

Doing business in the Netherlands

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Introduction

This business summary provides a bird's eye view of the general legal and tax aspects with respect to doing business in the Netherlands. It is not the intention to provide in-depth-information regarding all relevant aspects.

This summary was last updated in February 2006.

The Netherlands

The Netherlands is a highly developed country with well-educated and skilled working force. The country is situated on the North Sea, with access to Europe's mainland (the port of Rotterdam, Schiphol airport Amsterdam and an excellent infrastructure of roads and railroads).

The financial infrastructure is very well developed.

The Netherlands offers many opportunities for international businesses, such as favorable tax regimes for companies that perform financing and holding activities, for instance.

The Netherlands has over 16 million inhabitants. The country is a Kingdom reigned by HM Queen Beatrix. The Netherlands has a longstanding tradition as a parliamentary democracy on a national, regional and municipal level.

The Caribbean islands of the Netherlands Antilles and Aruba are part of the Kingdom of the Netherlands.

The European Union

The Netherlands is a well-respected partner in the international community of the European Union. The legislation of the Netherlands implements the four freedoms of the EU Treaty: the free movement of persons, goods, services and capital.

According to the EU Treaty all Member States are obliged to implement the EU legislation in, or to conform it to their national laws and regulations. The EU legislation therefore has a major influence on Dutch national legislation.

In specific cases, Member States, residents of Member States and national Courts have the possibility, and sometimes the obligation, to ask for a ruling of the European Court of Justice in Luxemburg. In the recent past, rulings of the European Court of Justice have had a severe impact on several parts of the Dutch laws.

In order to be able to understand the tax and civil laws of the Netherlands, the laws of the European Union must be studied.

Business forms

Legal requirements

Every person (including legal entities) that wants to start a business has to

register that business in the Trade Register of the Chamber of Commerce and Industry. For many types of businesses, a permit from the authorities is not required.

The Chamber of Commerce is an active organization where general information can be obtained about the legal and administrative aspects of doing business.

Sole proprietor

Many entrepreneurs in the small businesses sector are so-called sole proprietors. The sole proprietor is liable to the full extent of this property for the covenants of the company.

Partnerships

Based on the Dutch Civil Code and the Commercial Code, corporate activities can be performed in different forms of cooperation.

The most common form of cooperation for businesses that operate under a joint name is the general partnership (vennootschap onder firma; VOF).

This form of cooperation is advisable for retail and service industry, for instance. Every partner in the general partnership is fully liable for the obligations of the general partnership.

Liability can be limited by publishing the management and representation authority agreed upon between the partners in the Trade Register of the Chamber of Commerce and Industry. These published authorities can be set up against third parties.

The most suitable form of cooperation for practitioners (doctors, lawyers, accountants, tax consultants, etc.) is the

partnership (maatschap). In general, practitioners are not obliged to register in the Trade Register at the Chamber of Commerce and Industry.

The limited partnership (commanditaire vennootschap; C.V.) offers the possibility to participate in a business as a limited partner.

If the limited partnership is registered in the Trade Register of the Chamber of Commerce and Industry and all other legal obligations are met, the liability of the limited partner can be limited to his contribution of capital in the partnership. The managing partner(s) is (are) fully liable for the obligations of the limited partnership.

All these forms of cooperation can be established without many formalities; involvement of a notary public is not necessary.

Most of the aforementioned forms of cooperation are transparent for the personal income tax (PIT) and corporate income tax (CIT), meaning that taxes are due on the level of the partners.

It is possible, however, to structure the form of cooperation in such a way that it becomes a taxpayer for the corporate income tax. Distributions from the profit of the form of cooperation are then regarded as dividends.

Currently a law is in preparation which gives these forms of cooperation the opportunity to opt to be incorporated. The legislator has not yet anticipated the fiscal consequences of the above.

The State Secretary of Finance does intend to maintain the 'fiscal transparency' for partnerships. This means that the profit share in the company received by the partners

remains subject to personal income tax. Private limited companies that are partners in a partnership are liable to corporate income tax. This means that the partnership itself is not subject to corporate income tax.

The EU legislation offers the possibility to form a so-called European partnership (EEIC; European Economic Interest Grouping; Europees Economisch Samenwerkingsverband). This type of partnership is especially designed for intra-EU partnerships.

Private company with limited liability

The legal entity that businesses typically use is the private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid; B.V.). The B.V. is a legal entity, which means that it has its own rights and obligations and can act in a corporate capacity.

The liability is in general limited to the capital that is contributed and reserved during the B.V.'s existence.

The B.V. is established in a notarial deed. The B.V. can be incorporated after a so-called certificate of no objection has been issued by the Dutch Ministry of Justice. A limited investigation of the founder's and envisaged shareholders' history is then carried out.

The incorporation procedure of a B.V. in general takes approximately two weeks. The costs of incorporation approximately amount to € 1,500.

The articles of association are incorporated in the deed of establishment. A B.V. can be established by one person (natural person or legal person). The minimum capital of a B.V. is € 18,000. The shares

are registered shares. A B.V. cannot issue share certificates. Proof of shareholding is the registration in the register of shareholders.

A transfer of the legal ownership of shares can only take place in a notarial deed.

If so provided by the articles of association, a B.V. can issue common shares, preferential shares and priority shares.

The B.V. is governed by a Board of Directors. One or more directors can be appointed. Both natural and legal persons can be appointed as a director. The General Meeting of Shareholders has the authority to appoint, suspend and dismiss the Board of Directors. The remuneration of the directors also has to be approved by the General Meeting of Shareholders.

The General Meeting of Shareholders also adopts the annual accounts of the B.V. and discharges the directors from liability for their management.

If more than one shareholder participate in a B.V. it is to be advised that the shareholders enter into a so-called shareholders' agreement, in which they agree on, for instance, the desired dividend policy and the handling of possible differences. This contract can also contain agreements on the voting behavior of the shareholders in the General Meeting of Shareholders (voting agreement).

Small and medium sized businesses can also incorporate a Supervisory Board.

The B.V. and its board of directors have to be registered in the Trade Register of the Chamber of Commerce and Industry.

The B.V. is a taxable person for the CIT.

Public limited company

The public limited company (naamloze vennootschap; N.V.) is often used by big businesses. The N.V. offers the possibility to register at the Stock Exchange.

The minimum capital of an N.V. is € 45,000. The N.V. is also established by the notary public.

Foreign legal entities

Foreign legal entities are allowed to become a resident of the Netherlands and operate a business there. For legal entities established in EU Member States, this rule is based on the EU Treaty.

Foreign legal entities must also register in the Trade Register of the Chamber of Commerce and Industry.

To prevent a misuse of foreign legal entities, the Netherlands has implemented legislation (Companies Formally Registered Abroad Act), which must ensure that these foreign legal entities fulfill the same requirements as legal entities established under Dutch law. If this law is not complied with, the board of directors may be personally liable.

A ruling of the European Court of Justice¹ confirmed that some requirements of the Companies

Formally Registered Abroad Act are in contradiction with the principle of freedom of establishment as provided in the EU Treaty.

This ruling is of great importance for foreign companies that want to establish in the Netherlands.

Foreign companies can have branches or permanent establishments and representatives in the Netherlands.

Societas Europea (SE)

In October 2004, a new European law took effect, offering the possibility to establish a European company, the Societas Europaea (SE).

This SE is mainly meant for intra-community mergers and joint ventures. The SE can also act as a holding company.

The share capital of an SE amounts to a minimum of € 120,000. The SE is governed by the tax legislation of the country in which it has its statutory seat and where the actual place of management is situated. The provisions regarding the capital, maintenance and change of capital are in accordance with the provisions applying to public limited companies in the member state where the SE is established.

European Cooperative Company (as from 18 August 2006)

The European Cooperative Company (ECC) is a new legal form in the EC that is designed to facilitate cross-border mergers and cooperation between different EC legal forms.

¹ ECJ 30 September 2003, case C-167/01 (Inspire Art Ltd).

Anti Trust Laws

The Netherlands has so-called anti trust and competition legislation, based on national and EU law. These laws must restrict unfair competition and prevent unauthorized dominant positions.

This law is primarily implemented by the Netherlands Competition Authority and the European Commission.

General Conditions

In general it is to be advised to apply general conditions when doing business in the Netherlands. By applying general conditions, possible liabilities can be limited.

Taxes in the Netherlands

Personal income tax

Income from work, owned house and enterprise are taxable in the so-called 'Box 1' in the personal income tax. The progressive rate varies from 2.45% to 52%.

Rate Box 1 (taxable income from work and owned house) 2006					
Taxable income exceeding	but not exceeding	tax rate	national insurance contributions	total rate	levied on brackets' total
younger than 65 years					
-	€ 17,046	2.45%	31.70%	34.15%	€ 5,821
€ 17,046	30,631	9.75%	31.70%	41.45%	11,451
30,631	52,228	42.00%		42.00%	20,521
52,228		52.00%		52.00%	

National insurance contributions are levied in the first two brackets of Box 1, at a rate of 31.7%.

Income from a substantial holding in a company (shareholding of 5% or more) is taxed in Box 2 at a rate of 25%. This way, both gains from sales and regular gains are taxed.

Income from savings and investments is taxable in Box 3 in the personal income tax. The tax rate is 30% on a fictitious income of 4% on the balance of the assets minus debts.

See figure 1, below: Tax rates 2005 (taxpayer younger than 65 years)

Corporate income tax

Corporate income tax rate

On 1 January 2006, the income tax rate was reduced from 31.5% to 29.6%. As from 2007 the rate will be further reduced to 29.1%. On 1 January 2006, the rate payable on the first € 22,689 was also decreased from 27% to 25.5%. As from 2007, this rate will be decreased to 24.5%.

For certain investment funds the corporate income tax rate is 0% if the profit of the company is distributed to the shareholders in accordance with legal provisions. This income is deemed to be taxable income of the shareholders and is taxed at the progressive rate in Box 1 in the personal income tax.

Residence

A company that is incorporated under Netherlands law is qualified as a resident of the Netherlands and is therefore subject to the Dutch corporate income tax. Legal entities incorporated under foreign law are qualified as residents of the Netherlands if they are actually established there. According to the General Tax Act, the residence of these entities is determined on the basis of the actual facts and circumstances. Usually, the actual place of management will be decisive in this respect. In case of dual residence according to national legislations, tax treaties provide the tiebreaker.

Classical system

The Netherlands has a so-called classical corporate income tax system. This means that the income of a taxpayer is first taxed with corporate income tax. A (non-deductible) profit distribution is subsequently taxed with dividend tax (25%), which can be set off against the personal income tax due by the recipient/natural person. The total tax burden on the thus distributed profit therefore amounts to approximately 47%.

Taxable amount

Netherlands resident companies are taxed for their world income for corporate income tax purposes. In general, capital gains are included in the taxable amount.

Certain costs and charges, such as company expenses and depreciations, can be deducted from the taxable amount.

Income from participating interests, sales and dividends are not included in

the taxable profit; this income is exempt in accordance with the participation exemption in the corporate income tax. The participation exemption is explained later on in this memo.

Tax incentives

The Dutch corporate income tax legislation includes a number of tax incentives for entrepreneurs/businesses, such as:

- investment allowance;
- energy investment allowance;
- environmental investment allowance;
- film investment allowance;
- deduction for research and development;
- arbitrary depreciation of company assets;
- reinvestment reserve.

Reinvestment reserve

Profits realized with the sale of company assets can be reserved for investment in other company assets, and can be deducted from the purchase sum of these new assets. A postponement of taxation can thus be realized.

Group treatment

Under certain conditions Netherlands resident companies that are part of a group can opt for a fiscal unity for the corporate income tax. Corporate income tax is then due on the consolidated taxable income of the group companies.

The main conditions to apply the fiscal unity are:

- The parent company has an interest of at least 95% in the subsidiaries.
- The subsidiaries and the parent company have the same financial year.

- The subsidiaries are (also) established in the Netherlands.

Dividend withholding tax

The distributor of dividends or other profits has to withhold and contribute dividend withholding tax at a flat rate of 25%.

If the recipient of the profit distribution can claim the application of the participation exemption in the corporate income tax, an exemption for the dividend withholding tax also applies.

In most double tax treaties concluded by the Netherlands, a lower tax rate is agreed upon.

If the recipient of the profit distribution is a company residing in an other EU Member State, the Netherlands cannot levy dividend withholding tax according to the Parent-Subsidiary Directive.

Wage taxes

Every employer has to withhold and contribute wage tax from the remuneration paid to employees, and file a wage tax return.

The wage tax rates are equal to the personal income tax rates in Box 1.

The wage tax is an advance levy on the employees personal income tax.

Capital duty

Capital duty was abolished as from 1 January 2006.

Immovable property transfer tax

When the legal or beneficial ownership of immovable property is transferred, tax

is due at a rate of 6%, unless an exemption is applicable.

The transfer of shares in a qualifying real estate company is also taxed with 6% immovable property transfer tax.

VAT and Customs

The Netherlands has implemented the EU VAT system as laid down in the Sixth EU VAT Directive.

A general tax rate of 19% is applicable on most supplies of goods and services and import of goods from non-EU jurisdictions.

A reduced rate of 6% can be applied to certain supplies of goods and services (agricultural supply of goods and services, for instance).

A 0% rate can be applied in case of export of goods outside the EU or in case of certain intra-community supplies of goods, and certain services to persons outside the Netherlands.

Taxable persons receive a refund for the paid VAT, provided that all legal requirements are fulfilled.

International aspects

Expatriates

For certain categories of employees from other countries, it is possible to apply for the so-called 30% regulation.

This means, in brief, that a tax-free allowance equal to 30% of the salary can be granted to the employees. This way, the Netherlands wants to compensate expatriate costs.

Outward expatriates that are seconded to certain countries, can benefit from a comparable regulation.

Participation exemption

Many internationally orientated companies structure their activities through an (intermediate) holding company in the Netherlands.

Capital gains and dividends from participating interests are exempt from corporate income tax in the Netherlands because of the participation exemption.

In February 2004, the Parent-Subsidiary Directive was amended. This is a European Directive. The directive obliges the EU Member States to adjust their legislation accordingly. An important consequence of this Directive is that payments of profit distributions to and the receipt of such payments by a permanent establishment are treated the same as direct payments between a parent company and its subsidiary. A permanent establishment is a permanent company establishment in a Member State, by means of which a company of an other member state fully or partially operates its business.

Loss compensation foreign subsidiary

The Netherlands applies loss compensation with a foreign subsidiary in case of:

1. winding-up losses of participating interests;
2. temporary write-downs of participating interests (until 1 January 2007).

Holland Routing

In the past, it was not possible to deduct a winding-up loss on a foreign

participating interest, if this participating interest was acquired from a foreign - established affiliated company and the participating interest is wound-up or (partially) ceased within three years after its acquisition. In the ruling of 24 December 2003, the Amsterdam Court of Appeal regarded this provision as non-proportional, due to the lack of a rebuttal provision. This ruling resulted in a legislative proposal, which has in the meantime been passed, giving the taxpayer the possibility to consider such a loss, provided that it is made plausible that it is a winding-up loss due to a decrease in the value of the participating interest as a result of new facts or changed circumstances since the moment of acquisition. It is possible to ask for security on forehand from the tax inspector, who will decide on such request by means of a ruling that is open to objection. In the same legislative proposal, the effect of this regulation was expanded to domestic participation relationships. This adjustment of the law took retroactive effect on 1 January 2003.

Tax rulings

With regard to the tax consequences of planned activities, resident and non-resident companies can request a so-called advance tax ruling (ATR) or advance pricing agreement (APA) from the tax authorities.

Tax rulings can be obtained for international financing activities and royalty payments, for instance.

Interest

There is no interest withholding tax in the Netherlands

Royalties

There is no withholding tax on outgoing royalties.

Double taxation relief

The Netherlands has concluded many double tax treaties. If there is no double tax treaty, the Netherlands grants unilateral double taxation relief for foreign income and capital of its residents.

Tax treaty Netherlands, Netherlands Antilles and Aruba

For tax purposes the Netherlands, the Netherlands Antilles and Aruba are considered as separate jurisdictions with separate tax laws. There is a regulation between these parts of the kingdom, comparable to a tax treaty, which provides for the right to levy taxes. This tax regulation offers companies and private persons several possibilities to structure their financial interests in a tax-friendly manner.

The Netherlands Antilles plans to adjust its policy on treaties to the EU standards on a short term, which will probably mean that in the near future the withholding tax on dividends from participating interests will be 0% , provided that certain provisions are met.

Thin capitalization

As from 1 January 2004, as a response to the ruling of the European Court of Justice² in the Bosal case, the Netherlands has implemented so-called thin capitalization legislation. The object is to limit the deduction of interest by companies capitalized with a surplus of loaned capital.

The thin cap rate is 3:1 with a threshold of € 500,000. Also, a group test is applied.

Besides this new thin capitalization legislation, the Netherlands has a number of other limitations of the deduction of financing interest in the corporate income tax.

Transfer pricing

The arm's length principle is incorporated in the Corporate Income Tax Act, in imitation of the provisions of international (model) treaties.

This means that for corporate income tax purposes, transactions between affiliated companies must take place at arm's length. If not, these transactions can result in adjustments of the fiscal profit.

ABAB International

Based in the Netherlands, ABAB is a leading provider of accountancy and tax and legal consultancy services in a wide range of market segments. Our philosophy is based on our strong local and regional presence. ABAB is a professional organization with over 800 staff members working from 20 offices in the Netherlands.

ABAB Accountants is an independent medium-sized accountancy and consultancy firm in the Netherlands. We are the consultant of many family-owned businesses in the Netherlands. The firm has a no-nonsense culture.

The special advisory group ABAB International provides internationally oriented entrepreneurs and private

² ECJ 18 September 2003, case C-168/01 (Bosal)

persons with top-notch tax and legal support.

ABAB International offers entrepreneurs an online VAT helpdesk, thus solving VAT problems within 24 hours.
(VATConsult@abab.nl)

ABAB International renders advice with regard to the application of tax treaties, transfer pricing, income tax advice for emigrants, structuring international groups, international tax planning, EU legislation, structuring financial interests by means of private foundations, securitization, product licensing, royalty structures and international financial planning.

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lawyers of ABAB International can offer you in doing business internationally.

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