www.pwc.nl

Doing Business in the Netherlands
2016

pwc

Contents

Foreword

PwC

I am pleased to present the 2016 edition of PwC's publication Doing Business in the Netherlands. Doing business internationally expands a company's horizon and offers unique opportunities for growth, development and profit building. The Netherlands poses an excellent operating base from a business and social perspective and is one of the most open economies in the world. From an outstanding infrastructure – including Europe's largest port – to a competitive tax climate and a strong tax treaty network.

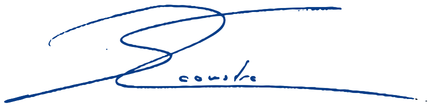
This guide is intended to provide a broad understanding of the key aspects of doing business and investing in the Netherlands. We answer many questions that foreign businesses and entrepreneurs have when making their first venture into the Dutch market, leveraging on our extensive experience in regard to establishing businesses in the Netherlands.

We are delighted that one of our cooperating partners, the Netherlands Foreign Investment Agency (NFIA), was willing to collaborate on this publication. The NFIA is an operational unit of the Dutch Ministry of Economic Affairs and throughout the years it has supported thousands of companies from all over the world to successfully establish their business in the Netherlands.

As a result, this publication goes beyond tax advice and tax compliance. The chapter 'Introduction to the Netherlands' offers general information about the Netherlands, for example about the location, industries and business segments, living in the Netherlands and the workforce. The forms of business used in the Netherlands are also described and there are separate sections for human resources, employment law, and audit and accountancy.

However, as a guide, it can only be a starting point. If you need more information, our advisors will be very happy to assist you on an individual basis.

On behalf of PwC NL, I hope that you will find this guide useful and I would like to wish you every success in the Netherlands.



Sytso Boonstra
Chairman of PricewaterhouseCoopers Belastingadviseurs N.V.

Netherlands Foreign Investment Agency

Whether you're considering locating in the Netherlands or have existing operations here, the Netherlands Foreign Investment Agency (NFIA) is prepared to assist your company at every stage of establishing or expanding operations.
An operational unit of the Dutch Ministry of Economic Affairs, the NFIA is your first port of call, connecting you with a broad network of business partners, including PwC, regional economic development organisations and government institutions to facilitate your international expansion.

The NFIA does not operate on its own. Under the label Invest in Holland, we operate closely with a network of regional partners in the Netherlands. The Invest in Holland network is a collaborative team made up of the NFIA, regional economic development agencies, and several large cities.

Throughout the years, NFIA and its partners have supported thousands of companies from all over the world to successfully establish their business in the Netherlands.

In general, foreign investors are particularly valuable to us, as they create jobs, link us to international networks and add great value to the Dutch economy. But even more importantly, we focus on companies that are operating in the key sectors that have been identified as Top Sectors by the Dutch government. This means companies in those sectors, including Agrifood, High Tech Systems, Chemicals, Life Sciences & Health and IT, benefit from a priority focus from all public and private stakeholders. It also means the Dutch government, and of course, the Invest in Holland network in particular, is extremely motivated to support you on an ongoing basis, as we want to see you succeed and grow here.

We look forward to welcoming you in the Netherlands.

Yours sincerely,

Jeroen Nijland
Commissioner Netherlands Foreign Investment Agency

Executive summary

Why the Netherlands

General

- The central geographical position of the Netherlands and its outstanding infrastructure make it the ideal gateway to start expanding your business.
- The Netherlands acts as the logistics hub for Europe through the Rotterdam port (Europe's largest) and Amsterdam Airport Schiphol (named second best Western European airport for 2015), both with renowned service levels.
- The Netherlands provides access to 95 per cent of Europe's most lucrative consumer markets within 24 hours of Amsterdam or Rotterdam.
- The Netherlands features one of the most highly educated, multilingual, flexible and motivated workforces in Europe.
- Due to its exceptional number of bilateral investment treaties, the Netherlands is a secure place from which to make your investments.
- The Dutch political/financial climate has been very stable for decades.
- The Netherlands ranks eighth position among the cleanest countries in the world with respect to the perceived level of public sector corruption.
- According to the Global Competitiveness Report 2015-2016 of the World Ecnomic Forum the Netherlands is the 5th most competitive economy in the world.

Tax

- The Netherlands has one of the most extensive tax treaty networks in the world, and an attractive low corporate tax rate of 25 per cent (20 per cent for profits up to EUR 200,000).
- Double taxation on international activities can usually be avoided through the large tax treaty network of the Netherlands. Profits from subsidiaries/ branches can be enjoyed tax free due to the full participation exemption and foreign branch exemption.
- The Netherlands has a very favourable tax treatment for foreign-owned companies. There are no withholding taxes on interest and royalties, and a full (to zero) or partial reduction of withholding taxes on dividend usually applies.
- Especially for holding companies, the Dutch tax system has many advantages.
- The innovation box, together with other R&D facilities, provides for a highly attractive tax regime for R&D activities.
- Expatriates with specific expertise may benefit from a 30 per cent tax free allowance on Dutch wage tax.
- Dutch authorities generally are accessible and willing to discuss the tax position in a constructive manner and to issue Advance Tax Rulings (ATR) and/or Advance Pricing Agreements (APA) to eliminate uncertainty for taxpayers.
- It is possible to form a fiscal unity between Dutch group entities so that all entities are treated as one corporate taxpayer for corporate income tax simplifying compliance and creating the opportunity to offset results.

Why PwC NL

One stop shop

Assurance

Assurance focuses on the audit of information and processes and provides assurance thereon. The audit of financial statements constitutes the majority of our Assurance practice, with the remainder consisting of assurance on processes and numerical (non-financial) information and advice on accounting issues.

Tax

Tax assists companies, individuals and organisations with their tax strategies, planning and compliance, and provides a wide variety of specialist HR advisory services in the areas of remuneration structures, pension plans, and cross-border deployment as well as legal advisory services.

Advisory

Advisory focuses mainly on transformation processes arising for instance, from strategic changes or from improvements in business processes and systems. Advisory also provides services in the area of mergers and acquisitions, from strategy determination through to assistance with business (unit) integration or carve out, and provides crisis management services to clients effected by fraud, disputes or inadequate cyber security.

Industry groups

Our services structure covers a wide range of market sectors. For every sector, we have set up special teams (sector groups) that are up to date on current developments in the sector concerned. This means that our clients are advised by professionals who are familiar with their specific sector.

Knowledge sharing within eight industry groups

- *Industrial Products*
- *Retail & Consumer*
- *Financial Services*
- *Energy, Utilities & Mining*
- *Technology, Media and Telecom*
- *Transport & Logistics*
- *Private Equity*
- *Public Sector*

Strong network

According to a 2015 independent survey of primary buyers of tax services in 41 key markets by research agency Jigsaw research, senior tax buyers name PwC as their first choice providers for all tax services globally.

In-house knowledge necessary to design state-of-the-art group structures to optimise your business activities and tax position.

Very good contacts with the Dutch Tax Authorities, resulting in quick and smooth communication about your requests, filings and questions.

PwC worldwide
208,109
people

PwC
The Netherlands
4,445
people

The Netherlands
12
Offices

Official name:
Kingdom of the Netherlands

Form of government:
Constitutional monarchy, parliamentary democracy

Head of State:
His Majesty King Willem-Alexander, King of the Netherlands, Prince of Orange-Nassau

Capital:
Amsterdam

Seat of government:
The Hague

Surface area:
33,800 km2

Number of inhabitants:
16,980,240 (January 2016)

Number of inhabitants per km2:
502 (January 2016)

Monetary unit:
Euro

Languages:
Dutch, Frisian

Introduction to the Netherlands

Location

The Netherlands is situated in North Western Europe. The location of the Netherlands provides a prime access to markets in the UK, Germany, France and other European countries. The strong position of the Netherlands in terms of logistics is reflected in the World Bank Logistics Performance Index 2014, where the Netherlands is ranked second.

The city of Rotterdam has the largest port in Europe. Rotterdam has five distinct port areas and three distribution parks that facilitate the needs of a hinterland with 350 million consumers. Most important for the Port of Rotterdam are the petrochemical industry and general cargo transhipment handlings. The harbour functions as an important transit point for transport of bulk and other goods between the European continent and other parts of the world. From Rotterdam goods are transported by ship, river barge, train or road. There is a double track fast cargo railway from Rotterdam to Germany.

The Netherlands has the best water transport infrastructure in the world. The road transport network is extensive and is second in the world as regards road network density.

Close to the city of Amsterdam is the main airport of the Netherlands, Amsterdam Airport Schiphol. An optimal logistics infrastructure, continual supply-chain innovation, an extensive network and the added value of a highly qualified team of experts have put Amsterdam Airport Schiphol in the top five of European airports. The airport has won over 200 national and international awards since 1980.

Government

The Dutch government is seated in The Hague and enjoys a good international reputation and functions effectively. The Netherlands is one of the most stable nations in the world with a competitive fiscal climate. Besides, government finances are relatively healthy. According to the World Bank, the government of the Netherlands is one of the most effective in the world, thus making it easier for companies to make medium and long-term decisions.

Living in the Netherlands

Because of its long and successful tradition in worldwide commerce, the Netherlands applies the same open-minded principles to making its society work for both natives and newcomers. It has extensive experience in adapting to the needs of others.

The large international community in the Netherlands has stimulated the Netherlands to provide good facilities, which naturally include a wide range of good primary and secondary international schools. Nowhere else in the world there is such an extensive group of high-quality international and globally oriented educational institutions as in the Netherlands.

Trade and foreign investment

The Netherlands plays a prominent role in the world economy due to its exports, imports, attracting foreign investors and investments abroad. Its favourable location in relation to the European hinterland and its world-class infrastructure have helped the Netherlands become an important distribution centre. As the fifth-largest exporter of goods in the world, the Netherlands occupies a prominent position when it comes to world trade. As well as being a major exporter, the Netherlands also imports large quantities of goods; the country is the eighth-largest importer of goods in the world. Dutch businesses are truly international in their orientation. The total value of Dutch investments in other countries is considerable. In 2014, overseas investments totaled in excess of 985 billion US dollars, making the Netherlands, the seventh-largest foreign investor in the world. The Netherlands is also the world's tenth-largest and Europe's sixth-largest recipient of foreign investment. In 2014, foreign companies had inward direct investment worth 664 billion US dollars.

Top sectors

In its economic policy, the Dutch government focuses on nine business sectors that are key to the Netherlands' international trade and investment. These are sectors that are leading the way in innovation and sustainability, collaborating with Dutch knowledge institutes on world-class research and development. Expertise and products from these Dutch sectors are in demand around the world. Together, they are the drivers of the Dutch economy.

Agriculture and food sector - World-leading supplier of agri-food products

- The Netherlands is the world's second largest exporter of agricultural products (EUR 80.7 billion in 2014.
- Four of the world's top 30 food and beverage companies are Dutch and nine have a major production site or R&D facilities in the Netherlands.
- The Netherlands is one of the world's leading developers and manufacturers of food processing machinery.
- The productivity of Dutch agricultural entrepreneurs is five times higher than the European average.

Chemical sector - Chemical portal to Europe

- The chemical industry is one of the leading business sectors in the Netherlands with a production (value) of EUR 87 billion in 2014. The Netherlands is world's fifth-ranking chemical exporting country with chemical industry exports of EUR 76 billion in 2014.
- The Netherlands hosts sixteen of the world's top 25 leading chemical companies.
- Chemical companies work together on innovation and production and take advantage of regional clustering.
- The Netherlands is home to world-class R&D institutes for fundamental and applied research.

Creative industries - Masters in architecture, design, fashion and gaming

- The Dutch creative industry ranks among the world's top ten in terms of trade figures, jobs and registrations of brands and patterns.
- Dutch architects are commissioned to design prestigious buildings around the world.
- The Netherlands has a long tradition of interior design.
- The Netherlands is the world's third largest exporter of television formats.
- The Netherlands is also a world-leading developer of computer games.
- The Netherlands is a pioneer in the area of dance music and large dance events.

Energy sector - Innovative, sustainable energy solutions

- The Netherlands is a major natural gas producer and the source of advanced gas technology.
- The distribution network for gas is the densest in Europe and of a very high standard.
- The Dutch have leading expertise in offshore wind energy, co-combustion of biomass in coal-fired power plants, pre-treatment methods of biomass, the use of landfill gas and the use of heat pumps combined with heat and cold storage.
- The Netherlands has an international reputation for research in renewable energy.
- The Netherlands is establishing itself as leader in green gas.
- The Netherlands plays a key role as a major oil-refining centre in Europe.

High tech sector - New technologies for health, mobility, energy and security

- The Netherlands is a world leader in the development of new technologies and materials for use in communication systems, aircrafts and automobiles, medical devices, energy generation and semiconductor production.
- The Netherlands is world leader in designing, developing and making high-tech equipment and micro/nano components.
- The Netherlands is strong in nanotechnology research.
- In 2013 this sector had an export value of EUR 45 billion and an added value of EUR 42 billion.

Horticulture sector - World's leading supplier of flowers, plants and trees

- The Dutch horticulture sector is a global trendsetter and the undisputed international market leader in flowers, plants, bulbs and propagation material.
- A quarter of the world trade in horticultural products is in Dutch hands.
- The sector is the number three exporter in nutritional horticulture products.
- The Dutch are the world's largest exporter of seeds.
- In 2014 the Netherlands was the world's second biggest exporter (in value) of fresh vegetables.

Life sciences and health sector - Helping to advance health worldwide

- The Netherlands ranks fourth worldwide in patent applications for medical technology and ninth in patent applications for biotechnology. With approximately 360 innovative life sciences companies clustered within

a 120 mile radius, the Netherlands is the most geographically concentrated region in the world when it comes to creating economic and social value in this sector.

- In 2011, Eindhoven's Brainport region was named the world's most intelligent ICT and health cluster.
- The Netherlands is a global market leader in mobile health care.
- The sector invests over two billion euros in R&D in the Netherlands each year and is becoming a globally recognised stronghold of open innovation.
- The industry's annual exports amount to around EUR 37 billion in total.

Logistic sector - Strategic gateway to Europe and the world

- The Netherlands ranks second in the 2014 World Bank Global Logistics Performance Index.
- The Port of Rotterdam is the world's eighth-largest and Europe's largest port with a throughput of 440.5 million tons in 2013.
- At the 2015 World Airport Awards air travelers voted Amsterdam Schiphol the second best airport in Western Europe. Amsterdam Schiphol Airport won the award for Best Airport in Europe for the twentieth time at the 2015 Asian Freight & Supply Chain Awards.
- According to the World Economic Forum, the quality of the Dutch infrastructure is among the best in the world, reflecting excellent facilities for maritime (ranked first), air (ranked fourth) road (ranked second) and railroad (ranked seventh) transport in 2015. IMD Business School ranked the Netherlands first worldwide in 2015 with regard to the quality of its water transport infrastructure.
- Over 1,000 American and Asian companies have centralised their European distribution activities in the Netherlands.
- Dutch inland shipping accounts for 54 per cent of all trade shipping in Western Europe.

Water sector - World leader in hydraulic engineering, water treatment and shipbuilding

- The Dutch are renowned for their integrated water management and multi-disciplinary approach that balances social, environmental and engineering needs.
- Forty per cent of the freely accessible market for water management is in Dutch hands.
- The Dutch Delta Works are listed in the Guiness Book of Records as the largest flood defence project in the world.
- The Dutch invest heavily in innovation and R&D through public-private partnerships.
- In the field of water technology and maritime technology, the Netherlands ranks eight worldwide for global patents.
- Some 99.9 per cent of Dutch households have access to clean, entirely chlorine-free drinking water.
- The Dutch maritime cluster comprises twelve sub sectors and 12,000 companies, which employ 194,000 employees. Of the sea-going ships produced in the Netherlands 60 per cent are destined for export.

Human capital and innovation

Dutch products are 'typically' highly innovative. The Netherlands provides solutions to keep rising water levels in check, create islands in the sea and make waterways navigable. Apart from solutions for use in the natural environment, the Dutch also have the knowledge and the skills to develop products such as navigation systems with worldwide appeal. This capacity to innovate is evidenced by the large number of patents that are applied for every year and by the presence of several world-renowned knowledge and research institutes in the Netherlands.

Well-educated working population

The internationally-oriented working population of the Netherlands is well educated, with many people able to speak more than one foreign language. According to the EF English Proficiency Index 2014, the Netherlands ranks second out of 63 countries. A good proportion of the population also speak German and French. According to the European Commission, the Netherlands has a world-class vocational education and training system, with built-in mechanisms to adapt to current and future skills needs so that training is more demand-driven. The Dutch labour force is also well equipped for the dynamic, fast changing IT-society of the 21st century. Dutch schoolchildren achieve good scores in the OECD Programme for International Student Assessment: fifth place within the OECD and second in the EU. Furthermore, compared to many other EU Member States, life-long learning is commonplace in the Netherlands: adults regularly engage in further education in order to continually improve their skills and knowledge levels.

High productivity per hour

The high level of education and the strong economic structure allow employees to be productive. Labour productivity per hour is among the highest in the world. It is noteworthy that the Netherlands has combined this high level of productivity with a high level of labour participation, also among semi-skilled and unskilled workers.

High level of entrepreneurs

The Dutch have always been well known for their entrepreneurial spirit, which is reflected in the country's large number of entrepreneurs: 11.9 per cent of the Dutch working population is self-employed. The Dutch government promotes start-ups because they create economic vitality and innovation and because they challenge existing firms, giving them the incentive to adapt and continue to innovate.

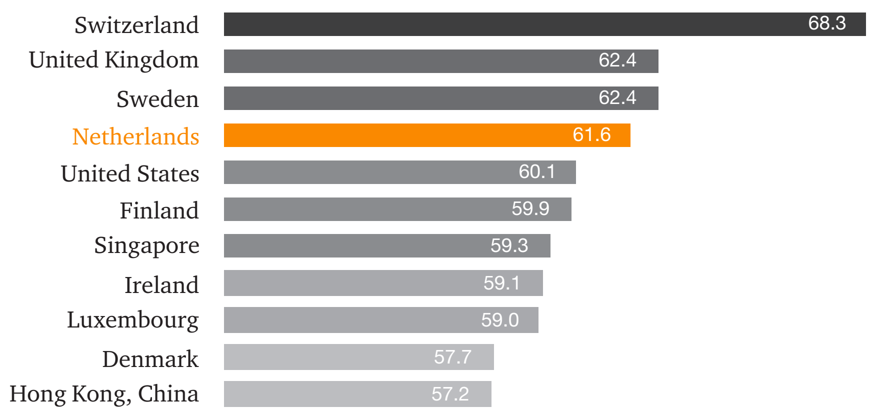
Business etiquette

Dutch people tend to view themselves as modest, tolerant, independent and self-reliant. They value education, tolerance, hard work, ambition and ability. The Dutch have an aversion to the non-essential. Dutch manners are frank with a no-nonsense attitude; informality combined with adherence to basic etiquette. For foreigners not being used to this, the Dutch may seem harsh or impolite at first. However, foreigners will soon learn that the Dutch way of working is also honest, efficient and friendly.

The Dutch are proud of their cultural heritage, rich history in art and music and involvement in international affairs.

Global Innovation Index: fourth position

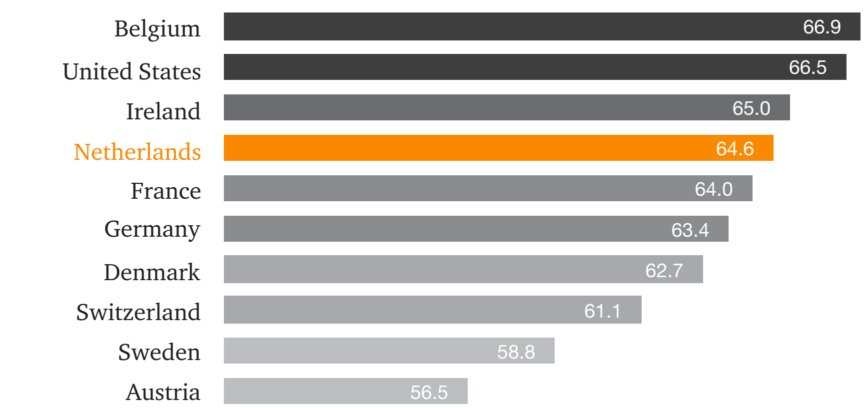
Most innovative countries (2015) - 141 countries



Source: INSEAD, 2015

High productivity per hour

GDP per hour, in US Dollars (2014)



US dollars
Source: The Conference Board and Groningen Growth and Development Centre, 2015

Legal system

Setting up a business

Dependent on the form chosen, certain steps must be taken to set up your company in the Netherlands. As it is most common to start doing business in the Netherlands using a bv ('besloten vennootschap'), below we will briefly set out the requirements for setting up your business using such entity form. The Dutch forms of business are described in the next paragraph.

- Normally, an establishment permit is not required to start up a new business in the Netherlands. This may be different for some sectors that are considered more complex. An example is the food sector. If you are planning a new plant in the Netherlands, an environmental permit is required in all cases.
- The articles of association must be written in Dutch and contain the name, seat and object of the bv. The name must be unique in such a way that it does not cause confusion with other entities/brands.
- The founders of the bv must sign the articles of association before a civil-law notary in the Netherlands (it is possible to use a power of attorney to avoid unnecessary travel or delays).
- Every business must be registered with the Trade Register of the Dutch Chamber of Commerce. The register holds publically available information on the business, such as the names of the board members and the articles of association.
- Before all requirements are fulfilled, the bv 'under formation' is allowed to assume obligations. These obligations are for the risk of the person(s) representing the bv under formation. After the formal establishment of the bv, these obligations need to be authorised by the bv, and the representatives are absolved of this liability.

Forms of business

There are several ways to operate a business in the Netherlands. A distinction can be made between entities with legal personality (corporate entities) and entities without legal personality (non-corporate entities). Below we discuss the principal forms used by foreign investors and companies expanding their businesses to the Netherlands.

Corporate entities

The bv and nv

Under Dutch law, two types of limited liability companies are recognised:

- bv ('besloten vennootschap'); and
- nv ('naamloze vennootschap').

Both the bv and the nv are entities with legal personality and a capital divided into shares. They can be used for the same business purposes, to be set out in their articles of association. The bv is the more flexible of the two and is most frequently used in international business. For more information we refer to the box on page 15.

The cooperative

The Dutch cooperative ('co-op') was historically used mainly in the agricultural sector and by certain banks and insurance companies. In the last decade, it has been reinvented as a holding company in international structures due to its flexibility from a Dutch legal and tax perspective. A co-op is a special kind of association. Similar to the nv and bv, it is an entity with legal personality, governed by articles of association.

The participants in a co-op are called members and at least two members are required to set up the co-op. The co-op conducts its activities for its members and is considered an extension of the businesses of its members. Members can be individuals, partnerships or legal entities. Member liability can be unlimited, limited or excluded. In general, the co-op is a very flexible legal entity with no minimum capital requirements and a less regulated governance structure. The co-op is often used in international structuring.

Non-corporate entities

Partnerships are used by individuals and entities to work together without incorporating in a separate legal entity. The legal requirements are limited, a partnership agreement is sufficient. Although a partnership cannot hold legal title, it can acquire rights and assume obligations in its own name. It is therefore a separate business entity from an operating perspective, although it is not legally separate from its owners (the partners) in many respects, including taxation.

The most common partnerships are the vof ('general partnership') and the cv ('limited partnership'). Partners in the vof have unlimited liability. In the cv, one or more general partners also have unlimited liability, but there will also be partners with limited liability. The limited partners are not allowed to perform acts of management and/or represent the partnership, as this would deprive them of their limited liability.

The cv is often used in international structuring for an optimal tax position.

Branch

Another possibility to start up activities in the Netherlands is to create a Dutch branch of a foreign entity. A branch is not a separate legal entity but an establishment in the Netherlands which is part of and governed by a foreign legal entity. The parent business therefore always bears ultimate legal liability for the branch. Depending on the nature and scope of the activities, the branch may qualify as a 'permanent establishment' for taxation matters. If so, the results of the branch will be taxable in the Netherlands.

The bv

The bv is a privately held company comparable to the 'limited liability company' (Ltd) in the United Kingdom or the 'Gesellschaft mit beschränkter Haftung' (GmbH) in Germany. The rules for the bv changed in 2012 and were made even more flexible with the introduction of the 'flex-bv'. The main characteristics of the bv under the new rules are:

Shares

- Practically no minimum capital is required. The founders will determine the issued capital (at least one share) and required paid-up capital. The issued capital and paid-up capital will be laid down in the articles of association.
- Companies with multiple shareholders can issue different types of shares to vary the voting rights of shareholders and to vary their dividend rights.
- Some shareholders (e.g. banks) can be excluded from voting rights.
- Shares of a particular class may give no or limited entitlement to profit sharing. Shares with no rights to profit or liquidation proceeds must always have voting rights.
- Depending on the wording in the articles of association, transfer restrictions may be applicable.
- Shares cannot be listed on a stock exchange.

Governance

- Annual general meeting (GM) for shareholders (in general, also for shareholders without voting rights) and holders of meeting rights.
- Both a one-tier board (executive and non-executives) and a two-tier board (separate supervisory board) are possible.
- A supervisory board (or non-executive directors (NEDs) on the board) is optional. Large companies may be subject to the 'Large Company regime'. In that case, the supervisory board (or the NEDs) is mandatory and will have special powers to appoint the executive members of the board. For some groups of companies (holding companies, companies with a majority of the employees working outside the Netherlands), the Large Company regime is less restrictive.
- The articles of association may grant shareholders the right to give specific instructions to the management board.
- Disclosures about allocation of board membership between men and women are required. Based on the Dutch Corporate Governance code the principle of 'comply or explain' is advisable.

Allocation of profits

- The GM decides on profit distribution, based on the company's accounts drafted by the management board.
- Dependent on the outcome of a liquidity test, the management board may refuse approval to the distribution of profit, if this contribution might threaten the continuity of the company.
- No other capital and creditor protection rules apply.
- It is possible to make interim dividends.

The nv

The nv is a public company comparable to the 'public limited company' (plc) in the United Kingdom or 'Aktiengesellschaft' (AG) in Germany. The shares in an nv may be freely transferable. In general, the nv is more strictly regulated and mainly used to incorporate companies that are very large and/or listed on the stock exchange. The main characteristics of the nv are:

Shares

- Minimum capital of EUR 45,000.
- Different types of shares are possible (including bearer shares).
- All shareholders have voting rights and profit rights. There is the possibility to create depositary receipts to split up voting rights and profit rights.
- Depending on the wording in the articles of association, transfer restrictions may be applicable.

Governance

- Annual general meeting (GM) for shareholders (in some cases, depositary receipt holders may also attend the meeting).
- Both a one-tier board (executive and non-executives) and a two-tier board (separate supervisory board) are possible.
- A supervisory board (or non-executive directors (NEDs) on the board) is optional. Large companies may be subject to the 'Large Company regime'. In that case, the supervisory board (or the NEDs) is mandatory and will have special powers to appoint the executive members of the board. For some groups of companies (holding companies, companies with a majority of the employees working outside the Netherlands), the Large Company regime is less restrictive.
- The articles of association may grant shareholders limited possibilities to give instructions (only general guidelines) to the management.
- Disclosures about allocation of board membership between men and women are required. Based on the Dutch Corporate Governance code the principle of 'comply or explain' is advisable.

Allocation of profits

- The GM decides on profit distribution, based on the company's accounts drafted by the management board.
- The GM decides on the proposed profit distribution. Dividends are limited by formal capital and creditor protection rules.

Taxation in the Netherlands

For centuries, the Netherlands, being a nation of traders, has realised the importance of being open and welcoming to foreign companies. As a result, the Dutch taxation system contains many incentives that stimulate entrepreneurship, foreign investment in the Netherlands and immigration of foreign employees. The most important are:

- A low corporate income tax rate of 25% (20% for income up to EUR 200,000)
- Accessible and cooperative Tax Authorities, Advance Tax Rulings (ATR) and/or Advance Pricing Agreements (APA) are issued to eliminate uncertainty for taxpayers
- 30% ruling
- Participation exemption and foreign branches
- Innovation box
- Fiscal unity
- No withholding taxes on interest and royalties
- Broad tax treaty network
- Regulations to unilaterally lower Dutch taxes

APA

ATR

An APA is an agreement with the Dutch Tax Authorities specifying the pricing method that the taxpayer will apply to its related-company transactions. These programmes are designed to help taxpayers voluntarily avoid or resolve actual or potential transfer pricing disputes in a proactive, cooperative manner.

An ATR is an agreement with the Dutch Tax Authorities determining the tax rights and obligations in the taxpayer's specific situation, used to prevent or resolve any tax disputes.

The Dutch ruling practice

One of the specific features of the Dutch tax system is the possibility to discuss the tax treatment of certain operations or transactions in advance. Upfront approval can be obtained from the Dutch Tax Authorities. The Dutch Tax Authorities conclude Advance Pricing Agreements (APA) as well as Advance Tax Rulings (ATR). Both are binding for the taxpayer and the Dutch Tax Authorities. To obtain an APA or ATR, certain substance requirements must be met. In general, the Dutch Tax Authorities are more than willing to cooperate and handle requests for APAs, ATRs and other requests (e.g. a request for a fiscally facilitated merger, a VAT registration or a (VAT) fiscal unity) within a reasonable amount of time.

BEPS and country-by-country reporting

As a member of the OECD, the Netherlands is an active participant in the anti Base Erosion and Profit Shifting (BEPS) project of the OECD and supporting its goals. As a consequence, the Netherlands will enact legislation when agreement is reached within the OECD on the BEPS project and all parties agreed to implement.

One example of this type of legislation is the OECD country-by-country reporting implementation package. The reporting requirements are primarily meant to be a (tax) risk assessment tool for the (international) Tax Authorities. Based on the OECD report, a multinational group with a turnover of at least EUR 750 million will have to file a country-by-country report in the state where the ultimate parent company is a resident. The Tax Authorities will then exchange this information with Tax Authorities of other countries for which the information is relevant and that have agreed to mutually exchange these reports. Besides, the agreed OECD report prescribes that each individual company will be obliged to have a master file and a local file available in its administration. The master file contains information on the transfer pricing within the entire group while the local file contains information on all intra group transactions of the local company. All this information will be kept confidential, not accessible to the general public.

The Netherlands has adopted legislation implementing the OECD country-by-country reporting package which corresponds with the system and methods as prescribed in the OECD country-by-country reporting package. In addition, in the Netherlands companies with a consolidated turnover of at least EUR 50 million are obliged to have a local file and a master file available. The Netherlands has also joined in a multilateral agreement for the exchange of information to effectuate the legislation. This legislation has become effective as per 2016. Furthermore, a Decree regarding the execution of the reporting obligations has been published on 30 December 2015.

Cooperative compliance

Another specific feature in the Netherlands is that the Dutch Tax Authorities allow businesses, under certain conditions, to apply for ‘horizontal monitoring’. This is a form of cooperative compliance by signing a Horizontal Monitoring covenant with the Dutch Tax Authorities. Horizontal monitoring encompasses more than just complying with laws and regulations, the organisation must be able to demonstrate it is in-control of its tax processes and tax risks, via a so called ‘Tax Control Framework’. The Dutch Tax Authorities will adjust the methods and intensity in which they perform their monitoring to the level of tax control of the taxpayer. As a result, audits performed by the Tax Authorities will shift from reactive (tax audits over past years) to proactive (providing ‘assurance’ upfront). Under horizontal monitoring, the company’s relationship with the Dutch Tax Authorities is based on mutual trust, understanding and transparency.

The benefit of this arrangement is that relevant tax risks and positions can be dealt with when they occur (in the present) within acceptable commercial deadlines. The company is required to act with a transparent attitude towards the Dutch Tax Authorities, who will in return provide a quick response with respect to tax issues that are brought to their attention by the company. This proactive assurance prevents unpleasant surprises afterwards. Apart from this, it helps with accurately determining the tax cash flow, deferred and current taxes, and ascertains that the company has as little uncertain tax positions as possible. This saves the company both time and costs.

However, some critical remarks with respect to horizontal monitoring have to be made. The way Horizontal Monitoring is executed depends very much on the individual tax inspector in charge of supervision since the concept is not strictly regulated. Another remark is that the Tax Authorities have not formulated any objective criteria with respect to the concept of Tax Control Framework requirements. According to the Dutch Tax Authorities a Tax Control Framework is a ‘subjective, dynamic, open standard’. We strongly disagree with this view since general financial risk management standards should also apply to the tax function. The risk for companies is that the Tax Authorities become unpredictable when working with ‘subjective, dynamic open standards’. Even more so, since the Dutch Tax Authorities now claim that a Horizontal Monitoring covenant has no legal power but has to be seen as a ‘psychological contract’. Based on the above we advise companies only to enter into the Horizontal Monitoring programme when clear written objectives have been set and a clear working process has been defined in order to manage expectations of the parties involved.

Horizontal monitoring can be applied to all taxes including corporate income tax, value added tax, wage tax and social security. PwC has developed a special tax management maturity model (T3M) to help companies determine their existing level of tax risk management and the path towards the intended maturity level of their tax risk management.

Corporate income tax

Scope

In general, a Dutch resident company is subject to corporate income tax (CIT) on its worldwide income. However, certain income can be exempted or excluded from the tax base. Non-resident entities have a limited tax liability. Only 'Dutch source income' is included in the CIT base of non-resident corporate taxpayers. For foreign companies, the income from Dutch sources includes income derived from a business enterprise in the Netherlands. This is the income attributable to a business or part of a business operated through a Dutch permanent establishment or permanent representative in the Netherlands.

Residence

In the Netherlands, corporate residence is determined by the company's specific facts and circumstances. Management and control are important factors in this respect. Companies incorporated under Dutch law are deemed to be residents of the Netherlands.

To obtain a Dutch tax residency certificate, minimum substance requirements need to be met, effectively ensuring that effective management and control of the company is based in the Netherlands.

Tax rate

The standard CIT rate is 25 per cent. A lower rate of 20 per cent applies to taxable income up to EUR 200,000. If the criteria are met, fiscal investment funds are taxed at a CIT rate of nil per cent. Under conditions, certain investment funds are eligible to opt for an exempt status for Dutch CIT purposes.

25%

Income determination

Corporate income is determined annually in accordance with the principles of 'sound business practice'. Profits and losses are attributed to the years with reference to the basic principles of realisation, matching, reality, prudence and simplicity. The Dutch tax laws, however, contain rules that expressly deviate from the concept of sound business practice. For example, tax laws limit the annual depreciation of some assets but also offer the possibility of accelerated depreciation of other assets. In addition, there are many exceptions to the main rules as a consequence of special fiscal facilities, the most important one being the participation exemption, which will be discussed on page 20.

The Dutch tax system provides several tax incentives, for example to stimulate certain investments. If the conditions are met, tax incentives are available for small-scale investments, investments in energy-efficient or environmental assets and for research and development activities. The Netherlands also provides for an optional favourable regime for the calculation of profits from qualifying activities of sea-going vessels. Conditions do apply.

The remuneration for activities performed should be at arm's length, meaning that terms, conditions, and pricing of transactions between affiliated companies should be similar to those applied between independent third parties. Dutch companies are obliged to produce and maintain appropriate transfer pricing documentation substantiating the transfer prices used. 'Appropriate documentation' means that the documentation should, among other things, include a functional analysis (description of the functions, risks and assets), an economic analysis as well as transfer pricing policy documents and internal contracts. Since January 2016, more detailed legislation applies to TP documentation. The new standards for TP documentation enable the Tax Authorities to better analyse potential risks with respect to transfer pricing and tax base calculation. Depending on the situation, the new documentation obligations include a country-by-country report, a master file and a local file. We refer to page 17.

If a transaction between related parties is not at arm's length, the taxable income may be adjusted by the Tax Authorities. Moreover, transactions that do not meet the arm's length test may be deemed to be a contribution of informal capital or a hidden profit distribution (the latter may possibly trigger dividend withholding tax).

Depreciation

Generally, depreciation may be computed by a straight-line or a reducing-balance method or, in accordance with any other sound business practice, on the basis of historical cost. However, Dutch tax law includes specific rules that can limit the depreciation of immovable property, goodwill and other assets.

On the other hand, the law provides accelerated and random depreciation of several specific assets. Accelerated depreciation applies to qualifying investments in assets that are in the interest of the protection of the environment in the Netherlands (the allowed percentage for accelerated depreciation is 75 per cent, the normal depreciation regime applies to the other 25 per cent of the investment). Accelerated depreciation is also available for certain other designated assets, for example, investments of starting entrepreneurs. Under conditions, the costs of the production of intangible assets may be taken into account at once.

Functional currency

A Dutch taxpayer may upon request and under certain conditions determine its taxable income in a currency other than euro. The request should be filed during the first book year of incorporation or prior to the start of a new book year in later years. Tax payments must always be made in euro.

Participation exemption

The Dutch participation exemption regime aims at eliminating economic double corporate taxation of profit distributions paid by a subsidiary to its parent company. A corporate taxpayer is exempt from Dutch corporate income tax on all benefits, such as dividends and capital gains, connected with a qualifying shareholding, in general a shareholding of at least 5 per cent. Such benefits are also eligible for an exemption of Dutch dividend withholding tax if distributed by a Dutch resident entity. If a taxpayer fails the motive tests and the participation is actually or deemed to be held as a portfolio investment – then the participation exemption would still apply if:

- the subsidiary in which the portfolio investment participation is held, is subject to tax that is reasonable according to Dutch standards, i.e. an effective tax rate of at least ten per cent ('effective tax rate test'); or,
- less than 50 per cent of the assets, directly or indirectly owned by the subsidiary in which the portfolio investment participation is held, consists of low-taxed free portfolio investments ('asset test').

There is no minimum holding period in relation to the applicability of the participation exemption. As an exception to the participation exemption regime, losses arising from the liquidation of the company in which a qualifying participation is held may be deductible for CIT purposes.

For non-qualifying portfolio investment participations, an indirect tax credit system is applicable for foreign taxes instead of the exemption.

As per 1 January 2016, the participation exemption regime is amended to implement the recent changes to the EU's Parent-Subsidiary Directive. Like all EU Member States, the Netherlands needed to include a specific clause to prevent double non-taxation as a result of mismatches in tax effects. A corporate taxpayer will not be eligible for the participation exemption or participation credit for received distributed profits to the extent that such distributed profits are deductible by the subsidiary. This might be the case for certain hybrid financial instruments. The intention of the taxpayer is irrelevant in this respect. Income and expenses relating to earn-out receipts and payments are not taxable. Note that expenses relating to the sale or purchase of participations are non-deductible.

Implementation Parent-Subsidiary Directive

The implementation of the recently adapted EU's Parent-Subsidiary Directive resulted in only minor changes of the Dutch corporate tax system. The participation exemption regime and the dividend tax regime as such remain largely unaltered. The wording of the substantial holding regime of the Dutch Corporate Income Tax Act and the Dividend Tax Act are adjusted slightly to reflect the wording of the general anti-abuse rule (GAAR) of the Directive. In addition, the scope of the current minimal substance requirements is broadened to include certain intermediates. In general however, no significant changes in the current practice are intended. As discussed above, the participation exemption regime is however altered to include a specific clause to prevent double non-taxation as a result of mismatches in tax effects. With these changes the adjustments of the EU's Parent-Subsidiary Directive are implemented, something which all EU Member States are obliged to do. The Netherlands has chosen for a practical and business friendly implementation in this respect.

Innovation box regime

A special regime applies with respect to profits, including royalties, derived from a self-developed intangible asset. Under the innovation box, the taxpayer may opt, under certain conditions, for the application of a lower effective rate on taxable profits derived from these intangible assets. The effective tax rate of the innovation box is five per cent, by means of a reduction of the tax base. The innovation box can be a very important facility. In combination with other facilities (see 'Tax incentives' on page 29), it makes the Netherlands the ideal location for R&D companies.

Fiscal unity

A Dutch resident parent company and its Dutch resident subsidiaries may, under conditions, opt to be treated as one taxable entity for the Dutch CIT by forming a 'fiscal unity'. Under the fiscal unity regime, inter-company transactions are eliminated and the business proceeds of the included companies are balanced for CIT calculation purposes. Companies with their place of residence in the Netherlands, both for Dutch tax law purposes and tax treaty purposes, may be eligible to opt for this regime. Under conditions, tax payers that are resident abroad may also be included in a Dutch fiscal unity insofar as they run a business in the Netherlands through a permanent establishment.

The main requirements to apply for this facility are that the parent company should hold directly or indirectly at least 95 per cent of the shares in one or more Dutch resident companies, the place of effective management should be located in the Netherlands and the entities should be subject to the same tax regime. The advantages of the fiscal unity include:

- Filing a single CIT return.
- Offsetting of losses during the existence of the fiscal unity.
- Elimination of inter-company transactions.

A fiscal unity only comes into existence after a request has been filed with the Tax Authorities and may have maximum retroactive effect of three months (provided that the conditions have been met during this term).

A disadvantage of a fiscal unity may be that each company is jointly and severally liable for the corporate income tax debts of the fiscal unity and the more limited application of certain tax incentives.

Following EU case law the Dutch legislator has submitted a legislative proposal broadening the scope of the fiscal unity regime. Pending this legislative proposal in parliament, it is now already possible to form a fiscal unity between a Dutch parent company and its Dutch sub-subsidiary, excluding the intermediary holding company if the intermediary holding company is an EU/EEA resident company and other conditions are met. It is now also possible to form a fiscal unity between two Dutch sister companies excluding their parent company, if the parent company is an EU/EEA company and other conditions are met. Also forming a fiscal unity with a Dutch permanent establishment of an EU company has been made considerably easier.

Net operating losses

Tax losses can be carried back one year and carried forward nine years.

Complex rules may prohibit the utilisation of net operating losses after a change of 30 per cent or more of the ultimate control in a company. Furthermore, limitations exist on loss utilisation for holding/finance companies. Based on these rules, losses incurred by a mere holding or group finance company can only be offset against holding or finance income in preceding and following years, provided that certain strict conditions are met.

No cross-border relief is available with regard to foreign permanent establishments. As of 1 January 2012, foreign source losses can no longer be offset against Dutch source profits. An exception applies to 'final losses', losses realised upon the discontinuation of foreign business operations. Under the 'cessation regime', final losses of foreign permanent establishments are taken into account for Dutch CIT calculation purposes.

Foreign income and double tax relief

The worldwide income of a resident corporate taxpayer is included in the Dutch CIT base, but the Dutch system usually subsequently provides for double tax relief. The Netherlands concluded around 90 tax treaties for the avoidance of international double taxation ('DTC'). In case no DTC applies, the Netherlands often unilaterally provides for double tax relief. In addition, taxpayers may benefit from the favourable rules provided by EU directives and EU law.

Double taxation of foreign dividends (if not exempt under participation exemption), interest, and royalties is relieved by a tax credit provided for in Dutch tax treaties or if the payer of the income tax is a resident of a developing country designated by Ministerial Decree unilaterally. If no treaty or unilateral relief applies, a deduction of the foreign tax paid is allowed in computing the net taxable income.

The Dutch tax law provides for double tax relief for Dutch resident corporate taxpayers deriving profits from foreign business activities. The taxpayer's worldwide profits are determined according to Dutch tax standards and subsequently reduced by an amount equal to the 'positive and negative business income items derived from foreign sources' on a per-country basis. The eligible income items include, for example, the business profits attributable to a permanent establishment located abroad and the income from immovable property located in the other state.

In most circumstances, foreign dividend is exempt from Dutch CIT under the participation exemption, as previously discussed. As a consequence, foreign withholding tax cannot be credited, and constitutes a real cost for the companies concerned. However, a credit of the foreign withholding taxes granted against Dutch dividend tax due on the distribution to foreign parents of the Dutch company may be available. The credit amounts to a maximum of three per cent of the gross dividend paid.

Exit tax

If, for any reason, you wish to migrate your company from the Netherlands, an exit tax is due on realised and unrealised profits (hidden reserves and goodwill). The taxable amount is calculated at the time of migration and is formalised in an assessment. If the new place of residence is within an EU/EEA Member State, the tax due may be deferred. The company has to comply with certain administrative requirements and provide security in order to obtain the deferral.

Value added tax

EU context

The system of value added tax (VAT) in the Netherlands is based on EU regulation and essentially the same as that used in the rest of the EU. However, there still are some significant differences in details between various Member States of the EU, especially with regard to the tax rates and formal VAT requirements and the applicable business context.

The VAT system

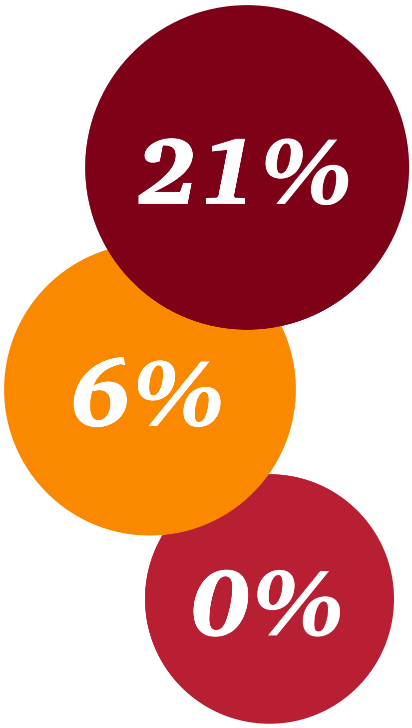
VAT is charged on the supply of goods and services in the Netherlands made by a taxable person in the course of exercising a business, unless the supplies are zero-rated or exempt. A VAT taxable person is anyone performing business activities in the Netherlands. If the business is liable for VAT on its transactions in the Netherlands, it will have to register for VAT. VAT is also due on the importation of goods into the Netherlands, regardless of whether the importer is a VAT taxable person or not.

VAT is effectively a tax on consumer expenditure. So, in theory, the final burden of the tax should not fall on business activity. This objective is achieved by an arrangement known as the input VAT deduction system. When a business buys goods or services, it usually pays VAT to the supplier (input tax). When the business sells goods or services, whether to another business or to a final consumer, it is usually required to charge VAT (output tax) unless the supplies are specifically relieved from VAT. If the business makes only taxable supplies, it must periodically total the input VAT it incurs and deduct this from the output VAT charged, paying (or claiming) the balance to (from) the Dutch Tax Authorities. The result is that the end consumers bear the total cost of VAT on the final price of the goods or services they purchase.
Special attention needs to be given to the VAT position of holding and/or financing companies.

Rates

Currently, the standard VAT rate in the Netherlands is 21 per cent. A lower VAT rate of six per cent applies to certain essential goods and services, for example food and drink, passenger transport and certain labour-intensive repair and maintenance activities. The zero per cent rate applies to, for example, the export of goods.

Additionally, various types of supply are exempt from VAT, such as educational and medical services. The difference between zero per cent VAT and an exemption is that the VAT incurred on costs that are incurred for VAT exempt transactions cannot be settled with input VAT. Zero-rated transactions (zero per cent VAT) allow full deduction of input VAT.



Deferment of import VAT

In contrast to some other EU Member States, the Netherlands has implemented a system that provides for the deferment of actual payment of import VAT at the time of importation. Instead of paying import VAT when the goods are imported into the EU, the payment can be deferred to the periodic VAT return. Under this system, the import VAT should be declared but this amount can simultaneously be deducted in the same VAT return. As a result, in principle there is no actual payment of VAT at import, thus avoiding cash flow disadvantages.

Form-free administration and e-invoicing

Contrary to some other European countries, form-free administration is allowed in the Netherlands. There are some general requirements regarding the content and readability of the administration, as well as the obligation to retain the administration for seven years (ten years when it relates to immovable property), but basically the entrepreneur is free to determine how the administration is organised, as long as data can be made available in a legible and comprehensible way upon request of the Dutch Tax Authorities. This makes it relatively easy for businesses in the Netherlands to comply with the Dutch administrative obligations compared to other EU Member States.

Another advantage is that the Netherlands has introduced legislation that allows for form-free e-invoicing. This means that, although the standard invoicing requirements have to be met, the way in which the electronic invoices are sent is up to the entrepreneur, as long as the authenticity of origin, the integrity and completeness of the content and the readability of the electronically stored invoices are guaranteed. Especially going forward, as electronic invoicing takes flight, it will be advantageous to be established in the Netherlands, where the legislation in this respect is less restrictive than in many other European countries.

VAT refund request

In addition, general VAT refund requests are processed within a couple of weeks in the Netherlands, which is advantageous from a cash flow perspective.

Customs and excise

EU: customs union

If your business imports goods into the Netherlands from outside the EU, the goods will have to be declared for customs purposes and may be subject to customs duties and VAT. The EU is a customs union, which means that the EU is treated as a single territory for customs purposes and that in principle the same rules and rates apply in each Member State. This means that, once goods are in 'free circulation' (i.e. all duties paid and import formalities completed) in one Member State, such as the Netherlands, they can move freely between all other Member States, without further payment of customs duties or further customs formalities.

However, although the rules are the same throughout the EU, the interpretation and/or application may differ in the various EU countries. As a result of the long tradition as a trading country with its open and business friendly environment, the Dutch Customs Authorities are known for their flexible solutions in terms of customs supervision. This does not mean that lower duties are levied or no controls are performed, but merely that the Dutch Customs Authorities typically try performing their controls and supervision in such a manner that it has less impact on the company's operations.

Customs duties

There are essentially three areas that determine the amount of customs duties payable on goods imported from outside the EU, these are:

Classification

The amount of customs duties depends on how the goods are classified in the EU Combined Nomenclature (the EU list of codes and duty rates for customs purposes), as this determines whether goods are subject to ad valorem customs duty rates (i.e. a set percentage of the value) or to specific customs duty rates (e.g. a set amount per volume) or no customs duties at all (i.e. a zero rate).

Valuation

Where goods are subject to ad valorem customs duties, the EU customs valuation rules are based upon the WTO valuation rules and likewise require that as a basic rule a transaction value method is applied. This means that the price actually paid or payable is the basis for the customs value, i.e. the value is based upon a buy-sell transaction. The transactions between related parties are basically acceptable as a basis for transaction value. However, the Customs Authorities may request that the arm's length nature of the prices is demonstrated. Only where such transaction value is not available or cannot be applied, alternative methods may apply.

While using a buy-sell transaction as the basis for the customs value, certain cost elements may need to be added in case these are not included in the price paid, e.g. freight and insurance to the EU border, assists, R&D costs or royalty payments. Certain elements e.g. inland freight or inland installation may, in certain circumstances, be excluded, in case these are included in the price paid.

Origin

The EU has many free trade agreements and preferential trade arrangements in place with a large number of countries, which means that goods that on the basis of the specified strict rules, qualify as originating from such a country, can enter the EU at a reduced or zero customs duty rate. However, the EU does also apply trade defence measures upon importation of goods, such as anti-dumping, anti-subsidy (also known as countervailing) or safeguard measures, which generally take the form of additional duty. These are often applied to goods originating from specifically listed countries. Careful consideration must therefore be given to the customs implications of any sourcing or production decisions.

Unlike the US the EU does not have a general refund system for customs duties paid. This means that when goods are imported and subsequently re-exported the customs duties paid upon importation will not be refunded. Therefore, in order to avoid unnecessary payment of customs duties for products that are not destined for the EU market, various suspension arrangements can be applied, e.g. for transportation (customs transit), for storage (customs (bonded) warehousing) or for processing (inward processing). Some of these arrangements may also be applied for postponing the payment of customs duties and import VAT. For the application of such suspension regimes typically authorisations are required, which may only be available for EU established companies.

There is a range of customs reliefs that an importer may use provided that the criteria are met.

Furthermore, simplified procedures are available for performing customs formalities for import, transit and/or exports. These simplified procedures will often allow a more flexible handling of the (logistical) operations with customs supervision being performed in the company's administration rather than with a physical customs checks/supervision. The simplifications can also relate to self-issuing certificates of origin for exports or origin statements on commercial documents such as invoices (authorised exporter). Based on such origin certificates or origin statements, the imports in the country of destination may be subject to reduced customs duty rates.

Excise duty

Excise duty is a consumption tax payable on certain consumer goods that have been specified in a European context. Excisable goods include: beer, wine, spirits, tobacco and mineral oil products. The amounts of duties payable may be substantial and the rules regarding excise formalities are complex, it is therefore important to seek advice before imports commence.

UCC

As of 1 May 2016, the new 'Union Customs Code' (UCC) will enter into effect. The UCC is going to replace the current Community Customs Code. Although the general principles as mentioned above will remain the same, the UCC will also introduce some radical changes on a number of points. For example, the provisions relating to customs value are to be changed, and furthermore, it will no longer be possible to determine customs value on the basis of a 'First Sale'.

Personal income tax

The Netherlands taxes its residents on their worldwide income; non-residents are subject to tax only on income derived from specific sources in the Netherlands (mainly income from employment, director's fees, business income, and income from Dutch immovable property).

Residence

The facts and circumstances determine an individual's residence. In case of a dispute, the Dutch tax courts will examine the durable ties of a personal nature with the Netherlands. An expatriate is generally considered a resident of the Netherlands if, as a married person, his/her family accompanies him/her to the Netherlands, or if, as a single person, he or she stays in the Netherlands for more than one year.

Qualifying non-resident taxpayer

As of 1 January 2015 the regime for qualifying non-resident taxpayers replaces the regime under which non-resident taxpayers could opt to be treated as a resident taxpayer, which was in place up to and including 31 December 2014. No transitional rules apply. Qualifying non-resident taxpayers of the Netherlands (i.e. individuals who reside in the EU, EEA, Switzerland or the BES islands and who earn 90 per cent of their worldwide income in the Netherlands) will be eligible for personal/ familial deductions, tax credits, et cetera, which are normally only available to Dutch tax residents. An advantage of the new legislation is that qualifying non-resident taxpayers will benefit from deductions without becoming liable to tax in the Netherlands on their worldwide income. The other benefit is that their deductions etcetera are taken into account in full, and no longer pro rata as under the rules that applied up to and including 31 December 2014 if certain conditions are met. However, under the new rules, only residents of the countries indicated above can qualify as qualifying non-resident taxpayers of the Netherlands.

Under the provisions of the 30 per cent ruling (see 'Extra territorial costs and the 30 per cent ruling' on page 27), employees who are considered resident taxpayers may opt to be treated as partial non-residents. 'Partial' in this respect implies that they are treated as residents for box 1 and as non-residents for box 2 and box 3 purposes whilst they are entitled to personal deductions and tax credits.

Boxes

In the Netherlands, worldwide income is divided into three different types of taxable income, and each type of income is taxed separately under its own schedule, referred to as a 'box'. Each box has its own tax rate(s). An individual's taxable income is based on the aggregate income in these three boxes:

Box 1

Scope

Box 1 refers to taxable income from work and home ownership. It includes entrepreneurial and employment income and home ownership of a principal residence (deemed income).

Rates

Box 1 has a progressive rate.

Income determination

Regarding box 1, we will only discuss income from employment and home ownership, as these are most relevant for employees of foreign companies doing business in the Netherlands.

If an employee is on a Dutch payroll, wage tax will be withheld from its salary. The amount withheld and paid by the employer is applied as a prepayment of income taxes for the employee. Within an employment relationship, all benefits in kind are, in principle, considered taxable income. Such benefits include accommodation allowances, private use of the company car, employee stock options, home-leave allowances, and pre- and post-assignment bonuses. Employer-paid reimbursement of relocation costs relating to the acceptance of new employment is not taxable. The same applies for employer contributions towards approved pension schemes, as the future pension terms will be taxed. Income and benefits from equity based remuneration is generally taxable at the moment the benefit vests (shares) or is exercised (stock options).

The rules regarding 'excessive' remuneration, which became effective several years ago, have brought 'lucrative investments' (carried interest arrangements) under taxation in box 1. The income from a lucrative investment, both income and capital gains, will, in principle, be considered 'income arising from other activities' and, as such, be taxable in box 1. Under certain circumstances the income may be taxed in box 2 (lower tax rate).

Mortgage interest payments in relation to the financing, renovation, or maintenance of the primary residence may be deducted from box 1 income. To determine the net amount of the deduction, deemed income of, generally, 0.75 per cent of the value of the property is taken into account. An increased rate applies when the value exceeds EUR 1,050,000, for which the rate is 2.35 per cent on the portion exceeding EUR 1,050,000. The interest paid on mortgage loans concluded as of 1 January 2013 can only be deducted if the full mortgage loan is paid off on a periodical basis within 30 years. Starting from 1 January 2014, the maximum effective tax rate against which the mortgage interest is deducted is lowered by 0.5 per cent per calendar year over a period of 28 years. This implies that in the year 2016 the mortgage interest paid can be deducted against a (maximum) tax rate of 50.5 per cent (38 per cent in 2041).

Levy rebates

Qualifying taxpayers are entitled to 'levy rebates'. In addition to the general levy rebate, several other levy rebates may be claimed, depending on the personal situation of the taxpayer (e.g. the single parent rebate).

Income (EUR)	Tax rate (%)	Social security (%)	Total (%)
0 - 19,922	8.4	28.15	36.55
19,922 - 33,715	12.25	28.15	40.40
33,715 - 66,421	40.4	none	40.40
> 66,421	52	none	52

Box 2

Scope

Box 2 refers to taxable income from a substantial interest.

Rates

Box 2 income is taxed at a flat rate of 25 per cent.

Income determination

A Dutch resident who holds at least five per cent of the shares or a class of shares of a company, or who holds rights to acquire a five per cent interest in a company, has a 'substantial interest'. The benefits derived from this substantial interest are taxable in box 2. These benefits include dividends and the gain on the sale of one or more of the shares or rights. Taxation in box 2 will apply to a non-resident only if he holds a substantial interest in a Dutch-based company.

Box 3

Scope

Box 3 applies to (deemed) taxable income from savings and investment.

Rates

Box 3 income is taxed at a flat rate of 30 per cent.

Income determination

Income from savings and investments is, as such, not taxable. However, the net assets (assets minus debts) valued as at 1 January are deemed to generate a fixed return on investment of four per cent per year. This fixed return is taxed in box 3. All net assets that are not intended for daily use and that are not taxed in box 1 or box 2 classify for the box 3 taxable base. The fixed return on investment will probably change per 1 January 2017, due to new legislation. According to the proposed new legislation three different percentages (2.9 per cent, 4.7 per cent and 5.5 per cent) will apply for the fixed return on investment, depending on the amount of the net assets.
For Dutch residents, part of the taxable base is exempt (2016: EUR 24,437) and several specific deductions apply. Non-residents are subject to taxation only on the net value of a limited number of Dutch

assets, including Dutch real estate not used as the primary residence, and profits rights unrelated to shares or an employment.

Foreign tax relief

Residents and most partial non-residents are entitled to relief from double taxation under tax treaties or under unilateral relief provisions.

Social security

The Netherlands has an extensive compulsory social security system, to which both the employer and the employee must contribute. As the social security contributions are capped, the Dutch social security system is relatively inexpensive in comparison to other European social security systems. The system can be classified as follows:

- National insurance tax: under the national insurance tax regulations, contributions are levied on an employer income up to a maximum of EUR 33,715. At present, the contributions are capped at EUR 9,490 per annum. From this amount several levy rebates may be deducted. National insurance contributions paid by an employee are not deductible from taxable income. National insurance contributions and income taxes are included as a combined amount in the first and second income tax brackets.
- Employee's insurance: this is paid by the employer. It includes unemployment and disability benefits. The maximum annual contribution amounts to approximately EUR 6,185 depending on the industry and size of the company.
- Health insurance: the employee should individually conclude a health insurance policy with a Dutch health insurance company irrespective of whether international health insurance is available. In addition, the employer is required to make a contribution as well. This contribution is capped at EUR 3,561.

Extra-territorial costs and the 30 per cent ruling

The actual costs relating to employees who are hired/assigned from abroad to the Netherlands incurred by a foreign employee may be reimbursed tax free provided that these expenses can be proven. These extra-territorial costs basically include all costs that the employee would not have incurred had he or she not been assigned to the Netherlands. Costs that qualify as extra-territorial costs include, among others, costs related to double housing, language courses, residence permits, and home leave. Apart from the base of the 30 per cent ruling the employer can reimburse the school fees for an international school for the kids of employees tax free in full.

If certain conditions are met, a foreign employee working in the Netherlands may be granted a 30 per cent ruling. Under this ruling, a tax free reimbursement amounting to 30 per cent of the income from active employment can be paid to the employee. The 30 per cent reimbursement is intended to cover all extra-territorial costs. If the 30 per cent ruling is applied, the actual extra-territorial costs may not be reimbursed tax free in addition to the 30 per cent reimbursement. If the actual extra-territorial costs are higher than the 30 per cent reimbursement, the higher costs can be reimbursed tax free.

There are several requirements to qualify for the 30 per cent ruling:

- The foreign employee should have specific expertise that is not available, or is scarce in the Dutch labour market. This is based upon a salary norm: the general gross salary has to amount to a minimum of EUR 36,889 (i.e. EUR 52,698 including tax free reimbursement of 30 per cent). A lower norm amounting to EUR 28,041 (i.e. EUR 40,058 including tax free reimbursement of 30 per cent) applies to individuals with a university degree who are younger than 30.
- The employee must have lived outside a 150 kilometre radius of the Dutch border during more than 2/3 of a 24-month period before taking up Dutch employment in order to qualify for the 30 per cent ruling.
- An application for the 30 per cent ruling must be filed within four months of starting the Dutch employment. If this period is exceeded, the ruling, if granted, will only apply as of the month following the month in which the application was filed. The 30 per cent ruling may only be applied if the employee is included in a Dutch wage tax administration.

The 30 per cent ruling will end when the conditions are no longer met or ultimately eight years from the moment the 30 per cent ruling became applicable. Furthermore, the 30 per cent ruling lapses at the end of the next wage tax period following the wage tax period in which

Example of the 30 per cent ruling

Employer pays EUR 75,000 to an expatriate who made extra-territorial costs of EUR 10,000 in a given year.

	With 30% ruling	Without 30% ruling
Paid by employer	€ 75,000	€ 75,000
Less: extra-territorial costs	€ 22,500 (30% of remuneration)	€ 10,000 (actual costs)
Wage for income tax	€ 52,500	€ 65,000
Less: Income tax	€ 10,951	€ 16,001
Less: National insurance tax	€ 9,490	€ 9,490
Plus: Levy rebates	€ 3,035	€ 1,932
Net income	€ 57,594	€ 51,441
Effective tax rate	23%	31%

the Dutch employment was terminated. The 30 per cent ruling can no longer be applied on post-departure income. Hence, the 30 per cent ruling can, in principle, no longer be applied on bonuses and equity income that becomes taxable after having left the Netherlands in most situations.

One of the conditions listed above is that the employee should have lived outside a 150 kilometre radius of the Dutch border during more than 2/3 of a 24-month period before taking up Dutch employment in order to qualify for the 30 per cent ruling. This '150 kilometer radius' condition is currently under discussion. Several court cases regarding this condition started during the year 2012. One case that was referred to the European Court of Justice by the Dutch Supreme Court is now back at the Dutch Supreme court for its (final) decision.

PwC has a special agreement with the Dutch Tax Authorities, based on which PwC can assess and grant expatriates the beneficiary 30 per cent ruling on behalf of the Dutch Tax Authorities. This reduces the application period from 3-4 months to 2-3 weeks.

Other taxes

Transfer tax

Acquisition of economic or legal ownership of immovable property in the Netherlands is subject to a six per cent transfer tax on market value. Some exemptions are available, e.g. for mergers, split ups, reorganisations. The real estate transfer tax on homes is two per cent.

The acquisition of shares in an entity that owns real estate may also be subject to transfer tax if that entity is characterised as a 'real estate entity'. The threshold for qualifying as a real estate entity is met if at the time of acquisition of the shares or in the preceding year more than 50 per cent of the assets of the entity consist of or has consisted of real estate and at least 30 per cent consist of Dutch immovable property.

Dividend withholding tax

Dividends from Dutch corporations are generally subject to a fifteen per cent Dutch dividend withholding tax. In general, in a business-driven structure this does not apply to a Dutch cooperative, a widely used vehicle for international holding and financing activities. Dividend withholding tax on dividend received by Dutch individuals or corporate entities is creditable against the personal income tax and the corporate income tax. However, if the participation exemption applies the dividend withholding tax can not be credited.

Dividends paid to corporate entities in other EU countries are often exempt from dividend tax due to the EU Parent/Subsidiary Directive. Moreover, dividend tax is often eliminated or lowered by one of the many bilateral tax treaties.

No withholding tax on interest and royalties

There is no Dutch withholding tax on royalties and interest.

Car taxes and regional taxes

Apart from the taxes already mentioned, some other taxes complete the Dutch tax system. The most important are:

- An individual who owns/uses a car in the Netherlands may become liable to Dutch road tax.
- A municipal tax applies to the ownership and/or use of immovable property.
- Inheritance and gift tax is imposed on the fair market value of the gift or inheritance.

Tax incentives

The Netherlands is a very attractive place for performing research and development R&D work and for investment. The Dutch tax system features several tax incentives to stimulate innovation and business activities.

Research and development incentives

Apart from the innovation box (see ‘Innovation box regime’ on page 21), the Dutch tax system stimulates R&D activities by providing for a reduction of wage tax due on the wages of employees engaged in R&D of technologically new products.

R&D costs

A company can reduce the costs of its R&D activities by making use of the scheme for reducing the payroll tax and national insurance contributions to be remitted (WBSO). The WBSO rebate for R&D covers salary costs and other costs and expenses related to R&D. The subsidy accrues to the employer when the employee is credited for the normal amount of wage tax. For the year 2016, the reduction of the payroll tax and social security contributions amounts to 32 per cent of the first EUR 350,000 in R&D costs (first bracket) and sixteen per cent of the excess R&D costs. The rebate is limited at the total amount of wage tax due.
To obtain the relief under the R&D incentive programme, taxpayers must file an electronic/online application with RVO.nl, a department of the Ministry of Economic Affairs. The taxpayer will receive an R&D declaration. The budget for this subsidy is fixed, so the amount of the subsidy is dependent on budget availability. Note that, subject to certain conditions, self-developed and utilised software falls within the scope of the R&D incentive.

Between 1 January 2012 and 31 December 2015 the additional Research and Development Allowance (R&D allowance) encouraged businesses to invest in their research and development work. In addition to R&D facilities for R&D wage costs in the wage tax, the R&D-deduction amounted to 60 per cent (60 per cent in 2014, 54 per cent in 2013, 40 per cent in 2012) of the costs (other than wage costs) and expenses directly related to R&D activities performed by the taxpayer. An expense of EUR 1 million was taken into account over a period of five years, 20 per cent each year. To receive this additional deduction, taxpayers needed to file an electronic/online application with the Netherlands Enterprise Agency together with the application for the R&D declaration. As of 1 January 2016, the R&D allowance is integrated in the WBSO.

Investment incentives

Investments in certain business assets may qualify for an additional deduction for tax base calculating purposes. Not all business assets are eligible, some are explicitly excluded.

Energy-efficient and environment-improving assets

An investment in a new energy-efficient asset may qualify for an additional deduction (EIA) if the amount exceeds EUR 2,500 and the asset satisfies the requirements on the Energy List 2016. The EIA amounts to 58 per cent of the qualifying investments. A similar tax incentive is available for investments in new environment-improving assets. Such an investment may qualify for an additional deduction (MIA) if the amount exceeds EUR 2,500 and the asset satisfies the requirements on the Environment List 2016. The MIA is set at 36, 27 and 13.5 per cent (dependent upon eligibility) of the amount of the qualifying investments. The taxpayer must report the qualifying investment within three months to RVO.nl. An investment can be reported in phases, but the minimum amount for notification is EUR 2,500. An electronic application form is available for this purpose. Both for EIA and MIA, limitations to the maximum amount of benefit apply.

Arbitrary depreciation

Arbitrary depreciation is available to investments in business assets that are in the interest of the protection of the Dutch environment and that meet certain requirements. If the conditions are satisfied, accelerated (or decelerated) depreciation up to 75 per cent of the investment costs is possible. The other 25 per cent of the costs are depreciated in accordance with sound business practice.

Accelerated depreciation is also available for certain designated investments, such as investments by starting entrepreneurs and certain investments made in new business assets in 2009, 2010 or 2011 and between 1 July 2013 and 31 December 2013. Certain conditions apply.

Human resources and employment law

Human resources

The most important long-term asset of almost any business is its qualified personnel. As mentioned before, the Netherlands is internationally renowned for its high-quality labour market. In addition, Dutch employees are flexible and have an excellent work ethic.

Trade unions in the Netherlands have a moderate demeanor in character and tend to operate on the premise of consensus. Union membership is generally low and where industrial disputes do occur, they are resolved quickly and pragmatically. Employers and employees cooperate in various ways through the Joint Industrial Labour Council, the Social and Economic Council, Dutch works councils and European works councils. This cooperation also contributes to stable labour relations. As a result, growth in wage costs has been kept to moderate levels, while productivity levels remain high.

It has become common practice in the Netherlands to include a bonus scheme in the employment agreement of highly qualified personnel. In certain sectors bonus schemes are subject to specific statutory requirements. The wording of these schemes is of utmost importance, as the right design can have tax advantages and may save the employer unexpected costs when the employment is terminated. In addition, providing benefits (rather than paying a higher salary) can have tax advantages for both the employer and the employee.

While wage costs are moderate, it is important to notice that premiums for benefits such as social security and pensions are compulsory. They are paid by both the employer and the employee.

Recently, many Dutch employers have been hiring people on a flexible basis, such that in principle they qualify as self-employed. In this regard temporary and flexible contracts are possible and may alter the social security and pension obligations for employers. In addition, these contracts prove helpful for easier termination of the employment. However, the employer should take care that the Dutch Tax Authorities cannot consider the relationship with the self-employed person as an employment. The regulations under which it was possible for tax and social security purposes to obtain clarification from the Dutch Tax Authorities about the contractor's status, i.e. de Declaration of Independent Contractor status ('Verklaring Arbeidsrelatie / VAR'), is planned to be abolished in the course of 2016. However, it remains possible to retain security about the labour relationship by submitting the contract with the self-employed person to the Tax Authorities for approval, or by using a standardised pre-approved contract.

Employment law requirements

Dutch law grants employees a range of protections that create obligations and potential risks for employers. These include:

- The requirement to establish a works council for every company with 50 employees or more. The employees elect the members. The works council facilitates the communication between management and staff and has a legal right to advise on, or approve, certain decisions of the company.
- A general duty to provide a safe place of work, safe access and safe work systems, supported by related obligations such as consulting with employees or their representatives on health and safety issues and providing staff with certain health and safety information.
- An obligation not to discriminate against employees, including job applicants, on a range of grounds, including race, colour, nationality, ethnic origin, age, gender (this includes sexual harassment), marital status, religion or religious belief, sexual orientation, disability and part-time or fixed-term status.
- It is possible that the activities of an enterprise fall within the scope of an industry collective labour agreement (CLA) concluded by employers' and employees' organisations. Such CLA will have to be applied by all enterprises in the branch during periods that the CLA will have been declared mandatory applicable by the Ministry of employment and social affairs.
- An obligation to pay employees at least the minimum wage, which is a fixed monthly rate and is increased annually (as of 1 January 2016 EUR 1,524.60 for those aged 23 and over).
- Various benefits for the employee in connection with childbirth, adoption and other family situations (including the right to at least sixteen weeks of pregnancy and maternity leave, and a right to time off to deal with personal emergencies).

- A requirement not to allow a worker to work beyond twelve hours per day and 60 hours per week without express consent (there are additional limits on working time, including daily and weekly time off and specific limits related to young workers and night workers). A full-time work week normally contains not more than 40 hours per week.
- A duty to give each employee paid holiday leave at a minimum of four times the average number of days worked per week.
- An employer is limited in its freedom to process personal data obtained about its employees and job applicants, including transferring such data to third parties (these limitations are more stringent in relation to personal data which is 'sensitive' and where the data may be transferred outside the EU to countries with low levels of privacy protection).
- The limitation of the number of temporary employment contracts that can be offered to an employee. After three consecutive temporary employment contracts, the fourth employment contract automatically becomes a permanent one. The total duration of two or more consecutive temporary employment contracts may not exceed two years. After that time the employment contract will also be deemed a permanent contract. If an interval of at least six months has occurred between two temporary employment contracts, a new 'chain' of three fixed term contracts may be concluded.
- Various rights that protect employees in the event of termination of employment. At times, this may make it difficult to dismiss employees. There is a minimum notice entitlement varying from one month (for workers employed less than five years) up to four months (for workers employed more than fifteen years). Under certain circumstances deviation of the notice period is possible.
- If the employer terminates or does not extend an employment contract after its fixed term, the employee is entitled to a statutory severance payment, the so-called 'transition allowance' if the employee has worked for the employer for at least two years. The calculation formula for the transition allowance, stipulates that an amount equal to 1/3 of the gross monthly salary per service year for the first ten years of service and an amount equal to 1/2 of the gross monthly salary for further service years, is due. Up to the year 2020, years of service after the age of 50 and situations of more than ten years of service are rewarded with one gross monthly salary instead of the 1/2 month salary. The transition allowance is capped at EUR 75,000 gross, or one gross annual salary if this exceeds the amount of EUR 75,000.

It is advised for an employer to have a comprehensive employment contract in place, to be used for each employee. This can include all the terms and conditions of employment and in addition protect the employer's business interests by imposing obligations on the employee (e.g. about confidentiality of business secrets or restrictions of certain competitive activities after the employment ends).

Immigration

Immigration procedure(s) must be started for foreign nationals who want to work and stay in the Netherlands. Over the past few years the Netherlands has introduced a less restrictive admittance policy for highly skilled workers of multinational companies who meet specific (salary) criteria.

EEA national

No immigration requirements are applicable to EEA nationals (excluding Croatian nationals, for whom a work permit is required in the first year of their employment). In case the stay of an EEA national exceeds four months he/she needs to register with the local municipality in the city of residence (see 'Registration municipality' under 'Non-EEA national').

Non-EEA national

According to the Dutch Foreign Employment Act an employer needs to be in possession of a work permit for a non-EEA national (including Croatian nationals) who will perform work activities in the Netherlands.
For stays shorter than three months the non-EEA national may need a Schengen visa (for business or tourist purposes) to enter the Netherlands. A (business) Schengen visa does not allow the non-EEA national to work in the Netherlands.

In case the intended stay will exceed 90 days (within a period of 180 days) a residence permit is required to legally stay in the Netherlands. Besides that a long term entry visa (MVV) is required before entering the Netherlands for most nationals (except for nationals from the US, Canada, Australia, South Korea, Vatican City, New Zealand, Monaco and Japan). In case the company of the foreign national is registered as a recognised sponsor and the foreign national is in possession of a valid residence permit issued by another Schengen country, no long term entry visa (MVV) is required. This exemption applies to the highly skilled migrant procedure see below.
Japanese nationals are allowed to work without a work permit in the Netherlands. However, a residence permit is required in case the intended stay will exceed 90 days (within a period of 180 days).

Which immigration procedure has to be initiated, depends on the specific facts and circumstances. The work permit procedure and the highly skilled migrant procedure are the most common.

Work permit procedure

There are various types of Dutch work permits (e.g. for intra-company transfers and trainees). It depends on the specific facts and circumstances which type of work permit can be applied for. For some non-EEA nationals a single application for a combined permit for work and stay (GVVA procedure) needs to be applied for in case they plan to work and stay in the Netherlands for at least three months. This procedure does not always apply; a number of exceptions exist. If the GVVA procedure does not apply, a separate MVV visa and residence permit should be applied for in addition to the work permit.

For a non-EEA national assigned to a Dutch entity within the same group the intra-company work permit procedure for key personnel might be applicable. The worldwide turnover of the group needs to be at least 50 million. Further, the employee must be in the possession of at least a bachelor's degree, have a management or key position and earn a gross monthly salary of at least EUR 4,579.20 (including holiday pay, figure 2016).

In general, the decision period for a work permit (including MVV and/or residence permit) is six to eight weeks.

Highly skilled migrant procedure

A residence permit for a highly skilled migrant allows a non-EEA national to reside and work legally in the Netherlands (without a separate work permit). This procedure is, in general, applicable in case the employee stays longer than 90 days within a period of 180 days. The following requirements have to be met:

- The company must be registered as a recognised sponsor with the Dutch Immigration and Naturalisation Service ('IND').
- The employee should have a gross monthly market conform salary of EUR 4,579.20 (including holiday pay, figure 2016 or EUR 3.356.64 (including holiday pay, figure 2016) if the employee is younger than 30 years.

If a MVV visa is required on the basis of nationality, the visa and residence permit can be applied for simultaneously under the so-called TEV procedure. The decision period for this residence permit (including or excluding MVV visa) is two to four weeks.

Please note that a 30 per cent tax allowance for this category of employees might be applicable (see 'Personal income tax' on page 5 and 27).

Registration municipality

In case the stay in the Netherlands is less than four months, registration as a non-resident with the Municipal Population Database is voluntary with one of the eighteen designated offices, but required in order to obtain a Dutch citizen service number, needed for tax and payroll purposes.
Further, for a stay of at least four months within a period of six months, registration with the Municipal Population Database is required.

Accounting and audit

Accounting requirements

A company is required to maintain accounting records that are sufficiently adequate to determine the financial position of the company at any time. There are various regulations, including civil and tax regulations, stipulating the period for which the records should be retained. As a general rule, the records must be kept for a period of seven years.

With regard to the location of where the accounting records are kept, there are no special regulations. The accounting can be done in any country (although for tax residency purposes, in certain situations accounting should take place in the Netherlands), but the records must be made available within a reasonable time upon request. A company may decide not to keep records in euros, but to maintain its own functional currency. The same applies to the financial statements. In principle, all companies residing in the Netherlands must prepare annual financial statements, which are then adopted by the shareholders of the company. Subsequently, the financial statements are published, most often by filing them with the Chamber of Commerce. If a foreign company only has a branch in the Netherlands, it normally suffices to file a copy of the annual financial statements of its home country.

It is not necessary for a company to prepare and file the annual report in Dutch. Preparation of the annual report in the English, German or French language is also allowed.

The annual report

Size of the company

For all companies, the requirements to prepare and file annual reports and the requirement for an audit are determined, inter alia, by the size of that company. Companies are classified as ‘micro’, ‘small’, ‘medium-sized’ or ‘large’ on the basis of three criteria, being (consolidated) total assets on historical cost basis, net turnover and the average number of employees during the financial year. The criteria are in the table below. These criteria have been amended in 2015 and are applicable for financial years starting on or after 1 January 2016, following new Dutch legislation.

A company will be classified as micro, small, medium-sized or large where it satisfies at least two out of the three criteria for that size for two consecutive years (or the first year for newly formed companies).

Content

The principal requirement for financial statements is that they must be prepared in accordance with generally accepted accounting principles (GAAP) and provide a true and fair view enabling a well-founded opinion of the entity’s assets, liabilities and results and, as far as the financial statements permit, of its solvency and liquidity.

	Micro-sized company	Small company	Medium-sized company	Large company
Net turnover (in EUR millions)	< 0.7	> 0.7 and < 12	> 12 and < 40	> 40
Total assets (in EUR millions)	< 0.35	> 0.35 and < 6	> 6 and < 20	> 20
Employees	< 10	> 10 and < 50	> 50 and < 250	> 250

The financial statements can be prepared either under Dutch GAAP or IFRS as adopted by the EU. IFRS is required for the consolidated financial statements of listed companies. In the past the Dutch Accounting Standards Board amended and updated many of its Dutch Accounting Standards to align them to IFRS. However, many differences remain between Dutch GAAP and IFRS. A standard in which IFRS fundamentally differs from Dutch GAAP is for example employee benefits.

In general, the annual report contains the following documents:

- A directors’ report presenting a fair view of the financial position, results and future plans of the company.
- Financial statements comprising (I) a balance sheet, (II) a profit and loss account, (III) a cash flow statement, and (IV) notes to the balance sheet and profit and loss account.
- Other information, including the auditor’s report.

The auditor’s report must include the following points: (a) whether the financial statements have been prepared, in all material respects, in accordance with the applicable accounting principles and provide a true and fair view of the financial position and result for the year, (b) whether the directors’ report meets the legal requirements and does not contain material inaccuracies; and (c) whether the other information has been provided. The auditor’s report for so-called OOBs (Public Interest Entities) has changed since financial year 2014, as the auditor also needs to include information on materiality, group scoping and key audit matters in the opinion for these companies. Micro-sized and small companies do not have to include a directors’ report and have no audit requirement. They may file an abbreviated balance sheet and, for small companies only, explanatory notes with the Chamber of Commerce. Notwithstanding the general requirements, a micro-sized or small company may at its discretion prepare financial statements based on tax accounting principles. As a result, the equity and the profit according to the financial statements are equal to the equity and profit according to the corporate tax return. This facility was introduced in Dutch law in order to reduce the administrative burden for small entities.

A medium-sized company must be audited, but is permitted to file an abbreviated profit and loss account as part of the financial statements and is exempt from including certain notes to the balance sheet.

Consolidation

The important issue of group financial statements is one that affects most foreign investors in the Netherlands, particularly in cases where a Dutch company is being used as an intermediate holding company in the group structure. While, as a general rule, a company with subsidiaries must prepare consolidated financial statements, there are significant exemptions available. The availability of these exemptions means that, in practice, most intermediate holding companies are not required to prepare consolidated accounts (Article 408 of the Dutch Civil Code) and can apply the size criteria only to their company accounts, due to which they will generally fall under the regime for small companies. Though, it is very important that the intermediate holding meets all the conditions stipulated in Article 408 in order to be able to use this exemption, also see the next paragraph.

As a general rule, small companies in the Netherlands are exempt from preparing and filing consolidated financial statements. If the holding company meets the small company criteria on a consolidated basis, there is no need to prepare and file consolidated accounts. Moreover, intermediate holding companies and group companies may be exempt from preparing consolidated financial statements when applying Article 408 provided, among other things, that the financial information which the company should otherwise consolidate has been included in the financial statements of its (ultimate) parent company and that these statements have been prepared in accordance with the provisions of Directive 2013/34/EU of the European Parliament and Council of 26 June 2013 with regard to yearly financial statements, consolidated financial statements and related reports of certain companies, amending Directive 2006/43/EG of the European Parliament and Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182), and have been filed with the Chamber of Commerce within the allowed timeframe.

Time table

The timetable below does not apply to listed companies. For those companies, the financial statements must be prepared and made generally available within four months after year-end. They must be adopted within six months after year-end.

Please note that for non-listed companies, the possible extension for preparation of the financial statements has been reduced from six to five months as of 1 January 2016, as reflected in the table below. This applies to financial years starting on or after that date, unless all changes to the Dutch Civil Code Book 2 Title 9 effective from that date are early applied to preceding financial years.

Penalties for non-compliance

In the event that the statutory requirements for preparing and filing financial statements have not been met, this will constitute an economic offence on the part of the directors. The maximum penalty that may be imposed on a director for non-compliance is a fine, as well as six months of imprisonment.

Non-compliance with the statutory requirements could have significant repercussions if the company goes bankrupt. Where the statutory requirements for preparing and filing financial statements have not been met, and the company goes into liquidation, the directors will be deemed not to have properly fulfilled their fiduciary duties and could be held personally liable for any deficit upon liquidation.

Further information

For further information with respect to the financial reporting framework within the Netherlands, reference is made to PwC's publication *An overview of financial reporting in the Netherlands, 2016 edition*.

Required action	*Time frame*	*Possible extension*
Maintaining accounting records	On-going during the year	
Preparation of financial statements	5 months after year-end	Up to 5 months (making the maximum preparation time 10 months after year-end)
Adoption of the financial statements by the general meeting	Within 2 months of the date of preparation	If the above extension is applied, adoption should take place ultimately 12 months after year-end
Filing of the financial statements	Within 8 days of adoption, but in no event later than two months after the date of preparation (whether the financial statements have been adopted or not)	If the above extension is applied, filing should take place ultimately 12 months after year-end.

Tax compliance overview

Corporate income tax

CIT return

A company incorporated under Dutch law or a foreign company tax resident in the Netherlands is required to file a CIT return annually.

The Dutch Tax Authorities will issue a preliminary CIT assessment at the start of a financial year. For financial years that do not coincide with the calendar year, other timing considerations than those discussed below are relevant.
A first preliminary CIT assessment is normally issued in January of the relevant year. Generally, the taxable amount in this first assessment is based on either the average of the two preceding years' taxable income or on a preliminary tax return submitted by the taxpayer. The payment date is mentioned in the assessment. Normally, these assessments must be paid within six weeks after the issue date of the assessment or in eleven instalments (i.e. February to December).
If an objection against the preliminary assessment is warranted, it must be filed within six weeks after the date of the assessment. Please note that at any time after this the taxpayer may request the Dutch Tax Authorities to issue a revised preliminary CIT assessment. Such a request can be filed electronically and is normally accepted, after which a revised preliminary assessment will follow.

Following the end of a financial year, a CIT return should be filed within five months with possible extension of five months (before 1 June respectively 1 November of the subsequent financial year in case of a financial year equal to the calendar year). If the CIT return is prepared by a professional tax firm like PwC, under certain conditions a longer extension for filing the CIT return can be obtained, up to a total of sixteen months after the end of a financial year. This means that for financial years that end on 31 December 2015, an extension for filing the CIT return may be granted up to May 2017. The maximum extension of a total of sixteen months after the end of the financial year also applies to companies with a financial year that is not equal to the calender year.

After the tax return has been filed, a revised preliminary tax assessment is often issued. Once the Dutch Tax Authorities have examined the CIT return, the final CIT assessment will be issued. The final assessment should be issued within a period of three years as from year end plus the period of the extension granted for filing the tax return. If an objection against the final CIT assessment is warranted, it must be filed within six weeks after the date of the assessment.

Payment

Tax is payable within six weeks of the date of assessment. Interest is payable on any difference between the final assessment and the preliminary assessments. The interest calculation is made as from six months following the financial year up until the date of the final assessment. It is advisable to ensure that a correct preliminary tax assessment is imposed, given the high level of tax interest payable of at least eight per cent. In situations where the final assessment shows a lower amount of tax due than the preliminary assessment, please note that ordinarily, no interest is refunded to the taxable entity. In light of the above, it is important to keep the preliminary assessments as close to the expected final assessments as possible.

Additional assessments

The Dutch Tax Authorities can raise an additional assessment after the final assessment is raised within five years after the fiscal year has ended, if new data becomes available of which the tax inspector could not reasonably have been aware at the time the final assessment was made. With regard to income from abroad, such additional assessments are allowed within twelve years. An additional assessment may involve interest and a penalty of up to 100 per cent of that assessment. This penalty is not tax deductible. For completeness' sake we note that the actual term of the granted extensions and the actual date/period/terms that the Dutch Tax Authorities will use to issue assessments may vary from case to case. Also depending on the filing history of the client and/or PwC, the Dutch Tax Authorities may reduce the extension for filing deadlines.

Country-by-country reporting

Multinational groups with a consolidated turnover of at least EUR 750 million and with a Dutch company as ultimate parent company need to submit a country-by-country report to the Dutch Tax Authorities. A Dutch group company of non-Dutch parented multinational groups may also be required to file a country-by-country report in the Netherlands in case a similar report is not available to the Dutch Tax Authorities. The country-by-country report needs to be submitted to the Dutch Tax Authorities within twelve months after the end of the financial year. Furthermore, Dutch companies forming part of a multinational group with a consolidated turnover of at least EUR 50 million must retain a master file and a local file as part of the administration, irrespective of the tax jurisdiction of its ultimate parent company.

These need to be in the administration of the Dutch companies in the timeframe set for filing the tax return.

On 30 December 2015 a Decree was published which provides guidance on the format and contents of the country-by-country report, the master file and the local file. The Decree provides for model templates of the tables that need to be included in the country-by country report and models for the master and local file.

Dividend withholding tax

Dividend payments, distributions treated as dividends and interest on certain profit participating loans paid by resident companies to residents or non-residents are subject to dividend withholding tax. The tax is withheld by the distributing company at the moment the dividends are put at the disposal of the recipient. The distributing company must file a self-tax assessment and pay the tax withheld to the Tax Authorities within one month of the distribution.

There is no withholding obligation and no self-tax assessment filing obligation if:

- the Dutch participation exemption regime applies; or
- both the distributor and the recipient are part of a fiscal unity for Dutch tax purposes; or
- the dividends are paid to a qualifying EU parent company.

Please note that in case no Dutch dividend withholding tax is due based on an applicable double tax treaty concluded with the Netherlands, the taxpayer is – contrary to the above – obliged to file the dividend withholding self-tax assessment even though no dividend withholding tax is due.

In some situations and subject to several conditions, if a Dutch entity has received a dividend from a subsidiary that is resident within the Netherlands or a country that has concluded a tax treaty with the Netherlands, which was subject to withholding tax in that jurisdiction, it is possible that Dutch dividend withholding tax due on subsequent dividend distributions by the Dutch entity to its shareholders is lowered by three per cent (of the distribution by the Dutch entity).

Additional assessments can be imposed by the tax inspector within five years after the calendar year in which the tax liability incurred or the dividend withholding tax refund was made. In case of an omission with regard to the self-tax assessment or in case the dividend withholding tax is not paid or not paid within the stipulated period, a penalty may be imposed.

Value added tax

VAT return

The tax period is usually a calendar quarter. However, the taxpayer may request the Dutch Tax Authorities to file a monthly VAT return. If the taxpayer is in a refund position, this could lead to a cash flow advantage. The taxpayer may also request filing a yearly VAT return provided that some specific conditions are met. One of these conditions is that the balance of payable and deductible VAT does not exceed EUR 1,883 per year.
VAT returns are due by the last day of the month following the tax period to which they relate for companies established in the Netherlands. For foreign companies with only a VAT registration in the Netherlands, the returns are due by the last day of the second month following the relevant tax period to which they relate. Taxable persons filing an annual return are automatically allowed to defer filing until 1 April of the following year. This applies even if no business has been conducted in the Netherlands during that period or there is no right to refund of Dutch VAT.
As VAT returns must in general be filed electronically there is no need for rescheduling these dates because of weekend or bank holidays. VAT returns can be filed 24/7.
Adjustments can be made to a VAT return by lodging an objection within six weeks after filing the return. Furthermore, an additional return can be submitted within five years after filing the VAT return. However, in the latter case, no appeal is allowed if these changes are rejected by the Tax Authorities. A special electronical form exists for filing additional VAT returns.

Intra-Community Transactions Statement

An Intra-Community Transactions Statement needs to be submitted if the taxpayer supplied goods or provided services to an entrepreneur in another EU country and where, in the case of the supply of goods, these goods are transported to another EU country. Taxpayers transporting their own goods to another EU country must also submit these Statements. The period for which the taxable person must submit an Intra-Community Transaction Statement depends on the actual situation (the amount of supplies and/or acquisitions and the type of transactions). The following options are possible: monthly, bimonthly, quarterly and annually.
The Netherlands has, effective per 1 January 2016, reduced the threshold for monthly reporting of intra-community supplies of goods (the so-called 'Opgaaf ICP') from EUR 100,000 to EUR 50,000. This change will only affect supplies of goods and the 'Opgaaf ICP' for services can still be filed on a quarterly basis.
The statements are due by the last day of the month following the applicable reporting period.

Intrastat declaration

Intrastat declarations have to be filed for dispatches of goods to other EU countries if these dispatches exceed EUR 1,500,000 per annum and for arrivals of goods from other EU countries if these exceed EUR 1,500,000 per annum. The Intrastat declarations must be filed monthly and are due on the tenth day of the calendar month following the period to which they relate.

Personal income tax

PIT return

Tax returns must be filed after each calendar year, in principle before 1 April. Extensions may be possible.

Advance payment or preliminary tax refund

Generally speaking, if taxpayers have sizeable income that is not subject to wage tax withholding, they may be required to make advance payments of estimated additional income tax. If the employee has income tax deductions that are not considered in the Dutch payroll (e.g. the mortgage interest deduction), it is also possible to file a preliminary tax refund form in order to claim monthly income tax refunds during the calendar year.

Tax Compliance Payroll taxes

Entrepreneurs who employ personnel in the Netherlands withhold wage tax and the national insurance contributions from the employee's wage and bear the cost of the employee's insurance contributions and the income-related contribution pursuant to the Health Care Insurance Act (jointly: payroll taxes). The wages are understood to mean everything the employee receives pursuant to the employment contract although some items may be tax exempt (under the general work related cost scheme or specific exemptions).

Payroll taxes are calculated for each wage period, i.e. the period for which the employee receives his/her wage (usually monthly or four-weekly). The employer is required to timely and correctly file the payroll tax returns per wage period. The payroll tax return consists of a collective section (general information concerning the employer) and an employee's section (detailed information concerning each employee).

The Tax Authorities use the detailed information for purposes including the award of benefits and the pre-completed income tax returns. Consequently, it is extremely important that the details are up to date, correct and complete. For this reason the employer must always adjust or supplement any misstatements or shortcomings in payroll tax returns.

Each payroll tax return has to be paid within the deadline given by the Tax Authorities and quoting the payment reference also given by the Tax Authorities.

Employers who provide reimbursements or benefits in kind to employees will have to assess the wage tax implications. Under the work-related cost scheme, the employer can provide reimbursements and benefits in kind tax-free (if certain conditions are met), up to 1.2 per cent of the total fiscal wages of its employees per calendar year. In addition, a number of specific benefits can be provided tax-free, without being included in the 1.2 per cent budget. In case the 1.2 per cent budget is exceeded, the employer has to pay a final levy of 80 per cent on the amount in excess.

Contacts and links

For more information and to find out the opportunities for your company, please contact your own PwC contact or:

Knowledge Centre Tax
Fascinatio Boulevard 350
3065 WB Rotterdam
P.O. Box 8800
3009 AV Rotterdam
Email: knowledge.centre.taxhrs@nl.pwc.com

Links for more information:

Tax specific:
http://taxsummaries.pwc.com

PwC the Netherlands:
http://www.pwc.nl

NFIA:
http://www.nfia.nl

This document was concluded on 1 January 2016. Subsequent developments have not been included.

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 208,000 people. At PwC in the Netherlands over 4,400 people work together. We're committed to delivering quality in assurance, tax and advisory services. Tell us what matters to you and find out more by visiting us at www.pwc.nl.