consecutive months, with a minimum of 20 hours a month. The contracted work in any given month is presumed to amount to the average working period per month over the 3 preceding months.

#### *Governing law*

As a rule, an employment relation is governed by the law of the country to which it is most closely connected (typically: the country where the labour is performed). As a rule, parties to an employment agreement are free to choose a different law to apply to their relationship. However, according to European legislation, the effect of any choice of law in international employment agreements is limited to the extent that the employee will not lose protection on the basis of mandatory provisions of the law of any member state which would apply if no choice of law had been made. Mandatory rules are legal provisions which cannot be contracted out. For example, many provisions of Dutch labour law regarding the termination of an employment agreement are considered to be mandatory.

The parties to an employment agreement are limited to negotiations of their own terms and conditions by both Dutch labour law and any applicable collective labour agreement, since these contain many mandatory rules on terms and conditions of employment.

#### *Employment law regulations*

Employment relations in the Netherlands are mostly regulated by the Dutch Civil Code ('Burgerlijk Wetboek'). An important principle of the employment provisions of the Dutch Civil Code is the protection of what is known as the weakest party, i.e. the employee. Apart from the Dutch Civil Code, regulations concerning labour law can be found in several other regulations and legislative acts, such as the Works Council Act and the Workings Conditions Act. As a result of the unification of Europe, Dutch regulations are increasingly influenced by European treaties and case law of the European Court of Justice. Furthermore, employment regulations are laid down in the Collective Labour Agreements.

#### *Minimum wage*

There is a statutory minimum wage for employees aged 23 or over. In addition there is a minimum wage for employees aged between 15 and 22, the level of which varies according to age. These minimum wages are indexed and may be adjusted twice a year on January 1 and July 1 (as of January 2016, the statutory minimum wage for employees aged 23 or over is € 1,524.60 gross per month, excluding 8% holiday allowance).

#### *Collective labour agreements ('CAOs')*

As mentioned above, employment agreements are also influenced by collective labour agreements ('CAOs'). Collective labour agreements are negotiated between representatives of employers and employees and are intended to provide consistent employment conditions within specific branches. Collective labour agreements can be negotiated for an entire branch or be limited to a company. Furthermore, the Minister of Social Affairs can impose the application of a collective labour agreement on the entire industry or sector by declaring a collective labour agreement generally binding. Any provision in an individual employment agreement, which restricts the rights of the employee under an applicable collective labour agreement, is void. In such cases the provisions of the collective labour agreement prevail.

#### *Trade unions*

Although the influence of trade unions in the Netherlands is generally waning, Trade unions are still well organised in the manufacturing industry and the semi-public sector or privatised sector. The most important trade unions are the National Federation of Christian Trade Unions ('Christelijk Nationaal Vakverbond' (CNV)) and The Netherlands Trade Unions Confederation ('Federatie Nederlandse Vakbeweging' (FNV)). The main employers' association is the Confederation of Netherlands Industry and Employers (VNO-NCW).

#### *Employment agreements*

An employment agreement may be agreed for an indefinite or fixed period of time. If an employment agreement for a fixed period of time is continued, a new agreement will then be deemed to have been entered into under the same conditions and for the same period of time (subject to a maximum of 1 year) as the former employment agreement.

Parties are free to enter into consecutive employment agreements for a fixed period of time, ending by operation of law, however two restrictions (chain provision) apply:

- The aggregate duration of the consecutive employment agreements (with interruptions of not more than 6 months) may not exceed 24 months; if the aggregate duration is longer than 24 months (interruptions included), the last employment agreement shall be deemed to be an employment for an indefinite period of time.
- The number of consecutive employment agreements must be less than 4. If the number of consecutive employment agreements exceeds 3 (while there are no interruptions of more than 6 months in between the employment agreements), the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

Under strict conditions exceptions may only be made to the Collective Labour Agreement for the new chain provision. In the Collective Labour Agreement however no more than 6 temporary contracts over a period of 4 years are permitted. The gap of 6 months is also binding for the Collective Labour Agreement.



## Termination of an employment agreement

With respect to termination of an employment agreement, a distinction must be made between an employment agreement for a fixed period of time and an employment agreement for an indefinite period of time. There are several ways for employment agreements to terminate:

### *Probation period*

Parties can agree upon a probation period. However, it should be noted that a probation period is subject to strict rules. It is not permitted to include a probation period in temporary employment contracts of a maximum of 6 months. This also applies for a subsequent contract unless the content of the contract differs in essence from the old contract. In the situation where for an existing Collective Labour Agreement a probation period is still possible for contracts of 6 months or less, the new rules apply until 1 July 2016 at the latest except where the existing Collective Labour Agreement expires earlier.

Also under the rules a probation period for maximum 2 months can only be concluded if parties have agreed upon an employment contract for a fixed period of at least 2 years, or in case of an employment contract for an indefinite period of time. An employment contract for the limited period exceeding 6 months but less than 2 years and an employment for a specific project, where a termination date is not indicated, may only contain a probation period of 1 month.

For temporary contracts with a term of at least 6 months a notice period has been introduced. At least 1 month before the expiry of the agreement term the employee must be informed of an extension or termination of the employment contract. Upon extension the employer is obliged to indicate the extension conditions. In the absence of this the employment contract is deemed to have been extended for the same period and conditions but for a maximum period of 1 year. In the absence of the notice obligation the employee is entitled to compensation of 1 gross all-in monthly salary or in case of late notification a pro rata part of the monthly salary.

During the probation period both the employer and the employee can terminate the employment contract directly at any time. In order to be valid, the probation period has to be expressly agreed upon by parties in writing. Any deviation from the aforementioned rules will result in a void probation period.

### *Lapse of the agreed period*

An employment agreement for a fixed period of time will terminate by operation of law at the end of the agreed period of time without formalities.

### *Summary dismissal*

The employment agreement can be terminated for urgent cause; for instance, if the employee has committed a serious crime, such as, but not limited to, theft, fraud, etc. Before a summary dismissal can be given, all circumstances must be taken into consideration. Dismissal must be given without delay, only the time necessary for an investigation into the facts is usually allowed. The grounds for the dismissal must be conveyed to the employee at the moment of dismissal. The employment ends immediately, without notice, and the employee is not entitled to compensation. Usually, payment of unemployment benefits is denied. The courts do not easily accept that sufficient grounds are present to deem a summary dismissal valid. Before deciding on a summary dismissal, therefore always consult a legal advisor.

The employee may challenge the dismissal itself within 2 months, stating that he is still employed and is thus entitled to pay. Alternatively, the employee may acquiesce in the termination of the employment, but claim damages for reasons that the grounds for the dismissal were not valid. As a risk containment measure, it is advisable to file for dissolution of the employment (see below).

### *Death of the employee*

The employment agreement will terminate by operation of law in case of death of the employee: the family of the employee is entitled to be paid approximately 1 month's gross salary.

### *Mutual consent*

The employment agreement can be terminated by mutual consent; the entitlement to unemployment benefits still exists unless the employee him/herself has taken the initiative for termination or he/she has acted in such a way that there is an urgent cause for summary dismissal. From the time of agreement the employee has a statutory cooling off period of 2 weeks. This period is extended to 3 weeks if the employer fails to include the statutory cooling off period in the agreement.

### *Dissolution by the Court*

With effect from the entry into force of the Work and Security Act from 1 July 2015 the dismissal procedure is subject to a clearly defined process: dismissal for economic reasons and dismissal in case of long-term sickness will be via the UWV and dismissal for all other reasons, such as personal reasons, is reviewed by the district court. In all cases the employee has the right to a statutory transitional allowance.

After an employment contract (temporary or permanent) of a minimum of two years employees will have the right to a transitional allowance intended to be used for training and transferring to a different profession or employer. The allowance depends on the duration of the contract and is 1/6 of the monthly salary per 6 months of service for the first 10 years and 1/4 of the monthly salary for each year of service after the 10th year of service with a maximum allowance of € 76,000 (2016) gross or one annual salary for employees with an annual salary of over € 76,000

(2016). For employees aged 50 years or older on 1 January 2016, for each year that on the date of dismissal they are aged over 50, the transitional allowance is 1 month for each year of service. The obligation to pay a transitional allowance lapses in case of serious financial problems (e.g. suspension of payment) for the employer. In case of summary dismissal there is also no transitional allowance payable. In the case of a Collective Labour Agreement, different transitional allowances may be determined.

#### *Notice*

The employer, who wishes to terminate an employment agreement for an indefinite period of time, can give notice to the employee observing the notice period employment agreements for a fixed period of time can only end by giving notice if this possibility is explicitly stated in the employment agreement. However, in order to be able to do so, the employer must first obtain approval of the UWV (labour office) before serving the notice of termination, stating the reason(s) for the intended termination. The UWV approval procedure will usually take about 2 months provided that the reasons for termination are clear.

After having obtained such approval to terminate the employment agreement, the notice period may be shortened by 1 month.

The statutory notice period that has to be observed may vary from 1-4 months, depending of the duration of the employment.

An employee whose employment has been properly terminated (i.e. after consent of the UWV and with due observance of the applicable notice period) may nevertheless claim damages on the grounds that he has been unreasonably dismissed (comparable to 'unfair dismissal'). There is no general rule for the calculation of such damages.

#### *Sham Employment Arrangements Act (Wet aanpak schijnconstructies)*

To combat exploitation, underpayment of personnel and unfair competition on the labour market with effect from 1 July 2015 the Sham Employment Arrangements Act (WAS) has been in force. The law provides for various measures, some of which came into effect as from 1 July 2015 and some from 1 January 2016. Other measures come into effect as from 1 July 2016. One of the measures that came into effect on 1 July 2015 concerns the supply chain liability for clients to make the correct payment of the agreed wage. This is the case for the hiring of personnel from another employer or in the performance of work by an employee of another employer based on an assignment agreement or contracting agreement. If the latter employee does not receive the (full) wage from his formal employer, this employee must make a claim against his employer and in the absence of (full) payment this employee has the option of then holding the client jointly and severally liable. The court rules on the joint and several liability of the client. In practice, by assessing contractors for reliability a liability risk may be reduced or avoided.

Another obligation for employers applicable from 2016 is that they must as a minimum transfer the net legal minimum wage to the employee by bank giro. The net legal minimum wage is equal to the gross legal minimum wage (see above) less the compulsory and permitted deductions, such as pension contributions and wage tax payments. The excess may however be paid in cash. As of 1 July 2016 an additional prohibition on deductions and offsets (e.g. for a traffic penalty or damages charged to the employee) applies for the minimum wage or the payment of part of the minimum wage as reimbursement of expenses.

## **Working conditions**

By comparison with international worker protection standards, the Dutch regulations are of a high standard. In view of an action plan of the Dutch Government (Simplifying Social Affairs and Employment Regulation), it is expected that these regulations will be simplified to bring them more in line with the international worker protection standards and to strengthen the position of the Netherlands on the international labour market.

Under Dutch law, the employer is responsible for organizing work in such a way that it protects the safety, health and well-being of the employees in accordance with a statutory set of standards and criteria. In principle, all employers are highly recommended to avail themselves of the professional assistance of a certified occupational health service ('Arbodienst') in respect of the implementation of a significant part of the applicable health and safety measures (for example the occupational health medical examination). Under certain circumstances, the employer's own employees may provide this assistance, providing that they are certified to this end.

#### *Foreign Nationals (Employment) Act (Wet arbeid vreemdelingen)*

Workers from the European Union, EEA countries (Norway, Iceland and Liechtenstein) and Switzerland do not need special permits to work in the Netherlands. To work legally in the Netherlands, depending on their work situation non-qualifying nationals, however, do need either a work permit (TWV) or a combined permit for residence and work (GVVA).

Under the Foreign Nationals (Employment) Act the employer applies for the residence permit. There are different types of permits, including for regular employment, as a highly skilled migrant, holder of a European blue card, lecturer, (guest) lecturer, trainee doctor or scientific researcher. If several permits are possible, the employer must make a choice. For the highly skilled with no employer a permit for a search year is possible. This residence permit gives the right to find an appointment as a highly skilled migrant within one year.

When applying for the permit, the employer acts as sponsor. The sponsor is responsible for the employee complying with the conditions. A permit for regular employment can be applied for by any employer with a branch or commercial agent in the Netherlands. Registration of the employer with the Chamber of Commerce is required.

To be admitted as a highly skilled migrant income requirements are laid down. To be admitted as a trainee doctor or (guest) lecturer, the employer making the application must be a sponsor authorised by the IND (Immigration and Naturalisation Service of the Ministry of Security and Justice). Authorisation is carried out by the IND. The authorisation as a sponsor is in a number of cases a condition for the application for the residence permit.

Employees with a European blue card are employees who carry out highly qualified work within the European Union and meet the salary and training requirement. For the scientific researcher admission to the Dutch labour market is regulated by EU Directive 2005/71/EC.

The UWV is obliged every year to check a job taken by a foreign employee (from outside the European Union, EEA countries or Switzerland) against the labour market status. The recruitment efforts of employers who wish to recruit or continue to employ foreign workers required by law issue no more than an employment permit for a maximum of one year. After five years labour migrants gain free access to the Dutch labour market. After that a permit may be refused if an employer has in the past been sentenced for infringing labour legislation.

## 7. handy addresses

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*Rijksdienst voor Ondernemend Nederland (most important subsidy agency in the Netherlands)*

P.O. Box 93144 NL-2509 AC Den Haag  
www.rvo.nl or phone +31 88 602 50 00

*Belastingdienst/kantoor Buitenland (Foreign office of the Department of Inland Revenue)*

P.O. Box 2865 NL-6401 DJ Heerlen  
www.belastingdienst.nl or phone +31 555 385 385

*Benelux Merkenbureau (Benelux Trademark Agency)*

P.O. Box 90404 NL-2509 LK Den Haag  
www.boip.int or phone +31 70 349 11 11

*CNV (National Federation of Christian Trade Unions the Netherlands)*

P.O. Box 2475 NL-3500 GL Utrecht  
www.cnv.nl or phone +31 30 751 11 00

*CPB (Netherlands Bureau for Economic Policy Analysis)*

P.O. Box 80510 NL- 2508 GM Den Haag  
www.cpb.nl or phone +31 70 338 33 80

*Douane (Customs and Excise Department)*

P.O. Box 3070 NL-6401 DN Heerlen  
www.douane.nl or phone +31 45 574 30 31

*European Patent Office (EPO)*

P.O. Box 5818 NL-2280 HV Rijswijk  
www.epo.org or phone +31 70 340 45 00

*FNV (The Netherlands Trade Union Confederation)*

P.O. Box 8456 NL-1005 AL Amsterdam  
www.fnv.nl or phone +31 20 581 63 00

*IND (Immigratie- en Naturalisatiedienst) (Immigration and Naturalisation Service)*

P.O. Box 287 NL-7600 AG Almelo  
www.ind.nl or phone +31 88 043 04 30

*Kamer van Koophandel Nederland (Chamber of Commerce)*

P.O. Box 29718 NL-2502 LS Den Haag  
www.kvk.nl or phone +31 88 585 15 85

*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior and Kingdom Relations)*

P.O. Box 20011 NL-2500 EA Den Haag  
www.government.nl/ministries/bzk or phone +31 77 465 67 67

*Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs)*

P.O. Box 20061 NL-2500 EB Den Haag  
[www.government.nl/ministries/bz](http://www.government.nl/ministries/bz) or phone +31 70 348 64 86

*Ministerie van Economische Zaken (Ministry of Economic Affairs)*

P.O. Box 20401 NL-2500 EK Den Haag  
[www.government.nl/ministries/ez](http://www.government.nl/ministries/ez) or phone +31 70 379 89 11

*Ministerie van Financiën (Ministry of Finance)*

P.O. Box 20201 NL-2500 EE Den Haag  
[www.government.nl/ministries/fin](http://www.government.nl/ministries/fin) or phone +31 70 342 80 00

*Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment)*

Anna van Hannoverstraat 4 NL-2595 BJ Den Haag  
[www.government.nl/ministries/szw](http://www.government.nl/ministries/szw) or phone +31 77 333 44 44

*MKB-Nederland (Dutch agency for Small and Medium-size Enterprises or SMEs)*

P.O. Box 93002 NL-2509 AA Den Haag  
[www.mkb.nl](http://www.mkb.nl) or phone +31 70 349 09 09

*Netherlands Foreign Investment Agency (NFIA)*

P.O. Box 93144 NL-2509 AC Den Haag  
[www.nfia.nl](http://www.nfia.nl) or phone +31 88 602 11 42

*ACM (Autoriteit Consument en Markt) (Authority for Consumers & Markets)*

P.O. Box 16326 NL-2500 BH Den Haag  
[www.nma.nl](http://www.nma.nl) or phone +31 70 722 20 00

*UWV (Employee Insurance Schemes Implementing Body)*

P.O. Box 58285 NL-1040 HG Amsterdam  
[www.uwv.nl](http://www.uwv.nl) and [www.werk.nl](http://www.werk.nl) or phone +31 88 898 20 01

*SRA (Umbrella body for accountants)*

P.O. Box 335 NL-3430 AH Nieuwegein  
[www.sra.nl](http://www.sra.nl) or phone +31 30 656 60 60

## 8. Conclusion

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Doing Business in the Netherlands is a practical guide to help you to deal effectively and efficiently with the most important issues that you might face upon your arrival in the Netherlands. Obviously the information contained in this manual is not exhaustive. In many instances, only the main points are mentioned due to lack of space, as a result of which you may still need to consult a specialist. Your SRA consultant will be able to advise you; so, please do not hesitate to contact your consultant for more detailed information.

## 9. Contact

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**For more information, please contact:**

Van Oers International  
Ginnekenweg 145  
4818 JD Breda

Postbus 2039  
4800 CA Breda

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