An overview of financial reporting in the Netherlands

February 2020

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‘Welcome to the latest edition of An overview of financial reporting in the Netherlands. As the title already suggests, this booklet provides a general overview of the existing requirements. If you are in need of more information, our advisors will be very happy to assist you on an individual basis. On behalf of PwC Accountants, we hope that you will find this booklet useful.’

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February 2020

This booklet is for those who wish to gain a broad understanding of financial reporting in the Netherlands. It is not comprehensive. The legislation on reporting is sometimes extremely complicated and changeable. We accept no responsibility for what one undertakes without expert advice in response to the content of this booklet.

While every effort has been made to ensure accuracy, information contained in this booklet may not be comprehensive or details that are relevant to a particular reader may have been omitted. In particular, this booklet is not intended as a study of all aspects of Dutch GAAP, or as a substitute for reading the Dutch law, the Dutch Accounting Standards, and any interpretations and/or judicial decisions when dealing with specific issues. No responsibility for loss to any person acting or refraining from acting as a result of any material in this checklist can be accepted by PricewaterhouseCoopers. Recipients should not act based on this booklet without seeking professional advice.

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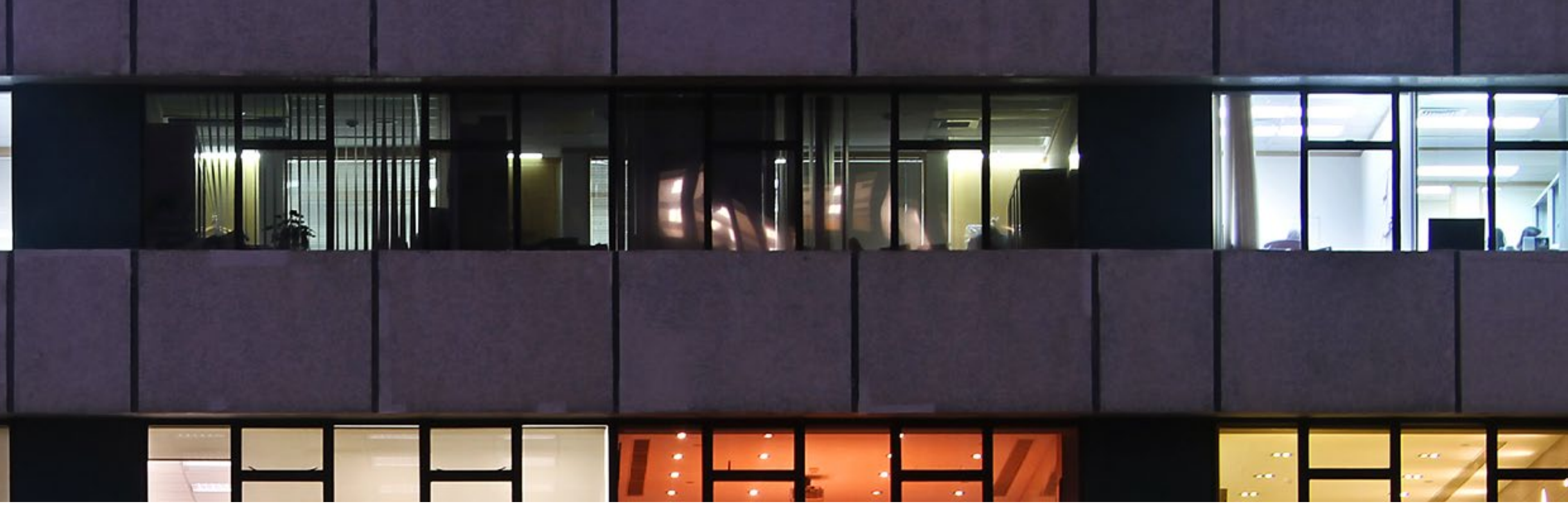


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Preface

This booklet has been written with the needs of the foreign investor (including multinationals with intermediate holdings) in the Netherlands in mind and aims to address many of the recurring questions raised by clients in practice.

It is not intended to be a detailed work of reference, but rather an accessible overview of financial reporting for limited liability companies in the Netherlands, including relevant aspects of law, and for existing investors who need, or wish to have, a basic understanding of the key aspects of establishing and operating a company in the Netherlands.

Industry specific legislation with regard to banks, insurance and investment companies and other financial institutions is not included in this book. This is also the case for any special rules that are applicable for entities, such as co-operatives, associations, governmental and public sector organisations.

In this book, we refer to Dutch GAAP, which covers: The Dutch Civil Code, Book 2 Title 9 ('DCC'), plus:
- The General Administrative Order on model formats ('Besluit modellen jaarrekening' –'GAO on model formats');
- The Decree on valuations ('Besluit actuele waarde'); and
- The Dutch Accounting Standards ('Richtlijnen voor de jaarverslaggeving').

Dutch company law is part of the Dutch Civil Code. The legal provisions relating to entities limited by shares in the Netherlands are included in Book 2 of the Code, which contains legal provisions relating to all legal persons and entities, including co-operatives and associations, as well as limited liability entities.

The Dutch Accounting Standards have no legal force but provide more detailed guidance on the interpretation of the law and in areas that are not specifically covered by the DCC. In practice, the Dutch Accounting Standards form an important part of the Dutch Generally Accepted Accounting Principles, which has been confirmed in a number of legal cases.
We based our booklet on Dutch Law and the 2019 version of the DAS, which is applicable for financial statements on annual periods beginning on or after 1 January 2020.

We are indebted to a number of colleagues for their commitment to read and check chapters of this book and for providing constructive comments: Kevin Bernadina, Arjan Brouwer, Jos de Groot, Michiel Lohman and Jeroen Tuithof.
Specific knowledge was provided for the preparation of the chapters on legal aspects and taxation. Therefore, we would like to thank Tom de Regter for reviewing the legal content of this booklet; and June Mentens and Mariska van der Maas of our Tax department for their help.

The online version of this booklet can be accessed via the Dutch branch of www.inform.pwc.com.

Enquiries concerning the contents of this booklet may be addressed to your contact at PwC.

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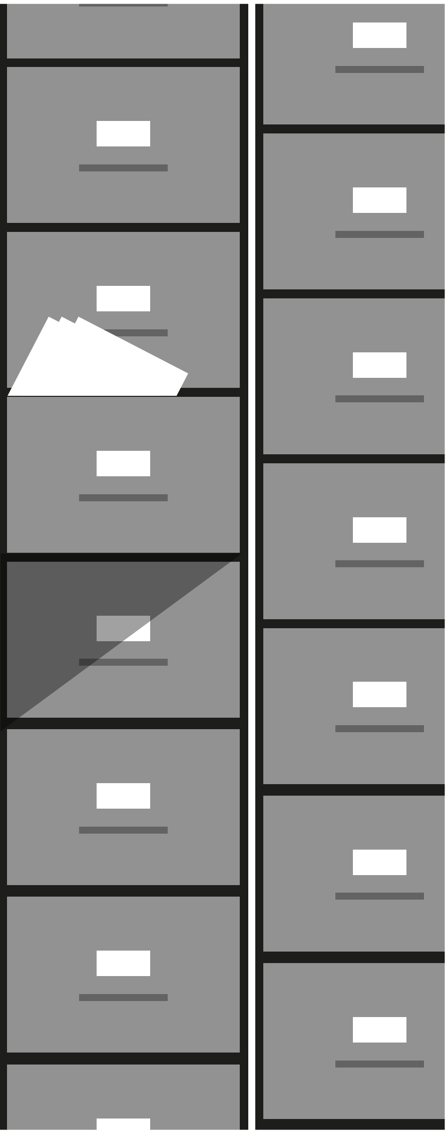
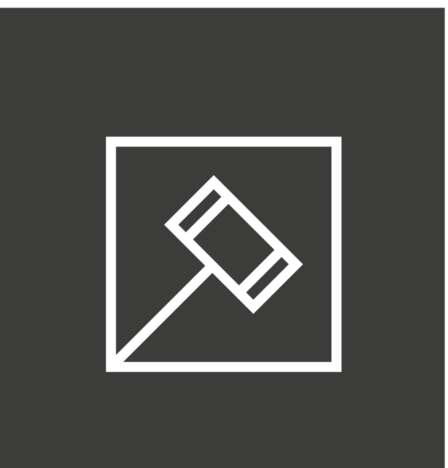
Amsterdam, February 2020

1. Legal framework





Dutch corporate law is part of the Dutch Civil Code (hereafter ‘DCC’). The legal provisions relating to companies limited by shares in the Netherlands are included in Book 2 of the DCC, which contains provisions relating to all legal persons and entities, including co-operatives, associations, foundations and limited liability companies. The financial reporting regulatory framework is built upon the relevant elements of the DCC, and is supplemented by the Dutch Accounting Standards (DAS), judicial precedence (‘de Ondernemingskamer’) and International Financial Reporting Standards (hereafter ‘IFRS’). Companies whose securities are listed generally also have to comply with the Financial Supervision Act (Wet op het financieel toezicht - Wft).

The Dutch Authority for Financial Markets (Autoriteit Financiële Markten - AFM) also plays a role in financial reporting in the Netherlands as it supervises the correct use of financial reporting rules by listed entities.

By way of introduction, this chapter sets out the main aspects of the legal framework relating to companies limited by shares. The more detailed requirements relating to accounting and auditing requirements for companies are dealt with in chapters 2 to 5.

1.1 The bv and the nv

Under Dutch corporate law, two types of companies limited by shares are recognised:
- bv (besloten vennootschap): the private company with limited liability;
- nv (naamloze vennootschap): the public limited company.

Both the bv and the nv are separate legal entities with share capital. They can be used for the same business purposes, which will be set out in their articles of association (hereafter ‘the articles’; refer to section 1.5).

The bv is a privately held company comparable to the Limited Company (Ltd.) in the United Kingdom and the ‘Gesellschaft mit beschränkter Haftung’ (GmbH) in Germany. It is possible to block the free transfer of shares of a bv.

The nv shares may be wholly or partially publicly held, whereas nv shares may also be privately held. The nv type company is comparable to the Public Limited Company (plc) in the United Kingdom and ‘Aktiengesellschaft’ (AG) in Germany. It is possible to block the free transfer of privately held shares in an nv, but not of the publicly held shares.

The table below summarises the main features of both types of company.

	bv	**nv**
Minimum share capital	€0.01	€45,000
Transfer of Shares	May be freely transferable	Publicly held shares are freely transferable, privately held shares may be
Stock exchange listing possible	Yes[1]	Yes
Conversion from nv to bv or from bv to nv possible	Yes	Yes

1 This rarely happens due to the private character of the bv. An example of a partially listed bv is FastNed B.V.

In practice, most companies are incorporated as a bv and then converted to an nv if and when a public quotation is sought.

There are no size restrictions applicable to either the bv or nv except for the minimum legal share capital restrictions.

It is also possible to establish a European Company (SE). An SE, which is incorporated in the Netherlands, can be compared to the Dutch nv. Furthermore, a European Cooperative Society (SCE) can be established, which is comparable to the Dutch cooperative, when it is incorporated in the Netherlands. Legal provisions for these companies are included in European regulations. The financial reporting regulatory framework of an SE and an SCE is subject to the applicable national law. In the remainder of this book, we address the Dutch regulatory framework for an nv and a bv.

1.2 Setting up a business

This section deals with the incorporation of a company, the articles of association and the liquidation of a company.

i. Incorporation of a company

The formation of a new company involves a legal procedure, which normally takes around two to three weeks to complete - although in urgent cases this may be shortened.

Founders

The founder(s) of a company is (are) the individual (or individuals) who in person or by proxy appear at the Dutch civil law notary, executing the deed of incorporation. The founders usually subscribe to the share capital in the new company. Founders may be both natural persons and legal entities, such as companies. There are no restrictions on the nationality or domicile of a founder. The main steps involved in the incorporation process are described below.

Deed of incorporation

The key document for the incorporation of a new company is the notarial deed of incorporation, executed before a Dutch civil law notary officiating in the Netherlands.

The deed of incorporation includes the following information:

- The articles of association including inter alia and details of the objectives of the company.
- Provisions on the corporate bodies (the general meeting, the management board, the supervisory board if that is to be installed or the one-tier board including executive and non-executive board members).
- Provisions on the shares of the companies' capital that the company is going to issue at the incorporation and in the final statements information on the issued capital and payments made on such shares.

Steps to incorporation

The steps in the incorporation process are as follows:

a. A deed of incorporation, which must be in Dutch, is prepared by a Dutch civil law notary officiating in the Netherlands, who must have the required information and documents (like articles of association and personal information on board members) needed for the incorporation.
b. The future shareholder(s) of an nv must subscribe to at least one fifth of the authorised share capital of the company which subscription and authorised share capital both have to be EUR 45,000 or more.
c. The notary executes the notarial deed.
d. For payments in cash on the shares of an nv the notary must obtain confirmation from a Dutch (or European Union) bank before the deed of incorporation is executed, that the subscription funds are available to the new company. If the subscription is in a foreign currency, the statement must give the equivalent in euros.
e. Payments in kind on the shares of an nv or a bv require a description, to be drawn up and signed by all incorporators, stating an appraisal of the value of the payments. Such appraisal of an nv must be certified (usually by a registered accountant) to have a value at least equal to the obligation to pay up.
f. The civil law notary usually assists with the registration of the new entity with the Trade Register of the Dutch Chamber of Commerce.

The notary retains the original deed. Certified copies will be issued.

The company is primarily responsible for payment of the expenses related to its formation, unless it is agreed that the founder will meet these expenses.

Company 'in formation'

It is possible for someone to act on behalf of a company that has not yet been incorporated. If one wishes to act in such a way, it is necessary to expressly state so and to add the abbreviation 'i.o.' ('in oprichting') after the name of the company. Transactions entered into on behalf of the company in formation, may be ratified by the management board of the company after incorporation (and after the registration with the Trade Register of the Dutch Chamber of Commerce has been completed) and will then bind the company. A warning is due here: should the management board of the company, after the formation, not ratify the transaction or contract, the person having acted is personally liable for that transaction or contract.

ii. The articles of association

The articles of association are the internal regulations of the company dealing with, for example, procedures at general meetings and the appointment of members of corporate bodies, such as the management board and the supervisory board (if the latter is present). The effect of the articles is to bind the company and its present and future shareholders. Every company must file articles upon application for registration with the Trade Register of the Dutch Chamber of Commerce, as detailed in section 1.4.

Law prescribes part of the content of the articles and the company's articles must not conflict with those provisions.

Contents of the articles

The most important contents of the articles are summarised below.

- **Name and corporate seat**

This section states the name of the company and whether it is an bv or an nv. Any name may be chosen, subject to certain restrictions. The most important is that the proposed name should not infringe on the trade name or mark of another company; the notary is able to have suggested names researched to prevent such infringements.

The corporate seat of the company will normally be the same as the principal place of business of the company, but it can be any municipality in the Netherlands.

- **Objects clause**

The law requires the objects or purpose of the business of the company to be stated in the articles, to establish the contractual capacity of the company. For practical purposes, the objects clause is normally a short, general description.

- **Authorised share capital**

An nv must have an authorised share capital amount, which is the maximum aggregated nominal value of the issued shares at any given point in time. For additional shares to be issued an amendment of this authorised share capital is required by amending the articles of association.
An nv must have an authorised share capital of at least EUR 45,000.

Subject to the foregoing minimum requirements, at least 20% of the authorised share capital of an nv must be issued. As the minimum issued share capital also is EUR 45,000, it is customary to set the initial authorised share capital at five times the minimum amount to be issued, so EUR 225,000.
A bv is not required to have an authorised share capital amount nor a minimum issued share capital amount, but may opt therefor by including these quantities in its' articles of association.

The authorised share capital of the company can only be changed by amending its articles, which requires a notarial deed of amendment executed before a Dutch civil law notary officiating in the Netherlands, who may assist in the registration of the amendment with the Trade Register of the Dutch Chamber of Commerce.

- **Financial year**

The articles determine the accounting year-end of the company. There is a legal presumption that this is the calendar year, unless the articles provide otherwise. In practice, most companies adopt the calendar year as their financial year. The year-end may of course be changed by amending the articles.

The articles of association also state the date of the first financial reporting period of the company. It is not exceptional for a newly incorporated company to have an extended first financial reporting period. For example, a company incorporated on April 1 2020, with an accounting year-end on December 31, would in that case prepare its first accounts for the 21 month period ended December 31, 2021.

- **Shareholders' meeting**

Provisions relating to shareholders' meetings, including the provisions relating to the distribution of profits, are set out in the articles. The shareholders' meeting has the legal power to adopt the financial statements and has the exclusive right to determine the distributions and to delegate this right to another corporate body. However, please note that for the bv a resolution of the general meeting to make a distribution shall have no effect as long as the management board has not given its approval. Also, refer to section 1.6.

Changing the articles

Unless stated otherwise in the articles, changes to the articles require a resolution of the shareholders, by way of a vote at a shareholders' meeting and a notarial deed of amendment of the articles executed before a Dutch civil law notary officiating in the Netherlands. The notary may assist with the registration of the amendment with the Trade Register of the Dutch Chamber of Commerce.

iii. Liquidation of a company

Types of liquidation

The liquidation of a company may be voluntary or involuntary.

- **Voluntary**

Extremely rarely, the articles provide for the liquidation of a company after a given period. More commonly, the voluntary liquidation is initiated by a general meeting of shareholders, in accordance with the procedures described below.

Procedure for a voluntary liquidation	
a.	an extraordinary general meeting of shareholders votes to dissolve the corporation;
b.	the meeting may (or may not) discharge the members of the management board and, if applicable, the supervisory board and appoint a 'Liquidator' and a 'Custodian' of the company's books and records. By default the members of the Management Board are the liquidators, unless the general meeting appoints someone else;
c.	notice of the liquidation must be filed at the Chamber of Commerce;
d.	liquidation accounts (rekening en verantwoording) are prepared which show the surplus or deficit on liquidation after settlement of all liabilities and costs;
e.	a distribution plan has to be drawn up in respect of the liquidation surplus (Plan van Verdeling) in the event there are two or more shareholders;
f.	the liquidation accounts (and liquidation plan) are filed at the Chamber of Commerce and a notice is published in a nationwide newspaper as to the location and the period for inspection of the accounts;
g.	any objections from creditors or other interested parties must be raised within two months of the filing of the liquidation accounts (and plan);
h.	if no objections are raised, the accounts (and plan) are deemed to be approved and the distributions may take place, after obtaining the statement of non-opposition with the District Court;
i.	the books and records of the company should be kept for a period of seven years by the Custodian.
The company continues to exist as long as necessary for the winding up procedure to be completed.	

Procedure for an involuntary liquidation by the court
The procedures for an involuntary liquidation by order of a court are:
a. a request for a court order to liquidate the company is made;
b. the court may grant the request and appoint the liquidator and the custodian.
Thereafter the procedure is similar to steps (c) to (i) in the preceding section 1.12.ii.

- **Involuntary**

If a company has been declared bankrupt, it is mandatorily liquidated either if it is deemed insolvent or if the bankruptcy is terminated because of the state the estate is in.
Creditors may apply for bankruptcy of the company in the event that the company fails to pay two or more of its creditors. In addition, the company may itself apply for bankruptcy. If the liquidator of a company, which has voluntarily been dissolved finds that the debts are greater than the assets, such liquidator must file for bankruptcy of the company unless all creditors agree with settlement outside of bankruptcy.
Other cases of involuntary liquidation are very rare. For example, where a company has been incorporated for an illegal purpose, a court may order the liquidation of the company. The Chamber of Commerce may also order the liquidation of a dormant company, where specific legal procedures have not been complied with.

Involuntary liquidation by order of the Chamber of Commerce

Companies that are dormant or inactive may be liquidated by order of the Chamber of Commerce if they fail to comply with two or more of the following conditions:

a. The company has failed for a year to comply with summons of the tax receiver to file corporation tax returns on time.
b. The company has not filed annual accounts at the Chamber of Commerce on time on at least one occasion (refer to chapter 2.6).
c. No managing directors are registered for a period of at least one year; or no registration has been filed; or in the event that the directors have been registered but have since died or cannot be traced.

The liquidation procedure followed would be similar to that detailed in section 1.2.iii above, but for that the Chamber of Commerce may be appointed as liquidator.

1.3 Relevant corporate bodies of a company

i. Boards

A significant feature of Dutch companies is the traditional ‘two-tier board structure’ or ‘dualistic governance structure’, with a management board whose members are responsible for day-to-day management and a separate supervisory board whose members supervise the management board and give advice to the managing directors. Similar two-tier systems are found in Germany and France. Companies may alternatively opt for the Anglo-Saxon model, the so-called one-tier board structure, with one board consisting of executive and non-executive directors.
In general, all Dutch companies are required to have a management board, whose members have executive tasks. The nv and the bv are free to opt for a two-tier board structure or for a one-tier board structure. Only companies that satisfy certain conditions, the so-called ‘structuurvennootschap’, are required by law to have a supervisory board. It is not possible to be a member of both the management board and the supervisory board.

Management Board

The management board, comprising of at least one member, is the executive board of the company. By way of speech its members often are referred to as directors. From a Dutch legal point of view, statutory directors are appointed by the general meeting of the company. This may cause confusion, as persons with important roles who have not been appointed to tasks as set out in the law, often also are given the personal job title of director. To prevent confusion, hereafter is referred to (executive or non-executive) members of the management board.

Members of the management board with executive tasks may be individuals or corporations. There are no nationality or residence restrictions.

The founders of the company appoint the initial members of the management board during the incorporation of the company. After incorporation, the general meeting is the corporate body authorised to appoint individual managing directors. Each managing director may, at any time, be suspended and dismissed by the corporate body that appointed him, provided that the managing director had the opportunity to be heard.
Once an nv or a bv has become a 'structuurvennootschap' (which is legally required to have a supervisory board or non-executive members of the board, with certain duties) its (executive) board members are appointed and removed or suspended by the supervisory board or the non-executive members of the board.

Responsibilities of the management board include:

- management of the company;
- representing the company towards third parties;
- maintenance of a share register;
- maintenance of the administration of the financial conditions of the company
- preparation of the annual report, including proposed allocation of profits;
- signing of the financial statements;
- ensuring the relevant filing requirements of the Chamber of Commerce are met;
- maintenance of the records of shareholders' resolutions;
- maintenance of proper books and records, to be stored for a period of at least seven years.

The Dutch Corporate Governance Code, which all publicly quoted nv's must report upon (comply-or-explain), sets out additional duties of a corporate governance nature for the management board (refer to section 1.7).

If the company has opted for the Anglo-Saxon inspired one tier board model, the board consists of executive and non-executive members. The non-executive members supervise the executive members. The tasks and responsibilities of the non-executive board are more extensive than the tasks and responsibilities of the supervisory board as known under the two-tier board, since they are a member of the management board. The non-executive board members are among others; subject to director's liability, directly involved in the decision making process and they have a direct influence on the passing of resolutions of the management board.

Supervisory Board of Directors – general/voluntary implementation

Companies, which do not fulfil the criteria of a 'structuurvennootschap' may opt to have a supervisory board of directors or to have a board consisting of executive and non-executive members.

The supervisory board (or the non-executive members of the board) is legally to advise and supervise the management board (or the executive members of the board), the latter having the executive function. In that capacity, their members also sign the financial statements, together with the members of the management board who have drawn up such statements.
It is quite usual to have clauses in the nv and bv articles that require the Supervisory Board or non-executive board members to approve certain resolutions of the management board.

The members of the supervisory board (or the non-executive members of the board) must be natural persons (and not legal entities). The founders/shareholders include in the articles of association clauses as to the number of members (one or more), arrangements regarding the appointment and term of office of members and the powers of the supervisory board.

Supervisory Board of Directors - compulsory

A so-called 'structuurvennootschap', which is an nv or bv meeting the below criteria, is obliged to instate a supervisory board or non-executive members of the board. Some of the rules for an ordinary, non-compulsory, supervisory board (or non-executive part of the board) equally apply, such as rules on the advising and supervising roles. Furthermore two main diversions from the rules for ordinary companies are 1) that some resolutions of the (executive members of the) management board require the consent of the supervisory board/non-executive members to be valid and 2) that some resolutions ordinarily adopted by the shareholders' meeting are now adopted by the supervisory board/non-executive members.

Criteria
Companies fulfilling the following criteria, which apply equally to the bv and the nv, are required by law to have a supervisory board of directors or non-executive board members when the company fulfils all of the following criteria for three consecutive years:

- the sum of the issued share capital and its reserves (total equity) is at least EUR 16 million.
- the company, or its subsidiary, has compulsorily established a Works Council (refer to section 1.3.iii).
- the company, together with any subsidiaries, has at least 100 employees in the Netherlands.

There are exemptions available for intermediate holding companies and multinational companies.

The company is required to notify the Trade Register at the Dutch Chamber of Commerce when the criteria are fulfilled. After the above criteria have been met and registered as such for three consecutive years, the articles need to be changed to include the establishment of a Supervisory Board.

Appointment of members to the Board
Supervisory board members or non-executive board members can only be natural persons, and not legal persons, unlike the (executive) members of the management board. There are no restrictions on the nationality and domicile of the supervisory board members or non-executive board members. The number of members will be set out in the articles or determined by shareholder resolution. There is a minimum number of members, being three. They typically are appointed by the general meeting of shareholders, from a nomination drafted by the supervisory board itself. Supervisory Board members / non-executive board members are appointed for a four-year term. Shareholders and the Works Council are entitled to put forward candidates for the nomination and must be given an opportunity to do so by the supervisory board. The general meeting of shareholders has discretion to accept or reject a person nominated by the supervisory board.

The Dutch Corporate Governance Code sets out additional requirements for the composition of the supervisory board of listed companies, as well as the independence and qualifications of its members. For example, the Dutch Corporate Governance Code restricts the appointment of a person to the supervisory board for a maximum of three four-year terms.

Duties of the members of a compulsory Supervisory Board
The duties of the supervisory board, which are normally defined in the articles of the company, include:

- to supervise and provide advice to the (executive members of the) management board
- election, dismissal and suspension of the (executive members of the) management board
- approval of certain resolutions of the (executive members of the) management board
- signing of the financial statements, together with the (executive members of the) management board

The Dutch Corporate Governance Code sets out additional duties of a corporate governance nature for the supervisory board of listed companies.

Exemptions
Supervisory boards for companies controlled from outside the Netherlands or for Dutch holding companies may be partly exempt from the above duties, if the majority of the employees are employed abroad. Specifically, the requirements in respect of the election of the management board and the adoption of the financial statements may remain with the shareholders of the company.

ii. Shareholders' meetings
A general meeting of shareholders must be held at least once a year. This meeting, and any other shareholders' meetings, must be held at a place designated in the articles. If the meeting of an nv is held elsewhere, legally valid resolutions will require the unanimous consent of all the shareholders. The rules for a bv are less restrictive. Meetings at other places may yield valid resolutions, if all persons eligible to attend the meeting have agreed to the alternative location and if all members of the management and supervisory boards have been granted the chance to render their advice to the shareholders on the resolutions that are put to the meeting.

The annual meeting of an nv must be held within six months of the company's year-end, unless a shorter period is determined by the articles. Refer to Article 2:108.2 DCC.

Shareholders may vote by proxy, which must be in writing. An e-mail is fine, unless the articles specifically disallow for electronic voting,

It is also possible for a shareholders' resolution to be passed without the need to convene a meeting, provided that:
1. the articles allow for it;
2. all members of the management and supervisory boards have been granted the chance to render their advice to the shareholders on the resolutions that are put to the vote;
3. all of the votes are submitted in writing; and
4. additional conditions have been met.

For an nv these conditions are that i) no bearer shares exist, ii) no depository receipts for shares have been issued with the cooperation of the nv and iii) all of the shareholders consent to the resolution in question. For the bv the additional condition is that all persons with meeting rights have agreed to deciding without formally meeting.

The rights of the general meeting of shareholders include:
a. the right to appoint, suspend and remove the managing directors in a company which is not legally obliged to have a supervisory board of directors;
b. the right to issue new shares;
c. the right to approve major changes in the company, including amendments to the articles, mergers and the liquidation of the company;
d. the right to adopt the financial statements;
e. the right to decide on the final allocation of profits;
f. the right to appoint the auditors, where an audit is required by law or by the articles;
g. first right of authority to commission an audit, or withdraw a request to perform an audit, where no audit is required by law or by the articles.

iii. Works Council

The right of workers to give consent, be consulted and informed on important management and business decisions affecting the company for which they work is set out in the law, the most important provisions being laid down in the Works Councils Act (Wet op de ondernemingsraden). This participation takes place via a representative body known as the Works Council (ondernemingsraad).

Requirements for a Works Council

Broadly speaking, a Works Council is required to be established where a company, together with its subsidiaries or related companies in the Netherlands, employs 50 people or more. Within this definition, it is possible for a company to establish two or more Works Councils for the different businesses or enterprises involved. Where this is done, a Central or Group Works Council may be established, if it is considered that this will enhance the application of the Works Councils Act.

Procedural rules

A Works Council is subject to the following procedural rules:
- It must comprise elected employees, who have worked with the company for at least one year.
- Employees, who are employed for at least six months, nominate candidates.
- It must have a minimum of three and maximum of 25 members, depending on the number of employees in the company.
- Members of the Works Council are allowed to spend time for meetings and for study, during normal working hours, which time is to be paid as normal working hours.
- A member of the management board must attend consultation meetings held.
- The business developments of the company must be discussed during at least two of those meetings (per year). One or more members of the supervisory board, where one has been established, must attend such meetings.
- A meeting may be requested either by the Works Council or by a member of the management board.

Small companies

Companies with less than 50 but more than 10 employees and no Works Council, must still facilitate two opportunities per calendar year for the management board to meet with the employees and provide information on the activities and results of the business in the prior year. The employer is obligated to meet with the employees when at least one quarter of the employees request this based on sound reasons. Employees must be consulted on decisions, which affect working conditions or may lead to the loss of jobs. There are no appeal procedures where employees' advice is not followed.

1.4 To be in compliance

i. Registration and filing requirements Chamber of Commerce

The Chamber of Commerce registers company information in the Trade Register and makes it available to the public. The Trade Register can be consulted online via *www.kvk.nl*.

Rights of the Works Council

In some cases, the Works Council must give its prior consent to important decisions affecting the business. The Works Council also has the right to be consulted and to receive information on important decisions and information affecting the business.

Consent requirements

Certain matters require the consent of the Works Council. These generally relate to changes in terms and conditions of employment and policies on hiring and dismissals, unless these have been covered by a collective labour agreement.

Consultation requirements

The Works Council is required by law to be consulted on a number of issues. This includes changes in ownership of the business, major investments and divestments, hiring of groups of workers and changes in the financing of the enterprise, but also changes in policy in respect of matters such as technology and the environment. This information does not need to be given on activities abroad, unless it has implications for the business activities in the Netherlands. The Works Council is entitled to give its advice on such matters and must be informed as to whether or not that advice has been followed. The Works Council can appeal to court where its advice is not followed or where material facts were not disclosed to it.

In contrast with the situation in several other European countries, the Works Council is not entitled to determine the profits distribution policy of the company. In addition, the Works Council is not required by law to be represented on the management board of the company. The Works Council can, however, make recommendations for the mandatory supervisory board of a large company (refer to section 1.6.iii).

Information requirements

The Works Council must be provided with details about the group structure and the composition of the (executive members of the) management board and, if applicable, the supervisory board or non-executive members of the board. The Works Council must also receive copies of the management report and the financial statements in the Dutch language, as adopted by the shareholders. This information must be provided immediately after the adoption. Where consolidated accounts are prepared, the Works Council should receive sufficient information about the composition of the results.

Meetings on business developments must include, inter alia, details of expected developments over the coming period and details of all capital investments, including those overseas. Details of any long-term plans must also be disclosed.

Once a year the Works Council must be provided with details on the employment situation in the company and its social policy over the prior year.

All companies must be registered with the Trade Register of the Chamber of Commerce and provide information on a regular basis. This includes the obligation to annually file the annual report and related documents, unless an exemption can be utilised. Filing requirements for annual reports are discussed in more detail in chapter 2. Other information that has to be registered includes, inter alia, details of the company's office address, issued and paid-up share capital, directors, a sole shareholder, and (not mandatory) holders of a power of attorney.

The directors of a company have a statutory duty to ensure that all relevant filing and registration requirements are met.

A company should include the number under which it is registered with the Trade Register in all its written means of communication such as letters, invoices, proposals, websites and e-mail correspondence. Furthermore, this number should be disclosed in the financial statements, according to Article 2:380b DCC.

ii. The auditors

The legal requirement to have an audit will depend on, amongst other things, the size of a company, as described in chapter 2.2. Dutch corporate law requires an audit of the financial statements for all large and medium sized companies. For group companies, an exemption may be available by applying Article 2:403 DCC, which is described in chapter 4.4.

Small and micro entities have no statutory audit requirement. However, these may be audited if the articles of association require so, or at the specific request of the shareholder(s).

Companies which form part of a group, may be eligible for additional exemptions. These exemptions may impact the interpretation of the size of the company as defined in chapter 2 and hence the requirement for an audit. The audit of group accounts is dealt with in chapter 4.

Where a company is required to be audited, the following procedures apply.

Appointment of auditors

The first right to appoint the auditors lies with the general meeting of shareholders of the company. In the event that they do not appoint the auditors, the responsibility lies with the supervisory board. If there is no supervisory board, or it fails to appoint the auditors, the management board has the right of appointment.

Removal of auditors

The general meeting of shareholders has the right to remove the auditors. The supervisory board or management board also has this right in case they appointed the auditor. If removed, the auditors have the statutory right to address a general meeting of the shareholders if there are issues related to the removal, which should be brought to the shareholders' attention. In addition, both the auditor and the management board need to notify the Authorities for Financial Markets (AFM) of this removal, accompanied with an adequate justification, in case of premature removal taking place before completion of the work and/or issuance of the report.

Auditor's report

The auditors are required to give an opinion on whether:

a. the financial statements give a true and fair view;
b. the financial statements comply with the other legal requirements;
c. the management report is consistent with the financial statements and meets legal requirements;
d. the other information required by law has been added to the financial statements;
e. based on the knowledge of the company and its environment during the audit, material mistakes in the management report have been found stating the nature of these mistakes.

In respect of point (a) above, the auditors have an obligation to draw attention in their report to material departures from the requirements of generally accepted Dutch accounting principles, as well as departures from any relevant legal principles concerning disclosure or valuation.

In respect of point (c) above, the auditors have to report specifically in their auditor's report on consistency of the management report with the financial statements.

Item (d) will be referred to in the auditor's report only by exception.

In addition, the auditors are required to report to the supervisory board and management board. This report must include (at least) any findings in respect of the reliability and continuity of the automated data processing.

The auditor is allowed to attend the annual general meeting of shareholders adopting the financial statements and is authorised to speak there.
The basic principle in responding to questions during the general meeting is that it is the responsibility of members of the management board to inform the shareholders of matters that are relevant to the company. This includes the contents of the financial statements and the quality of the internal control structure. The auditor should restrict himself to responding to questions on his audit work and his auditor's report only.

iii. UBO-register

New regulations in the Fourth Anti-Money Laundering Directive prescribe all European Union member states to have a central register in the relevant member state ('UBO register') in which businesses and legal entities are required to maintain accurate and current information on the identity of their ultimate beneficial owners. An Ultimate Beneficial Owner (UBO) is:

1. an individual who has an interest of more than 25% of the capital interest – or has the power to exercise more than 25% of the voting rights in the meeting of shareholders of a legal entity other than a foundation or trust - or has in any other way the power to exercise the actual control in this legal entity, unless this legal entity is a listed company; or
2. in case a foundation or a trust has the power to exercise more than 25% of the capital interest – or more than 25% of the voting rights in the meeting of shareholders of a legal entity other than a foundation or trust – or has in any other way has the power to exercise the actual control in this legal entity: a beneficiary of 25% or more of the capital of this foundation or trust, or the person who has special control over 25% or more of the capital of a foundation or a trust.

In the Netherlands, the UBO-register is implemented in January 2020. If an UBO is identified, the following information is publicly available:

- complete first name(s);
- surname;
- month and year of birth;
- nationality;
- state of residence;
- nature and extent of the UBO's economic interest (stated as 25-50% or 50-75% or 75-100%);

Other information is only available for competent authorities and the Financial Intelligence Unit, such as:

- citizen service number (BSN)/Foreign TIN;
- date and place of birth;
- home address;
- copy of valid ID;
- copy of documents evidencing the nature and extent of the economic interest.

There are two exceptions in which case the UBO information should not be obliged to be publicly accessible:

1. In case there is a disproportionate risk for the UBO, fraud, kidnapping, etc.
2. In case the UBO is a minor.

1.5 Employee benefits

The below paragraph is based on the legislation as in place as per 1 January 2020. In general, legislation may be subject to change, therefore it is recommended to seek professional advice regarding specific issues on personnel.

i. Employment

The relationship between employee and employer is laid down in the Dutch Labour Law. Beside this, most industries have a 'Collective Labour Agreement' (CAO) which is applicable to employment contracts. The CAO contains agreements between employers regarding salaries, holidays, pensions, education, sickness, safety, notice and so on and so forth.

- An employer can offer an employment contract for an indefinite term or a fixed term. The number of succeeding employment contracts for a fixed term is limited to three. The total duration of fixed term contracts is limited to three years. If a fixed contract exceeds the legal limit, the employment

contract must be converted in a contract for an indefinite term.
- A normal fulltime employment is 40 hours a week (five days of eight working hours). An employee is at least entitled to 20 paid holiday days a year (in case of a fulltime employment). However, individual entities may decide to offer more paid holiday days, which often is the case in practice. For example, in the past employees could have been entitled to additional days based on their age. Besides this there are several public holidays, which are: New Year, Easter, Easter Monday, Kingsday (27 April), Ascension Day, Whit Sunday ('Eerste Pinksterdag'), Whit Monday ('Tweede Pinksterdag'), Christmas ('Eerste Kerstdag') and Boxing Day ('Tweede Kerstdag').
- An employee is entitled to a yearly holiday pay of 8% of the annual salary.

Accounting: under Dutch GAAP, wages and salaries must be recognised as an expense when an employee has rendered service. For accrued holiday pay and accumulated holiday days, a liability on the balance sheet and an expense must be recognised.

ii. Unemployment

In case of unemployment, the unemployed person may be entitled to receive an unemployment benefit. The initial unemployment benefit is 75% of the last earned wage for the first two months and 70% thereafter. The term of an unemployment benefit depends on the years of service: the minimum term is three months and a maximum term is 24 months. To be eligible for the unemployment benefit the '26 out of 36 weeks' ruling criterion must be met, which states that you must have been employed for a minimum of 26 out of 36 weeks before your first day of unemployment.

Accounting: under Dutch GAAP (RJ 271.502a), if an employer fires an employee a termination benefit (for instance a transitional benefit) should be recognised (under normal circumstances, and if the criteria are met). Furthermore, for instance in case of a reorganisation, a restructuring provision should be recognised if certain criteria are met.

iii. Sickness and health

- In case of sickness, an employee is entitled to at least 70% of the wage last earned. After two years of sickness, the employer can end the employment contract and the employee may be eligible for a state disability benefit.
- A pregnant employee is entitled to 16 weeks of paid maternity leave.
- Everyone living in the Netherlands participates in the Dutch health insurance scheme. In case of employment, the employer must pay part of the insurance premium. Many employers have arrangements with an insurance company to provide a collective health insurance policy for their personal.

Accounting:
- Sickness: Under Dutch GAAP (RJ 271.205), only a liability on the balance sheet and an expense must be recognised for employees who are not expected to recover (fully or partial).
- Disability: An employer can choose either to insure the disability benefits in the public sector (UWV) or to self-administer the benefits (opting out). In case of participating in the public sector, under Dutch GAAP (RJ 271.210), an expense must be recognised for disabled employees, the moment the required payments to UWV are due.

In case the employer choose to self-administer the benefits, a liability on the balance sheet and an expense must be recognised (RJ 271.205). The liability can be reduced if the disability benefit is insured with an insurance company.

iv. Pensions

The Dutch pension system has three main pillars: a flat-rate state pension (AOW) related to minimum wages and financed via payroll taxes (pillar 1), occupational pension schemes which are capital-funded (pillar 2), and individual saving schemes (pillar 3).

1. The first pillar is the state pension (AOW). The state pension provides a basic income, the level of which is linked to the statutory minimum wage. The state pension is financed via payroll taxes (pay-as-you-go system). The retirement age of the AOW is in 2020 66 years and 4 months. This retirement age will increase in steps to 67 in 2024. If you are born after 31 December 1958, your AOW pension age will be at least 67, but the exact age has not yet been fixed.

2. The second pillar consists of the occupational collective pension schemes. These pension schemes are administered by a pension fund or by an insurance company. The pension schemes are financed by capital funding. This means that the accrued pension benefits must be funded by employer and employee contributions. In case of a CAO, there usually is a mandatory pension scheme applicable (an industry wide or a company pension plan). However, there are still some (small) companies without a pension plan.
    a. There are various forms of pension schemes. The most common pension scheme in the Netherlands is an average salary pension plan. In average salary schemes, the accrued pension benefits are related to the employees' income in a specific year. In general, average salary schemes have conditional indexation, which is based on the available means.
    b. There are also defined contribution pension schemes in the Netherlands. In a defined contribution pension plan, the amount of pension a person receives depends on the contributions paid during the accumulation period and the return on investment achieved. Therefore, the investment risk and the interest rate risk (the risk that the rate for purchasing an annuity on the retirement date changes) rest with the employee.
3. Individual pension products form the third pillar. These are mainly used by the self-employed and employees in sectors without a collective pension scheme. Anyone can purchase a product in the third pillar to meet his/her requirements.

Accounting:
1. AOW (pillar 1):
   As an employer only is responsible for the payment of the employee payroll taxes to the Dutch tax authorities, there are no accounting consequences for the employer.
2. Occupational collective pension schemes (pillar 2):
   o Under Dutch GAAP (RJ 271.306), an expense must be recognised, the moment the required contributions to the pension administration are due. However, in case of other obligations (extra contributions due to underfunding or employee obligations, which are not protected by the Dutch Pension law (Pensioenwet)) a liability on the balance sheet and an expense must be recognised. This is referred to as the liability approach (RJ 271.307).
   o Dutch entities could opt to apply IFRS for their Dutch GAAP financial statements instead of the liability approach. This sometimes happens in international groups in which the parent applies IFRS. Under IFRS (IAS 19), there is a distinction between defined contribution (DC) and defined benefit (DB) pension plans. DC pension plans are pension plans under which the entity pays fixed contributions into a separate entity (pension fund or insurer) and will have no legal or constructive obligation to pay further contributions relating to employee service in current and prior periods. DB plans are pension plan other than DC plans.
     For DC pension plans, an expense must be recognised, the moment the required contributions to the pension administration are due.
     For DB pension plans an actuary must perform an actuarial valuation. On the balance sheet, the difference between the pension obligations (DBO) and the fair value of plan assets must be recognised. The DBO is calculated as the net present value of the expected pension benefits, taking into account future salary increases and actuarial assumptions. The pension expense (P&L) contains of the service cost (the annual accrual of the DBO) and the net interest cost. Remeasurements of DBO and plan assets are recognised in OCI.
     Industry wide pension plans are multi-employer plans under IAS 19. These pension plans usually are DB pension plans, but most industry wide pension funds cannot provide sufficient information in order to use DB accounting. In those cases, the pension plan should be treated as a DC pension plan.
3. Individual pension products (pillar 3):
   Usually an individual pension product is an arrangement between an employee and an insurer or bank. Therefore, there are no accounting consequences for the employer.

1.6 Share capital and dividend payments

i. Share capital

The basic rules for nv's concerning the share capital differ from the rules for bv's. For nv's the following requirements apply:

- The issued share capital of a company must be, without exception, at least 20% of the authorised capital of the company, as defined in the articles.
- The part of the issued capital which has actually been paid-in, must equal at least 25% of the issued capital (refer to Article. 2:69.2c/2:80.1 DCC.)
- The minimum amount of issued and paid-in share capital is EUR 45,000 (subsequent to Article 2:67.3 DCC).

An nv failing to meet the EUR 45,000 limit can be liquidated by the court. To prevent the liquidation of an nv failing to meet the EUR 45,000 limit, the nv can be converted into a bv.

This is different for bv's. There is no minimum capital required to incorporate a bv (this used to be EUR 18,000). However, shares are required to have a nominal value. Paying up of (a part of) the shares on the date of incorporation is not required, this may take place later. The nominal value of a share and thus the share capital of a bv may be presented in currencies other than Euro. Furthermore, the mandatory bank statement and/or statement of an auditor are not required for the incorporation of a bv. However, a notarial act of incorporation is necessary.

Types of share capital

The most common types of share capital encountered in practice are as follows:

- Ordinary or common shares
- This is the most common type of shares in practice. All shares are presumed to rank equally, in proportion to the nominal value of the shares held. No special rights attach to ordinary shares, although the rights of the shareholders may be modified by provision of the articles. All ordinary shares carry voting rights. The bv can issue non-voting shares or shares without rights to profit which makes that the rights of shareholders can be arranged flexible. It also can be determined whether a share has rights to reserves and/or rights to a surplus upon liquidation. These classes of shares make customization possible. The issue of shares with both voting rights and rights to profit (ordinary shares) is also possible. However, it is not possible to issue shares without voting and profit rights.

- **Preference shares**
  Preference shares normally have some form of priority over ordinary shares. This is usually in the form of a fixed amount of dividend payable in priority to the dividend payable to the holders of ordinary shares.

- **Cumulative preference shares**
  These are similar to preference shares except that the right to a fixed dividend is cumulative. This means that the right to dividends not paid in prior years takes priority over payments to holders of ordinary shares.

- **Priority shares**
  Priority shares are shares, which carry special (usually voting) rights, which will be set out in the articles. Special rights might relate to, for example, the appointment of the managing board.

Issue of shares

- **Rules applicable for nv's**
  Shares may be issued at par (nominal value) or at a premium. Shares may be partly paid-in, subject to a statutory minimum of 25% of the par value.
  The issued share capital must remain within the limits of the authorised capital as defined by the articles of association. The capital clause of the articles can be amended according to the procedures described in section 1.5.2. At least 20% of the newly authorised share capital must be issued (Article 2:67.4 DCC).

Shares may be issued at a premium, being the amount paid in excess of the nominal value; this premium must be fully paid at the time of issue.
In the case of an nv, the shareholders decide on the placement and pricing of a new issue of shares. In practice, this task is often delegated to the managing or supervisory board of directors for a period of up to five years, which can be renewed.

bv

nv

Description of share	Method of transfer	Registration
bv		
Uncertified registered shares	Deed of transfer, which must be executed before a civil law notary. The articles may place restrictions on transfers, e.g. right of first refusal for existing shareholders or the obligation to offer to other shareholders.	Shares must be recorded in a shareholders' register. No share certificate is issued.
nv (non-listed)		
Certified registered shares	Not freely transferable. Transfer by deed of transfer, which must be executed before a civil law notary.	Shares must be recorded in a share register. Share certificate is in the name of the shareholder.

- **Rules applicable for bv's**
  In the case of a bv, shares may be issued upon resolution of the shareholders, unless this power is delegated to the managing or supervisory board, or the articles provide for such delegation (Article 2:206 DCC).

Transfers of shares

Once issued, shares may be transferred. The legal provisions concerning the transfer depend on the type of share in question. There are legal restrictions concerning the types of share that both a bv and an nv can issue. The relevant rules are summarised as follows.

Reductions of share capital

- Rules applicable for nv's

Subject to strict rules to protect creditors, a company may reduce its share capital by one of the following methods:
- repurchase and cancellation
- reduction of the par value

A company can repurchase its shares in cash subject to a 50% limit of the issued capital if, after repurchasing, the minimum capital amount (see before) is still present. These shares can be subsequently cancelled. Any shares repurchased must be fully paid. The 50% limit does not apply to non-listed nv's.

'Cancellation' of shares is possible, subject to a number of rules, in three cases:
- with the approval of all holders of the shares issued in the class to be cancelled. The shareholder receives the par value of the shares held, or the amount paid-up if the shares are not fully paid;
- where a company has purchased its own shares, it may also cancel those shares;
- where the articles permit cancellation of a class of shares. This will normally involve cancellation of the entire class of shares involved.

'A reduction of the par value' of shares normally only takes place in the context of a capital restructuring of a company with accumulated losses.
Any reduction in share capital, by any of the above methods, must not reduce the net equity of the company below the sum of the remaining called-up share capital plus any legal reserves and reserves required by the articles.

- Rules applicable for bv's

The task of granting approval for capital reduction and repurchasing of shares (but also distributions to shareholders) has been assigned to the management to protect the interests of the creditors. Consequently, the management has to perform an equity test as well as a liquidity test. This liquidity test helps the management to determine whether the bv can continue to pay its due and payable debts after doing the intended transaction. The management has to perform the test before approving a proposed distribution, repurchase of shares or capital reduction. The equity test means that legal and/or statutory reserves may not be distributed. The formula is as follows: a distribution is allowed if total equity exceeds the legal reserves and the statutory reserves (the reserves according to the articles of association). Refer to the part on dividend payments below for possible consequences for the directors' if they have granted approval whereas the bv is not able to pay is short term debts.

Contributions in kind

Shares may be paid for in cash or 'in kind'. In the case of 'in kind' contributions, special provisions apply designed to protect creditors and shareholders against a dilution of the issued share capital, which would arise if the value of the assets contributed was below the amount payable for the shares issued in return.

Contributions in kind are restricted to assets, which can be independently valued. The most common example in practice is the contribution of shares in another company, as part of a group restructuring. Contributions in kind require approval of the majority of the shareholders, unless otherwise stated in the articles.

The DCC refers to two possible situations of contribution in kind. An exemption from the requirements detailed below may be available to companies whose debts and liabilities are guaranteed by another group company.

- Contribution in kind on incorporation (Article 2:94a/2:204a DCC)

In this case, the founders of the company must prepare a description of the contribution in kind, stating its value and the valuation methodology used. The valuation method has to be generally accepted. The description must relate to the contribution at a date no earlier than either six months before the date of incorporation. The description must be signed by the founders.

Contributions in kind in case of an nv require an auditor's opinion stating that the value of the contribution to be made is at least equal to the amount payable as a capital contribution. The auditor's opinion must be filed at the Chamber of Commerce.
An auditors' opinion is not required for bv's.
A contribution in kind, which forms (part of) the initial payment for shares on foundation of the company, must be stated in the deed of incorporation.

- Contribution in kind after incorporation (Article 2:94b/2:204b DCC)

In this case, the procedure to be followed is similar to that for Article 2:94a/2:204a DCC described above. The description must relate to the contribution at a date no earlier than either six months before the date on which the shares are subscribed for or the date on which an additional payment is called-up or agreed. The description must be signed by all the managing directors. For nv's, an auditor's opinion is required.

- Transactions with founders and shareholders (Article 2:94c DCC), only applicable for nv's

This case covers the acquisition of property from a founder or shareholder one year prior to incorporation or two years after registration of the company, where the transaction involves assets which were held by a founder in the year preceding incorporation or thereafter.

The procedure to be followed is similar to the ones above. A description of the property to be acquired must be prepared, including its valuation and the methodology used, and of the consideration to be paid. The description should relate to the property on or after the date of incorporation. All the managing directors are required to sign the description, and an auditor's opinion is required.

Certain transactions are exempt from the above provision, including those in the normal course of business.

ii. Dividend payments

General

Dividend payments require a shareholders' resolution, which can only be made after the adoption of the financial statements. The annual report, as presented by the managing board, will include a proposed allocation of profits in the 'other information' to the financial statements. However, the shareholders finally determine whether dividends will be paid. The articles of association may state that the allocation of profits is delegated to another body of the entity.

Flex legislation for bv's: directors' responsibility

As mentioned before in the part on reductions on share capital, the management board has the task of granting approval for dividend payments in order to protect the interests of the creditors (Article 2:216.2 DCC). Therefore, the management has to perform an equity and a liquidity test. In the latter, it determines whether the bv can comply with its liabilities after the proposed profit distribution. In other words, can the bv continue to pay its due and payable debts? The parliamentary history shows that when implementing the liquidity test, usually a period of one year after the date of the payment of the proposed distribution should be taken into account.

If the management has approved a distribution while the bv does not seem to be able to continue to pay it's short term debts, the management may be held liable. This will happen when, at the time of payment, the management knew or should have foreseen that the bv would no longer be able to continue to pay these debts after the distribution (Article 2:216.3 DCC). Furthermore, it is also important that the management checks if the actual liquidity test is still suitable if there is significant time between test and payment. If the management is held liable, it must compensate the bv for the deficits caused by the distribution plus legal interest. Deficit should be read as: the amount of the distribution and the interest. The management is jointly and severally liable, which means that an individual director can be addressed for the entire deficit arising of the distribution. However, this director has a right of recourse on his fellow directors. An individual director may exculpate himself if he proves that the distribution made by the bv cannot be attributed to him and that he was not negligent in taking measures to avert the consequences.

The shareholder can also be held liable (up to the amount he received plus legal interest) if he knew or should have foreseen that the bv could no longer meet its liabilities after distribution, repurchase of shares or capital reduction. If the director of the bv has already been addressed, then in this case, the shareholder has to compensate the director(s).

Traditional creditor protection rules apply for nv's

Dividends can only be paid where there are cumulative retained earnings available for distribution. The net equity of the company, after the distribution, must be at least equal to the sum of the called-up share capital plus any legal reserves and reserves required by the articles of association (Article 2:105 DCC). There are no additional tests that need to be performed. However, in spite of the lack of a legal codification, it is assumed that the nv is subject to a similar approach as the bv, which is then based on case law.

Interim dividends

An interim dividend may be declared and paid, before adoption of the financial statements, provided the above mentioned net equity condition is met and the articles of association allow such dividend. For an nv, this net equity condition is required to be evidenced by an interim balance sheet, prepared and signed by the management board, no earlier than 3 months before the declaration of the dividend. This statement must be filed at the Chamber of Commerce (Article 2:105 DCC). A bv is not required to prepare such a statement.

If the net equity condition is not met, the dividends must be repaid to the company. In the case of an nv, this would be limited to shareholders who knew or should have known that the distribution was illegal.

1.7 Corporate governance

i. Dutch Corporate Governance Code

Focusing on the governance of listed companies, the Dutch Corporate Governance Code (the Code) provides guidance for effective cooperation and management. Governance is about management and control, about responsibility and influence, and about supervision and accountability. The purpose of the Code is to facilitate – with or in relation to other laws and regulations – a sound and transparent system of checks and balances within Dutch listed companies and, to that end, to regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). Compliance with the Code contributes to confidence in the good and responsible management of companies and their integration into society. The Code was first adopted in 2003 and revised in 2008 and 2016. The full text of the Code and additional information (in English and Dutch) can be found on *www.mccg.nl*.

Scope

The Code applies to (i) all companies whose registered offices are in the Netherlands and whose shares, or depositary receipts for shares, have been admitted to trading on a regulated market or a comparable system; and (ii) all large companies whose registered offices are in the Netherlands (balance sheet value > €500 million) and whose shares, or depositary receipts for shares, have been admitted to trading on a multilateral trading facility or a comparable system.

Contents of the Code

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders (including the general meeting of shareholders). The principles and provisions are aimed at defining responsibilities for long-term value creation, risk control, effective management and supervision, remuneration and the relationship with shareholders (including the general meeting of shareholders) and stakeholders. The principles may be regarded as reflecting widely held general views on good corporate governance. The principles have been supplemented in the form of best practice provisions. These provisions contain standards for the conduct of management board members, supervisory board members and shareholders. They reflect best practices and supplement the general principles of good corporate governance.

Companies may depart from these best practice provisions, if they give reasons for doing so. The management board and the supervisory board are responsible for the corporate governance of the company and for compliance with this Code. Compliance with the Code is based on the ‘comply or explain’ principle. Unlike legislation, the Code offers flexibility in that it provides room to depart from the principles and best practice provisions. The management board and the supervisory board account for compliance with the Code in the general meeting and provide a substantive and transparent explanation for any departures from the principles and best practice provisions.

The Code consists of five chapters:

1. Long term value creation
2. Effective management and supervision
3. Remuneration
4. The general meeting
5. One-tier governance structure

Chapter 1. Long-term Value Creation

Principle 1.1 Long-term value creation
Principle 1.2 Risk management
Principle 1.3 Internal audit function
Principle 1.4 Risk management accountability
Principle 1.5 Role of the supervisory board
Principle 1.6 Appointment and assessment of the functioning of the external auditor
Principle 1.7 Performance of the external auditor’s work

Chapter 2. Effective Management and Supervision

Principle 2.1 Composition and size
Principle 2.2 Appointment, succession and evaluation
Principle 2.3 Organisation of the supervisory board and reports
Principle 2.4 Decision-making and functioning
Principle 2.5 Culture
Principle 2.6 Misconduct and irregularities
Principle 2.7 Preventing conflicts of interest
Principle 2.8 Takeover situations

Chapter 3. Remuneration

Principle 3.1 Remuneration policy – management board
Principle 3.2 Determination of management board remuneration
Principle 3.3 Remuneration – supervisory board
Principle 3.4 Remuneration accountability

Chapter 4. The General Meeting

Principle 4.1 The general meeting
Principle 4.2 Provision of information
Principle 4.3 Casting votes
Principle 4.4 Issuing depositary receipts for shares

Chapter 5. One-tier Governance Structure

Principle 5.1 One-tier governance structure

Underlying notions

The Code is based on the notion that a company is a long-term alliance between the various stakeholders of the company. Stakeholders are groups and individuals who, directly or indirectly, influence – or are influenced by – the attainment of the company's objectives: employees, shareholders and other lenders, suppliers, customers and other stakeholders. The management board and the supervisory board have responsibility for weighing up these interests, generally with a view to ensuring the continuity of the company and its affiliated enterprise, as the company seeks to create long-term value.

If stakeholders are to cooperate within and with the company, they need to be confident that their interests are duly taken into consideration. Good entrepreneurship and effective supervision are essential conditions for stakeholder confidence in management and supervision. This includes integrity and transparency of the management board's actions and accountability for the supervision by the supervisory board. The operation of the Code is not determined by the extent to which it is complied with to the letter, but rather by the extent to which all stakeholders are guided by the spirit of the Code.

Relation to legislation

The Code was formed by self-regulation. It was made by, and is intended for, the parties addressed by the Code. Self-regulation means that parties draw up their own rules, without government intervention, to which they then commit themselves by following, enforcing and updating those rules. Self-regulation supplements government regulation. The Code should be viewed in the context of Dutch and European legislation and case law on corporate governance. The particular merit of the Code as an instrument of self-regulation is that the Code focuses more on the behaviour of management board members, supervisory board members and shareholders.

One-tier governance structure

The Netherlands traditionally works with a dualistic governance model (i.e. a two-tier governance structure). The Code is focused on this model. In companies with a two-tier governance structure, management and supervision are divided between two company bodies: the management board and the supervisory board. A specific chapter in the Code pertains to companies with a one-tier governance structure.

Governance disclosures in the annual report and on the corporate website

The broad outline of the company's corporate governance is set out each year in a separate chapter of the directors report or published on the company's website, partly on the basis of the principles stated in this Code. Here the company explicitly states the extent to which it complies with the principles and best practice provisions stipulated in this Code and, where it does not comply with them, why and to what extent it deviates from them.

Specific best practices include a prescription for specific governance disclosures to be included in the directors' report, the report of the supervisory board and some specific governance information to be published on the corporate website.

ii. Corporate governance disclosures in the annual report

Companies with listed shares at a European (EU) regulated market also have to comply with the 'Besluit inhoud bestuursverslag', which prescribes that the directors' report should also include a 'corporate governance statement'. This statement can be published on the corporate website instead of in the directors' report. Specific disclosures to be included in this statement include the application of the relevant corporate governance codes, the responsibilities of the management board and supervisory board, specific rights of shareholders, the key characteristics of the system of internal control regarding financial reporting, some specific disclosures as defined in the anti-takeover Directive and board diversity policy.

Large companies with listed debt at an EU regulated market also have to publish a corporate governance statement, however the disclosures in this statement are limited to disclose the key characterises of the system of internal control regarding financial reporting and board diversity policy.

iii. Audit committee requirement

In addition, so-called ‘Organisaties van Openbaar Belang’ (OOBs) (which are companies with listed shares and/or debt at an EU regulated market, banks and insurance companies) are required to install an audit committee, or alternatively the legal defined role and task of the audit committee have to be allocated to the full Supervisory Board.

iv. Board diversity

Large Dutch companies are expected to strive for at least 30% female management board and 30 female supervisory board members. In case these diversity thresholds are not met, the company is required to include a specific disclosure in its annual report that this threshold is not being met and the future board diversity policy of the company. In addition, large companies with listed shares and/or listed debt at an EU regulated market also have to disclose board diversity policy (objective, execution and results).

v. One-tier and two-tier structure

Dutch companies can opt for a one-tier as well as two-tier board structure.

vi. Mandatory audit firm rotation and auditors independence

The European legislation regarding mandatory audit firm rotation are applicable to Dutch OOBs, and as such these OOBs a required to change audit firm every ten years. In the Netherlands, specific detailed regulation is applicable regarding so-called permitted services, which are services can be provided by the external auditor in addition the financial statement audit.

vii. Non-financial information

EU law – incorporated in Dutch company law – requires large public interest companies (OOBs) with more than 500 employees to disclose in the directors’ report certain information on the way they operate and manage social and environmental challenges:

- o brief description of the undertaking’s business model
- o policies, results and principal risks in relation to specific thematic aspects:
  - environmental protection
  - social responsibility and treatment of employees
  - respect for human rights
  - anti-corruption and bribery
- o non-financial key performance indicators relevant to the undertakings business.

Reference is made to the ‘Besluit bekendmaking niet-financiële informatie’. ■

2. Requirements for annual reports

The legal provisions relating to the preparation, the format and contents, filing and audit requirements for annual reports are set out in Book 2, Part 9 of the Dutch Civil Code.

The Code reflects the requirements of the Directive 2013/34/EU. In addition to the Code, a Decree provides models for the balance sheet and the profit and loss account, in conformity with the European Directives (Decree on model accounts). Additional requirements are set out in the Dutch Accounting Standards ('DAS'), judicial precedence and, in certain cases, analogising to IFRS requirements may be appropriate.

The principal requirement for financial statements is that they are prepared in accordance with generally accepted accounting principles and provide a view enabling a well-founded opinion to be formed of the company's equity and result and, as far as the financial statements permit, of its solvency and liquidity (Article 2:362 DCC).

The financial statements can be prepared based on either Dutch GAAP or IFRS as adopted by the EU. Refer to chapter 5 for more information on IFRS. The information in this chapter is only applicable to Dutch GAAP, unless specifically stated otherwise.

The following sections provide an overview of the more important aspects of the requirements for annual reports. This booklet does not set out all required disclosures.

2.1 The composition of the annual report

The annual report will normally comprise three parts:
- the yearly report of the managing board ('directors' report');
- the financial statements, comprising a profit and loss account, balance sheet, notes to the accounts and (only for large and medium-sized companies) a cash-flow statement; and
- other information, comprising, inter alia, the auditor's report and the provisions in the articles of association concerning appropriation of profits.

For all companies the requirements to prepare and file an annual report and the requirement for an audit are determined, inter alia, by the size of that company (refer to section 2.2).

i. Directors' report

The managing board prepares the directors' report annually. This report is not a part of the financial statements (as defined below). Nonetheless, the directors' report shall not be inconsistent with the financial statements. The directors' report may be prepared in a language other than Dutch, subject to the agreement of the general meeting of shareholders.

In general, the directors' report (Article 2:391 DCC) should include:
- A true and fair view of the financial position at the balance sheet date, developments during the year and the results for the year of the company and the group companies, which are included in the financial statements. This includes (dependent on the size and complexity of the company and the group companies) a full and balanced analysis of above-mentioned aspects.
- This analysis should address non-financial and financial performance indicators, including environmental and personnel aspects if these are vital for a correct understanding of the balance sheet position, results and developments (a medium-sized company is exempted from addressing the non-financial performance indicators).
- Description of the primary risks and uncertainties under which the company operates (more guidance on these risks and uncertainties, as well as on any measures to mitigate these risks, is included in DAS 400 'Jaarverslag').

- Information on future developments with regard to for example investments, financing, number of personnel and circumstances that will affect the future development of the turnover and rates of return. Other elements:
  - details of research and development;
  - details of any significant events that are not reflected in the financial statements;
  - the policy of management and supervisory board remuneration and how this policy was applied in the year of the financial statements (for public limited companies to which Article 2:383b applies);
  - the use of financial instruments by the company and, if necessary, the objectives and the policy of the company regarding financial risk management, as well as any measures to mitigate the risks; examples thereof refer to price, credit, liquidity and cash flow risks.
- Further background on the composition of the supervisory board and management board (by gender).

In case of consolidated accounts, the directors' report should cover the activities and developments of the group as a whole. As said, the Dutch Accounting Standards, standard 400, contain further detailed guidance on the contents of the directors' report.

ii. Financial statements

The financial statements will normally comprise:
- balance sheet;
- profit and loss account;
- cash flow statement;
- notes to the financial statements.

Note that financial statements in accordance with IFRS also contain a statement of changes in equity and a statement of other comprehensive income (OCI) as an addition to the profit and loss account (collective statement of comprehensive income). For large companies a so-called 'statement of Total result' should be presented or disclosed in the notes, refer to DAS 265.

A company that is the head of a group is required to prepare consolidated financial statements as well as company financial statements unless an exemption applies.

iii. Other information

The managing board must include the following other information (Article 2:392 DCC) with the financial statements and the directors' report:
- auditor's report;
- reasons for the omission of the auditor's report if it is not included;
- details of the provisions in the articles of association concerning the appropriation of results;
- details of special shareholders' rights;
- details of shares without profit rights and non-voting shares;
- details of branch establishments.

The other information shall not be inconsistent with the financial statements and directors' report. The auditors (refer to chapter 1.4) must state, inter alia, in their auditor's report whether or not:
- The financial statements provide a true and fair view.
- The financial statements comply with the Dutch legal requirements.
- The directors' report is consistent with the financial statements.

The shareholders can, without an audit opinion, not adopt the financial statements of a legal entity that is legally required to have an audit, unless a notification of the absence of the opinion with the legitimate reason for this has been added to the other information.

2.2 The size of a company matters

Companies are classified as 'micro, small, medium-sized or large' on the basis of three criteria, being total assets, net turnover and the average number of employees (Articles 2:395a, 2:396 and 2:397 DCC).

The criteria are summarised in the table below.

i. Classification

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; and
- satisfies those criteria for two consecutive years.

ii. Net turnover

The amount to be used in the calculation of turnover is based directly on the amount shown in the standard format (consolidated) profit and loss account. Net turnover is defined as the income from the supply of goods and services from the business of the company, after deduction of rebates and similar discounts and of turnover tax.

For accounting periods longer or shorter than one year, the turnover size criteria are adjusted proportionately. For example, a company preparing financial statements for a 9 month accounting period, will reduce the small company turnover threshold to EUR 9,000,000 (9/12 x EUR 12,000,000).

iii. Total assets

Total assets can be defined as the total of all consolidated assets without deduction of any liabilities. The assets should be valued on a historical cost basis for this purpose, being the cost of acquisition or production excluding any revaluations.

iv. Average number of employees

The calculation of the average number of employees is based on persons with a contract of employment with the company or group companies, whether part-time or full-time, recalculated on a fulltime basis. The average can be calculated for accounting periods of more than one year or less than one year by calculating the number of employees week by week, adding the weekly numbers and dividing the total by the number of weeks in the accounting period.

v. Newly incorporated company

A newly incorporated company will be classified as micro, small, medium-sized or large for the first and second financial period when it, at the balance sheet date of the first financial period, satisfies at least two out of the three criteria for that size. Thereafter, the two consecutive year rule is applied.

vi. Finance and intermediate holding companies

The question of size is often raised in practice in relation to finance and intermediate holding companies. Under the assumption that the companies in question do not engage in any other activities, they are unlikely to have any employees but may have a high value of total assets. This means that the question of size normally focuses on the turnover criterion. Also, refer to Article 2:377 section 6 and DAS 270.201.

In practice, group finance companies often classify the group interest income under the line item 'Interest income and expenses' in the profit and loss account, not under the line item 'Revenue', as defined above. Consequently, such companies usually meet the small criteria for turnover/revenue and average number of employees. While such a position may be defendable in certain circumstances, this classification of interest has to be reviewed on a case-by-case basis. A finance company dealing exclusively with third parties on a commercial basis, for example, should classify interest income as turnover, as it constitutes a supply of financial services.

	Micro company	Small company	Medium-sized company	Large company
Net turnover (€ '000)	< 700	> 700 and < 12,000	> 12,000 and < 40,000	> 40,000
Total assets (€ '000)	< 350	> 350 and < 6,000	> 6,000 and < 20,000	> 20,000
Employees	< 10	> 10 and < 50	> 50 and < 250	> 250

Intermediate holding companies classify their share in results from investments under the line item ‘Share in profit/loss of participations’ in the profit and loss account, and not under the line item ‘Turnover’. On a company basis, therefore, holding companies will usually satisfy the small company criteria for both the average number of employees and turnover. However, (intermediate) holding companies are required to base the calculation of the value of their assets, net turnover and average number of employees on a consolidated basis. This consolidated method does not need to be applied if the intermediate holding company takes advantage of the so-called intermediate consolidation exemption under Article 2:408 DCC. Further details are discussed in chapter 4.

The conditions for this exemption are set out in chapter 4 on group accounts (chapter 4.3). In practice, many holding companies take advantage of this exemption.

2.3 Keeping the books and preparation of the financial statements

A company is required to maintain accounting records sufficiently adequate to enable the financial position of the company to be determined at any time. There are various regulations, including tax regulations, which stipulate the period for which the records should be kept. Generally, the records should be kept for a minimum period of seven years.
For most companies, it is not necessary to maintain accounting records in the Netherlands. However, for tax purposes, such records must be made available upon request.

In principle, all companies must prepare financial statements. The preparation thereof is a responsibility of the Managing Board (Article 2:101.1 DCC for nv’s and 2:210.1 DCC for bv’s). These financial statements are to be adopted by the shareholders of the company (Articles 2:101.3 and 2:210.3 DCC). The financial statements are then published by filing them at the Chamber of Commerce. The date of the adoption of the financial statements must be noted on the filed copy (Article 2: 394 DCC).

Listed companies (companies whose securities are admitted to trading on a regulated market within the meaning of the Act on Financial Supervision) must file their financial statements at the financial markets authority.

i. Language of preparation

It is not necessary for a company to prepare and file the annual report in Dutch. Preparation of the annual report in other languages is allowed if the general meeting has decided to do so (Article 2:362.7 and 2:391.1 DCC). However, filing can only be done in the Dutch, English, German or French language.

ii. Currency

There is no specific requirement to maintain accounting records in euros. In practice, a company may wish to maintain its accounting records in a currency other than euros, for example its functional currency. The company however, will probably need to file its tax return in euros. This issue could be solved by means of a dual ledger, one in the functional currency and one in euros. Ideally, transactions recorded in the functional currency should be recorded in the euro ledger at the exchange rate on the transaction date. In practice, maintenance of a dual ledger is not always possible. In such cases, companies normally update the euro ledger at month-end. Under certain circumstances, it is possible for companies to file their tax returns in their functional currency, which avoids the need to maintain accounting records in euros.

The financial statements may be presented in a currency other than euros, when the activities of the company or the group’s international structure justifies its use. In practice, this usually means the functional currency of the company or group. If the currency of the issued share capital differs from the functional currency, then the share capital amount should be translated to the functional currency at the closing rate as at the balance sheet date. The exchange difference resulting from this translation should be recognised in retained earnings (RJ 240.205).

iii. Signature and adoption of financial statements

The managing board is responsible for the preparation of the financial statements. The subsequent procedures depend on whether the company has a supervisory board.

- **Company with supervisory board**

When a company has installed a supervisory board, the complete managing board and supervisory board must sign the original version of the financial statements. If a signature is missing, then the reasons for this must be stated (Articles 2:101.2; 2:210.2 DCC). There is no legal requirement for either the directors' report or the other information to be signed.

For copies of the financial statements, it is sufficient to include the names of the managing and supervisory board. However, if a signature is missing in the original version, the reasons for the absence of the signature must also be stated on all copies (Decree on model accounts, Article 15).

The supervisory board must review the financial statements as prepared by the managing board and subsequently the supervisory board must submit the financial statements to the general meeting of the shareholders for adoption. When a statutory audit is required the adoption cannot take place before the audit opinion is issued, unless there are lawful grounds why an opinion has not been issued by an auditor.

- **Company without a supervisory board**

The procedures are identical to the above except that the financial statements will only be signed by the managing board, who will submit the financial statements to the shareholders for adoption.

2.4 Filing of the annual report

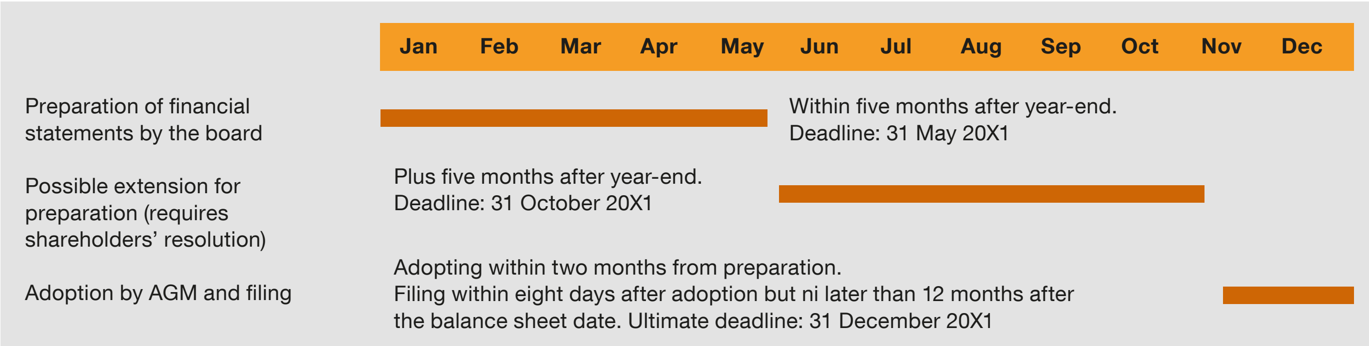
The managing board is responsible for the filing of the financial statements. The directors' report, the auditor's report and the details of branch establishments do not have to be filed with the Chamber of Commerce, provided the documents are kept at the registered office of the company for public inspection and a copy can be obtained upon request at no more than cost price (Article 2:394.4 DCC). The company must register notice of this procedure with the Chamber of Commerce. In practice, however, most companies will file the complete annual report including directors' report and other information.

i. Timetable

The managing board is responsible for the filing of the financial statements in accordance with the timetable in the Dutch Civil Code (Article 2:394 DCC). The general meeting of shareholders may extend the period for the preparation, and hence filing of the financial statements. Listed companies are subjected to a different timetable.

The timetable on the next page provides a summary. It is based on a reporting date of 31 December (financial year 20X0).

Required action	Time frame	Possible extension	Extension requires
Preparation of financial statements	Five months after year-end.	Up to five months. The maximum preparation time is ten months after year-end.	Well-founded reasons; also requires approval of the general meeting of shareholders (recorded in minutes).
Filing of the financial statements at the Chamber of Commerce	Eight days after adoption by the general meeting of shareholders but no later than two months after the date of preparation (irrespective of whether the financial statements have been adopted).	If above extension is applied, filing should take place ultimately 12 months after year-end.	



Listed nv's are subject to the Financial Supervision Act. According to this law, a different timetable applies. The financial statements have to be prepared and made generally available within four months after year-end. There are no exemptions to this obligation. The financial statements are to be adopted within six months after year-end. Filing of the adopted financial statements at the AFM must take place within five days after adoption.

ii. Filing without adoption of the financial statements

The adoption of the financial statements by the shareholders' general meeting cannot be enforced. In practice adoption of the financial statements needs to take place within two months after the legal term for preparation of financial statements has ended (within seven months after the year-end, or up to 12 months if the shareholders have approved an extension for preparation) as otherwise the non-adopted financial statements have to be filed at the Chamber of Commerce. In this case, the financial statements filed must clearly disclose that they have not (yet) been adopted by the shareholders (Article 2:394.2 DCC).

If the financial statements are not adopted this would have the following impact:

- no discharge of directors;
- no distribution of profit;
- no purchase of own shares when the financial year has passed for more than six months;
- the term within which a legal procedure with regard to the financial statements can be initialized does not start.

iii. Penalties for non-compliance

In the event that the statutory requirements to prepare and file financial statements have not been met by the managing directors and, where applicable, the supervisory directors, 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. If the statutory requirements to prepare and file 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 resulting from the liquidation.

iv. Filing exemptions for micro, small and medium-sized companies

Micro, small, and medium-sized companies, as defined in section 2.2, can make use of exemptions regarding the preparation and filing of financial statements. A small company, for example, only needs to file an abbreviated balance sheet and notes thereto.

Application of the exemptions does not require the advance approval of the shareholders. However, the general meeting can pass a resolution not to take advantage of the available exemptions, provided this is done within six months of the start of the applicable financial year.

Prior to any discussion on filing exemptions, it is important to understand the distinction between the preparation of financial statements on the one hand and filing on the other.

Financial statements have to be prepared by the managing board of the company for adoption by the shareholders of the company. The financial statements prepared by the managing board for this purpose are subject to certain exemptions in the case of micro, small and medium-sized companies.

The publication of the company's financial statements is achieved by way of filing those accounts at the Chamber of Commerce. Pursuant to the Civil Code, micro, small and medium-sized companies may apply some exemptions to the financial statements, which are filed at the Chamber of Commerce. As a result, the financial statements filed at the Chamber of Commerce may differ in the amount of information provided, compared to those which are presented to the shareholders of the company for adoption.

The filing exemptions available to micro, small and medium-sized companies, are summarised in the table below:

2.5 Formats of financial statements

Book 2, Part 9 of the Dutch Civil Code contains detailed requirements concerning the format of financial statements. Part 9 is supplemented by the Decree on model accounts, which includes inter alia, formats for the balance sheet and the profit and loss account. The Decree does not apply to micro companies.

The code does not prescribe formats for the cash-flow statement. The Dutch Accounting Standards do prescribe formats and give additional guidance (DAS 360).

i. Available formats

A limited choice of formats is available as follows:
- balance sheet - either vertical or double-sided format;
- profit and loss account - cost categorisation based on either the nature of expenditures (raw materials, staff costs etc.) or on the function the expenditures relate to (cost of sales, administrative expenses etc.);

The Decree does permit some flexibility such as the insertion of sub-totals but does not allow a change in the order of presentation.

Preparation requirements				
	Micro	Small	Medium-sized	Large
Directors' report	Full exemption	Full exemption	No exemption	No exemption
Balance sheet	Partial exemption	Partial exemption	No exemption	No exemption
Profit and loss account	Partial exemption	Partial exemption	Partial exemption	No exemption
Cash-flow statement	Full exemption	Full exemption	No exemption	No exemption
Notes to the accounts	Full exemption	Partial exemption	Partial exemption	No exemption
Other information	Full exemption	Full exemption	No exemption	No exemption

Filing requirements				
	Micro	Small	Medium-sized	Large
Directors' report	Full exemption	Full exemption	No exemption	No exemption
Balance sheet	No exemption	No exemption	No exemption	No exemption
Profit and loss account	Full exemption	Full exemption	Partial exemption	No exemption
Cash-flow statement	Full exemption	Full exemption	No exemption	No exemption
Notes to the accounts	Full exemption	Partial exemption	Partial exemption	No exemption
Other information	Full exemption	Full exemption	Partial exemption	No exemption

Once chosen, the format should be applied consistently (unless there is a good reason to change, the changes must then be disclosed including the reason for the change) and comparative figures need to be restated (Articles 2:363.4 and 2:363.5 DCC). A reference from the line items in the primary statements to the accompanying note is required for all line items which have a note (refer to DAS 300.104; although recommended, medium-sized companies are exempted). Furthermore, the order of the items in the notes should follow the order that was applied in the primary statements (Article 2:363.1 DCC). Offsetting of amounts is not allowed, although immaterial items can be combined (Articles 2:363.2 and 2:363.3 DCC).

ii. Balance sheet

For the purposes of identification, the Decree prefixes each balance sheet disclosure requirement with:

- a capital letter (A, B, C etc.);
- a Roman number (I, II, III etc.);
- an Arabic number (1, 2, 3 etc.).

In order to permit companies to reduce the volume of detail, which appears on the face of the balance sheet, any amounts that are assigned an Arabic number may be combined if the individual amounts are not material to assessing the state of affairs or result of the company.

Only the Arabic numbers may be combined: it is always necessary to disclose those items assigned Roman numbers, unless nil in both the current and previous year. Items with Arabic numbers can be included in part or in full in the notes to the financial statements rather than on the face of the balance sheet.

iii. Profit and loss account

The notes should follow the order of the profit and loss account, and include subtotals, which agree to the face of the profit and loss account. The use of non-GAAP terms such as EBITDA is not permitted in the profit and loss account. They may, however, be used in the directors' report and/or in separate overviews of key figures.

iv. Prescribed formats for financial statements

As mentioned before, small and medium-sized companies are entitled to file abbreviated accounts. The formats for these abbreviated accounts are included in the Decree. The table below summarises the formats available to small, medium-sized and large companies. For an overview of the size criteria refer to section 2.2.
According to the Decree on model accounts, the following formats could be used for preparation and for filing, although small and medium-sized companies may choose to use formats that contain more information:

Preparation requirements

Company size	Balance sheet format	Profit and loss account format
Large	A or B	E or F
Medium-sized	A or B	E or F (based on the Decree) and I or J (based on Article 2:397.3 DCC)
Small	C or D (although A or B may also be used)	E or F (based on the Decree) and I or J (based on Article 2:396.4 DCC)
Micro	not available *	not applicable *

* The decree on model accounts does not include models for micro companies. The balance sheet model is prescribed in Article 2:395a section 4 DCC and the model for the profit and loss account in Article 2:395a section 5 DCC.

According to Article 8 of the Decree it is possible to include some of the required line items in the notes and not on the face of the primary statements.

Filing requirements

Company size	Balance sheet format	Profit and loss account format
Large	A or B	E or F
Medium-sized	A or B ***	I or J
Small	C or D	not applicable **
Micro	not available *	not applicable **

* The decree on model accounts does not include models for micro companies. The balance sheet model is prescribed in Article 2:395a section 4 DCC and the model for the profit and loss account in Article 2:395a section 5 DCC.
** Micro and small companies are not required to file a profit and loss account.
*** Some items of models A and B do not have to be presented separately in the filed accounts (Article 2:397.5 DCC).

Type:	**Concerns:**	**Characteristic:**
A	Balance sheet	Detailed, vertical format
B	Balance sheet	Detailed, horizontal format
C	Balance sheet	High level, vertical format
D	Balance sheet	High level, horizontal format
E	Profit and loss	Nature of expense
F	Profit and loss	Function of expense
I	Profit and loss	Nature of expense, abbreviated
J	Profit and loss	Function of expense, abbreviated

Balance sheet model B (Assets side)

Balance sheet as at...

Assets

A. Fixed assets

I. Intangible fixed assets
1. Costs of incorporation and issue of shares
2. Development costs
3. Concessions, licences and intellectual property
4. Goodwill
5. Prepayments on intangible fixed assets

II Tangible fixed assets
1. Land and buildings
2. Plant and equipment
3. Other fixed operating assets
4. Fixed assets in production and prepayments on tangible fixed assets
5. Fixed assets not used in operations

III Financial fixed assets
1. Interests in group companies
2. Accounts receivable from group companies
3. Other participations
4. Accounts receivable from participations and other participating interests
5. Other investments
6. Other accounts receivable

B. Current assets

I. Inventories
1. Raw materials and consumables
2. Work-in-progress
3. Finished products and goods for resale
4. Prepayments on inventories

II Accounts receivable
1. Trade debtors
2. From group companies
3. From participants and from minority interests
4. Other accounts receivable
5. Called-up share capital not paid
6. Prepayments and accrued income

III Securities

IV Cash at banks and in hand

Total

Balance sheet model B (Liabilities side)

Equity and liabilities

A. Equity

I. Called-up share capital

II. Share premium

III. Revaluation reserve

IV. Legal and statutory reserves
1. Legal reserves
2. Reserves required under the articles of association

V Other reserves

VI Retained earnings

B. Provisions
1. Pensions
2. Taxes
3. Other

C. Long-term debt
1. Convertible bonds
2. Other bonds and private loans
3. Debts to lending institutions
4. Prepayments on orders
5. Trade creditors
6. Bills of exchange and cheques payable
7. Accounts payable to group companies
8. Accounts payable to participations and other participating interests
9. Taxes and social security contributions
10. Pension liabilities
11. Other liabilities
12. Accruals and deferred income

D. Current liabilities
1. Convertible bonds
2. Other bonds and private loans
3. Debts to lending institutions
4. Prepayments on orders
5. Trade creditors
6. Bills of exchange and cheques payable
7. Accounts payable to group companies
8. Accounts payable to participations and to minority interests
9. Taxes and social security contributions
10. Pension liabilities
11. Other liabilities
12. Accruals and deferred income

Total

Profit and loss account model E

Profit and loss account for the period

Net turnover

- Change in stock of finished products and work-in-progress
- Capitalised production costs of own assets
- Other operating income

Total operating income

- Costs of raw materials and consumables
- Costs of work contracted out and other external costs
- Wages and salaries
- Social security charges
- Amortisation of intangible fixed assets and depreciation of tangible fixed assets
- Other changes in value of intangible and tangible fixed assets
- Impairment of current assets
- Other operating expenses

Total operating expenses

- Income from fixed asset investments
- Other interest income and similar income
- Changes in value of fixed asset investments
- Interest expense and similar expenses

Results before tax

- Taxes
- Share in profit/loss of participations

Net result after tax

Profit and loss account model F

Profit and loss account for the period

Net turnover

- Cost of sales

Gross operating result

- Selling expenses
- General administrative expenses

Total costs

Net sales margin

- Other operating income
- Income from fixed assets investments
- Other interest income and similar income
- Changes in value of fixed and current asset investments
- Interest expense and similar expenses

Result before tax

- Taxes
- Share in profit/loss of participations

Net result after tax

Balance sheet model D

Balance sheet as at...

Assets	Liabilities
A. Fixed assets	**A. Equity**
I. Intangible fixed assets II. Tangible fixed assets III. Financial fixed assets	I. Called-up share capital II. Share premium III. Revaluation reserve IV. Legal and statutory reserves V. Other reserves VI. Retained earnings
B. Current assets	**B. Provisions**
I. Inventories II. Accounts receivable, prepayments and accrued income III. Securities IV. Cash at banks and in hand	**C. Long-term debt** **D. Current liabilities, accruals and deferred income**
Total	Total

2.6 Notes to the financial statements

i. Disclosures

The following sections deal with the principal notes to the balance sheet and profit and loss account for large and medium-sized. Not all the necessary disclosures are detailed. The measurement principles are dealt with in chapter 3.

Please note that some disclosures are always deemed to be material so they may never be omitted. It concerns the equity movement schedule (Article 2:378 DCC), average number of employees (Article 2:382 DCC) and directors' remuneration (Article 2:383 DCC).

ii. Disclosure requirements for large companies

The following is a summary of the principal notes required for the financial statements of a large company. It should be emphasised that this summary is not exhaustive. The full text of the applicable Dutch Accounting Standards as well as additional guidance should be consulted in order to be able to comply with all disclosure requirements.

Statement of accounting policies

In addition to the notes given below, the notes to the accounts must give a summary of the main accounting policies adopted. Typically, this will include:

- measurement principles applied to the main categories of assets and liabilities, for example whether the historical cost basis is applied;
- principles of the translation of foreign currency balances;
- depreciation and amortisation methods for fixed assets;
- principles of consolidation.

Notes to the balance sheet

a. Intangible, tangible and financial fixed assets must be presented on the face of the balance sheet. Sometimes investment property is presented as a separate category due to its special character (property held to earn rentals or for capital appreciation or both). Article 2:368 DCC requires disclosure of movements in the cost and accumulated depreciation (or amortisation) for each class of fixed assets, for example as follows:

- opening book value;
- total investments or additions, as well as total disposals;
- revaluations;
- depreciation charge, impairments, reversal of impairments;
- closing book value.

Furthermore, the accumulated revaluations, depreciation and impairment charges per item need to be disclosed.

Any impairment losses should be separately disclosed (Articles 2:387.4 and 2:387.5 DCC) (refer also to chapter 3.3), as well as any restrictions regarding the free disposal of the assets. A company also needs to disclose the depreciation method, the depreciation percentage and further details, refer to the relevant DAS (DAS 210 for intangible fixed assets, DAS 212 for tangible fixed assets, DAS 213 for investment property, and DAS 214 for Financial fixed assets).

b. In case of financial fixed assets, the notes to the accounts must include details of all participating interests, if the company has 20% or more of the voting share capital. The details required include:
   - name;
   - domicile;
   - percentage of share capital held by the company.

   Furthermore, the amount of the net assets and results of the participation shown in its last adopted financial statements must be disclosed unless:
   - the participation is consolidated by the company;
   - the participation is accounted for under the equity method;
   - the company does not consolidate the financial information because it is not material or pursuant to Article 2:408 DCC (refer to chapter 4);
   - the financial data of the participation is of negligible importance;
   - less than half the capital of the participation is on behalf of the company and the participation legally does not publish its balance sheet.

   The name and domicile of the parent company heading the group should also be disclosed, unless the parent company itself does not need to disclose its investment in the company concerned (Article 2:379 DCC).

c. Additional disclosure requirements for inventories are included in DAS 220.

d. Receivables falling due after one year must be disclosed. The classification of a receivable as a fixed asset depends on whether it is for use on a sustainable basis in the operations of the company (Article 2:364 DCC) and not on the date on which the receivable falls due.
   The following categories or receivables should be presented separately, if applicable (in the balance sheet, or in the notes (Article 2:370 DCC):
   - trade receivables;
   - receivables from group companies;
   - receivables from associates and participations;
   - requested payments of issued capital;
   - other receivables including accruals.

e. The aggregate value of any listed securities and the shares in group companies must be disclosed as well as the value of securities not at free disposal of the company.
   In case financial instruments are not valued at fair value, the fair value should be disclosed (Article 2:381b.a DCC).

f. Any cash not at free disposal of the company must be disclosed, for example cash held on fixed term deposits (Article 2:372 DCC).

g. Current liabilities should include amounts due within one year or which are not subject to maturity and are expected to be paid within one year. For the total liabilities the amount which is due after 5 years should be disclosed. Any assets pledged as security on debt should be disclosed, again for the liabilities in total. In addition, any subordinated liabilities must be indicated. For liabilities maturing after one year, the interest rate must be disclosed.
   The following categories or liabilities should be presented separately, if applicable (in the balance sheet or in the notes (Article 2:375 DCC)):
   - convertible and similar bonds;
   - debts to lending institutions;
   - prepayments (insofar not deducted from an asset);
   - cheques to be paid;
   - trade payables;
   - accounts payable to group companies and/or participations;

- taxes and social security contributions;
- pensions;
- other liabilities.

h. Provisions should be presented by type, and as a minimum should be classified as follows:
   - pensions;
   - taxes;
   - other.

   The provisions need to be described in the notes to the accounts, together with an indication of whether the provisions are short or long-term. Also, refer to Article 2:374 DCC as well as DAS 252 for more details.

i. Equity.
   Movements in each component of shareholders' equity during the year must be disclosed. Main components are share capital, share premium, revaluation reserves, other legal reserves (to be presented separately according to their type), statutory reserves and retained earnings. Based on the law this note is one of the three material disclosure requirements (Article 2:363.3 DCC). Legal reserves for capitalised development costs or incorporation costs (Article 2:365.2 DCC) are examples of the so-called other legal reserves.

   The financial statements can be prepared either before or after the proposed appropriation of results for the year. Where the accounts are prepared before the proposed appropriation, the net profit for the year should be presented separately in shareholders' equity and not added to the brought forward retained earnings (Article 11 Decree on model formats). If the accounts are prepared after the proposed appropriation any proposed dividend may be presented as a liability or as a separate component of shareholders' equity (DAS 160.208). The heading of the balance sheet must state whether the balance sheet is prepared before or after appropriation of profit. Specific disclosures are required in respect of issued and paid up capital including details of (Article 2:378 DCC):
   - the number of issued shares;
   - the acquisition and disposal of shares;
   - own shares acquired;
   - any shares pledged as collateral.

j. Any significant contingencies or commitments not reflected in the balance sheet must be disclosed (Article 2:381.1 DCC) including their nature and a quantification. A distinction should be made between contingencies and commitments that expire within one year, between one and five years and after five years.

k. Related party transactions.
   Significant related party transactions that are not at arm's length (normal market conditions) must be disclosed. Disclosure includes the magnitude of the transactions and the nature of the relationship with the related party (Article 2:381.3 DCC).

l. In addition to aforementioned requirements, the company also needs to disclose, amongst others, any events after the balance sheet date, which are not included in the balance sheet (Article 2:380a DCC), the statutory seat, the registration number at the Chamber of Commerce (Article 2:380b DCC), the proposed profit appropriation (Article 2:380c DCC) and the number of profit-sharing certificates and similar rights (Article 2:380d DCC).

Notes to the profit and loss account

a. Analysis of net turnover by (Article 2:380 DCC):
   - business categories;
   - geographical markets.

b. Total personnel costs, specified for:
   - wages and salaries;
   - pension costs; and
   - social security contributions.

   In addition, the average number of employees must be mentioned and the number of employees working abroad (Article 2:382 DCC). This note cannot be omitted as it is deemed to be material. For consolidated accounts, this information should be disclosed in a note to the consolidated profit and loss account and must be the total amounts for all fully consolidated companies. There are extensive disclosure requirements regarding the total number of employee share options granted, outstanding and exercised, exercise prices, conditions attached and any changes to the conditions during the financial year. Refer to DAS 275 'Share based payments'.

c. Costs incurred by the company by way of remuneration of the executive and supervisory board members must be disclosed by category. This disclosure is considered to be material, based on Article 2:363.3 DCC and can therefore not be omitted. Additional disclosure requirements are applicable (DAS 275). If the remuneration disclosure can be traced back to one single natural person an exemption applies (Article 2:383.1 DCC). Any loans or guarantees granted to executive or supervisory directors must be disclosed, detailing the outstanding amounts, rates of interest and terms or repayment. Furthermore any impaired loans need to be disclosed (Article 2:383.2 DCC).

d. The fees for the audit of the financial statements, other audit fees, fees for tax services and fees for non-audit services charged to the company by the external auditor need to be disclosed (Article 2:382a DCC). Medium-sized companies are exempt from this requirement.

iii. Disclosure requirements for medium-sized companies

A medium-sized company 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.

A summary of the notes to the accounts that a medium-sized company must prepare is given below, split between preparation requirements and filing requirements. Again, please note that this is not an exhaustive overview and that preparers of financial statements should always read and apply the Dutch Accounting Standards in order to be in compliance with all requirements.

Notes to the financial statements

In general, most of the disclosure requirements that apply for large companies, are also applicable for medium-sized companies. Nevertheless, the Dutch Civil Code as well as the Dutch Accounting Standards offer some exemptions.

- **Statement of accounting policies and notes to the balance sheet**
  These must be stated in full. No exemption is available.

- **Contingencies or commitments not reflected in the balance sheet**
  The note should give a description of the nature and the business goal of the contingency or commitment. The quantification for commitments may be omitted for a medium-sized company (Article 2:397.6 DCC).

- **Profit and loss account**
  Regarding the use of a model the medium-sized company could opt to omit further information on the turnover. As a result, the gross margin would then be the first line item in the profit and loss account. This is illustrated in the models I and J. The notes to the profit and loss account are similar to those for a large company, as detailed above. In addition, the relative increase or decrease of the net turnover, as compared to previous year, should be disclosed (Article 2:397.5 DCC).

- **Related party transactions**
  Transactions entered not at arm's length need to be disclosed. Medium-sized bv's are exempt from this disclosure (Article 2:397.6 DCC).

Notes to the financial statements for filing

For certain items, the information that medium-sized companies are required to include in the financial statements for filing purposes is the same as the information that is included in the financial statements as they have been prepared. These concerns, amongst others, the accounting principles, provisions, equity, commitments and contingencies, subsequent events (after the balance sheet date) and the notes to the profit and loss account. This also applies to the so-called 'other information' presented alongside the financial statements, which includes i.e. the statutory arrangements around profit appropriation and statements of the number of profit-sharing certificates and similar rights. Certain other items are exempt according to Article 2:397.5 DCC. This concerns very detailed guidance; for example, a medium-sized company does not have to disclose the remaining term of receivables (Article 2:370.2 DCC) and liabilities (Article 2:375.2 DCC) on an individual basis, but rather in totals. ■

3. The core accounting principles under Dutch GAAP

Book 2, Part 9 of the Dutch Civil Code (DCC, or Civil Code), which deals with annual reporting by legal entities in the Netherlands, provides instructions on the principles of measurement of assets and liabilities and the determination of the results. This chapter provides an overview of the main legal provisions.

In addition to the legal provisions, Dutch Accounting Standards have been issued by the Dutch Accounting Standards Board (Raad voor de Jaarverslaggeving), with representatives from the Netherlands Institute of Chartered Accountants (NBA), from employers' and employees' organisations (VNO-NCW, MKB, CNV and FNV) and from investors organisations (Eumedion and VBA). The Dutch Accounting Standards provide more detailed guidance on the interpretation of the law. The Standards also set out accounting areas that are not specifically covered by the Civil Code. In practice, the Dutch Accounting Standards (DAS) form an important part of Dutch Generally Accepted Accounting Principles and this has been confirmed in a number of legal cases. In this chapter reference is made where the DAS clarify the law.

Dutch law prescribes that listed companies apply IFRS, as endorsed by the EU, for their consolidated financial statements. All other companies are allowed to adopt IFRS, as endorsed by the EU, for their annual reporting. The possibilities to apply IFRS under Dutch law are described in chapter 5. This booklet does not address the IFRS accounting principles. Reference is made to other PwC publications, for example the IFRS Manual of Accounting.

3.1 General principles

i. True and fair view

Article 2:362 DCC does not use the exact term 'true and fair view' but requires the financial statements to be prepared in accordance with generally accepted accounting principles. So that a well-founded opinion can be formed of the legal entity's equity and result and, insofar as the nature of the financial statements permits, of its solvency and liquidity.

The requirement to provide a true and fair view is fundamental, over-riding other requirements. According to Article 2:362 DCC a company must depart from the requirements of the Civil Code if compliance with those requirements would detract from the true and fair view given by the financial statements, though in practice, this is a very rare occurrence. When there is a departure, the reason for departure, its effect on the equity and result must be disclosed. Furthermore, if additional information, over and above the legal requirements, is needed to give a true and fair view, the financial statements must include this additional information. This underlines the Dutch financial reporting framework's principle-based character.

ii. Fundamental accounting concepts

The Civil Code refers to the fundamental accounting concepts of matching, prudence, consistency and going concern, which underlie the financial statements.

The matching concept (Article 2:362.5 DCC) requires that revenues and costs are accrued, recognised as earned or incurred, matched with one another and accounted for in the period in which they arise. Therefore, it is not relevant whether this has already resulted into cash inflows or outflows.

The concept of prudence (Article 2:384.2 DCC) requires that profits are not recognised until fully realised. On the other hand, (expected) losses must be recognised immediately when they originate before the end of the financial year and are known before the preparation of the financial statements.

The consistency concept (Article 2:384.6 DCC) requires consistency of accounting treatment of items from one period to the next. Only with a well-founded reason the measurement of assets and liabilities, and the determination of the result, can change. The reason for the change needs to be disclosed together with the financial consequences on equity and result, by disclosure of restated figures over the prior financial period. Also, refer to section 3.4.ii for changes in accounting policies.

Under the going concern concept (Article 2:384.3 DCC), measurement of assets and liabilities should be based on the assumption that the company will continue in operation for the foreseeable future. When this assumption is in doubt, this must be disclosed in the financial statements, together with the effect on the equity and result of the company.

iii. Historical cost and current value principle

Generally, assets and liabilities are measured at cost, either being the cost price or manufacturing cost. For intangible fixed assets (under certain conditions), tangible fixed assets, certain financial instruments and agricultural inventories, the current value method is permitted (Article 2:384 DCC). The following variants of the current value are available: the current cost price, value in use, market value (also known as fair value) and realisable value. The use of the replacement value ('vervangingswaarde') is not allowed. Micro entities can apply the current value method to the aforementioned categories of assets, but are not allowed to carry these at market value. For companies preparing their accounts under current value accounting principles, guidance that is more detailed is set out in the Decree on Valuations (Besluit actuele waarde).

Measurement principles must be changed if required by Dutch law, the Dutch Accounting Standards Board or when change results in a better insight for the user of the financial statements. In the event of a change, the reasons for this change together with the effect on equity and result must be disclosed. Caution should be given to this, as in practice it is not always directly clear whether a change qualifies as a change in an accounting estimate, a change in an accounting policy or an accounting error (refer to section 3.4).

3.2 Principles on the recognition and measurement of various items

i. Intangible fixed assets

Intangible fixed assets include the following:

a. incorporation and share issue costs;
b. development costs;
c. concessions, licenses and intellectual property rights;
d. goodwill acquired from third parties;
e. prepayments in respect of intangible fixed assets.

Intangible assets are measured at historical cost or at current value (under certain strict conditions). In case the intangible fixed assets are measured at current value, a non-distributable revaluation reserve must be created for upward revaluations. The revaluation reserve is created by transferring the distributable reserves or by direct transfer of the result of the year where the revaluation is recognised insofar the revaluation still applies at balance sheet date.

For the abovementioned items (a) and (b), the company must recognise a legal (non-distributable) reserve equal to the amount of the capitalised costs (Article 2:365.2 DCC). This reserve is recognised by direct transfer from distributable reserves, normally retained earnings. The legal reserve, where formed, is released directly to reserves in line with the amortisation of the related costs.

Amortisation

The capitalised cost connected with the incorporation and with the issue of shares should be amortised within five years. The cost of development, to the extent these were capitalised, and the capitalised cost of goodwill should be amortised in accordance with the expected useful economic life. In the exceptional circumstances where the useful life of the cost of development and goodwill cannot be reliably estimated, these costs are amortised over a period of no longer than ten years. With regard to goodwill, the reasons for this amortisation period should be disclosed. Any fixed assets with limited useful economic lives (e.g. concessions, licenses and intellectual property rights) shall be amortised annually according to a method based on their expected future useful economic lives. Refer to Article 2:386.3 DCC.

Situation	Goodwill amortisation period	Required disclosures
Useful economic life can be reliably measured	Less than 20 years	Used depreciation method + Used amortisation period
	More than 20 years	Used depreciation method + Used amortisation period + Reasons for rebutting the presumption that goodwill should be depreciated in max. 20 years
Useful economic life cannot be reliably measured	Not more than 10 years	Used depreciation period + For goodwill: the factors that have played a significant role in determining the economic useful life

DAS 210.401/216.221 state that the useful economic life of an intangible asset will normally not exceed 20 years. Goodwill being amortised over a period longer than 20 years is subject to an annual impairment test regardless of indications of triggering events or changes in circumstances (DAS 216.225a).
Required disclosures in this respect are set out in the table above. Goodwill will be recognised in case if acquisition of an associate (DAS 214.333; significant influence but no control) or in case of a business combination, when a subsidiary is acquired (DAS 216.216).
This goodwill is calculated as the difference between the cost price and the net asset value of the shareholding based on the same accounting principles as the acquiring company.

Impairment

Where there is a permanent diminution in the value of an intangible asset, the net book value should be impaired to the estimated recoverable amount, which should then be amortised over the remaining useful economic life. In the event that the reasons for recognising such an impairment cease to exist, the impairment should be reversed. However, any impairment regarding goodwill cannot be reversed. See also section 3.2.iv as goodwill as an individual asset cannot generate cash. It needs to be allocated to a cash-generating unit (CGU) in order to perform an impairment test.

ii. Tangible fixed assets and investment property

Tangible fixed assets include:

a. land and buildings;
b. plant and equipment;
c. other fixed operating assets (such as office equipment);
d. fixed assets under construction;
e. assets not used in operations.

Tangible fixed assets may be measured at cost, being purchase cost or manufacturing cost, or at current value (Article 2:384.1 DCC). In calculating the cost, interest on related debt finance may be capitalised during the manufacturing period. The criteria for capitalising an asset include whether or not the asset generates sustainable economic benefits for the company and whether or not the company bears the economic risk of ownership. Assets held under finance leases, for example, would be capitalised and the related financing obligation recognised and presented as a liability.

Depreciation and impairment

The cost of tangible fixed assets, less the estimated residual value, should be depreciated over the estimated useful economic life of the asset. If there is a permanent decrease in the value of an asset, the carrying amount should be written down to the estimated recoverable amount, which should then be depreciated over the remaining useful economic life. In the event that the reasons for making such an impairment cease to apply, the impairment should be reversed. Refer to section 3.2.iv

Revaluations

Tangible fixed assets may be measured at current value using current cost price (Decree on Valuations). For upward revaluations a non-distributable (legal) revaluation reserve must be recognised.

Any downward revaluations, including permanent diminutions in value, must be deducted from the revaluation reserve, subject to maintaining the revaluation reserve at the legal minimum. The legal minimum requires that the reserve is at least equal to the sum of the upward revaluations above cost, relating to assets still held at the balance sheet date. Any downward revaluations which would take the reserve below this minimum level must be accounted for in the profit-and-loss account, and separately disclosed.

Where the revaluation reserve is no longer required, for example on disposal of a previously re-valued asset, then this reserve may be released to the profit-and-loss account. This should be disclosed in the financial statements. The revaluation reserve may also be converted into capital (Article 2:390.2 DCC).

Investment property

Investment properties can be measured at historic cost or at current value (in fact this is the fair value). If measured at fair value, the investment property is not depreciated. Any fair value gains or losses are recognised in the profit-and-loss account. A non-distributable revaluation reserve needs to be recognised for unrealised gains. This legal reserve may be recognised via the profit-and-loss account or via retained earnings in equity (DAS 213.504).

This legal reserve can either be calculated as the difference between the current value and the historical cost of the asset, or preferably, as the difference between the current value and the historical cost less fictitious depreciation.

Investment property is often presented as a single line item in the balance sheet, albeit that investment property according to the Dutch Civil Code forms a part or subset of the tangible fixed assets. However, due to the nature of investment property, which is held to earn rentals or for capital appreciation, or both, separate presentation is encouraged.

iii. Financial fixed assets

Financial fixed assets include (Article 2:367 DCC):

a. shares, depository receipts of shares and other forms of participations in group companies;
b. other participations;
c. amounts receivable from group companies;
d. amounts receivable from other legal entities and partnerships which participate in the legal entity or in which the legal entity holds a participation;
e. other investments;
f. other accounts receivable with separate mention of receivables from loans and advance payments to members or holders of registered shares.

Participating interests

The measurement of participating interests depends on whether or not the investing company exercises a significant influence over the financial and operating policies of the participation, in which it holds shares. A significant influence is presumed to exist in cases where the investing company owns 20% or more of the voting share capital in the participation. For more detailed definitions refer to chapter 4.1.

The measurement principles that may be used for participating interests and other investments are summarised in the table on the next page. With respect to the other categories within financial fixed assets, please refer to section 3.2.vi on financial assets and liabilities.

Impairment

Where there is a permanent diminution (decrease) in the value of a financial fixed asset, the net book value should be written down to the estimated recoverable amount. This may be done, even if the participation itself has not recognised the losses in its own books. In the event that the reasons for making such an impairment cease to exist, the impairment should be reversed.

Where there has been an upward valuation (or revaluation) of financial fixed assets, any downward adjustments, including impairments, must be deducted from the revaluation reserve, subject to the legal minimum. This minimum requires that the reserve is at least equal to the sum of the upward revaluations above cost, relating to assets still held on the balance sheet date. Any downward adjustments, which would take the reserve below this minimum

Influence	Valuation methods	Comments
Significant influence (presumed where the share in voting capital is > 20%)	Equity accounting: Net asset value	The participation is measured at its net asset value (Article 389.2 DCC), which should be based on the accounting principles of the investing company. The difference between the cost of acquisition and the net asset value of the participation is recognised as goodwill in the books of the investing company. The investing company will recognise its share in the results in the participation, determined on the basis of its own accounting principles.
	Equity accounting: Visible equity method	In the rare case that initial valuation based on the net asset value method is not possible (only when the investing company has insufficient information to determine the net asset value – Article 2:389.3 DCC), another method may be used, namely the visible equity method. The participation is measured at its net assets, using its own accounting principles (provided that they are in conformity with Dutch law, otherwise adjustments would still have to be done). The use of this alternative method must be disclosed. The calculation of goodwill will be based on this initial valuation. The recognition of the share in results of the participation is based on the participations accounting policies.
	Historic cost	Under certain conditions, the participation may also be measured at cost (only applicable for the company financial statements), when there are 'well-founded reasons' (Article 2:389.9 DCC). This may be the case for intermediate holdings in a larger, international group structure. These intermediate holding companies are often consolidated, together with their own subsidiaries, by a parent company. In such cases, equity accounting by the intermediate holding company is considered impractical. Declared dividends are recognised in the profit-and-loss account of the investing company.
No significant influence	Historic cost	The participation is measured at acquisition cost (DAS 214.320). In this case, no goodwill will be recognised in the books of the investing company. Declared dividends are recognised in profit-and-loss of the investing company.
	Current value (Fair value)	In this case, the investment may be re-valued in cases where its net current value (fair value) differs from its book value (DAS 214.320). Any upward revaluation can be accounted for directly in profit-and-loss or through a revaluation reserve (and recycled upon realisation through profit-and-loss). As under the historic cost method, the investing company recognises declared dividends in profit-and-loss.

level, are recognised in the profit-and-loss account (Article 2:390.3 DCC).

Negative goodwill

If the cost of acquisition of the participation is lower than the net asset value thereof, the difference is recognised as negative goodwill in the books of the investing company. This negative goodwill (as deferred income) may be released to results either immediately or over time depending on the circumstances. Refer to DAS 216.235.

Restrictions with regard to dividend distribution

A non-distributable legal reserve is recognised when the investor, applying the net asset value or visible equity method (equity accounting) does not have the power to enforce a dividend distribution. This is normally the case when the investor is a minority shareholder in the participation (Article 2:389.6 DCC). This could also be the case where there are foreign exchange controls or other restrictions on distribution of dividends.

Under these circumstances, the investing company can still recognise its share in the results of the participation, but is, as mentioned, required to set up a non-distributable reserve, being the difference between a) the share in results since acquisition and b) dividends to which the investor is entitled and which are not collectable in the Netherlands. This reserve is formed by way of a transfer from distributable reserves, usually retained earnings.

iv. Impairment test

For fixed assets, except for financial fixed assets for which DAS 290 (financial instruments) applies, assets regarding employee benefits and deferred tax assets, the entity must assess annually whether there is a triggering event that might result in a permanent diminution in value of that asset. If a triggering event exists, the entity must determine the recoverable amount of that asset.
The recoverable amount is the highest of the fair value less costs to sell and the value in use. If the recoverable amount is lower than the book value of the asset an impairment loss needs to be recognised in the profit-and-loss account. Impairment of an asset at current value, for which a revaluation reserve is recognized, will be accounted for in the revaluation reserve relating to that asset. This is done as long as this reserve is positive; otherwise directly in the profit-and-loss account. If the impairment ceases to exist, the impairment accounted for will be reversed (with the exception of any impaired goodwill).
If it is not possible to determine the recoverable amount of an individual asset, then the recoverable amount of the cash-generating unit to which the individual asset belongs, should be determined (DAS 121.501).

v. Current assets (inventories and construction contracts)

The general measurement principle for inventories (DAS 220) is lower of cost and market value (Article 2:387.2 DCC). Agricultural inventories can also be measured at current value.

For inventories detailed guidance is provided for the determination of cost of similar components (Article 2:385 DCC):

- weighted average method;
- 'first in first out' (FIFO) method;
- 'last in first out' (LIFO) method (although this method is allowed according to the Dutch law it is not recommended (DAS 220.316), as it does not always provide sufficient insight in the equity of the entity;
- some similar method.

In cases where there is a significant difference between the cost calculated using one of the above methods, and the market value, the market value should be disclosed.

The cost of inventory include cost of purchase and conversion. Conversion costs include production costs, production overheads and any other attributable overheads. Interest costs may be included where debt finance is used and the inventory classifies as qualifying assets.

Construction contracts, which should be based on a contract with a customer, are covered in DAS 221. The objective of this standard is to prescribe the accounting treatment of revenue and costs associated with construction contracts. Because of the nature of the activity undertaken in construction contracts, the date at which the contract activity is entered into and the date when the activity is completed usually fall into different accounting periods. Therefore, the primary issue in accounting for construction contracts is the allocation of contract revenue and contract costs to the accounting periods in which construction work is performed.

When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract shall be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the end of the reporting period. An expected loss on the construction contract shall be recognised as an expense immediately (DAS 221.301).
Only small entities may use the completed contract-method. This is not addressed specifically in the Dutch Civil Code, but in the Dutch Accounting Standards.

When the outcome of a construction contract cannot be estimated reliably, revenue shall be recognised only to the extent of contract costs incurred for which it is probable that they will be recoverable. The contract costs are recognised as an expense immediately (RJ 221.314).

An entity could also choose to apply IFRS 15 instead of the Dutch requirements, regarding revenues and related costs in relation to construction contracts. This is allowed, provided that there is full and consistent application of IFRS 15. However, this is an area of considerable complexity and beyond the scope of this booklet.

vi. Financial assets and liabilities

In the following overview, based on DAS 290.504, the general rules for the measurement and determination of result after initial recognition of the various categories of financial assets and financial liabilities have been summarised. Initial recognition of financial assets and financial liabilities is always at fair value. Of further relevance is that the choice of the accounting principles for financial instruments can affect the revaluation reserve.

An entity could also choose to apply IFRS 9 instead of the Dutch requirements (DAS 290.101), regarding the impairment and uncollectability of certain financial instruments. However, this is an area of considerable complexity and beyond the scope of this overview.

vii. Provisions

Provisions should be recognised for liabilities in the following cases (Article 2:374 DCC):

- liabilities that are considered to be probable or certain as at the balance sheet date with regard to clearly defined obligations of uncertain timing or amount;
- expenses to be incurred in a subsequent financial year, provided that these expenses originate (partly) in the financial year in question or in an earlier financial year where the purpose of the provision is to spread the costs evenly over a number of years (cost equalisation).

Provisions for diminution in value of a fixed asset or provisions for current assets (i.e. impairments) should be booked against that particular asset and not presented separately as a provision in the balance sheet.

The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the reporting period. Where the effect of the time value of money is material, the amount of a provision shall be the present value of the expenditures expected to be required to settle the obligation.

In accordance with the Dutch Accounting Standards, pension premiums are expensed immediately and there is no difference between defined benefit (DB) and defined contribution (DC) accounting. This is therefore an important difference with the accounting principles under IAS 19 for pension plans. Refer to chapter 1.5 for more details.
Under certain circumstances, an entity still needs to recognise a provision, for example in case of an expected deficit in the pension fund. This is an area of considerable complexity and beyond the scope of this overview.
An entity could also choose to apply IAS19 instead of the Dutch requirements, in which case the defined benefit plans, defined contribution plans and projected unit credit Method of IFRS need to be applied.

Provisions could also include any provisions for deferred taxation, in particular in case of temporary differences between the carrying amount of an asset (or liability) and its tax base.

3.3 Equity and reserves

i. Equity in the company accounts and consolidated accounts

An important principle of the consolidated financial statements is to provide insight in the equity of a company. That means that financial instruments are presented according to their economic substance (rather than their legal title). For example, preference shares for which the entity must pay perpetual and fixed dividends that are not dependent of the profit of the entity are classified as liability. In addition, the size of the equity is affected by the measurement principles that are applied to the individual assets and liabilities. For example, if tangible fixed assets are measured at amortised costs it probably results into another (lower) value as compared to measurement at current value.

The main purpose of the company financial statements is to provide insight into the freely distributable amount of equity. To determine this, the legal provisions regarding capital protection are of

Category/Type of financial instrument	Subcategory	Measurement after initial recognition	Recognition of value changes
Trade portfolio (financial assets and financial liabilities)		Fair Value	Through the profit-and-loss account.
Derivatives (assets and liabilities) (not a part of the trade portfolio)	Hedging	Fair Value	Depending on the hedge accounting model applied
		Cost	Combined with the hedged position in the profit-and-loss account. If the hedged position is accounted for at fair value, different rules apply.
	Other – underlying listed shares	Fair Value	Through the profit-and-loss account.
	Other – underlying value other than listed shares	Cost	Through the profit-and-loss account in case of transferal to a third party or in case of impairment
		Fair Value	Through the profit-and-loss account.
Purchased loans and bond loans	Held-to-maturity	Amortised cost	Effective interest in the profit-and-loss account. Impairment through the profit-and-loss account.
	Other	Fair Value	Through the profit-and-loss account, or initially via shareholders equity (revaluation reserve), and at realisation in the profit-and-loss account. Effective interest in the profit-and-loss account. Impairments below the (amortised) cost directly through the profit-and-loss account.
		Amortised cost	Effective interest through the profit-and-loss account. Through the profit-and-loss account in case of transferal to a third party or in case of impairment.
Granted loans and other receivables.	Not part of trade portfolio	Amortised cost	Effective interest through the profit-and-loss account. Through the profit-and-loss account in case of transferal to a third party or in case of impairment.
Investment in equity instruments (not a part of a trade portfolio)	Listed	Fair Value	Through the profit-and-loss account, or initially via shareholders equity (revaluation reserve), at realisation through the profit-and-loss account. Impairments below cost directly through the profit-and-loss account.
	Not listed	Cost	Through the profit-and-loss account in case of transferral to a third party or in case of impairment.
		Fair Value	Through the profit-and-loss account, or initially via shareholders equity (revaluation reserve), at realisation through the profit-and-loss account. Impairments below cost directly through the profit-and-loss account.
Financial liabilities	Not part of trade portfolio	Amortised cost	Effective interest through the profit-and-loss account.

importance. This underlines the legal character of the equity in the company financial statements. The legal character also leads to different classification of financial instruments: as an example, preference shares, irrespective their conditions, are classified as equity. This legal approach could lead to differences between company and consolidated equity.

However, the entity could also decide to follow the economic substance in the company financial statements. This would result into a classification of financial instruments in line with the consolidated financial statements (DAS 240.207, 208). As a result, equity in the consolidated financial statements and the company financial statements would be the same; yet, some differences can still occur because of the difference in character between the consolidated financial statements and the company financial statements. This may be the case if no provision is recognised in the company financial statements for the negative net asset value of a participation, while the negative value of the participation is subsumed in the consolidated financial statements.

ii. Legal reserves

A legal, non-distributable reserve has to be recognised by companies in the following cases (Article 2:373.4 DCC):

a. where the amount of the called-up and paid in capital is less than the statutory minimum of EUR 45,000 for an nv (Article 2:67a.2 and 3 DCC);
b. reserve for capitalised development costs or incorporation costs (Article 2:365.2 DCC);
c. share in profit of participations since the first valuation where these are subject to foreign exchange controls or similar restrictions, or where the investor does not have control over the participation (Article 2:389.6 DCC);
d. currency translation differences (both positive and negative) in case of conversion of participations from a foreign currency to the functional currency (Article 2:389.8 DCC);
e. in cases where assets are revalued above cost (Article 2:390 DCC), i.e. a revaluation reserve (refer to section 3.3.iii);
f. in respect of the outstanding amount of any loans made by an nv for the purpose of the subscription or acquisition of shares in its own capital (Article 2:98c.4 DCC);
g. in case of a contribution in kind into an nv, if no description on the contribution has been prepared and no auditor's report has been issued (Article 2:94a.6f DCC).

Some of these legal reserves only relate to the nv, and not to the bv. With regard to the bv other capital protection rules apply, in particular the equity test and the liquidity test. Refer to chapter 1.6 for information regarding the consequences of legal reserves on dividend payments.

iii. Revaluation reserves

The revaluation reserve is a non-distributable legal reserve which must be recognised when a company re-values an asset above original cost. The difference between the book value before and after the revaluation must be credited to a separate revaluation reserve. Any downward revaluations, including impairments, must be debited to the revaluation reserve, subject to maintaining the revaluation reserve at the legal minimum. The legal minimum requires that the reserve is equal to the sum of the upward revaluations above cost, relating to assets still held on the balance sheet date.

Any downward revaluations (or impairments) which would take the reserve below this minimum level, must be recognised as expenses in the profit-and-loss account, and separately disclosed.

The revaluation reserve may be used for the following purposes:

a. conversion to capital;
b. released where it is no longer required, for example where an asset is disposed of or where a previously revalued asset is written down, provided the revaluation reserve is not reduced below the sum of the revaluations relating to assets held on the balance sheet date.

iv. Distributable reserves

Distributable reserves can be defined as all reserves excluding:

a. the legal reserves as detailed in section 3.3.ii (including the revaluation reserve);
b. any other reserves required to be recognised under the articles of association.

Only distributable reserves may be paid out as dividends, furthermore some differences apply between nv and bv as outlined in chapter 1.6.

3.4 A change in accounting policy, change in accounting estimate or a prior period error?

i. Change in accounting policy

In order to prepare financial statements a company needs to select accounting policies. In doing so, the company has to decide which specific principles, bases, conventions, rules and other practices need to be applied. These policies shall be used with regard to the recognition, measurement and presentation of assets and liabilities. An entity shall select and apply its accounting policies consistently for similar transactions and conditions, and also from period to period. An entity may only change an accounting policy when there is a well-founded reason to do so (Article 2:384.6 DCC). A well-founded reason may be a preference in the DAS, or in case the parent company has a different accounting policy for a certain asset or liability. Furthermore, an entity shall change an accounting policy if the change is required by the Dutch Civil Code or by a DAS, and if the change results in the financial statements providing a significant better view (refer to RJ140.206). Also, refer to section 3.1.ii fundamental accounting concepts. A change in presentation of the balance sheet or profit-and-loss account also qualifies as a change in accounting policy.

In case of a change in an accounting policy, the financial statements should disclose both the reasons for the change, as well as the impact on equity and profit or loss (Article 2:384.6 DCC). A change in accounting policy is applied retrospectively, whereby the closing equity of the preceding year is recalculated based on the changed accounting policy and the difference is adjusted in the opening equity of the year in which the change in accounting policy takes place. The comparative figures are restated based on the changed accounting policy.

ii. Change in accounting estimate

The size of an item in the financial statements cannot always be measured with precision but can in some cases only be estimated. This is often a result of uncertainties that are inherent to the nature of the activities of the company, requiring estimation of such items. Estimations involve judgements based on the latest available reliable information. An estimate may need revision if changes occur in the conditions on which it was based. It is sometimes difficult to distinguish a change in estimate from a change in accounting policy. In case of doubt, normally it would be accounted for as a change in estimate with sufficient disclosure.
Generally, a change in accounting estimate applies in the following circumstances: 1) the revision of an earlier estimate (a common example is a change in the useful life of an asset) or 2) a change in the estimation method (for example the depreciation method of an asset).

Unlike a change in an accounting policy, a change in an accounting estimate shall be recognised prospectively by including it in the profit-and-loss account only in the period in which the change in the estimate takes place, and (if applicable) in any future periods. The nature and the quantitative effect of the change in accounting estimate should be disclosed in the notes.

iii. Prior period error

From time to time, errors are identified that relate to one or more prior periods for which the financial statements have already been approved by the shareholders. Such errors shall be corrected in the next set of financial statements which have not yet been approved by the shareholders. The manner in which the error is corrected depends on the size of the error.
Dutch GAAP distinguishes three types of errors. The table on the next page provides more details on the correction of each type of error:

Type of error	Method of correction
Errors that lead to the financial statements failing to provide the true and fair view to a significant extent	Cumulative effect of the error is adjusted in opening equity of the current year + Restatement of comparative balance sheet and profit-and-loss account figures + Filing a notification with the Chamber of Commerce
Errors that lead to the financial statements failing to provide the true and fair view, but not to a significant extent (material errors)	Cumulative effect of the error is adjusted in opening equity of the current year + Restatement of comparative balance sheet and profit-and-loss account figures
Other errors	Through the profit-and-loss account of the current year

Sometimes an error is so severe that, consequently, the financial statements do not provide a true and fair view to a significant extent. Correction of such errors is done retrospectively, whereby the closing equity of the preceding year is restated as if the error did not happen. The difference between the equity that was reported, and the restated equity is adjusted in the opening equity of the year in which the error is corrected. The comparative figures need to be restated. Information on the nature, the size, and the correction of the error should be disclosed In addition, upon identification of the error, the company should inform the shareholders and file a statement (notification) with the Chamber of Commerce regarding the error. This needs to be done in order to inform the users of the financial statements about the error. When the financial statements were audited, this statement should be accompanied by an auditor's report (Article 2:362.6 DCC).

A material error is any error which causes the financial statements to fall short in the required true and fair view, but not to a significant extent. In its consideration whether an error is material, the company should assess if leaving out or incorrectly presenting items, both in isolation and in total, might influence the economic decisions of users of the financial statements. Material errors are also corrected retrospectively, so similar to an error that lead to failing to provide the true and fair view to a significant extent. However, there is no need to file a notification with the Chamber of Commerce.

Errors that do not meet the definition of the above types of errors are also corrected in the first set of financial statements that has not yet been approved by the shareholder, but these are accounted for in the profit-and-loss account, in accordance with the nature of the error. Adequate disclosure should be provided. Under certain circumstances, these errors may be corrected retrospectively as well.

4. Consolidated financial statements

The topic of consolidated financial statements (also referred to as group accounts) is one that affects most foreign investors in the Netherlands, and particularly in cases where a Dutch company is being used as an intermediate holding company in the group structure.

While, as a rule, a company with subsidiaries must prepare consolidated accounts, 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.

Application of the consolidation exemption rules could also affect the size of a company, as described in chapter 2.2, and hence the related audit, accounts preparation and filing requirements for that company.

4.1 Definitions and accounting principles

In the context of this chapter, the definitions of 'group company', 'participating interest', 'subsidiary', 'joint venture', 'associate' and 'other investment', are of key importance.

i. Group company

A group (Article 2:24b DCC) is defined as an economic unity with legal entities that are organisationally related. Group companies are legal entities that are interrelated with each other in a group. Apart from these two legal criteria there needs to be central management (DAS 217.201).

The economic concept of a group is one that is not clearly defined in the DCC. The DAS (Standard 217) however identify several situations, which indicate whether there is a group company, or not. In order to assess whether a group relation exists, all facts and circumstances should be taken into account (DAS 217.202 through 208), including potential voting rights and protective rights, if any. A group company needs to be identified in order to be able to assess whether consolidation is needed or not.

While in theory, more than one company can head a group, in general practice only one will exercise decisive influence over operational and financial policies ('control'). Control is the power to govern the financial and operating policies of an entity to obtain benefits from its activities.

ii. Participating interest

A participating interest is an investment in another company that is held:
1. durably; and
2. for the holding company's own account; and
3. for the benefit of the holding company's own activities.

Usually this is accompanied by the holding company exercising a significant influence on operational and financial policies of the investee (Article 2:24c DCC). A significant influence is legally presumed to exist where the holding company owns, directly or indirectly, at least 20% of the issued share capital of the participation. Shares without voting rights must be excluded from this calculation.

In international accounting, there is no synonym for a participating interest (in Dutch: 'deelneming'). These are either, depending on the level of influence:
- subsidiaries;
- joint arrangements (conducted through a legal entity);
- associates;
- other equity investments (with less than significant influence) when the participating interest definition is met.

These categories are detailed below. As a rule, participating interests need to be measured in line with Article 2:389 DCC (in principle: at net asset value).

iii. Subsidiary

The Dutch law uses the term 'daughter entity'. This term is not common in international accounting. It approximates the term 'subsidiary' in IFRS. For the purpose of this chapter we use the term 'subsidiary'. The legal definition of Article 2:24a DCC is explained by means of the following example.

Company S is a subsidiary of Company H, where it fulfils any of the following criteria:

- H holds a majority of the voting rights in S; or
- H is a shareholder in S and controls, whether or not under contract with other voters, alone or together, more than half of the voting rights in S; or
- H is a shareholder in S and has the right to appoint or remove a majority of the members of the managing or supervisory board of S; or
- H is a shareholder in S, and has the right to appoint or remove a majority of the members of the managing or supervisory board of S by virtue of the articles of association or of a control contract.

DAS 217.204 and onwards provides more detailed guidance on the criteria with regard to subsidiaries. The key element is that a subsidiary is a participating interest over which the parent exercises control.

A subsidiary will normally be consolidated, subject to potential consolidation exemptions. The economic unity concept described in section 4.1 may give rise to a difference between subsidiary and group company. Entities that are not subsidiaries may still qualify as a group company that should be included in the consolidated financial statements because they are controlled by the group, while the group may not hold any shares in such an entity.
An example of such an entity can be a foundation where the group has the right to appoint and dismiss the management board of the foundation and the foundation meets the definition of a group company. Such a foundation, however, does not qualify as a subsidiary as it does not have any share capital so there is no shareholder.

iv. Joint venture

A joint venture is deemed to exist when activities are governed by a management or co-operation agreement whereby the shareholders or partners jointly control more than 50% of voting rights, or the right to appoint and dismiss more than half of the board of directors of a company (Article 2:409 DCC).

Such activities may or may not be conducted through a legal entity. When conducted through a legal entity, such a shareholder would also meet the definition of a participating interest.

Where a joint venture exists, it may be measured in accordance with the rules that apply for participating interests. As an alternative, a joint venture may be proportionately consolidated in the accounts of the respective shareholders provided it enhances the insight ('true and fair view') to the financial position and results of the group. Proportional consolidation is not a mandatory requirement.

In international accounting, a distinction can be made between multiple types of joint arrangements: joint ventures and joint operations. Such a distinction is not made in Dutch law or DAS, as only joint ventures are distinguished.

v. Associate

The term associate is not defined in Dutch law or DAS. It can be regarded though as a participating interest over which significant influence is exercised, but not joint control or control. This is similar to what is regarded as an associate in international accounting. An associate needs to be measured in line with Article 2:389 DCC (in principle: at net asset value). Associates are not consolidated as there is no control.

vi. Other equity investments

There are two types of equity investments not covered by any of the categories above:

1. participating interests where no significant influence is exercised (typically accompanied by a holding percentage of less than 20%): such investments should still be measured in line with Article 2:389 DCC (in principle: at net asset value);
2. other equity investments that do not meet the definition of a participating interest: such investments should be measured in line with the requirements for financial instruments.

vii. Overview

The table below gives an overview of the different types of participations that companies could have in another company with the main characteristics. Please note that this table does not show all details and certain nuances, and that the facts and circumstances should always be taken into account in order to reach a conclusion on classification of a participation. For example, although it would normally be the case, a 60% investment is not by definition a subsidiary.

For further guidance on measurement of participating interests, see chapter 3.2.iii.

4.2 Consolidation and exemptions from consolidation (Article 2:407 DCC)

According to Article 2:406 DCC an entity needs to prepare consolidated accounts in which are included the financial information of:

- the entity itself;
- its subsidiaries;
- other group companies; and
- other entities over which it has control or which are centrally managed.

Article 2:407 DCC sets out specific grounds for exemption from the obligation to prepare consolidated accounts and for exemption from consolidating information of certain group companies and/or subsidiaries. These exemptions are not applicable when an entity uses IFRS in their financial statements (please note that IFRS has its own consolidation exemption, which is not discussed further in this booklet). The following sections provide more detail but may not be exhaustive in explanation. Individual facts and circumstances may or may not result in successfully applying an exemption.

Apart from the consolidation exemptions included in article 2:407 DCC, there is a separate consolidation exemption for intermediate holding companies, which is included in article 2:408 DCC. This specific exemption is discussed in detail further on in this chapter.

i. Small group exemption

Small companies in the Netherlands are generally exempt from preparing and filing of consolidated financial statements (Article 2:407.2.a DCC). As already stated in chapter 2, the size of a holding company is normally assessed on a consolidated basis, taking into account the subsidiaries of the holding company.

If the holding company meets the small company criteria, on a consolidated basis, there is no need to prepare and file consolidated financial statements.

Description	Main characteristic	Typical shareholding	Measurement in consolidated financial statements	Measurement in company financial statements
Group company	Economic entity, organisational relationship, centrally managed	Not included in the definition	To consolidate unless an exemption applies	• When also a subsidiary: normally at net asset value • Otherwise: not included in company f/s
Subsidiary	Control	More than 50%	To consolidate unless an exemption applies	Normally: net asset value
Joint venture	Joint control	50%	Proportionate consolidation or net asset value	Same as in consolidated f/s
Associate	Significant influence	20% to 50%	Net asset value	Same as in consolidated f/s
Other equity investment	Meeting participating interest definition	<20%	Net asset value (under certain conditions: at cost)	Same as in consolidated f/s
	Not meeting participating interest definition	<20%	Apply accounting for financial instruments: at cost or at fair value	Same as in consolidated f/s

Where the holding company takes advantage of the Article 2:408 DCC exemption as described in section 4.3, the size of the company is then assessed on an entity basis, and not on a consolidated basis. The holding does not prepare consolidated accounts as it uses Article 2:408 DCC (consolidation exemption for intermediate companies). This exemption is further discussed below.
Whether or not a company is subject to a mandatory audit will depend on the size of the company. The normal regime (small/medium sized/large companies) is applicable. See also chapter 2.

Other criteria and conditions in order to comply with the exemption (Article 2:407.2 DCC):
- none of the group companies is allowed to be listed on a stock exchange; and
- the entity accounts of the holding company, which still need to be prepared and filed, should disclose that consolidated accounts have not been prepared because Article 2:407 has been applied; and
- no written objection should have been made to preparing accounts on an entity basis, within six months after the beginning of the financial year, by a quorum of shareholders representing at least 10% of the paid-up share capital of the company.

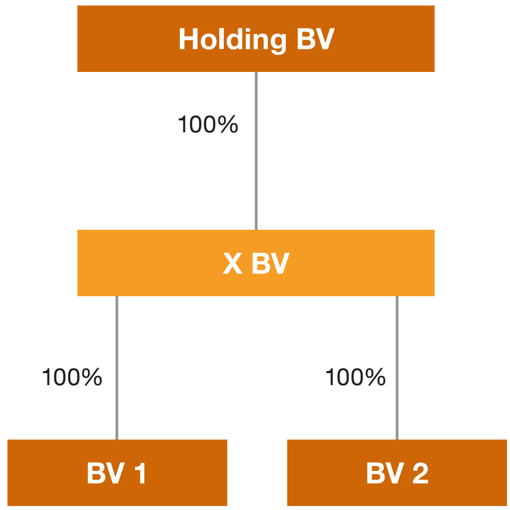
ii. Other exemptions from obligation to consolidate

Certain group companies may be excluded from a group consolidation in the following cases:
a. group companies which, in combination, are of insignificant influence on the group as a whole;
b. group companies where the required information for consolidation can only be obtained at undue cost or disproportionate delay; and
c. group companies which are only held for disposal.

4.3 Consolidation exemption for intermediate holding companies (Article 2:408 DCC)

Apart from the exemptions included in article 2:407 DCC (as discussed above) there is another facility specifically geared towards intermediate holding companies, allowing them to not prepare and file consolidated accounts altogether. This facility is included in Article 2:408 DCC exemption. The intermediate holding company however, will still need to prepare and file entity accounts. For wholly owned intermediate holding entities that apply IFRS, a similar exemption (though subject to different conditions), can be applicable. This is included in IFRS 10, paragraph 4.

The exemption of article 2:408 DCC applies to X BV in the below illustration. The Holding BV is the Dutch or foreign parent entity, in whose financial statements the financial data of X BV and its subsidiaries BV1 and BV2 should be included. For the other conditions, refer to the text below.



i. The conditions

To obtain the Article 2:408 DCC exemption, all of the following conditions must be met:

a. no written objection has been made within six months after the beginning of the financial year by at least one tenth of the shareholders or shareholders of at least one tenth of the paid-up share capital of the company; and
b. the ultimate parent or parent company of the intermediate holding company prepares consolidated financial statements, which include the financial data of the intermediate holding company and its subsidiaries; and

c. these consolidated financial statements are filed at the Chamber of Commerce within six months after balance sheet date or a later permissible date; and
d. the consolidated financial statements may be in the Dutch, French, German or English language. The copy filed must include the auditor's report and directors' report also in one of the aforementioned languages; and
e. the parent company's consolidated financial statements must be prepared in conformity with the Dutch Civil Code or Directive 2013/34/EU or (for entities that are not subject to that EU Directive) a similar method.

Entities with debt or equity instruments that are traded in a public market can not apply the exemption of Article 2:408 DCC.

In practice, the intermediate holding company's stand-alone accounts will be filed, where the consolidated parent's accounts will also be deposited at the relevant Chamber of Commerce. The normal filing timetable requirements for the intermediate holding company's stand-alone accounts, described in chapter 2.4, apply.

The interpretation of the conditions above can prove to be challenging. For example:

- In condition B it is stated that the consolidated financial statements need to include the financial information of the intermediate holding company and its subsidiaries. When the (ultimate) parent acquires the intermediate holding company during the financial year, this raises the question whether the consolidation exemption can still be used, since the financial information of the intermediate holding company and its subsidiaries will not be consolidated for the full financial year but only after the acquisition. The generally accepted view in this instance is that it is possible to apply the consolidation exemption, as Article 2:408 DCC only mentions the financial information, rather than all financial information. This can therefore be interpreted as the financial information from the acquisition moment onward.
- Another challenge with respect to condition B is the following question: what is consolidation? For example, when two joint venture partners own the intermediate holding company, would it still be possible to make use of the consolidation exemption when the two joint venture partners each consolidate their interest in the intermediate holding company proportionally? In this case, the generally accepted view is that proportionate consolidation is not equivalent to consolidation, hence no use can be made of the consolidation exemption by the intermediate holding company.
- With respect to condition C, it is sometimes argued that publication of the parent financial statements on a website would be sufficient. This is, however, not the case, since the law clearly states that the consolidated financial statements need to be filed with the Chamber of Commerce in The Netherlands. This filing needs to be done within six months after the end of the financial year, or at a later permissible date. This later permissible date could apply when the parent filing the consolidated financial statements is subject to filing requirements in the Netherlands.
- Condition E could be a challenge where the parent company is located outside the European Union. Financial statements prepared under endorsed IFRS are in any case similar, according to RJ217.215. The generally accepted view is that accounts prepared under accounting principles of the United States of America will also be considered a similar method. Generally accepted accounting principles in other jurisdictions could also comply. However, in all these cases, conformity with Directive 2013/34/EU needs to be reviewed on a case-by-case basis.

These examples illustrate that care should be given when applying the consolidation exemption of Article 2:408 DCC. If not all criteria are met and consolidation nonetheless does not take place, this will most likely result in an error in the financial statements of the intermediate holding company. Please also note that it is not possible to combine the consolidation exemption of Article 2:408 DCC with the exemption of publishing financial statements of Article 2:403 DCC. Application of the exemption of Article 2:403 DCC by subsidiaries of an intermediate holding company is not possible where that company seeks to make use of Article 2:408 DCC and has declared itself liable for those subsidiaries. In this case, a parent above the intermediate parent level should prepare consolidated financial statements and issue the liability declaration for the benefit of the subsidiaries seeking to apply Article 2:403 DCC.

ii. The exemption

If the conditions of Article 2:408 DCC are met, an intermediate holding company will not be required to:

- prepare consolidated financial statements including its subsidiaries;
- disclose the amounts of the result and equity according to the latest adopted set of financial statements of any non-consolidated subsidiaries in the notes to its financial statements (Article 2:379.2.c DCC).

The company however, is still obliged to prepare and file entity (individual) financial statements under the normal preparation and filing procedures described in chapter 2. The accounts should disclose the fact that the Article 2:408 DCC exemption has been applied. When applying the exemption, the intermediate holding company can carry its investments in subsidiaries at cost, as described in chapter 3.3.iii. Furthermore, dividend revenues and interest income (on loans that are part of the net investment in subsidiaries) would not have to be classified as net turnover (DAS 270.201). These factors will likely have an effect on the size criteria of an intermediate holding company. See further details below.

iii. Impact on company size criteria

In chapter 2, it was indicated that, for determining a company's size, a holding company needed to be assessed on a consolidated basis, taking into account subsidiary companies.

Where Article 2:408 DCC applies, it is not required to determine the size of a holding company on a consolidated basis. This can be done on an entity (stand-alone) basis. This is a significant additional benefit of the Article 2:408 DCC exemption, because in practice most holding companies will be classified as small or even micro-sized on an entity basis, exempting them from a statutory audit and allowing them to file abbreviated accounts at the Chamber of Commerce.

4.4 Group exemption (Article 2:403 DCC)

An exemption from filing the financial statements is available to group companies , albeit accompanied by strict conditions that apply. Apart from filing some other exemptions also apply.

i. The conditions

To obtain the Article 2:403 DCC exemption, all of the following conditions need to be met:

a. the financial information of the company must be consolidated in the consolidated accounts of a parent company. These accounts must comply with EU-IFRS or the 2013/34/EU/European Directive on financial statements; be in the Dutch, German, French or English language; and must be filed timely at the Dutch Chamber of Commerce; and
b. the parent company, preparing the consolidated financial statements, must declare in writing that it accepts, jointly and severally, the liability for the debts from legal acts of their subsidiary; and
c. the direct shareholders must declare in writing their (unanimous) agreement to apply the exemption. This must be done after the commencement of the financial year but before adoption of the financial statements and must be confirmed thereafter on an annual basis; and
d. the declaration of the parent company and the shareholders must be filed timely at the Dutch Chamber of Commerce.

The exemption of Article 2:403 DCC cannot be applied by Public Interest Entities as meant in Article 2:398.7 DCC. Refer to appendix A for the text of this Code, also for a comprehensive overview of all requirements

The parent company, referred to above, will be the company that has accepted the joint and several liability and which will prepare consolidated financial statements. This may be the immediate, an intermediate or the ultimate parent company. A company applying the Article 2:408 DCC exemption, as described in section 4.3, is not allowed to apply the Article 2:403 DCC exemption at the same time.

The joint and several liability commences on the earlier of the date stated on the signed undertaking or the date on which the declaration is filed. Cancellation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of the declaration must be filed at the Trade Register of the Chamber of Commerce and notified publicly. Also refer to Article 2:404 DCC.

Due to the stringent conditions attached to Article 2:403 DCC, careful consideration should be given to applying for this exemption. This consideration could include legal advice from an expert.

ii. The exemption

If the conditions for Article 2:403 DCC are met, a company is:

- exempt from preparing a directors' report;
- allowed to prepare only an abbreviated balance sheet and profit and loss account (which are to be adopted by the General Shareholders' meeting in order to be able to, amongst others, distribute dividends or repurchase shares);
- exempt from the usual disclosure requirements in the notes to the accounts;
- exempt from a (if applicable) mandatory audit;
- not required to file the abbreviated accounts at the Chamber of Commerce.

The abbreviated balance sheet and profit and loss account do not need to comply with Part 9 of the Dutch Civil Code. Nevertheless, there are some minimum requirements. This means that the balance sheet needs to contain at least:

- total of fixed assets;
- total of current assets;
- amount of equity;
- amount of provisions;
- amount of liabilities.

The profit and loss account need to contain at least:

- result on ordinary activities after tax; and
- other gains and losses after tax.

The abbreviated accounts do not have to be prepared in accordance with Dutch GAAP but can also be prepared in accordance with the accounting policies of the parent company as long as these parent company accounting policies comply with the general requirements for proper bookkeeping as included in Dutch law.

4.5 Format and content of consolidated accounts

According to Article 2:361 DCC the financial statements of a company consist of:

- the company financial statements;
- the consolidated financial statements (if applicable).

The format and content of the consolidated financial statements are the same as the company financial statements apart from certain legal issues and some other topics due to differences in character and nature between the two types of financial statements.

i. Content of financial statements

The financial statements will normally comprise the:

- consolidated financial statements comprising:
  - consolidated balance sheet;
  - consolidated profit and loss account;
  - consolidated cash-flow statement;
  - notes to the consolidated financial statements.
- company financial statements comprising:
  - company balance sheet;
  - company profit and loss account;
  - notes to the company financial statements.

Consolidated financial statements must be based on information dated no earlier than three months prior to, or later than three months after, the date of the consolidated balance sheet (Article 2:412 DCC).

ii. Additional disclosures for consolidated financial statements

In addition to the overview of disclosure requirements set out in chapter 2, there are some specific disclosures required in the context of consolidated financial statements, such as:

Equity reconciliation

Any difference between the shareholders' equity per the company stand-alone balance sheet and the equity per the consolidated balance sheet must be explained in a note to the accounts (Article 2:389 DCC). A similar reconciliation is needed where there is a difference between the net result after tax in the company stand-alone profit and loss account and the net result after tax presented in the consolidated profit and loss account. Under Dutch GAAP, the company stand-alone equity and net result after tax

will normally be identical to that in the consolidated accounts due to the valuation of the investments in subsidiaries at net asset value. However, for example the application of IFRS (see chapter 5) or the consolidation of subsidiaries with negative equity may create such differences in certain circumstances.

Details of participating interests

Details of participating interests held by the parent company must be disclosed as described in chapter 2.6.ii. Additional disclosures are required with respect to the participated interests from a consolidated perspective (including those not directly held by the parent company but that are indirectly held through other group companies). Article 2:414 DCC requires details specifically on:

- consolidated participations;
- participations accounted for under the net equity method (net asset value method or visible equity method);
- participations accounted for on a proportional consolidation method;
- non-consolidated participations.

Minority interest

The share of the minority interest in the net result needs to be presented. In addition, movements on the minority interest account will need to be shown as part of the note to shareholders' equity in the balance sheet.

iii. Article 2:402 DCC exemption

If the parent company applies the Article 2:402 DCC exemption, it is not required to include its company profit and loss account in full in the company financial statements. In this case, the parent company only needs to show:

- share in results of participations;
- net result after tax.

If Article 2:402 DCC is applied, this fact must be disclosed in the notes to the consolidated accounts. Entities that classify as Public Interest Entities (Article 2:398.7 DCC) may not apply this exemption as stated in Article 2:402.2 DCC.

5. IFRS in Dutch financial statements

As indicated in chapter 3, financial statements are prepared by applying either Dutch GAAP or IFRS (as adopted by the EU, Article 2:362.8 DCC). This chapter addresses the consequences according to Dutch law if an entity opts to apply IFRS in their financial statements. It also summarises the main differences between IFRS and Dutch GAAP. Please note that publicly quoted entities need to apply IFRS for their consolidated financial statements. For their company financial statements, they have the options as described in section 5.2.

5.1 To apply IFRS in the Netherlands

i. IFRS for publicly quoted entities

All publicly quoted entities in the European Union that are listed on an EU regulated market have to apply IFRS as endorsed by the EU for their consolidated financial statements. This requirement applies to any entity with financial instruments quoted on any regulated European Union exchange. The responsibility for supervising the application of IFRS by entities quoted on exchanges in the Netherlands lies with the Authority for Financial Markets.

ii. IFRS and the Dutch Civil Code

For companies that are not publicly quoted, it is permitted by the Dutch Civil Code to prepare the consolidated financial statements based on IFRS. Using IFRS as the accounting framework for the annual financial reporting does not exempt a company from applying the DCC. Article 2:362.9 DCC mentions which articles should be applied in conjunction with IFRS. This results, among others, in a mandatory audit of the financial statements and the mandatory inclusion of the directors' report according to Article 2:391 DCC, irrespective of the size of the company (refer to chapter 2), as the exemptions based on size are not applicable when IFRS is applied. Specific additional disclosures are required by the DCC, for example, the disclosure of the remuneration of the board of directors, the number of employees during the year and the auditors fee for (non-) audit services provided.

Furthermore, Dutch law prescribes a number of non-distributable reserves, such as a legal reserve for capitalised development and incorporation costs, the revaluation reserve, the currency translation reserve and a legal reserve for retained earnings of participations since the first valuation when their distribution to the entity is restricted.

iii. IFRS versus Dutch GAAP

The Dutch Accounting Standards Board ('DASB') has aligned many of its Dutch Accounting Standards ('DAS') with IFRS. Recently, the DASB proposed new accounting principles for revenue recognition, which are largely similar to IFRS 15 'Revenue from contracts with customers' (but there are some differences). On top of these amendments, the DASB facilitated the specific application of the new IFRS standards IFRS 15 'Revenue from contracts with customers, IFRS 16 'Leases' and the expected credit loss model of IFRS 9 'Financial Instruments', in financial statements prepared on the basis of Dutch GAAP. When a company applies Dutch GAAP for the preparation of the financial statements and opts for this facility, it must be aware of the fact that the IFRS standard must be applied integrally including the presentation and disclosure requirements.

However, differences exist between Dutch GAAP and IFRS. For example, Dutch GAAP makes no distinction in accounting for defined benefit pension plans and defined contribution pension plans, but rather adopted the liability approach. Another example refers to the possibility of valuation of most derivatives at cost and the option of cost price hedge accounting. This method is allowed in Dutch GAAP, but does not exist in IFRS. Revenue recognition in the (proposed DAS 270/221) Dutch principles is in the core based on recognition of revenue when the important risk and rewards are transferred to the customer, while revenue recognition in IFRS 15 is primarily based on recognition of revenue when the entity transfers control over the goods or services to the customer. This can result in not only different timing of revenue recognition, but also a different outcome could rise from an agent/principal assessment when assessed based on Dutch GAAP or IFRS.

iv. IFRS for SMEs

In the 2015 'Memorie van Toelichting' (further background) to the amended Dutch Civil Code, the responsible Dutch Ministry confirmed that IFRS for SMEs can be applied by Dutch entities as long as this does not lead to conflicts with the provisions of the Dutch Civil Code. Only limited differences remain after the amendments of the Dutch Civil Code as of 1 January 2016 and the updated IFRS for SMEs standard.

5.2 Options available for the consolidated and company financial statements

When the consolidated financial statements are prepared based on Dutch GAAP, the company financial statements also need to be prepared based on Dutch GAAP. When preparing consolidated financial statements based on IFRS, management has three different options for preparing the company financial statements. In this context, Dutch GAAP should be read as the Dutch Civil Code, Book 2 Title 9, in combination with the guidelines of the Dutch Accounting Standards Board. The table below summarises the different options.

The third option, IFRS for the consolidated financial statements in combination with IFRS principles and policies in otherwise Dutch GAAP financial statements, is the most commonly applied in practice. Subsidiaries in the company financial statements are carried at their net asset value or measured at the equity method. With this option, it is possible for entities to have a consolidated equity (and result) that equals the equity (and result) in the company financial statements. While using this option, the Dutch law models for the balance sheet and income statement apply and it is for example not necessary to prepare cash flow statement in the company financial statements. Furthermore, option 3 requires Dutch GAAP disclosures, which are, as compared to IFRS, fairly limited.

According to DAS 100.107 the IFRS principles that need to be applied in the company financial statements (applying option 3) include the IFRS classification criteria for equity. For example, financial instruments that are classified as liability in the IFRS consolidated financial statements should follow this classification in the company financial statements, even if these financial instruments classify as equity when Dutch GAAP would have been applied.

	Consolidated accounts GAAP	Company accounts GAAP
1	Dutch GAAP (not applicable for listed entities)	Dutch GAAP
2	IFRS	Dutch GAAP (fully based on Dutch GAAP accounting policies and measurement principles)
3	IFRS	Dutch GAAP (using the accounting policies and measurement principles of the consolidated financial statements)
4	IFRS	IFRS

5.3 Parts of Dutch law are still relevant for IFRS appliers in the Netherlands

When the company applies IFRS for its financial reporting, Article 2:362.9 DCC prescribes which articles of Dutch law are applicable on top of the IFRS requirements. Below is an overview of these articles.

If a company makes use of the possibility to prepare the financial statements based on IFRS, section 11 of Book 2 of the Dutch Civil Code is not applicable. Section 11 describes the exemptions that apply to small and medium-sized companies, for example the exemption for small companies to have the financial statements audited and the exemption for small companies to prepare a directors' report. As section 11 is not applicable when the financial statements are prepared by making use of IFRS, these exemptions cannot be applied.

Also section 13 (consolidated financial statements) of the Dutch Civil Code is not applicable when IFRS is used for the annual reporting. Section 13 includes the consolidation exemption for intermediate holding companies (Article 2:408 DCC; also refer to chapter 4.3). IFRS appliers can therefore not make use of Article 2:408 DCC. However, IFRS provides a similar exemption within IFRS 10 paragraph 4.

Article/section DCC	Topic
Section 7	Directors' report
Section 8	Other information
Section 9	External audit of the financial statements
Section 10	Publication of the financial statements
Article 2:362.6	Errors that lead to the financial statements failing to provide the true and fair view to a significant extent, in which case the entity needs to submit a statement at the Chamber of Commerce
Article 2:362.7	The financial statements need to be prepared in Dutch unless the General Meeting has decided to use another language
Article 2:362.10	Disclosure of the GAAP applied in the prepared financial statements
Article 2:365.2	Disclosure on capitalised costs of incorporation, issuance of shares, and development
Article 2:373	Disclosure of each part of the equity, rules on the recognition of legal reserves
Article 2:379.1	The name, principal place of business and the share in the issued capital of each company to which it contributes at least one-fifth of the issued share capital or for which it is, as a partner, fully liable to the creditors
Article 2:379.2	Disclosure of equity and results of the investments in subsidiaries, joint ventures and associates, unless an exemption is applicable
Article 2:380b sub d	The registration number with the Chamber of Commerce
Article 382	Average number of employees
Article 382a	Audit fees as well as fees for other professional (non-) audit services by the external auditor
Article 2:383	Disclosure requirements for directors' remuneration, loans, advances and guarantees to directors', as well as amounts that were impaired
Article 2:383b through e	Disclosure requirements for directors' remuneration, loans, advances and guarantees to directors' specific for nv's
Article 2:389.8	Currency translation adjustments (both positive and negative) in case of translation of participations from a foreign currency to the functional currency need to be included in a legal reserve
Article 2:389.10	Differences between equity and results in the consolidated and the company financial statements need to be disclosed
Article 2:390	Requirements for recognising a revaluation reserve in case of measurement at current value (including the fact that this is a legal reserve which cannot be distributed)

5.4 Overview of the key differences between Dutch GAAP and IFRS

The table below aims to highlight some of the key differences between IFRS and Dutch GAAP. It is not an exhaustive overview. It takes into account authoritative pronouncements issued under IFRSs published up to 1 January 2020. With regard to Dutch GAAP, it takes into account the DAS 2019-edition that is applicable for financial statements for annual periods beginning on or after 1 January 2020.

A more detailed overview of differences and similarities between IFRS and Dutch GAAP is included in the PwC brochure 'Similarities and differences Dutch GAAP vs. IFRS (March 2018)'.

Post balance sheet events	**IFRS** As a rule, the balance sheet date is decisive whether events and/or transactions are taken into account into the financial statements. For example: • Dividends that are declared after the reporting period are not recognised as a liability. • Liabilities related to refinancing completed after the balance sheet date are addressed as events after the balance sheet date. • In case of violation of debt covenants the liabilities may only be presented as non-current if a waiver for one year is granted by the lender before the balance sheet date. • A restructuring provision arises only when an entity has a detailed formal plan for the restructuring and the entity started to implement the plan, or announced the main features of the plan to those affected by it - before the end of the reporting period. **Dutch GAAP** Post balance sheet events and/or transactions that take place after balance sheet date, but before the date of issuance of the financial statements are under certain conditions or circumstances taken into account in the financial statements. For example: • An entity has an option whether or not to recognise dividends as a liability when these dividends are declared after balance sheet date. • Liabilities related to refinancing may be presented as non-current if the refinancing is completed after the balance sheet date, but before the date of issuance of the financial statements. • In case of violation of debt covenants the liabilities may be presented as non-current if a waiver for more than one year is granted by the lender before the date of issuance of the financial statements. • A restructuring provision can be recognised when an entity has a restructuring plan that is formalised before balance sheet date and the entity started to implement the plan, or announced the main features of the plan to those affected by it after balance sheet date, but before the date of issuance of the financial statements. (Which is an option – under these circumstances, the entity could also decide not to recognise a provision but only to disclose the restructuring.)
First-time adoption	**IFRS** First-time adoption requires full retrospective application of the IFRSs effective at the reporting date for an entity's first IFRS financial statements. There are mandatory exceptions and optional exemptions applicable. **Dutch GAAP** There are no separate guidelines regarding a first-time adoption. General approach would be to apply retrospectively accounting principles in full.
Financial statements	**IFRS** An entity is required to present a statement of comprehensive income either in a single statement, or in two statements comprising of a separate income statement and a separate statement of (other) comprehensive income. There is no prescribed format. Management selects a method of presenting its expenses by either function or nature. Additional disclosure of expenses by nature is required if presentation by function is chosen. **Dutch GAAP** The statement of comprehensive income is not a legal primary statement. Instead, Dutch GAAP requires the income statement (or profit and loss account) according to the models of the Decree on model accounts. Next to this, an 'overview of total results' is only required for large entities (DAS 265). This overview could be presented as a separate primary statement but could also be part of the disclosure notes, for example added to the disclosure note of group equity.

Business combinations	**IFRS** The purchase method is used for accounting for business combinations. Transaction costs are expensed under IFRS 3. Contingent considerations are recognised regardless of the probability of payment. Amortisation of goodwill is not permitted. Goodwill is subject to an impairment test at least annually, and when there is an indicator of impairment. The option provided by IFRS to measure the non-controlling interest using either fair value method or proportionate share method on each transaction may result in a different goodwill amount compared to Dutch GAAP. **Dutch GAAP** For business combinations considered as being the uniting of interests, the pooling of interest method is required. The pooling of interests method is allowed in very rare circumstances. In other cases, business combinations are accounted for using the purchase method. Transaction costs are included in the cost of the acquisition. Contingent considerations are only recognised if a reliable estimate is possible and it is probable that the consideration will be paid (DAS 216. 239). After initial recognition, the goodwill is measured at cost less accumulated amortisation and any accumulated impairment losses.
Investments in associates and the equity method	**IFRS** Investments in associates in the consolidated financial statements are accounted for using the equity method. The cost method and fair value method are only permitted in the company financial statements. When applying the equity method, goodwill related to associates is part of the carrying amount of the associate. Any goodwill included as part of the carrying amount of the investment in the associate is not tested separately for impairment but rather as part of the test for impairment of the investment as a whole. **Dutch GAAP** An entity may account for its investments in associates using one of the following methods: • net asset value method; • visible equity value in case insufficient data is available to apply the net asset value method; • at cost less impairment when certain criteria are met. Net asset value method: unlike the equity method, goodwill is recognised as a separate intangible asset; therefore subject to amortisation and a separate impairment test if triggering events are applicable.
Financial instruments – initial and subsequent measurement	Initial measurement of financial instruments is similar under both Dutch GAAP and IFRS, namely at fair value. Under both Dutch GAAP and IFRS, the subsequent measurement of a financial instrument depends on the classification. The two frameworks distinguish different classification and measurement categories. The differences are expressed below, divided into the differences for financial assets and financial liabilities.
Financial assets – classification and subsequent measurement	**IFRS – financial debt assets** Financial debt assets shall be classified based on: - the business model of the entity related to the financial asset; - the contractual cash flows of the financial asset (so-called 'SPPI-test'). IFRS distinguishes three measurement categories of financial debt assets. When the contractual terms give rise to solely payment of principal and interest (SPPI), and; 1. The business model is 'hold to collect'; measurement is at amortised cost. 2. The business model is 'hold to collect and sell'; measurement is at fair value with fair value changes through OCI (with recycling). 3. In case the financial debt asset fails the SPPI and business model test, measurement is at fair value with fair value changes through profit and loss. IFRS contains an option to designate financial debt assets at fair value through the profit and loss account, provided that this resolves an accounting mismatch.

Financial assets – classification and subsequent measurement *(continued)*	**IFRS – equity investments** An equity investment shall be classified as follows: 1. if the equity investment is not held for trading, IFRS 9 provides for the option to measure at fair value through OCI, without recycling; 2. if the fair value through OCI option is not elected or when the equity investment is held for trading, measurement is at fair value through profit and loss. **Dutch GAAP** Dutch GAAP distinguishes five financial asset categories: 1. part of a trading portfolio - measurement at fair value through profit and loss; 2. derivatives (refer to 'derivatives and hedging' below); 3. purchased loans and bonds: a) held to maturity loans - measurement at amortised cost b) other purchased loans/bonds - measurement at either fair value through profit and loss or at amortised cost; 4. issued loans and other receivables not part of a trading portfolio - measurement at amortised cost; 5. investments in equity instruments: a) listed equity investments not part of a trading portfolio - measurement at fair value through profit and loss or equity (insofar change is positive); b) non-listed equity investments not part of a trading portfolio - measurement at cost or at fair value through profit and loss or equity (insofar change is positive). Dutch GAAP does not have a similar fair value option as IFRS.
Financial liabilities – classification and subsequent measurement	**IFRS** IFRS 9 distinguishes two measurement categories of financial liabilities: 1. amortised cost; 2. fair value through profit and loss. IFRS contains the option to irrevocably designate financial liabilities at fair value through profit and loss. If, it (a) resolves an accounting mismatch or (b) when these financial liabilities form part of a group of financial liabilities (or a group of both financial assets and liabilities) managed together and its performance is evaluated on a fair value basis in accordance with the risk management investments strategy. **Dutch GAAP** Dutch GAAP distinguishes three measurement categories of financial liabilities: 1. part of a trading portfolio - measurement at fair value through profit and loss; 2. derivatives (refer to 'derivatives and hedging' below); 3. other financial liabilities not part of a trading portfolio - measurement at amortised cost. Dutch GAAP does not have a similar fair value option as IFRS.
Financial instruments – derivatives and hedging	**IFRS** Derivatives are valued at fair value with value changes recognised through profit and loss (unless hedge accounting is applied). Hedge accounting recognises the offsetting effects on profit or loss of changes in the fair value of the hedging instrument and the hedged item. There are three types hedging relationships: fair value hedge, cash flow hedge and hedge of a net investment in a foreign operation. Derivatives are measured at fair value. **Dutch GAAP** DAS 290 is largely based on IFRS; however, there are differences that can be significant. For example in Dutch GAAP: • derivatives, except those based on listed equities, are allowed to be measured at cost or lower market value; • cost price hedge accounting is permitted, this model does not exist within IFRS; • generic hedge documentation as alternative for individual hedge documentation is allowed; and • a retrospective quantitative effectiveness test is not required under Dutch GAAP, when the critical terms are equal.

Financial instruments - impairment	**IFRS** IFRS 9 accounts for expected credit losses. When applying expected credit losses under IFRS 9, an entity takes forward-looking information also into account. The expected credit loss model of IFRS 9 consists of the following stages: Stage 1 (no significant increase in credit risk) An entity shall measure the loss allowance for that financial instrument at an amount equal to 12-month expected credit losses. Stage 2 (significant increase in credit risk) An entity shall measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses or the credit risk. Stage 3 (not performing) An entity shall measure the lifetime credit loss if the financial instrument is credit impaired. For financial assets measured at amortised cost, the change in loss allowance will be recognised in the statement of profit and loss. For financial assets measured at fair value through other comprehensive income, the loss allowance will be recognised in the statement of other comprehensive income. **Dutch GAAP** Dutch GAAP permits the usage of the expected credit loss model of IFRS 9. As an alternative, Dutch GAAP allows the incurred credit loss model. At the end of each reporting period, financial assets measured at cost or amortised cost are reviewed for objective evidence of impairment. If such objective evidence exists, an impairment loss needs to be calculated. Impairment losses are recognised in the income statement immediately. If the objective evidence reverses in a subsequent period, impairment losses are reversed in the income statement of subsequent periods. As an alternative for the above described impairment methods, Dutch GAAP allows measurement at cost or lower market value as subsequent measurement for financial assets measured at amortised cost. This accounting policy choice has to be made and applied consistently per sub-category financial assets measured at amortised cost.
Employee benefits, defined benefit plans	**IFRS** IAS 19 ‘Employee benefits’ considers all pension plans as defined benefit (DB) plans, unless the criteria for treatment as defined contribution plans are satisfied. Hence, a plan will be a DB plan unless the employer’s legal or constructive obligation is limited to the amount that it agrees to contribute to the plan. **Dutch GAAP** In Dutch GAAP, no distinction is made between defined benefit plans and defined contribution plans. Instead, DAS 271 applies a liability approach to pension accounting. The pension contributions payable by the employer to the pension fund are expensed. With regard to the accounting of pension plans, Dutch GAAP also permits the use of the IFRS or US GAAP standards for pension accounting.
Income taxes	**IFRS** Deferred tax assets and liabilities are measured at the tax rates that apply or have been substantively enacted by the reporting date. Deferred tax assets and liabilities shall not be discounted. **Dutch GAAP** Similar to IFRS, but deferred tax assets and liabilities can also be measured at present value (option).
Discontinued operations and assets held for sale	**IFRS** Discontinued operations are presented separately in the income statement and the cash flow statement. There are additional disclosure requirements in relation to discontinued operations. **Dutch GAAP** Separate presentation of discontinued operations in the income statement is not allowed. There are some specific disclosure requirements for discontinued operations.

Non-financial assets	**IFRS** For tangible and intangible assets, there is an accounting policy choice between the cost model and the revaluation model. In case the revaluation model is used, the assets are carried at their revalued amount, being its fair value at revaluation date less any subsequent accumulated depreciation and accumulated impairment losses. If an asset's carrying amount is increased because of a revaluation, the increase is recognised in other comprehensive income and accumulated in equity as 'revaluation reserve'. Goodwill and other intangibles with indefinite lives are reviewed for impairment and not amortised. **Dutch GAAP** For tangible and intangible assets, there is an accounting policy choice between the cost model and the current cost model for the subsequent measurement. The current cost is the lower of the current cost price or the net realisable value. The current cost price entails the current purchase price of the asset and additional costs if any, or the current manufacturing price of the assets, which consist of the current manufacturing price of i.e. raw materials, labour, a reasonable part of the indirect costs and additional costs if any, less accumulated depreciation. If an entity remeasures an asset based on its current cost, it recognises a revaluation reserve in equity (legal reserve) unless this upward revaluation is a reversal of a prior downward revaluation. All intangible assets, including goodwill, are assumed to have finite lives and are amortised.
Maintenance costs and costs for dismantling - recognition	**IFRS** The cost of a major inspection or replacement of parts of an item of property plant and equipment, occurring at regular intervals over its useful life, is capitalised to the extent that it meets the recognition criteria of an asset. The carrying amount of the previous inspection or parts replaced is derecognised. Cost of dismantling and removing an asset or costs for restoring the site on which the asset is located, are capitalised as part of the asset. The obligation for an entity incurs either when the item is acquired or because of using the item during a particular period. **Dutch GAAP** Similar to IFRS, however in addition entities are allowed to recognise (and build-up) a provision for costs of major inspection or dismantling.

6. Company taxation

The aim of this chapter is to provide a general overview of some of the important tax concepts, where questions often arise in practice. The chapter is based on applicable Dutch tax law as of 1 January 2020. More information on the covered taxes, as well as on other taxes, can be found in the 'Doing Business in the Netherlands' publication.

The area of company taxation is complex and professional advice should be sought.

6.1 Resident and non-resident taxpayers

Corporate income tax is levied upon both resident and non-resident taxpayers. Companies are considered Dutch residents if it can be demonstrated that they are effectively managed in the Netherlands. In addition, corporate taxpayers are, for Dutch corporate income tax purposes, deemed to be Dutch tax residents when incorporated under Dutch civil law, even if the actual management is abroad (although not with respect to certain provisions, such as the participation exemption and fiscal unity). As a result, dual residency may occur. In general, tax treaty provisions in favour of the country where the company is effectively managed avoid dual residency of a company. However, in certain instances, based on the implementation of the OECD's Multilateral Instrument a consensus of the competent Tax Authorities on the residency of a company is required prior to obtaining treaty benefits.

Resident corporate taxpayers are subject to Dutch corporate income tax on their worldwide income. Such companies may also be subject to foreign corporate tax on their profits earned outside the Netherlands. In order to avoid double taxation, Dutch tax law contains various rules that provide relief for juridical double taxation for income that has already been taxed or is subject to taxation in another country. This avoidance of double taxation is provided for in the 'base exemption for foreign business profits', bilateral tax treaties, or the Unilateral Decree for the Avoidance of Double Taxation. In addition, the Dutch 'participation exemption regime' provides relief for economic double taxation.

Non-resident corporate taxpayers are non-resident entities, which receive income from certain specified Dutch sources such as:

- business income from a Dutch permanent establishment or from a Dutch permanent representative;
- income from a 'substantial holding', i.e. an interest of 5%, in a Dutch resident company if the interest is held with one of the main purposes to avoid Dutch personal income tax and if it is not put into place with valid commercial reasons which reflect economic reality;
- income from immovable property located in the Netherlands.

In general, non-resident corporate taxpayers are subject to the corporate income tax for their Dutch sourced income. The profits of a Dutch permanent establishment are determined following the Dutch rules for determining taxable profits, including the assumption of 'at arm's length' conditions. Transactions with associated companies and internal dealings must take place on an at arm's length basis (i.e. as if the permanent establishment were a separate, unrelated and independent company engaged in similar activities under similar circumstances). However, internal interest expenses are generally non-deductible, although a few exceptions exist. A similar approach applies to internal royalties.

With respect to the profit allocation to permanent establishments, the Netherlands largely subscribed to the authorised OECD approach as expressed in the OECD's Report on the Attribution of Profits to Permanent Establishments.

6.2 Corporate income tax

Corporate income tax is levied on the annual profit of companies. For fiscal year 2020, there are two ranges:

- taxable profits up to and including EUR 200,000 are taxed at 16.5%;
- the remaining taxable profits in excess of EUR 200,000 are taxed at 25%.

It is proposed to reduce the lower rate to 15% and the higher rate to 21.7% as from 1 January 2021. However, this may still change.

The tax year for a company is - in principle – the same as the financial year as stated in the company's articles of association.

i. Taxable profits

Determination of taxable profits

Generally, taxable profits are calculated based on the increase in equity of the company, after adjustments for dividends paid and for capital contributions or redemptions. The exact amount of taxable profits is calculated in accordance with the general rules set out in the Income Tax Act 2001, which follows sound business practice, and the specific rules in the Corporate Income Tax Act. Transactions between associated companies should be performed at arm's length. Transactions that are not performed at arm's length, such as excessive management fees, should, for tax purposes, be adjusted to arm's length conditions. If such an adjustment does not take place, the Dutch Tax Authorities could successfully challenge the used transfer pricing. Such adjustment may be treated as an informal capital contribution or a (deemed) dividend and be subject to withholding tax.

In order to be able to demonstrate the arm's length nature of (cross-border) transactions, the taxpayer is required to maintain appropriate documentation substantiating the positions. Additional documentation or reporting requirements may apply, please see section 6.8.

Functional currency

Taxable profits are in principle calculated in euros. Only if the financial statements of the Dutch taxpayer are prepared in a different currency and certain other conditions are met, the taxable profits are calculated in that other currency (i.e. the functional currency). The tax payable is then converted into euros and must be paid in euros.

ii. Allowable deductions

In principle, all expenses relating to the conduct of the business are allowable deductions for tax purposes. There are, however, certain specific rules. This includes for example rules on depreciation and amortisation of goodwill and other assets and rules on interest expenses.

Depreciation and amortisation

For tax purposes, the amortisation of acquired goodwill is limited to 10% of the purchase price per annum and amortisation/depreciation of other business assets is limited to 20% of the purchase price or production costs per annum.

In addition, deprecation of real estate is only tax deductible for Dutch corporate income tax purposes insofar the fiscal book value of the real estate is higher than the so-called 'WOZ value'. The municipality in which the real estate is located and roughly corresponds with the fair market value of the property determines the WOZ value.

Investment credit

Because of the regular profit determination rules, a taxpayer is allowed to deduct the costs of an investment in assets from its taxable profits. The investment credit encourages investments by providing an additional deduction for taxpayers on top of the costs of the asset. This investment credit lowers the taxable profit and as such reduces the corporate income tax due. The investment credit is available for:

- certain investments that contribute to a sustainable energy transition, such as energy-efficiency measures and sustainable energy;
- investments that contribute to positive environmental effects and an improvement of the environment, provided that the assets are included in the so-called Environment List 2020; and
- small-scale investments, i.e. an annual investment exceeding EUR 2,300 but not exceeding EUR 318,449, not taking into account investment that are smaller than EUR 450.

Interest expenses

Dutch tax law contains various limitations on the deduction of interest expenses on debt. Sometimes, a debt instrument is so similar to equity, that based on Dutch case law, that debt instrument is requalified to equity. As a result, expenses in relation to that instrument are not deductible for Dutch tax purposes.

Debt or equity

In principle, for Dutch tax purposes a financial instrument is considered a loan if it qualifies as a loan for Dutch civil law. However, in the following three circumstances (based on Dutch case law) a financial instrument is considered equity for Dutch tax purposes notwithstanding the fact that the financial instrument qualifies as a loan for Dutch civil law:

- the loan is granted under such conditions that the creditor in fact participates in the debtor ('profit participating loan');
- the loan is granted in a situation in which it was clear from the outset that the loan would never be repaid by the debtor due to its financial position ('loss-financing loan'); or
- while the parties seem to have agreed to enter into a loan agreement, in fact, the parties have intended to make an equity contribution ('sham loan').

If the debt instrument is not requalified to equity for Dutch tax purposes, the at arm's length interest expenses on that debt are deductible unless a specific limitation applies. In addition, it is important to properly document the arm's length nature of the interest expenses, taking into account the loan's terms and conditions. We discuss the main limitations on the deduction of interest hereafter.

Anti-base erosion rules

Based on the Dutch anti base erosion rules, interest – including expenses and currency exchange results – on loans directly or indirectly owed to a related company or individual (i.e. an interest of at least one third or part of the same collaborating group) is not deductible when this loan relates to certain so-called 'tainted transactions'. Tainted transactions include (intra-group) capital contributions, (intra-group) dividend distributions and the acquisition of shares in a company that is or becomes a related party after the acquisition.

However, the interest limitation is not applicable, if it can be successfully demonstrated that:

1. both the loan and the transaction(s) are predominantly based on sound business reasons; or
2. the interest income is subject to an effective tax rate of 10% according to Dutch tax standards, unless the tax inspector successfully proves that there are not predominantly commercial reasons for both the transaction and the loan (e.g. in case of an unusual rerouting of the funds) or that the reason for obtaining the loan is loss compensation.

Earnings stripping rules

Until 2019, Dutch tax law contained interest limitation rules that limited the deduction of interest on excess acquisition debt, if the acquired company subsequently joins a Dutch fiscal unity with the taxpayer and other interest limitation rules that limited the deduction of interest on excessive participation debt. With the introduction of the earnings stripping rules, applicable as from January 1, 2019, these two interest limitation regulations were abolished.

As part of the implementation of the EU ATAD I directive, the earnings stripping rule limits the deduction of the net interest expenses to 30% of the taxpayer's EBITDA with a threshold of EUR 1 million and a carry forward rule.

In addition to the interest limitation rules described above, interest may also be non-deductible on the basis of the hybrid mismatch rules. Information that is more detailed can be found hereafter.

Hybrid mismatch rules

On the basis of the hybrid mismatch rules, an implementation of the EU ATAD II directive, the Netherlands neutralises hybrid mismatches between associated enterprises (interests of at least 25%) and in structured arrangements (transactions between unrelated parties where the financial benefit of a hybrid mismatch is part of the scheme). This happens both between EU Member States and between EU Member States and third states. This rule denies, as from January 1, 2020, the deduction of payments made by a Dutch taxpayer in relation to hybrid mismatches, insofar the income or reimbursement is not included in the tax base of the recipient due to the hybrid mismatch. In addition, it denies an exemption or credit at the level of the recipient if this recipient is resident in the Netherlands insofar the payment is deductible for the payer (e.g. no exemption for foreign business profits).

A taxpayer must include in its administration all relevant data showing to what extent and in what way there is a case of compensation, payment, assumed payment, or loss within the meaning of the proposed measures.
The measures indicated above, neutralise the outcome of a hybrid mismatch but do not change the qualification of the entity (that causes the mismatch outcome). This may still lead to tax benefits in structures with reverse-hybrid entities incorporated under Dutch law (i.e. a company transparent for Dutch tax law and non-transparent for foreign tax law, and as a result not subject to tax anywhere). In order to also eliminate such tax benefits, the Netherlands is obliged to implement a rule as from January 1, 2022, that ensures that such reverse-hybrid entity is subject to tax in the Netherlands.

Non-business motivated loans

According to case law, a loan is non-arm's length if it was granted intra-group under such conditions and circumstances that the creditor runs a debtor's risk that an independent third party would not accept under the same conditions and circumstances.
In such case, the interest rate must be adjusted to an arm's length level that an independent third party would have agreed upon. If the interest rate cannot be adjusted to a fixed rate under which an independent third party would have been prepared to grant a similar loan without altering the debt-nature of the financial instrument, the loan is non-business motivated. In that case, a loss suffered on the receivable (write down) is not deductible for tax purposes.

Disposal of written-down receivable

If a receivable from a subsidiary or a related company's subsidiary has been written-down, which led to a deductible expense for Dutch tax purposes, such loss may need to be recaptured in the following circumstances:

- the Dutch taxpayer transfers the written-down receivable to a related company or person;
- the Dutch taxpayer transfers the written-down receivable to its foreign permanent establishment; or
- (part of) the debtor's business was transferred to the Dutch taxpayer or a related company or person.

Such recapture is subject to Dutch corporate income tax. In addition to the above, a write-down on such receivable may need to be recaptured if it, in fact, fiscally disappears. This is the case if the receivable is capitalised, is otherwise going to function as equity or is waived wholly or partly. For these specific cases, the recapture is in principle taxed, but a provision can be formed for the same amount. This provision is released (and taxed) insofar the fair market value of the debtor/subsidiary increases. In some situations, the provision is released tax-free.

For both above-mentioned measures, the definition of write-down needs to be interpreted broadly. As such, also a currency exchange loss on such receivable is considered a write-down. Since the application of these measures is complicated, we suggest to consult a tax advisor in situations described above.

Provisions for tax purposes

A provision can be formed if (i) the expenses have originated prior to the balance sheet date, (ii) they can be allocated to that period and (iii) there is a reasonable certainty that the expenses provided will be incurred in the future.

iii. CFC income

Under the Dutch CFC-regime, certain passive net income earned by a Controlled Foreign Company ('CFC') is included as CFC income in the Dutch taxpayer's tax base, unless the net income has been distributed by the end of the year or the CFC has genuine economic activities in its jurisdiction of residence. A CFC is defined as a subsidiary or permanent establishment in a low-taxed, i.e. less than 9%, or a non-cooperative jurisdiction that is explicitly listed by the Dutch Ministry either of Finance in which the taxpayer owns a direct or indirect interest, standalone or with affiliated companies, of more than 50%.

iv. Research and Development incentives (R&D)

Innovation Box

To encourage innovation and investments in research and development 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 tax rate on taxable profits derived from these intangible assets. The effective tax rate of the innovation box is a maximum of 7%, by means of a reduction of the tax base. For profits up to and including EUR 200,000 (i.e. the first bracket), this effective tax rate is even lower. The innovation box only applies insofar the profit arises from qualifying research and development activities.

The intangible asset (not being goodwill) is only eligible for the innovation box if it arises from research and development by the taxpayer and at its risk and expense, for which it obtained so-called S&O declaration from the Dutch government. This may also include, under certain conditions, contract R&D and the further development of an acquired intangible asset. For large companies, in addition to the S&O declaration, an additional 'entry ticket' is required, such as a patent or similar right that ensures legal protection of intellectual property.

The innovation box can be a very important facility. In combination with other facilities, it makes the Netherlands the ideal location for R&D companies. Because the application of the innovation box regime can be quite complex in many cases, it is advisable to request a tax ruling with the Tax Authorities to obtain certainty on the application of the innovation box. For completeness' sake, the Dutch government has expressed the intention to increase the innovation box tax rate to 9% as of 2021. However, this is still subject to change.

Research and development tax rebate

A rebate on payroll tax and national insurance contributions is available for companies with employees engaged in research and development activities on applied new technology for which a so-called S&O declaration was obtained. The rebate for R&D is based on a percentage of the allowable R&D costs, such as salary costs and other costs and expenses related to R&D. In general, the rebate amounts to 32% for the first EUR 350,000 of R&D costs and 16% for the remaining R&D costs. The rebate is limited to the total amount of wage tax due.

v. Capital gains and losses

In principle, capital gains are taxed as ordinary income. However, exceptions (may) apply, such as:

- capital gains realised on the disposal of a shareholding qualifying for the participation exemption (we refer to section 6.2.vi) are tax exempt;
- a gain on the disposal of depreciable assets may be carried over to a special tax deferral reinvestment reserve, deferring the taxation of the gain provided that it is used to reinvest in a new asset with the same function as the replaced asset; and
- under conditions, upon a legal merger or legal split-up of the company a gain may be deferred.

Capital losses on the disposal of a shareholding are in principle not tax deductible if the participation exemption applies. Under strict conditions, a loss may nevertheless be deductible.

vi. Participation exemption

The Dutch participation exemption provides for an exemption of Dutch corporate income tax for dividends, capital gains and foreign exchange results derived from qualifying shareholdings. Capital losses and other losses arising from qualifying shareholdings are, in principle, non-deductible. This could be different with respect to losses realised upon liquidation of a subsidiary, provided that certain conditions are met. Please note that the conditions to deduct a loss realised upon liquidation are expected to change as from 2021.

In order for the participation exemption to apply to a subsidiary of a Dutch entity, the following cumulative requirements should be met:

1. the Dutch company directly owns at least 5% of the nominal paid-up share capital of the subsidiary ('Ownership Test'); and
2. at least one of two following conditions is met:

a. the subsidiary is not held as a portfolio investment ('Intention Test'); or
b. the subsidiary can be considered a qualifying portfolio investment participation (i.e. either the 'Asset Test' or the 'Effective Tax Rate Test' is met).

Please note that participations in a mutual fund and an open limited partnership, as well as a membership in a cooperative could qualify, under certain conditions, for the application of the participation exemption. Furthermore, there is no minimal holding period in relation to the applicability of the Dutch participation exemption.

Acquisition costs and costs in relation to a transfer of a subsidiary are also included in the participation exemption. As a result, these are not deductible. As this often leads to discussions with the Dutch Tax Authorities, we strongly advise to properly ring-fence and document, which costs arise from the acquisition or sale of a subsidiary. The participation exemption is not applicable on dividends received that are tax deductible at the level of the subsidiary.

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

vii. Base exemption for foreign business profits

In general, a Dutch resident company is subject to corporate tax on its worldwide income. However, the Netherlands apply the 'base exemption for foreign business profits' to provide international juridical double tax relief for Dutch resident corporate taxpayers with profits attributable to foreign permanent establishments. Under this mechanism, the taxpayer's worldwide earnings are reduced with an amount equal to the sum of the foreign sourced income items as determined according to Dutch tax standards on a per country basis. Consequently, losses of foreign permanent establishments cannot be offset against profits of the Dutch head office and currency exchange results are included in the tax base. However, if the foreign activities are ceased, any losses in this respect can, under conditions, be deducted. These conditions are subject to change, expected as from 2021. For certain low-taxed passive permanent establishments, the object exemption is replaced by a tax credit system.

viii. Loss relief

Both resident and non-resident taxpayers have a loss carry-back possibility of one year and a carry-forward possibility of six years. Net operating losses incurred prior to January 1, 2019, have a carry-forward period of nine years. However, in order to combat amongst others the trade in loss-making entities, complex rules may prohibit the utilisation of net operating losses after a change of 30% or more of the ultimate control in a company.

Prior to 2019, another loss limitation rule restricted the utilisation of so-called holding and financing losses. Only for holding and financing losses incurred in tax periods up to and including 2018, these limitations remain applicable.

ix. Fiscal unity

Under the Dutch Corporate Income Tax Act it is possible to form a tax group, called a 'fiscal unity'. The companies that make up the fiscal unity are generally treated as a single taxpayer for Dutch corporate income tax purposes. As a result, intercompany transactions between the fiscal unity members are ignored and any profits of one fiscal unity member are settled with any losses of the other members. Yet, individual companies and transactions are visible in relation to several anti-abuse provisions.

One of the conditions to form a fiscal unity is that the head of the fiscal unity must have, directly or indirectly, the full legal and economic ownership of at least 95% of each class of shares in the subsidiary ('ownership requirement'). The ownership requirement can also be met if the head of the fiscal unity is an EU-resident company or if there is an EU-resident intermediate company. Nevertheless, only Dutch resident companies can be part of the fiscal unity. However, under certain conditions, companies with their place of effective management abroad but with a permanent establishment in the Netherlands, may be included in a Dutch fiscal unity insofar as they run a business in the Netherlands with a Dutch permanent establishment. In addition to the ownership requirement, other requirements apply.

Although the subsidiaries included in the fiscal unity remain formally subject to Dutch corporate income tax, the tax balance sheets and the profit and loss accounts of the fiscal unity members are consolidated and the Dutch (deemed) head of the fiscal unity pays all Dutch corporate income tax due by the fiscal unity.

Note that Dutch VAT also has a tax grouping system (the VAT fiscal unity), which is completely separate from the corporate income tax group regime.

6.3 Capital tax

There is no capital tax levy on the contribution of capital to a company and any later expansion of the share capital.

6.4 Interest and royalty withholding tax

For 2020, there is no withholding tax levied on interest or royalty payments made by Dutch resident companies. However, in certain cases interest payments will be qualified as dividend distributions (e.g. interest payments on certain profit depending loans or on participating loans), which may be subject to dividend withholding tax.
As from 2021, the Netherlands introduce a conditional withholding tax on interest and royalty payments made to affiliated companies in designated low-tax jurisdictions, and in certain tax abuse situations. The tax will be levied at the highest Dutch corporate income tax rate, which is expected to be 21.7% for 2021. This withholding tax may still be reduced if an applicable double tax treaty provides for such relief.

6.5 Dividend withholding tax

A 15% dividend withholding tax is levied from those who are entitled to income from Dutch resident companies, including amongst others BVs, NVs and holding cooperatives.

Provided that certain conditions are met, a domestic dividend withholding tax exemption is available or the Dutch dividend withholding tax can be reduced on the basis of a double tax treaty.

i. Domestic exemption

The domestic exemption is available from dividend withholding tax for dividend distributions made by Dutch resident entities if:

1. the beneficiary of a dividend distributed by the Dutch entity is a resident of the Netherlands or a state with which the Netherlands has concluded a tax treaty that contains a provision on dividends; and
2. the beneficiary of the dividend would have been able to apply the Dutch participation exemption (see section 6.3.vi) or participation credit to its interest in the Dutch entity distributing the dividend if the recipient of the dividend would have been a resident of the Netherlands.

However, the aforementioned dividend withholding tax exemption is not applicable if:

1. under a tax treaty concluded between the country of residence of the beneficiary of the dividend and a third country, the beneficiary of the dividend is considered to be a tax resident of a country with which the Netherlands have not concluded a tax treaty;
2. the beneficiary of the dividend is considered an investment institution that is exempt from corporate income tax, similar to Dutch investment institutions that are exempt from Dutch corporate income tax (i.e., the so-called ‘vrijgestelde beleggingsinstelling’ and the so-called ‘fiscale beleggingsinstelling’); or
3. the interest in the Dutch entity distributing the dividend is held by the beneficiary of the dividend with the main purpose, or one of the main purposes, to avoid the levy of Dutch dividend withholding tax at the level of another entity and the structure is considered part of an artificial arrangement.

ii. Dividend stripping

In addition to the above, the dividend withholding tax exemption is not applicable if the beneficiary cannot be considered the beneficial owner of the dividend income. This may for example be the case with dividend stripping, in which case - briefly put - ‘artificial’ transactions take place that change the direct shareholder of the Dutch dividend paying company with the purpose of avoiding/reducing Dutch dividend withholding tax, whereby in fact the beneficiary of the dividends does not change. The new shareholder is in such case not considered the beneficiary of the dividend income.

iii. Holding cooperatives

Generally, distributions by a Dutch cooperative are not subject to Dutch dividend withholding tax, unless it concerns a distribution on a qualifying membership right in a holding cooperative. This is the case if the two following cumulative conditions are met:

1. The cooperative qualifies as a ‘holding cooperative’: a cooperative of which the actual activities generally consisted of at least 70%

holding participations and/or financing of related entities or individuals in the financial year preceding the moment of the distribution. In this respect, multiple factors may be taken into account and this is considered at the level of the cooperative itself. When a cooperative has sufficient relevant substance at cooperative level (e.g. active involvement, employees, office space), the cooperative might not have to be qualified as a holding cooperative.
2. The recipient of the dividend has a so called 'qualifying membership right' if it, together with any related entity or individual, is entitled to at least 5% of the annual profits and/or liquidation proceeds of the holding cooperative.

iv. Reduction of Dutch dividend withholding tax in case of an upstream dividend

A reduction of Dutch dividend withholding tax is granted for dividends received by a Dutch company from a subsidiary and distributed upstream to its shareholders, provided that the following conditions are met:

- the subsidiary is resident in a country that has concluded a double tax treaty with the Netherlands, or on Aruba, Curacao, Sint-Maarten or the BES Islands;
- the Dutch company owns at least 25% of the paid-up share capital in that subsidiary;
- the Dutch participation exemption applies to the dividend income received from the subsidiary; and
- the dividends distributed to the Dutch company were subject to at least 5% foreign withholding tax.

The credit amounts to 3% of the gross dividends paid by the Dutch company to its shareholders and is deducted from the Dutch withholding tax payable on those dividend distributions.

v. Filing obligations

The Dutch dividend paying company is obliged to file a notification with the Dutch Tax Authorities within one month after the dividend distribution. This notification provides the Dutch Tax Authorities with information to demonstrate that the company is eligible to apply the domestic dividend withholding tax exemption.

6.6 VAT

i. EU context

The system of value added tax (VAT) in the Netherlands is based on EU regulation and is 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 VAT rates, formal VAT requirements and the applicable business context.

ii. The VAT system

VAT is effectively a tax on consumer expenditure. Therefore, in theory, the final burden of the tax should not be 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 total 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.

VAT is charged on the supply of goods and services created in the Netherlands 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. Furthermore, the intra-Community (i.e. within the EU) acquisition in the Netherlands by taxable persons or non-taxable legal persons, the intra-Community acquisition of a new means of transport by any person, and the importation of goods are also considered taxable events.

All the above-mentioned events are taxable if performed in the Netherlands, even when non-residents carry them out.

The Netherlands furthermore allow legally independent businesses that are closely bound to one another by financial, economic and organisational links to be treated as a single taxable person (fiscal unity/VAT group).

If the business is liable for VAT on its transactions in the Netherlands, it will have to register for VAT.

Special attention needs to be given to the VAT position of holding and/or financing companies.

iii. Rates

Currently, the standard VAT rate in the Netherlands is 21%. A reduced VAT applies to certain essential goods and services, for example food and drinks, passenger transport and certain labour-intensive repair and maintenance activities. The 0% rate applies to, for example, the export of goods. As of 1 January 2019 the reduced VAT rate has increased from 6 to 9%.

Additionally, various types of supplies are exempt from VAT, such as educational and medical services. The difference between 0% VAT (zero rate) 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 in principle allow for a full deduction of input VAT.

iv. 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.

v. 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). However, 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.

vi. VAT refund request

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

vii. Quick Fixes

Effective January 2020, the EU Member States, including the Netherlands, are required to implement four quick fixes aiming to improve the day-to-day functioning of the VAT system for EU cross-border B2B trade. These Quick Fixes have consequences for the company’s administrative systems, VAT registrations, contracts, (electronic) documents and invoices.

6.7 Payroll Taxes

i. Wage tax and national insurance contributions

Companies who have their residence (or a permanent establishment) in the Netherlands and who employ personnel are obliged to withhold and pay payroll taxes. Companies, who do not have their residence in the Netherlands but do have employees that are taxed in the Netherlands for their employment income, can choose to become a withholding agent for the payroll taxes in the Netherlands.

Withholding agents for the payroll taxes are obliged to 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). Please note that the social security premiums are only due in case the employee is covered by the Dutch social security system.

The wage tax and national insurance contribution are a withholding tax on the income tax of employees. The insurance contributions and the income-related contribution pursuant to the Health Care Insurance Act are costs for the employer.

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). Employers who provide reimbursements or benefits in kind to employees will have to assess the wage tax implications. When no specific exemption applies (specific exemptions apply for example to entitlements to Dutch pension benefits and certain jubilee bonuses), the reimbursement or benefit in kind is individual wage for the employee or can be included in the work-related cost scheme.

ii. Work-related cost scheme

Under the work-related cost scheme, the employer can provide reimbursements and benefits in kind tax-free. The work-related costs budget is 1.7% for the first EUR 400,000 of the total fiscal wages, and 1.2% for the remaining amount of the taxable wage bill (numbers for 2020). In addition, a number of specific benefits can be provided tax-free, without being included in the work-related costs budget. In case the work-related costs budget is exceeded, the employer has to pay a final levy of 80% on the amount in excess.

It is important to note that under the work-related cost scheme, the scale of the reimbursements must not substantially deviate (30%) from what is considered usual in similar circumstances. Besides, certain benefits can not be provided tax free under the work-related cost scheme, because they are compulsory individual wage for the employee. This applies for instance to the private use of a company car.

iii. Extra-territorial costs and the 30% ruling

The actual costs incurred by employees who are hired/assigned from abroad 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.

If certain conditions are met, a foreign employee working in the Netherlands may be granted a 30% ruling. Under this ruling, a tax free reimbursement amounting to 30% of the income from active employment can be paid to the employee. Apart from the base of the 30% ruling the employer can reimburse the school fees for an international school for the children of employees tax free in full.

The 30% reimbursement is intended to cover all extra-territorial costs. If the 30% ruling is applied, the actual extra-territorial costs can not be reimbursed tax free in addition to the 30% reimbursement. However, if the actual extra-territorial costs are higher than the 30 % reimbursement, you can choose to reimburse these higher actual costs tax free if proof of the costs is available.

There are several requirements to qualify for the 30% ruling. As of January 2019 the maximum term of the 30% ruling and the tax free reimbursement of actual extra-territorial costs have been reduced from eight to five years. Transitional law is applicable for existing cases for a maximum period of two years.

The 30% ruling lapses at the end of the next wage tax period following the wage tax period in which the Dutch employment was terminated. The 30% ruling can not be applied on post-departure income. Hence, the 30% ruling can, in principle, not be applied on bonuses and equity income that becomes taxable after having left the Netherlands in most situations.

6.8 Reporting requirements

The following reporting and administrative requirements are important.

i. Transfer pricing documentation requirements

Detailed transfer pricing documentation regulations are applicable in line with the requirements of BEPS Action 13. This includes country-by-country reporting, the master file and the local file.

Country-by-country reporting

Qualifying taxpayers must submit a country-by-country report to the Dutch Tax Authorities annually. The obligation to submit an annual country-by-country report to the Dutch Tax Authorities applies to multinational groups with a consolidated group turnover of at least EUR 750 million (in the prior financial year). In principle, a country-by-country report only needs to be filed with the Dutch Tax Authorities if the ultimate parent company of the multinational group is a Dutch resident company or if a Dutch entity is designated as the surrogate parent. However, in certain situations, Dutch group entities belonging to multinational groups without a Dutch resident ultimate parent company or Dutch surrogate parent may also be obliged to submit the country-by-country report.

Dutch entities that are part of a multinational group must notify the Dutch Tax Authorities about the group entity that will file the annual country-by-country report ultimately before the end of the relevant financial year. If a Dutch entity is the filing entity, the actual country-by-country-report (in addition to the notification for the next financial year) needs to be filed with the Dutch Tax Authorities within 12 months of the last day of the group's financial year for reporting purposes.

Master file and local file

In addition to the country-by-country reporting obligations, taxpayers in the Netherlands that are part of a multinational group with a consolidated group turnover of at least EUR 50 million will need to have a master file and local file in their administration. The master file must contain an overview of the business of the multinational group, including a description of the nature of the business activities, its general transfer pricing policy and the worldwide allocation of income and economic activities. The local file must contain information that is relevant for the transfer pricing analysis relating to intercompany transactions where the Dutch taxpayer is involved. The master and local file must be available by the ultimate filing deadline for the tax return (taking into account any extension granted by the Dutch Tax Authorities).

ii. DAC6 reporting

DAC6 imposes mandatory disclosure requirements for certain arrangements with an EU cross-border element. Where such an arrangement falls within certain 'hallmarks' mentioned in the directive and additionally, in case of specified hallmarks, where the main or expected benefit of the arrangement is a tax advantage, the arrangement should be reported. There will be a mandatory automatic exchange of information on such reportable cross-border schemes via the Common Communication Network (CCN), which will be set-up by the EU.

Although the directive is not effective until July 1, 2020, taxpayers and intermediaries need to monitor their cross-border arrangements already as of June 25, 2018, as these arrangements will have to be reported ultimately August 31, 2020.

Whether an arrangement needs to be reported does not depend on whether it will be implemented, but whether the taxpayer can implement it. The reportable arrangement needs to be reported as from July 1, 2020, within 30 days of one of the following events, whatever comes first:

- the day on which the arrangement is made available;
- the day on which the advice on the arrangement is completed; or
- the day on which the first step of the implementation took place.

iii. Hybrid mismatch documentation

A taxpayer must include in its administration all relevant data showing to what extent and in what way there is a case of compensation, payment, assumed payment, or loss within the meaning of the hybrid mismatch rules.

6.9 Tax rulings and Tax Authorities

i. Fraus legis doctrine

In combatting abusive situations, Dutch case law, known as the fraus legis doctrine, gives the Dutch Tax Authorities the possibility to deny a tax benefit in situation where the taxpayer's decisive motive is to obtain a tax benefit and obtaining that benefit is contrary to the aim and purpose of Dutch law. Under the fraus legis doctrine, transaction(s) may be deemed not to exist, be ignored or replaced. This case law remains in development and is subject to change.

ii. APA/ATR

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 clearance can be obtained from the Dutch Tax Authorities. The Dutch Tax Authorities conclude Advance Pricing Agreements (APA) as well as Advance Tax Rulings (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 programs 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 accordance with the law in the taxpayer's specific situation.

Both are binding for the taxpayer and the Dutch Tax Authorities. In accordance with EU law, the Dutch Tax Authorities are obliged to exchange information regarding rulings and transfer pricing arrangements with the Tax Authorities of other EU member states automatically. In addition, an anonymous summary of each ruling with an international character will be published. This also applies to ruling requests that ultimately do not result in a ruling.

To obtain an APA or ATR, the following requirements must be met:

- the taxpayer filing the ruling request has sufficient relevant economic nexus with the Netherlands (in short, economic nexus means operational business activities);
- avoiding Dutch or foreign tax is not the sole or the decisive reason for a certain transaction; and
- the transaction is not carried out with a country that is mentioned in the Dutch list of low-tax countries.

iii. Horizontal monitoring

Another specific feature of the Netherlands is that the Dutch Tax Authorities allow businesses, under certain conditions, to apply for an enhanced relationship ('horizontal monitoring'). This is a form of cooperative compliance, in which the organisation signs a Horizontal Monitoring covenant with the Dutch Tax Authorities. It provides a timing benefit and certainty: it prevents unpleasant tax surprises when it is too late to do something about it. However, 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. Horizontal monitoring can be applied to all taxes including corporate income tax, value added tax, wage tax and social security.

The main benefit of Horizontal Monitoring is that relevant tax risks and positions can be dealt with when they occur. The company is required to act with a transparent attitude towards the Dutch Tax Authorities, and they will in return provide a quicker 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.

We do note that the Tax Authorities currently reformulated Horizontal Monitoring. Top 100 taxpayers in the Netherlands are no longer part of this program and will get an individual approach and monitoring plan. Individual Horizontal Monitoring will be possible for companies who require an audit on their annual accountants and which have a tax strategy, a tax risk analysis and a monitoring and testing plan in place. For small and medium enterprises, a general covenant is possible through their qualified service provider. PwC is one of the qualified service providers.

Appendices

Appendix A – Book 2, Title 9 Dutch Civil Code (unofficial translation)

Text of Title 9, Book 2 of the Dutch Civil Code – The financial statements and the directors' report (unofficial translation of www.wetten.overheid.nl), valid as of January 2020. All articles mentioned come from the DCC, unless specifically stated otherwise.

Section 1 – General provision

Article 360

1. This Title applies to cooperatives, mutual insurance societies, companies limited by shares and private companies with limited liability. Irrespective of their legal type, this Title applies to banks referred to in Article 415.
2. This Title also applies to limited or general partnerships, all partners of which are capital companies under foreign law and fully liable towards creditors for the obligations.
3. This Title also applies to foundations and associations which maintain one or more undertakings which, pursuant to the law, must be registered in the commercial register if the net turnover of such undertakings over two successive financial years without interruption and, thereafter, over two subsequent financial years amounts to one half or more of the amount referred to in subparagraph b of Article 396, paragraph 1, as amended pursuant to Article 398, paragraph 4. The first sentence does not apply if the foundations or associations are required by or pursuant to the law to prepare financial accounts equivalent to the financial statements referred to in this Title and if these are published.

Section 2 – General provisions in respect of financial statements

Article 361

1. 'Financial statements' mean the individual financial statements consisting of a balance sheet and profit and loss account with notes thereon, and the consolidated financial statements if the legal person prepares consolidated financial statements.

2. Cooperatives and the foundations and associations referred to in Article 360, paragraph 3 shall substitute a statement of operating income and expenses for a profit and loss account, if this enhances the view referred to in Article 362, paragraph 1; the provisions in respect of the profit and loss account shall, as far as possible, apply, mutatis mutandis, to such statement. Provisions in respect of profits and losses shall, as far as possible, apply, mutatis mutandis, to the balance shown by the statement of operating income and expenses.
3. The provisions of this Title apply to financial statements and any part thereof both in the format in which the same are prepared by the management and in the format in which the same are adopted by the competent constituent or corporate body of the legal person.
4. Where Articles 367, 370, paragraph 1, 375, 376, 377, paragraph 5 and 381 are applicable, information on other companies must be given in a manner corresponding to that of group companies:
   a. which, on the basis of paragraphs 1, 3 and 4 of Article 24a, can exercise rights in the legal person, irrespective of whether they have legal personality, or
   b. which are subsidiaries of the legal person, of a group company or of a company referred to in subparagraph a.

Article 362

1. The financial statements, prepared in accordance with generally acceptable accounting principles, shall provide such a view as enables a sound judgment to be formed on the assets and liabilities and results of the legal person and, insofar as the nature of financial statements permit, of its solvency and liquidity. If so justified by the international structure of its group, the legal person may prepare its financial statements in accordance with generally accepted accounting principles in one of the Member States of the European Union, which provide the view referred to in the first sentence.

2. The balance sheet and the notes thereon shall fairly, clearly and systematically reflect the size and composition of the net assets at the end of the financial year classified in separate items. The balance sheet may reflect the assets and liabilities in accordance with the appropriation of the profit or the treatment of the loss or, where this has not been determined, in accordance with the proposal therefore. The heading of the balance sheet shall state whether the profits have been appropriated therein.
3. The profit and loss account and the notes thereon shall fairly, clearly and systematically reflect the result for

the financial year and the items of income and expenses upon which it is based.

4. In its financial statements the legal person shall include information supplementing that which is required by the special provisions set out in or pursuant to this Title, if required in order to provide the view referred to in paragraph 1. The legal person shall not apply such provisions to the extent these are not necessary to provide such view in which case the reason for not applying such provisions shall be set out in the notes, stating, where necessary, the effect thereof on the assets and liabilities and the results.
5. Any income and expenditure over the financial year shall be included in the financial statements, irrespective of whether the same resulted in any receipts or expenses in such financial year.
6. The financial statements shall be adopted with due observance of any matters in respect of the financial situation on the balance sheet date that have appeared since the preparation of the accounts and prior to the general meeting at which these are to be considered insofar as this is indispensable to the view referred to in paragraph 1. If it subsequently appears that the financial statements are seriously defective in providing this view, the management shall, without delay, inform the members or shareholders thereof and lodge a notice thereon at the Trade Register; if the financial statements have been audited in accordance with Article 393, such information shall be accompanied by an accountants report. A legal person of which securities are listed at a regulated stock exchange market as referred to in the Financial Supervision Act (Wet op het financieel toezicht) is deemed to have met the requirement to file the notice, as meant in the second sentence, at the Trade Register, if they have submitted the notice to the Stichting Autoriteit Financiële Markten under Article 5:25m, paragraph 5, of that law.
7. If justified by the activity of the legal person or the international structure of its group, its financial statements or only the consolidated accounts may be prepared in a foreign currency. The items shall be described in the Dutch language, unless the general meeting has resolved to use another language. If the legal person makes use of this possibility it shall state this in the notes.
8. A legal person may prepare its financial statements in compliance with the standards adopted by the International Accounting Standards Board and approved by the European Commission, provided the legal person then applies all adopted and approved standards. A legal person which prepares consolidated financial statements in accordance with this Title may not prepare individual financial statements in accordance with the adopted and approved standards. A legal person which prepares consolidated financial statements according to the standards mentioned in the first sentence of this paragraph may apply the same bases for evaluation in the individual financial statements as it applied in its consolidated financial statements.
9. A legal person which prepares financial statements in accordance with the standards referred to in paragraph 8 shall apply Articles 7 to 10, inclusive, of this Title and Articles 362, paragraph 6, second to last sentence, paragraph 7, last sentence and paragraph 10, 365, paragraph 2, 373, 379 paragraphs 1 and 2, 380b subparagraph d, 382, 382a, 383, 383b to 383e, inclusive, 389, paragraphs 8 and 10, and 390. Banks shall also apply Article 421, paragraph 5.
10. A legal person shall state in the explanatory notes the standards in accordance with which the financial statements were prepared.

Article 363

1. The combination, breakdown and layout of the information in the financial statements and the notes on such information shall be made so as to provide the view that the financial statements are intended to provide pursuant to Article 362, paragraph 1, with due observance of the provisions under paragraph 6 and of the other Sections of this Title. The notes are presented in the order of the financial statement line items.
2. It is not permitted in the financial statements to eliminate assets and liabilities or income and expenses, by applying these against each other if they are required to be shown in separate items pursuant to this Title.
3. An item need not be shown separately if it is not material to the financial statements as a whole in order to provide the view required by law. Any item required to be shown pursuant to this Title may be omitted where, on its own and together with other similar items, it would not be material to such view. The information required to be shown pursuant to Articles 378, 382 and 383 may not be omitted.
4. The layout of the balance sheet and the profit and loss account may only be varied from that of the preceding year for sound reasons in which case the differences and the reasons for changing the layout shall be set out in the notes.

5. Where possible, the amount for the preceding financial year shall be stated against each item in the financial statements and, insofar as is necessary for the purposes of comparison, such amount shall be restated and the change resulting from such restatement explained.
6. By Regulation, We may adopt standard forms and further rules for the layout of the financial statements applicable to the legal persons described therein. For the application thereof, the layout, nomenclature and description of the items appearing therein shall, to the extent permitted by the Regulation, be adapted to the nature of the business of the legal person.

Section 3 - Provisions in respect of the balance sheet and the notes thereon

Article 364

1. In the balance sheet the assets shall be classified into fixed and current assets, depending on whether they are intended to be used on a continuing basis in the conduct of the business of the legal person.
2. Fixed assets are subdivided into intangible, tangible and financial fixed assets.
3. Stocks, receivables, securities, liquid assets and, insofar as the same are not shown under receivables, prepayments and accrued income, shall be shown separately under current assets.
4. Equity, provisions, obligations, and, insofar as they are not included in these obligations, accruals and deferred income, shall be shown separately under liabilities.

Article 365

1. The following shall be separately shown under intangible fixed assets:
   a. expenses in connection with the incorporation and the issue of shares;
   b. development costs;
   c. acquisition costs in respect of concessions, licenses and intellectual property rights;
   d. costs of goodwill acquired from third parties;
   e. prepayments on intangible fixed assets.
2. Insofar as the legal person capitalises the expenses and costs referred to in subparagraphs a and b of paragraph 1, it must state this in a note and maintain a reserve for the amount thereof.

Article 366

1. The following shall be shown separately under tangible fixed assets:
   a. buildings and land used for business purposes;
   b. machinery and plant;
   c. other fixed operating assets, such as technical and office equipment;
   d. tangible fixed operating assets under construction and prepayments on tangible fixed assets;
   e. tangible fixed assets not used in the production process.
2. If the legal person has only a limited right in rem or right in personam to enjoy tangible fixed assets on a lasting basis, this shall be stated.

Article 367

The following shall be shown separately under financial fixed assets:

a. shares, depositary receipts issued for shares and other forms of participation in group companies;
b. other participating interests;
c. receivables from group companies;
d. receivables from other legal persons and partnerships which have a participating interest in the legal person or in which the legal person has a participating interest;
e. other securities;
f. other amounts receivable, with specific mention of receivables arising from loans and advances to members or holders of registered shares.

Article 368

1. Any movement during the financial year in any items of fixed assets shall be shown in a reconciliation statement which shall disclose:
   a. the book value at the beginning of the financial year;
   b. the aggregate of the values at which assets acquired during the financial year are recorded in the books and the aggregate amount of the book values of disposals of assets of the legal person at the end of the financial year;
   c. revaluations made during the financial year in accordance with Article 390, paragraph 1;
   d. amortisation, diminution in value and reversals thereof during the financial year;
   e. the book value at the end of the financial year.
2. For each fixed asset item there shall further be shown:
   a. the aggregate of the revaluations of assets held on the balance sheet date;
   b. the aggregate of amortisation and diminution in value on the balance sheet date.

Article 369

The following shall be shown separately under stocks included in current assets:

a. raw materials and consumables;
b. work in progress;
c. finished products and goods for resale;
d. prepayments on stock.

Article 370

1. The following shall be shown separately under receivables included in current assets:
   a. receivables from trade debtors;
   b. receivables from group companies;
   c. receivables from other legal persons and partnerships which have a participating interest in the legal person or in which the legal person has a participating interest;
   d. issued capital called but not paid up;
   e. other receivables, except those to which Articles 371 and 372 apply, with specific mention of amounts receivable from members or holders of registered shares arising from loans and advances made to them.
2. For each category of receivables mentioned in paragraph 1, the amount maturing after more than one year shall be stated.

Article 371

1. Where shares and any other type of interests in companies, not included in the consolidation referred to in paragraph 4 of Article 361, form part of the current assets, these shall be shown separately under securities. The aggregate value of such other securities forming part of the current assets and admitted to trading on a regulated market or a multilateral trading facility as referred to in Article 1:1 of the Wet op het financieel toezicht (Financial Supervision Act) or a system comparable to a regulated market or multilateral trading facility from a State which is not a Member State shall be stated.
2. It shall be stated to which extent such securities are not at the free disposal of the legal person.

Article 372

1. Under liquid assets, there shall be included cash in hand, balances on bank and giro accounts, bills of exchange and cheques.
2. There shall be stated the extent to which such balances are not at the free disposal of the legal person.

Article 373

1. The following shall be shown separately under equity:
   a. the issued capital;
   b. share premium;
   c. revaluation reserves;
   d. other legal reserves, subdivided by type;
   e. reserves required by the articles;
   f. other reserves;
   g. undistributed profit, with specific mention of the after-tax profit for the financial year insofar as the appropriation thereof has not been shown in the balance sheet.
2. If the issued capital has not been paid up in full, the paid up capital shall be stated instead or, if calls for payment have been made, the paid up and called capital. The issued capital shall be stated in these instances.
3. The capital shall not be reduced by the amount of the own shares or depositary receipts issued therefore held by the legal person or a subsidiary.
4. Legal reserves are reserves which must be maintained pursuant to Article 67a, paragraphs 2 and 3, Article 94a, paragraph 6, subparagraph f, 98c, paragraph 4, Article 365, paragraph 2, 389, paragraphs 6 and 8, 390, 401, paragraph 2 and 423, paragraph 4.
5. In financial statements prepared in a foreign currency the item referred to in subparagraph a of paragraph 1 shall be stated in such currency at the rate of exchange on the balance sheet date. In case the statutes state the issued capital in a different currency than the currency in which the financial statements have been prepared, then the for item as meant in paragraph 1 under a also the exchange rate and the amount in that other currency are disclosed.

Article 374

1. In the balance sheet provisions shall be made for liabilities, with a clear description of their nature, which may be considered prospective or actual on the balance sheet date but the extent or time when these will arise are not yet known. Provisions may also be made for any expenditure to be incurred in a subsequent financial year, to the extent that the incurring of such expenditure originates before the end of the financial year and the provision serves to allocate charges equally over a number of financial years.
2. Diminution in value of an asset shall not be presented by forming a provision.
3. Provisions shall be analysed according to the type of the liabilities, losses and expenses for which they are made and a precise description of their nature shall be given. Where possible, the notes shall state to what extent the provisions must be regarded as long-term.
4. In any event, specific mention shall be made of:
   a. the provision for tax liabilities which may arise after the financial year but which must be attributed to the financial year or to a prior year, including a provision for tax which may arise from a valuation in excess of the cost of acquisition or production cost;
   b. the provision for pension liabilities.

Article 375

1. The following shall be shown separately under liabilities:
   a. debt securities, mortgage bonds and other loans, with specific mention of convertible loans;
   b. amounts owed to credit institutions;
   c. prepayments received on orders, insofar as not already deducted from asset items;
   d. amounts owed to suppliers and commercial credits;
   e. bills of exchange and cheques payable;
   f. amounts owed to group companies;
   g. amounts owed to legal persons and partnerships which have a participating interest in the legal person or in which the legal person has a participating interest, insofar as not already disclosed under subparagraph f;
   h. amounts owed in respect of taxation and social insurance contributions;
   i. amounts owed in respect of pensions;
   j. other debts.
2. For each category of liabilities mentioned in paragraph 1 the amounts due within one year or less shall be disclosed, with an indication of the interest rate thereon. For the total of the liabilities mentioned in paragraph 1 the amount due after more than five years shall be disclosed.
3. For the total of the categories mentioned in paragraph 1, the liabilities for which real security has been provided and what form that security takes shall be indicated. To the extent necessary to provide the view referred to in Article 362, paragraph 1, it shall also be stated in respect of which liabilities the legal person has undertaken to encumber or not to encumber its property, either conditionally or unconditionally.
4. The amount to which liabilities are subordinated to the other amounts owed shall be indicated and the nature of any such subordination shall be explained in a note.
5. If the amount repayable on an account exceeds the amount received, the difference may be shown as an asset until the account owed is repaid at the latest, provided this is stated specifically.
6. Disclosure shall be made of the amount that the legal person is to repay during the financial year following that to which the financial statements relate on loans included in the liabilities payable after more than one year.
7. In respect of convertible loans, the terms of conversion shall be disclosed.

Article 376

If the legal person has assumed liability for debts of third parties or is still at risk for discounted bills of exchange or cheques, the commitments arising therefrom, insofar as no provisions have been made therefore in the balance sheet, shall be disclosed and analysed according to the type of security provided. Separate disclosure shall be made of the commitments entered into on behalf of group companies.

Section 4 - Provisions in respect of the profit and loss account and the notes thereon

Article 377

1. The following shall be shown separately in the profit and loss account:
   a. income and expenditure arising from ordinary business activities, the taxation thereon and the profit on ordinary business activities after tax thereon;
   b. any other taxation;
   c. the result after tax.
2. Income and expenditure arising from ordinary business activities shall be classified in accordance with either paragraph 3 or paragraph 4.
3. The following items shall be shown separately:
   a. the net turnover;
   b. the increase or decrease in stocks of finished products and in work-in-progress compared with the preceding balance sheet date;
   c. the production for the use of the business itself which has been capitalised;
   d. other operating income;
   e. wages;
   f. social security charges, with specific mention of those relating to pensions;
   g. the cost of raw materials and consumables and other external costs;
   h. depreciated amounts and any diminution in value charged to intangible and tangible fixed assets classified into such categories of assets;
   i. amounts of any diminution in value in respect of current assets to the extent that they exceed the usual amounts of diminution in value for the legal person;
   j. other operating costs;
   k. results from participating interests;
   l. proceeds from other securities and receivables forming part of the fixed assets;
   m. other interest income and similar income;
   n. changes in the value of financial fixed assets and of securities held which form part of the current assets;

   o. interest payable and similar expenses.
4. The following items shall be shown separately:
   a. net turnover;
   b. cost of sales, excluding the interest-expense component thereof but including depreciated amounts and any diminution in value;
   c. the gross result on turnover, being the balance of the items in subparagraphs a and b;
   d. selling expenses, including depreciated amounts and any extraordinary diminution in value;
   e. general management expenses including depreciated amounts and any diminution in value;
   f. other operating income;
   g. results from participating interests;
   h. proceeds from other securities and receivables forming part of the fixed assets;
   i. other interest income and similar income;
   j. changes in the value of financial fixed assets and of securities which form part of the current assets;
   k. interest payable and similar expenses.
5. In respect of items k-o of paragraph 3 and items g-k of paragraph 4, specific mention shall be made of income and expenditure arising out of relationships with group companies.
6. 'Net turnover' means the income from the supply of goods and services from the business of the legal person after deduction of discounts and the like and of taxes levied on turnover.
7. The nature and amount of income and expenses that are attributable to another financial year shall be disclosed.
8. The nature and amount of financial statement line items of income and expenses that are of exceptional size or are special in occurrence.

Section 5 - Special provisions in respect of the notes

Article 378

1. Movements in equity during the financial year shall be presented in a statement, showing:
   a. the amount of each item at the beginning of the financial year;
   b. additions to and reductions in each item during the financial year, classified according to their nature;
   c. the amount of each item at the end of the financial year.
2. In the statement, the paid up and called capital shall be analysed by the class of shares. Separate mention shall be made of the closing position and particulars shall be given of movements in shares in the capital of the legal person and in depositary receipts issued therefore held by or on behalf of the legal person itself or by or on behalf of a subsidiary on its own account. There shall be stated the item of net assets from which the acquisition cost or book value thereof has been deducted.
3. It shall be stated in which form payments on shares have been made in the financial year, whether demandable or made voluntarily, disclosing the substance of the legal acts performed during the financial year in respect of which any of Articles 94, 94c or 204 is applicable. Each acquisition and disposal by a company limited by shares for its own account of shares in its own capital and depositary receipts issued therefore shall be disclosed, stating the reasons for the acquisition and the number, nominal amount and agreed price of the shares and depositary receipts issued therefore involved in each transaction and the part of the capital that they represent.
4. A company limited by shares shall disclose the number, class and nominal amount of shares in its own capital or depositary receipts issued therefore:
   a. which are held by it or by a third party acting for its account by way of pledge on the balance sheet date;
   b. which are held by it or by a subsidiary on the balance sheet date pursuant to an acquisition under the provisions of Article 98, paragraph 5.

Article 379

1. A legal person shall state the name, principal place of business and the part contributed of the issued capital of each company:
   a. to which it, for its own account and solely or jointly with one or more subsidiaries, contributes, either directly or indirectly, at least one-fifth of the issued capital; or
   b. in which it, as a partner, is fully liable to the creditors for the obligations.
2. In respect of any company referred to in subparagraph a of paragraph 1, the legal person shall also state the amount of the net assets and results shown in its last adopted financial statements unless:
   a. the legal person consolidates the financial information of the company;
   b. the legal person accounts for the company in its balance sheet or consolidated balance sheet in accordance with Article 389, paragraphs 1 to 7, inclusive;

c. the legal person does not consolidate the financial information in the company because it is not material or pursuant to Article 408; or
d. less than one half of the capital of the company is contributed for the account of the legal person and the company lawfully does not publish its balance sheet.

3. Unless such company lawfully does not customarily disclose its interest in the legal person, the legal person shall state:
   a. the name and principal place of business of the company heading its group; and
   b. the name and principal place of business of each company which consolidates its financial information in its published consolidated financial statements and the place where copies thereof may be obtained at no more than cost.
4. The Minister of Economic Affairs may grant dispensation from the obligation referred to in paragraphs 1, 2 and 3, if an application is made based on well-founded concern that a serious prejudice may result from such disclosure. Such dispensation may be given for successive periods of no more than five years. The notes shall state that dispensation has been granted or applied for. Pending the application, no publication shall be required.
5. The items required to be disclosed by this article and Article 414 may be included jointly. Such part of the notes containing the items disclosed may be lodged for inspection of third parties at the Trade Register provided both parts of the notes refer to each other.

Article 380

1. If the business of the legal person is organised to engage in activities in various business sectors, a view shall be given, with the aid of figures, of the extent to which each type of activity contributed towards the net turnover
2. Similarly, the net turnover shall be segmented on the basis of the various geographical areas in which the legal person supplies goods and services.
3. Article 379, paragraph 4 applies, mutatis mutandis.

Article 380a

The events subsequent to the balance sheet date that have not been included in the balance sheet or profit and loss account, and which have important financial consequences for the legal person and other entities which have been included in the consolidated financial statement, are disclosed, as well as the extent of those consequences.

Article 380b

Disclosed are:

a. the name of the legal person;
b. the form of the legal person;
c. the seat of the legal person;
d. the number assigned by the chamber of commerce as meant in article 9, paragraph a, of the Handelsregisterwet 2007, under which the legal person is registered in the Trade Register.

Article 380c

The legal person discloses the appropriation of profit or loss, or, when this is not yet decided, the proposed appropriation.

Article 380d

The legal person discloses the number of profit sharing certificates and similar rights, stating particulars of the nature of those rights.

Article 381

1. Any major financial commitments entered into by the legal person for a number of years in the future and which are not disclosed in the balance sheet, such as those arising out of long-term contracts, shall be stated. Any contingent assets, contingent liabilities and unrecognised liabilities to which the legal person is connected shall be disclosed. Commitments towards group companies shall be mentioned separately. Article 375, paragraph 3 applies, mutatis mutandis.
2. Furthermore, the entity discloses the nature, the operational background and the financial consequences of arrangements that have not been recognised in the balance sheet, if the risks or benefits that result from these arrangements are significant and insofar publication of these risks or benefits are necessary for the assessment of the financial position of the entity.
3. The entity discloses significant transactions, other than those at arm's length, that are agreed with related parties as meant in the standards that were established by the International Accounting Standards Board and approved by the European Committee. Besides the entity discloses the size of the transaction, the character of the relation with the related party, as well as other information with regard to these transactions that is necessary to give insight in the financial position of the entity. Information about individual transactions may be aggregated according to their nature, unless separated information is necessary to give insight of the consequences of the transactions with related parties for the financial position of the entity. Transactions between two or more members of a group can be

omitted under the condition that the group companies that are involved in the transaction are wholly-owned by one of more of the group companies.

Article 381a

If financial instruments are valued at their current value, the legal person shall state:

a. if the current value is determined with the aid of valuation models and techniques, the assumptions on which these were based;
b. per category of financial instrument, the current value, the changes in value included in the profit and loss account, the changes in value included on the basis of Article 390, paragraph 1 in the revaluation reserve, and the changes in value by which the distributable reserves were reduced; and
c. per category of derivative financial instrument, information on the amount and nature of the instruments and the conditions which may affect the amount, the time and the certainty of future cash flows.

Article 381b

If financial instruments are not valued at their current value, the legal person shall state:

a. for each category of derivative financial instrument:
    1. the current value of the instruments, if this may be determined by means of one of the methods described pursuant to Article 384, paragraph 4;
    2. information on the amount and nature of the instruments; and
b. for financial fixed assets which are valued at an amount in excess of their current value and without implementation of the second sentence of Article 387, paragraph 4:
    1. the book value and the current value of the individual assets or of appropriate groups of the individual assets;
    2. the reason why the book value was not reduced and the nature of the indications for the view is based that the book value will be realisable.

Article 382

The average number of employees working for the legal person during the financial year shall be stated, broken down in accordance with the manner in which the business is organised. The company shall there by state the number of employees who work outside the Netherlands. If Article 377, paragraph 3 is not applied in the profit and loss account, the particulars required under subparagraphs e and f thereof shall be provided.

Article 382a

1. The aggregate fees charged to the legal person in the financial year for the examination of the financial statements, the aggregate fees for any other audit instructions, the aggregate fees for advisory services in the fiscal field and the aggregate fees for any other non-audit services executed by the external accountant and the accountants` organisation mentioned in Article 1, paragraph 1, subparagraphs a and e of the Wet toezicht accountantsorganisaties (Audit Firms Supervision Act) shall be disclosed.
2. If the legal person has subsidiaries or consolidates the financial information of other companies, the fees charged to them in the financial year shall be included in the statement.
3. A legal person need not state the fees if its financial information is consolidated in consolidated financial statements in respect of which, pursuant to the applicable law, the Regulation of the European Parliament and the Council on the Application of International Standards for Financial statements or Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms, amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182), provided that the information as meant in paragraph 1 is included in the disclosures of those consolidated financial statements.

Article 383

1. The amount of the remuneration, including pension charges, and of any other distributions made in the aggregate to the directors and former directors and, separately, in the aggregate, to the supervisory board members and former supervisory board members shall be disclosed. The preceding sentence relates to amounts chargeable to the legal person during the financial year. If the legal person has subsidiaries or consolidates the financial information of other companies, the amounts chargeable to them in the financial year shall be included in the statement. A statement which ultimately relates to a single natural person may be omitted.
2. Paragraph 1, except for the last sentence, shall also apply to the amount of any loans, advances and guarantees to or for directors and supervisory board members of the legal person provided by the legal person, its subsidiaries and the companies included in the legal person`s consolidated accounts.

Any amounts outstanding, impaired amounts and amounts that were waived, the rate of interest, the other principal conditions and the repayments made during the financial year shall be disclosed.

Article 383a

The foundations and associations referred to in Article 360, paragraph 3 shall disclose the provisions in their articles in respect of the appropriation of the profits as well as the manner in which the after-tax profits are appropriated.

Article 383b

Notwithstanding Article 383, Articles 383c to 383e, inclusive, apply to a company limited by shares, with the exception of a public company limited by shares whose articles exclusively provide for registered shares, contain restrictions on transfer and do not allow the issue of depositary receipts issued to bearer with the co-operation of the company and with the exception of the public company limited by shares, of which the shares or certificates of shares that have been emitted with cooperation of the company, are admitted to trading on a regulated market or a multilateral trading facility as referred to in Article 1:1 of the Wet op het financieel toezicht (Financial Supervision Act).

Article 383c

1. The company shall disclose the amount of the remuneration of each director. This amount shall be divided according to
   a. amounts of periodically paid remuneration,
   b. remuneration payable in instalments,
   c. distributions made on termination of the employment,
   d. profit shares and bonus payments, insofar as these amounts were charged to the company in the financial year.

   A company which has paid remuneration in the form of a bonus, which is based, wholly or partially, on attainment of objects set by or on behalf of the company shall state this. The company shall then state whether these objects were attained in the year under review.
2. The company shall disclose the amount of the remuneration of each former director divided according to remuneration payable in instalments and distributions on termination of the employment, insofar as these amounts were charged to the company in the year under review.
3. The company shall disclose the amount of the remuneration of each supervisory board member, insofar as these amounts were charged to the company in the year under review. A company, which has granted a remuneration in the form of a profit share or bonus shall state this separately, mentioning the reasons why it resolved to base the remuneration granted to a supervisory board member on this form of remuneration. The last two sentences of paragraph 1 apply, mutatis mutandis.
4. A company shall disclose the amount of the remuneration of each former supervisory board member, insofar as this amount was charged to the company in the year under review.
5. If the company has subsidiaries or consolidates the financial data of other companies, the amounts that were charged to them in the year under review shall be included in the statements allocated according to the category of remuneration involved and referred to in paragraphs 1 to 4, inclusive.
6. The company shall disclose the amount of the adjustment or recovery of the remuneration as meant in Article 135 paragraphs 6 through 8.

Article 383d

1. A company that grants directors or employees' rights to acquire shares in the capital of the company or a subsidiary shall disclose for each director and for the employees jointly:
   a. the exercise price of the rights and price of the underlying shares in the capital of the company, if such exercise price is lower than the price of such shares at the time the rights are granted;
   b. the number of rights not yet exercised at the beginning of the financial year;
   c. the number of rights granted by the company in the financial year with the conditions pertaining thereto; if a change is made in such conditions during the financial year, such changes must be separately mentioned;
   d. the number of rights exercised during the financial year, which must in each instance state the number of shares for which the rights were exercised and the prices at which these were exercised;
   e. the number of rights not yet exercised at the end of the financial year, mentioning:
      - the exercise price of the granted rights;
      - the remaining period for rights not yet exercised;
      - the principal conditions applicable in respect of the exercise of the rights;
      - any financing arrangement made in connection with the grant of the rights; and
      - other data of importance for

considering the value of the rights;

f. if applicable: the criteria applied by the company for the grant or exercise of the rights.

2. A company, which grants supervisory board members rights to acquire shares in the capital of the company or a subsidiary shall further, in respect of each supervisory board member, state these rights and the reasons on which the resolution is based to grant these rights to the supervisory board member. Paragraph 1 applies, mutatis mutandis.
3. The company shall state how many shares in the capital of the company were redeemed as of the balance sheet date or will be redeemed after the balance sheet date or how many new shares have been subscribed as of the balance sheet date or will be subscribed after the balance sheet date for the purpose of exercising the rights referred to in paragraph 1 and paragraph 2.
4. For the purposes of this article shares include depositary receipts issued for shares with the co-operation of the company.

Article 383e

A company shall disclose the amount of the loans, advances and guarantees provided by the company, its subsidiaries and the companies whose data it consolidates on behalf of each director and each supervisory board member of the company. Amounts still outstanding shall be disclosed, the interest rate, the main other provisions and any repayments during the financial year.

Section 6 - Provisions in respect of the principles of valuation and of the determination of the results

Article 384

1. In choosing a principle for the valuation of an asset and a liability and for the determination of the results, a legal person shall follow the provisions of Article 362, paragraphs 1-4. Principles which may be considered are the cost of acquisition or manufactured cost and the current value.
2. Such principles shall be applied in a prudent manner. Profits shall be recognised only to the extent these were realised on the balance sheet date. Liabilities originating before the end of the financial year shall be taken into account if known before the preparation of the financial statements. Foreseeable liabilities and contingent losses which originate before the end of the financial year may be taken into consideration, if these were known before the financial statements were prepared.
3. The valuation of assets and liabilities shall be based on the assumption that the entire activities of the legal person for which such assets and liabilities are instrumental will be continued, unless such assumption is incorrect or its correctness is open to serious doubt, in which case this shall be disclosed in the notes, stating its effect on the net assets and results.
4. Rules may be set by Regulation in respect of the content, parameters and manner of application of valuation at current value.
5. The principles of valuation of the assets and liabilities and of determination of the results shall be stated in respect of each item. Both the principles for the translation of amounts expressed in foreign currencies and the manner in which exchange differences have been treated shall be stated.
6. The principles on which the valuation of assets and liabilities and the determination of the results are based may be varied only from those applied in the preceding financial year for sound reasons. The reason for the change shall be stated in the notes. The significance of its effect on the assets and liabilities and the results shall also be shown by restated figures for the financial year or for the preceding financial year.
7. Changes in value of:
   a. financial instruments;
   b. other investments; and
   c. agricultural stocks, for which there are frequent market quotations valued at their current value based on paragraph 1, may, notwithstanding the second sentence of paragraph 2, be reflected in the results, unless otherwise provided in this Section. Changes in value of derivative financial instruments, to the extent these are not referred to in paragraph 8, shall, where necessary notwithstanding paragraph 2, be reflected in an increase or decrease in the results.
8. Changes in value of financial instruments which serve, and are effective, to cover risks in respect of assets; assets on order and other liabilities not yet reflected in the balance sheet or in respect of prospective transactions shall be reflected in an increase or decrease in the revaluation reserve, to the extent necessary to ensure that such changes in value are accounted for in the same period in the results as the changes in value which they are meant to cover.

Article 385

1. The assets and liabilities shall be valued separately insofar as the same differ in their significance for the view referred to in Article 362, paragraph 1.
2. Similar components of stocks and securities may be valued either on the basis of weighted average prices or by the 'first in - first out' (FIFO) method, the 'last in - first out' (LIFO) method or some similar method.
3. Regularly replaced tangible fixed assets and stocks of raw materials and consumables, the aggregate value of which is of minor importance, may be shown at a fixed quantity and value if their quantity, composition and value are only subject to slight variations.
4. Assets referred to Article 365, paragraph 1, subparagraphs d and e shall be shown at no more than the expenditure incurred thereon, less amortisation.
5. Shares in the legal person's own capital or depositary receipts issued therefore held by or on behalf of the legal person may not be capitalised. The value attributed to any participating interest in a subsidiary shall be reduced, proportionately to such interest or otherwise, by the purchase price of shares in the legal person and of depositary receipts issued therefore held by or on behalf of the subsidiary on its own account. If the subsidiary has acquired such shares or depositary receipts issued therefore before the date on which it became a subsidiary, their book value on that date or a proportionate part thereof shall be deducted.

Article 386

1. Amortisation shall be applied irrespective of the results for the financial year.
2. The methods of calculating amortisation shall be stated in the notes.
3. The capitalised cost connected with the incorporation and with the issue of shares shall be amortised within five years. The cost of development, to the extent this was capitalised, and the capitalised cost of goodwill shall be amortised in accordance with the expected useful economic life. In the exceptional circumstances where the useful life of the cost of development and goodwill cannot be reliably estimated, these costs are amortized over a period of no longer than ten years. In such circumstances, the notes shall disclose the reasons for the amortization period of the cost of goodwill.
4. Any fixed assets with limited useful economic lives shall be amortised annually according to a method based on their expected future useful economic lives.
5. A reasonable part shall be amortised annually on that part of a debt shown as an asset in accordance with Article 375, paragraph 5 until the repayment thereof.

Article 387

1. Impairment of assets shall be taken into account independently of the results for the financial year.
2. Current assets shall be valued at current value if, on the balance sheet date, this is lower than the cost of acquisition or production cost. The valuation shall be at another lower value if conducive to the view which is to be provided pursuant to Article 362, paragraph 1.
3. If a permanent impairment in the value of fixed assets is expected, this shall be taken into account in the valuation thereof. On the valuation of the financial fixed assets, any impairment, which has occurred on the balance sheet date, may in any event be taken into account.
4. Any write-off made pursuant to the preceding paragraphs shall be charged to the profit and loss account, unless the same is charged to the revaluation reserve pursuant to Article 390, paragraph 3. Such write-off shall be reversed as soon as the impairment has ceased to exist. Any write-off pursuant to paragraph 3 and any reversals thereof shall be stated separately in the profit and loss account or in the notes.
5. The second sentence of paragraph 4 does not apply to write-off of goodwill.

Article 388

1. The cost of acquisition at which an asset is valued shall comprise the price paid and the expenses incidental thereto.
2. The production cost at which an asset is valued shall comprise the cost of acquisition of the raw materials and consumables used and the other expenses directly attributable to the production. The production cost may also include a reasonable part of the indirect costs and the interest on debts over the period attributable to the production of the asset and, in such case, it shall be stated in the notes that such interest has been capitalised.

Article 389

1. Participating interests in companies, on the business and financial policy of which the legal person exercises a significant influence, shall be accounted for in accordance with paragraphs 2 and 3. If the legal person or one or more of its subsidiaries, solely or jointly, can exercise one-fifth or more of the votes of the members, partners or shareholders according to its discretion or cause them so to be cast, the legal person shall be

presumed to exercise a significant influence.
2. The legal person shall determine the net asset value of the participating interest based on a valuation of the assets, provisions and liabilities of the company in which it participates and on a computation of its results on the same bases as for its own assets, provisions, liabilities and results. This method of valuation must be stated.
3. Where insufficient information is available to the legal person for the determination of the net asset value, it may base the value on another method of determination in accordance with this Title, in which case such value shall be adjusted by the amount of its share in the results and in the distributions of the company in which it participates. This method of valuation must be stated.
4. The financial statements of a legal person which is not a bank as referred to in Article 415 may account for a participating interest in a bank in accordance with Section 14 of this Title. The financial statements of a bank as referred to in Article 415 shall account for a participating interest in a legal person which is not a bank in accordance with the provisions for banks, with the exception of Article 424 and the first sentence of paragraph 5 notwithstanding. This exception need not be applied with regard to participating interests in which operations are carried on which are directly in line with the banking business.
5. The financial statements of a legal person which is not an insurance company as referred to in Article 427 may account for a participating interest in an insurance company in accordance with Section 15 of this Title. The financial statements of an insurance company referred to in Article 427 may account for a participating interest in a legal person which is not an insurance company in accordance with the provisions for insurance companies, the first sentence of paragraph 4 of this article notwithstanding.
6. The legal person must maintain a (legal) reserve in the amount of its share in the positive results from participating interests and in any direct increases in its equity since the first valuation in accordance with paragraph 2 or paragraph 3. No account shall be taken of any participating interests the cumulative results of which have not been positive since such first valuation. The reserve shall be decreased by any distributions to which the legal person became entitled since the time of adoption of the financial statements and by any direct reduction of capital at the participating interest. Distributions which it may cause to be made without restrictions shall also be deducted. This reserve may be converted into capital. Distributions as referred to in this paragraph shall not include distributions in the form of shares.
7. Where, on a first valuation in accordance with paragraph 2 or paragraph 3, the value is lower than the cost of acquisition or the previous book value of the participating interest, the difference shall be capitalised as goodwill. For the purpose of this calculation the cost of acquisition shall also be reduced in accordance with paragraph 5 of Article 385.
8. Increases or decreases in value of any participating interest due to conversion of the equity invested therein and the conversion of currency of the participating interest into the currency in which the legal person prepares its financial statements shall be reflected in an increase or decrease, as the case may be, of the (legal) currency translation reserve. Differences in the rate of exchange on loans contracted to cover any exchange risks of foreign participating interests shall also be reflected in an increase or, as the case may be, decrease of such a reserve. The reserve may have a negative balance. If the interest in the participating interest is disposed, in full or in part, the reserve shall be reduced by that proportion of the reserve, which relates to the disposed part of such a participating interest. If the reserve for conversion differences has a negative balance, no distributions may be made for the amount of such balance to the debit of the reserves.
9. Paragraph 1 need not be applied where there are well-founded reasons, which shall be disclosed in the notes.
10. Any differences in the shareholders' equity and the results in accordance with the individual financial statements and with the consolidated financial statements of the legal person shall be stated in the notes to the individual financial statements.

Article 390

1. Any increases in value of tangible fixed assets, intangible fixed assets and stocks which are not agricultural stocks shall be reflected in a revaluation reserve. Increases in value in other assets which are valued at their current value shall be reflected in a revaluation reserve unless these are reflected in an increase of the results pursuant to Article 384. The legal person shall furthermore form a (legal) revaluation reserve out of its distributable reserves or out of the

results for the financial year, to the extent any increase in the value of assets which are still present on the balance sheet date was used to increase the results of the financial year. No revaluation reserve shall be formed for assets referred to in the preceding sentence in respect of which there are frequent market quotations. No distributions may be made out of reserves for the amount of deferred losses incurred on financial instruments as referred to in Article 384, paragraph 8, if these were applied to reduce the revaluation reserve. The revaluation reserve may be reduced by deferred tax liabilities in respect of assets which have been revalued at a higher amount.
2. The revaluation reserve may be converted into capital.
3. The revaluation reserve shall not exceed the amount of the difference between the book value based on the acquisition or production price and the book value based on the current value of the assets to which the revaluation reserve relates at the time of their valuation. On the alienation of a particular asset such a reserve shall be reduced by the amount included therein in respect of that item. To the extent that the current value of an asset has fallen below the amount at which it was valued for the purpose of the revaluation reserve, the revaluation reserve shall be reduced by the amount of the reduction in value.
4. Any diminution in the revaluation reserve that has been credited to the profit and loss account shall be shown in a separate item.
5. The notes shall state whether, and in what manner, in connection with the revaluation, the effect of taxation on the assets and liabilities and results has been taken into account.

Section 7 - Directors' report

Article 391

1. The directors' report shall give a true and fair view of the position on the balance sheet date, developments during the financial year and the results of the legal person and of the group companies whose financial information is included in its financial statements. The directors' report shall contain, taking into account the size and complexity of the legal person and the group companies, a balanced and complete analysis of the position on the balance sheet date, developments during the financial year and the results. If necessary for a proper understanding of the developments, the results or the position of the legal person and group companies, the analysis shall include both financial and non-financial performance-indicators, including environmental and personnel matters. The directors' report shall describe the principal risks and contingencies to which the legal person is subject. The directors' report shall be drawn up in the Dutch language unless the general meeting has resolved to use another language.
2. Information shall be given in the directors' report on the business outlook; particular attention shall be paid to investments, financing and number of personnel and circumstances affecting future turnover and profitability to the extent that this is not contrary to its best interests. Information shall be given on activities in the field of research and development. In the directors' report the public company limited by shares shall disclose the information required by Article 82, paragraphs 3 though 9. The effect on the projections of unusual events, which need not be reflected in the financial statements, shall be disclosed. A company limited by shares to which Article 383b applies shall further state the policy of the company as regards the remuneration of its directors and supervisory board members and the manner in which this policy was implemented in practice in the year under review.
3. As regards the use by the legal person of financial instruments and, to the extent that this will be significant for considering its assets, liabilities, financial position and results, the objects and policy of the legal person as regards risk management shall be stated. Attention shall be given to its policy with regard to covering risks attached to all significant types of contemplated transactions. Attention shall further be drawn to the price-, credit-, liquidity- and cash flow risks incurred by the legal person.
4. The directors' report may not be inconsistent with the financial statements. If the giving of the view referred to in paragraph 1 so requires, the directors' report shall contain references to, and provide a supplemental explanation of, items in the financial statements.
5. Further provisions with regard to the content of the directors' report may be set by Regulation. Such provisions may relate in particular to compliance with the Code of Conduct designated in the Regulation as well as to the contents, publication and auditor's report of the corporate governance statement and a non-financial statement as meant in Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms,

amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182),
6. The proposal for the adoption of a Regulation pursuant to paragraph 5 shall be made only four weeks after the submission of the draft to both Chambers of the States-General.

Section 8 - Additional Information

Article 392

1. The management shall supplement the financial statements and directors' report with the following information:
   a. the accountant's report referred to in Article 393, paragraph 5 or information as to the reason for its absence;
   b. information on the provision in the articles relating to the allocation of profits;
   c. details of the provisions in the articles relating to the share in the deficit of a cooperative or mutual insurance society, insofar as these differ from the statutory provisions;
   d. a list of the names of the persons having special rights of control in relation to the legal person pursuant to its articles, particulars of the nature of such rights, unless information is provided in respect of such data in the directors' report pursuant to Article 391, paragraph 5;
   e. details of the number of shares without voting rights and the number of shares that have no or limited rights to the profits or reserves of the company, stating particulars of the nature of those rights;
   f. a list of existing branch establishments and the countries where there are branch establishments and the names under which they trade if different from that of the legal person.
2. The information shall not be inconsistent with the financial statements and directors' report.
3. Where a right as referred to in paragraph 1, subparagraph d is vested in a share, the number of such shares held by each of the parties entitled thereto shall be stated. Where such a right vests in a partnership, association, cooperative, mutual insurance society or foundation, then the names of the directors shall also be stated.
4. The provision in paragraph 1, subparagraph d and in paragraph 3 does not apply to the extent that the Minister of Economic Affairs, upon request, gives dispensation to the legal person on account of important reasons; such dispensation may be given each time for no more than five years. No dispensation may be given from the provision in paragraph 1, subparagraph e, if information in respect of such data must be made in the directors' report by virtue of Article 391, paragraph 5.
5. The management of a foundation or an association as referred to in Article 360, paragraph 3 need not provide the information referred to in paragraph 1, subparagraphs b, and Article 380c in the financial statements and the directors' report.

Section 8a – Report on payments made to governments

Article 392a

1. By Regulation, for the execution of directives of the European Parliament and the Council of the European Union with respect to rules regarding to financial statements, rules shall be set with respect to the obligation of legal persons from certain industries to compose and publish a report or consolidated report on payments they make to governments, and further rules shall be set regarding the contents of this report.
2. The publication of the report, as meant in paragraph 1, shall occur within twelve months after the financial year in the manner as meant in Article 394, paragraph 1, second sentence.

Section 9 - Audit

Article 393

1. The legal person shall give instructions for the audit of the financial statements to a Register Accountant or to an Accountant Administratieconsulent in respect of whom in the accountantsregister an annotation has been made as referred to in Article 36, paragraph 2, subparagraph i of the Wet op het accountantsberoep or to a statutory auditor as meant in Article 27, paragraph 1 of the Wet toezicht accountantsorganisaties. Such instruction may be given to an organisation in which accountants who are qualified to be appointed work together. If a legal person also is a public interest entity as meant in Article 1, paragraph 1, subparagraph l of the Wet toezicht accountantsorganisaties, this legal person shall communicate to the Stichting Autoriteit Financiële Markten which accountant or accountants organisation is contemplated for the execution of an audit engagement regarding the financial statements of the legal person. This communication

shall occur prior to granting that engagement, as meant in the second paragraph. Our Minister of Finance shall set further rules on this communication by ministerial Regulation.

2. The general meeting is authorised to give such instructions. If no such instructions are given by that meeting, or if such a meeting is missing, the supervisory board shall be authorised to do so. If a supervisory board is missing, the management shall be authorised. The appointment of an accountant shall not be restricted to any limited list of candidates. The instructions may be withdrawn at any time by the general meeting and by the body who gave the instructions. Withdrawal of the instructions may only be made for well-founded reasons, which shall not include any difference of opinion on reporting methods or audit activities. The general meeting shall hear the accountant, if he so requests, in respect of the withdrawal of his instructions or an intention to do so which has been communicated to him. The management and the accountant shall notify the Stichting Autoriteit Financiële Markten without delay of the withdrawal of the instructions by the legal person or the intermediate termination thereof by the accountant stating their conclusive justification.
3. The accountant shall examine whether the financial statements provide the view required by Article 362, paragraph 1. He shall also ascertain whether the financial statements satisfy the requirements set by and pursuant to the law; whether the directors' report has been prepared in accordance with this Title and is consistent with the financial statements, and whether the directors' report, in light of the knowledge and understanding of the legal person and its environment obtained during the audit of the financial statements, contains material inaccuracies, and whether the information required by subparagraphs b to f, inclusive, of Article 392, paragraph 1, has been added.
4. The accountant shall report on his audit to the supervisory board and the management and mention therein in any event his findings in respect of the reliability and continuity of the automated data processing.
5. The accountant shall present the outcome of his audit in a report indicating whether the financial statements give a true and fair view. The accountant may issue separate opinions for the individual financial statements and for the consolidated financial statements. The accountant`s opinion shall in any event include:
   a. a reference to the financial statements to which the audit relates and which statutory provisions apply to the financial statements;
   b. a description of the extent of the audit, which in any event shall mention which guidelines were observed for the accountant`s audit;
   c. an opinion whether the financial statements give the required true and fair view and comply with the rules set by and pursuant to the law;
   d. a reference to specific matters in respect of which the accountant draws particular attention, without issuing an opinion as referred to in paragraph 6, subparagraph b;
   e. a mention of shortcomings as a result of the investigation as meant paragraph 3 of this Article, whether the directors' report has been prepared in accordance with this Title and whether the additional information as meant in Article 392 paragraph 1, subparagraphs b to f, has been included.
   f. an opinion on the compatibility of the directors' report with the financial statements;
   g. an opinion whether the directors' report, in light of the knowledge and understanding of the legal person and its environment obtained during the audit of the financial statements, contains material inaccuracies, disclosing the nature of those inaccuracies.
   h. a statement regarding material uncertainties that pertain to events or circumstances that can give rise to a reasonable doubt as to whether the legal person will be able to continue its activities;
   i. a mention of the registered office of the accountants organisation.
6. The accountant's opinion referred to in paragraph 5 shall be in the form of:
   a. an unqualified accountant's opinion;
   b. an opinion subject to a qualification;
   c. an adverse opinion; or
   d. a statement withholding an opinion.

   The accountant shall sign and date the accountant's opinion.
7. The financial statements cannot be adopted if the constituent body empowered to do so has been unable to take cognisance of the accountant's report which should have been appended to the financial statements unless a legitimate reason for the absence of the report is given in the other information.
8. Any interested party may demand the performance by the legal person of the obligation described in paragraph 1.

Section 10 - Publication

Article 394

1. The legal person must publish its financial statements within eight days from their adoption. Publication shall be made by filing a copy prepared entirely in the Dutch language or, if no Dutch language version was made, a copy in the French, German or English language at the Trade Register of the chamber of commerce, if applicable as prescribed by Article 19a of the Handelsregisterwet 2007. The date of adoption and approval should be noted down on the copy.
2. If the financial statements have not been adopted in conformity with the statutory provisions within two months from the end of the period set for their preparation, the management shall publish the financial statements as prepared in the manner provided in paragraph 1 without delay; it shall be stated in the financial statements that they have not yet been adopted. Within two months after judicial avoidance of its financial statements, the legal person must file at the Trade Register a copy of the orders set out in the judgment relating to the financial statements making reference to the judgment.
3. Within twelve months from the end of its financial year the legal person must publish the financial statements in the manner laid down in paragraph 1.
4. Simultaneously with and in the same manner as the financial statements, a copy of the directors' report and of the other information referred to in Article 392 shall be published in the same language or in the Dutch language. The preceding sentence does not apply, except for the information referred to in subparagraphs a and e of Article 392, paragraph 1, if the documents are kept for public inspection at the office of the legal person and a complete or partial copy thereof is obtainable on request at no more than cost. The legal person shall file a notice of this fact for registration in the commercial register.
5. The preceding paragraphs do not apply if the Minister of Economic Affairs has granted dispensation as referred to in Articles 58, 101 or 210, in which case a copy of the document granting dispensation must be filed at the Trade Register.
6. The documents referred to in the preceding paragraphs shall be kept for seven years. The chamber of commerce may transfer information on such records to other data carriers kept by it in the commercial register in lieu thereof, provided such transfer is made with a correct and complete rendering of such information so that the information shall be at the disposal during the entire period in which they must be kept and shall be legible within a reasonable time.
7. Any interested party may claim performance by the legal person of its obligations under paragraphs 1-5.
8. A legal person of which securities are listed at a regulated stock exchange market as referred to in the Financial Supervision Act (Wet op het financieel toezicht) is expected to comply with:
   a. paragraph 1, if their adopted financial statements have been sent to the Stichting Autoriteit Financiele Markten as meant in Article 5: 25.o paragraph 1 of that Act
   b. paragraph 2, first sentence, if they have made an announcement as meant in Article 5: 25.o, second subparagraph of that Act to the Stichting Autoriteit Financiele Markten
   c. paragraph 4, first sentence, if they have forwarded the directors' report and the Article 392 additional information to the Stichting Autoriteit Financiele Markten, as meant in Article 5: 25.o, 4th paragraph of the Financial Supervision Act.

Article 395

1. If the financial statements are published in any way other than in accordance with the preceding article, the accountant`s report referred to in Article 393, paragraph 5 shall be appended thereto in any event. For the purposes of the preceding sentence the financial statements of a legal person to which Article 397 is applicable, also mean the financial statements in the format in which their publication is permitted by that article. If no report is issued the reason therefore shall be stated.
2. If only the balance sheet or the profit and loss account is published, with or without notes thereon, or if the financial statements are published in an abridged form, in a format other than pursuant to the preceding article, this shall be stated unambiguously and reference shall be made to the publication required by law or, if no such publication has been made, with a note to that effect. In such case the accountant`s report referred to in Article 393, paragraph 5 may not be appended. On publication, it shall be stated whether the accountant has issued such a report. When the opinion is issued it shall state the purport referred to in Article 393, paragraph 6 of the accountant`s opinion and whether the accountant has drawn particular attention to specific matters without issuing an opinion as referred to in Article 393, paragraph 6, subparagraph b. If

such report is not issued, the reason shall be stated.
3. If the financial statements have not yet been adopted, this shall be stated with the documents referred to in paragraphs 1 and 2. If information has been given as referred to in the last sentence of Article 362, paragraph 6, this shall also be stated.

Article 395a

1. The paragraphs 3 through 6 apply to a legal person that on two consecutive balance sheet dates, without interruption subsequently on two consecutive balance sheet dates, has met two or three of the following criteria:
   a. the value of the assets according to the balance sheet with disclosures amounts to, based on historical cost and manufacturing cost, no more than € 350.000;
   b. the net revenues during the financial year do not exceed € 700.000;
   c. the average number of employees during the financial year is less than 10.
2. For the application of paragraph 1, the value of the assets, the net revenues and the number of employees of group companies are included, insofar those group companies should be included in the consolidation if the legal person should prepare consolidated financial statements. This does not apply when the legal person applies Article 408.
3. The provisions of paragraphs 3 and 4 of Article 364 with respect to prepayments and accrued liabilities do not apply to the other operating costs as meant in Article 377 paragraph 3 subparagraph j. The legal entity mentions the fact that no accrued assets and liabilities are included in the balance sheet.
4. Of the requirements prescribed pursuant to Section 3, no other need to be applied than those specified in Articles 364 paragraph 1, 365 paragraph 1 subparagraph a and 370 paragraph 1 subparagraph d, 373 paragraph 1, whereby the line items are combined into one line item, 374 paragraph 1 and 375 paragraph 1, whereby the line items are combined into one line item and whereby for the total of the liabilities it is indicated up to which amount the remaining term is at most one year and for which amount the remaining term is longer than one year. Furthermore, a public limited liability company shall state the information referred to in the second sentence of Article 378 paragraph 3 at the bottom of the balance sheet.
5. From the requirements of section 4 only those meant in Articles 377 paragraph 1 subparagraph a with the exception of including the income and expenditure arising from ordinary business activities, 377 paragraph 3 subparagraphs a, d and e, 377 paragraph 3 subparagraph g with the exception of including the other external costs, 377 paragraph 3 subparagraphs h and i where the line items are contracted to one line item, and 377 paragraph 3 subparagraph j, have to be included.
6. Section 5, the requirements of section 6 with regard to the disclosures, and sections 7, 8 and 9 are not applicable.
7. Notwithstanding section 6 of this Title the entity is allowed to apply fiscal measurement principles, that are used to determine taxable profit as meant in chapter 2 of the corporate income tax law 1969, for the valuation of assets and liabilities. If the entity opts for fiscal measurement principles it should apply all the principles that are applicable. The application of this paragraph will be disclosed in the notes. Additional rules could be adopted by a Regulation with regard to the use of these principles and the applicable disclosure notes.
8. Article 394 is only applicable with regard to the limited balance sheet following paragraphs 3 and 4.

Section 11 - Exemptions based on the size of the business of the legal person

Article 396

1. In spite of Article 395a, paragraphs 3 to 8 shall apply to a legal person, which on two consecutive balance sheet dates and, without interruption, on two consecutive balance sheet dates thereafter, satisfies two or three of the following requirements:
   a. the value of the assets according to the balance sheet and notes, on the basis of acquisition and production cost, amounts to no more than € 6,000,000;
   b. the net turnover for the financial year amounts to no more than € 12,000,000;
   c. the average number of employees during the financial year is less than 50.
2. For the purposes of paragraph 1, the value of the assets, the net turnover and the number of employees of group companies which would have been included in the consolidation if the legal person had been obliged to prepare consolidated financial statements shall be aggregated. This does not apply if the legal person applies Article 408.
3. Of the requirements referred to in Section 3, no other need to be applied than those prescribed in Articles 364, 365 paragraph 1 under a, 368 paragraph 2 under a, 370 paragraph 1 under d, 373

paragraphs 1 to 5, first sentence, 375 paragraph 3 and 376, and, without a breakdown by type of liability or receivable, in Articles 370 paragraph 2 and 375 paragraph 2, where the indication of the interest rate is omitted, and the statement of the retained part of the result.

4. In the profit and loss account, the items mentioned in subparagraphs a-d and g of Article 377, paragraph 3, or, as the case may be, in subparagraphs a-c and f of paragraph 4 may be combined to form an item called gross operating result.
5. The statement mentioned in Article 378, paragraph 1 shall be limited to the revaluation reserve save for the second sentence of Article 378, paragraph 3. Articles 379, 380, 381 paragraphs 2 and 3, 381b, introduction and subparagraph a, 382a and 383, paragraph 1 do not apply. The legal person shall disclose the name and residence of the company that composes the consolidated financial statements of the part of the group to which the legal person belongs. The information that is disclosed pursuant to Article 382, is limited to the average number of employees that have been employed by the legal person during the financial year.
6. Notwithstanding section 6 of this Title the entity is allowed to apply fiscal measurement principles, that are used to determine taxable profit as meant in chapter 2 of the corporate income tax law 1969, for the valuation of assets and liabilities. If the entity opts for fiscal measurement principles it should apply all the principles that are applicable. The application of this paragraph will be disclosed in the notes. Additional rules could be adopted by a Regulation with regard to the use of these principles and the applicable disclosure notes.
7. Articles 380c and 380d, 383b to 383e, inclusive, 391, 392 and 393, paragraph 1 do not apply.
8. Article 394 shall apply only in respect of a short-form balance sheet and notes in accordance with paragraph 3. The published notes may omit the information as meant in Article 380a.
9. If the object of the legal person is not the making of profits, it need not apply Article 394, provided it:
   a. immediately and free of charge sends to the creditors and holders of shares in its capital, depositary receipts issued therefore or others to which to right to hold a meeting is attributed, upon their request, the documents referred to in paragraph 7 or makes them available for inspection at the office of the legal person; and
   b. has filed at the Trade Register a report of an accountant certifying that the legal person did not perform any activities during the financial year outside its object and that this article is applicable to it.

Article 397

1. Save for the provisions in Article 396, paragraphs 3 to 7, inclusive, apply to a legal person, which on two consecutive balance sheet dates and without interruption, on two consecutive balance sheet dates thereafter satisfies two or three of the following requirements:
   a. the value of the assets according to the balance sheet and notes, on the basis of the cost of acquisition and production cost, amounts to no more than € 20,000,000;
   b. the net turnover for the financial year amounts to no more than € 40,000,000;
   c. the average number of employees during the financial year is less than 250.
2. For the purposes of paragraph 1 the value of the assets and the legal person's net turnover shall be aggregated according to the consolidation method, and the number of employees of group companies which must be included in the consolidation shall be added to that of the legal person, if the legal person would need to prepare consolidated accounts, unless the legal person applies Article 408.
3. In the profit and loss account the items mentioned in subparagraphs a-d and g of Article 377, paragraph 3, or, as the case may be, in subparagraphs a-c and f of paragraph 4 may be combined to form an item called gross operating result. By means of a proportional figure, the legal person shall state the extent to which the net turnover has increased or decreased in comparison with that of the preceding year.
4. Articles 380 and 382a are not applicable.
5. Of the requirements in Section 3, it is only necessary to mention in the published balance sheet with explanatory notes those that appear in Articles 364, 365 paragraph 1 under a and d, 366, 367 under a-d, 368 paragraph 2 under a, 370 paragraph 1 under b-d , 373, 374 paragraphs 3 and 4, 375 paragraph 1 under a, b, f and g and paragraph 3, as well as 376 and the accruals. Paragraphs 2 of Articles 370 and 375 apply both to the total of the receivables and liabilities and to the items from paragraph 1 of those Articles which require separate disclosure. The profit and loss account to be published and the explanatory notes may be limited in accordance with paragraphs 3 and 4.

6. The information that is required on behalf of Article 381 paragraph 2 is limited to information about the nature and the operational background of the arrangements. Article 381 paragraph 3 is not applicable except for when the entity is an NV, in which case the information as meant in Article 381 paragraph 3 is limited to transactions which are directly or indirectly have been agreed between the entity and her major shareholders and between the entity and the members of the board of directors and supervisory board.
7. The particulars referred to in subparagraphs d and e of paragraph 1 and in paragraph 3 of Article 392 shall not be published.
8. No attention need be given in the directors' report to non-financial performance indicators as referred to in Article 391, paragraph 1.

Article 398

1. Article 395a, Article 396 or Article 397 also apply in respect of the first and second financial year to a legal person which satisfied the requirements concerned on the balance sheet date of its first financial year.
2. Article 395a, paragraphs 3 to 7, Article 396, paragraphs 3 to 8, inclusive, and Article 397, paragraphs 3 to 7, inclusive, apply unless the general meeting has otherwise resolved within six months from the beginning of its financial year.
3. Articles 395a through 397 do not apply to an investment company or a company for collective investment in securities to which Article 401, paragraph 1 applies.
4. By Regulation the amounts mentioned in Article 396, paragraph 1 and Article 397, paragraph 1 shall be decreased, if so required by the law of the European Communities, and the same may be increased, to the extent permitted.
5. Where Articles 396, paragraph 1 and 397, paragraph 1 are applied to a foundation or association referred to in Article 360, paragraph 3, this shall be based on the aggregate assets of the foundation or association and, with due observance of Article 396, paragraph 2, on the net turnover and average number of employees of the undertaking or undertakings maintained by such foundation or association.
6. Article 395a does not apply to a participation company as meant in Article 2, section 15, of Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms, amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182).
7. Articles 395a to 397 do not apply to legal persons that as public interest entity:
   a. have outstanding securities are admitted to trading on a regulated market of a member state as meant in Article 4, section 1 under 14 of Directive 2004/39/EG of the European Parliament and the Council dated 21 April 2004 in respect of markets for financial instruments (PbEU 2004, L 145);
   b. are credit institutions as meant in Article 3, under 1, of Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 with respect to the access to the trade of credit institutions and the prudential supervision of credit institutions and investment companies, amending Directive 2002/87/EG and repealing Directives 2006/48/EG and 2006/49/EG (PbEU 2013, L 176), and that are not institutions as meant in Article 2, paragraph 5 of the aforementioned Directive 2013/36/EU;
   c. are insurance companies as meant in Article 2, paragraph 1 of Directive 91/674/EEG of the Council dated 19 December 1991 with respect to the financial statements of insurance companies (PbEG 1991, L 374); or
   d. are appointed as such by Regulation because of their size or function in society.

Section 12 - Provisions in respect of various types of legal persons

Article 399

[Repealed]

Article 400

Under certain conditions or without any conditions, the Minister of Finance may permit a financial institution which is not a bank as referred to in Article 415, upon application, to apply Section 14, with the exception of Article 424.

Article 401

1. A manager of an investment company, a manager of an icbe, an investment company and a company for collective investment in securities subject to the sub-part on the Conduct of Business Supervision of Financial Undertakings of the Wet op het financieel toezicht (Financial Supervision Act) must, in addition to the provisions in this Title, also comply with the requirements in respect of its financial statements

set by or pursuant to that Act. Pursuant to that Act a manager of an investment company, a manager of an icbe, an investment company and a company for collective investment in securities may derogate from Articles 394, paragraphs 2, 3 or 4 and 403.

2. The investments of an investment company or a company for collective investment in securities referred to in Article 1:1 of the Wet op het financieel toezicht may be valued at market value. Unfavourable price changes, compared with the preceding balance sheet date, need not be charged to the profit and loss account, provided these are set off against reserves. Favourable price changes may be added to the reserves. Such amounts shall be stated in the balance sheet or in the notes thereto.
3. The second sentence of Article 378, paragraph 3 does not apply to an investment company with variable capital.

Article 402

1. If the financial information of a legal person is included in its consolidated accounts, only the result on participating interests after deduction of taxation thereon need be disclosed as a separate item in the profit and loss account. In the notes to the consolidated accounts, it shall be stated that the preceding sentence was applied.
2. This Article does not apply to legal persons as referred to in Article 398 paragraph 7.

Article 403

1. A legal person which forms part of a group need not present its financial statements in accordance with the provisions of this Title, provided that:
   a. the balance sheet shows at least the aggregate of the fixed assets, the aggregate of the current assets and the amount of the equity, the provisions and the liabilities and the profit and loss account shows at least the result on ordinary activities and the balance of any other income and expenditure, in all instances after taxation;
   b. after the commencement of the financial year and before the adoption of the financial statements, the members or shareholders have declared in writing their agreement to derogate from the provisions;
   c. the financial information on the legal person has been consolidated by another legal person or partnership in consolidated financial statements to which, pursuant to the applicable law, the Directive of the European Parliament and the Council on the Application of International Standards for Financial statements, Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms, amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182) or either of both Directives of the Council of the European Communities on the Financial statements and Consolidated Financial statements of Banks and other Financial Institutions or of Insurance Undertakings apply;
   d. the consolidated financial statements if neither written in nor translated into Dutch shall have been made in or translated into French, German or English;
   e. the accountant`s report and the directors' report have been written in or translated into the same language as the consolidated financial statements;
   f. the legal person or partnership referred to in subparagraph c has declared in writing that it assumes joint and several liability for any obligations arising from the legal acts of the legal person; and
   g. the declarations referred to in subparagraphs b and f have been filed at the Trade Register and the documents or translations mentioned in subparagraphs d and e within every six months after the balance sheet date or within one month after a permitted later publication.
2. If, in the group or part of the group, the information of which has been included in the consolidated accounts, the legal person or partnership referred to in subparagraph f of paragraph 1 is juxtaposed with another legal person or partnership, paragraph 1 shall apply only if such other legal person or partnership has also issued a declaration of assumption of liability, in which case subparagraph g of paragraph 1 and Article 404 shall apply, mutatis mutandis.
3. Articles 391-394, inclusive, shall not apply to a legal person to which paragraph 1 applies.
4. This Article does not apply to legal persons as referred to in Article 398 paragraph 7.

Article 404

1. A declaration of assumption of liability, as referred to in Article 403, may be withdrawn by filing of a declaration to that effect at the Trade Register.

2. Nevertheless, the liability shall continue in respect of obligations, which arise from legal acts performed before the withdrawal could be invoked against a creditor.
3. The remaining liability towards a creditor shall cease if the following conditions are satisfied:
   a. the legal person no longer forms part of the group;
   b. a notice of the intention to terminate has been available for inspection for at least two months at the Trade Register;
   c. at least two months have elapsed since publication in a daily newspaper with a national circulation of a notice that such information is available for inspection and where it may be inspected;
   d. a creditor has not in good time opposed such intention or his opposition is withdrawn or declared unfounded by an irrevocable judicial decision.
4. If a creditor so demands, he must be provided with security, or otherwise given a guarantee for the satisfaction of his claims in respect of which liability remains, failing which the opposition referred to in paragraph 5 shall be upheld. This shall not apply if, after the liability has ceased, the creditor has sufficient security that such claims will be satisfied, having regard to the financial condition of the legal person or for other reasons.
5. Within two months after publication of such notice, the creditor in respect of whose claim liability remains may oppose the intention to terminate by filing a petition with the district court for the district where the legal person which is the principal obligor has its principal place of business.
6. The court shall declare the opposition well-founded only after a term set by it for the provision of security specified by it has expired without the same having been provided.

Article 404a

[Repealed]

Section 13 - Consolidated financial statements

Article 405

1. Consolidated financial statements are financial statements in which the assets, liabilities, income and expenditure of legal persons and partnerships constituting one group or part of a group and other legal persons and partnerships included in the consolidation are shown on a unified basis.
2. The consolidated financial statements must give a view of the legal persons and partnerships included in the consolidation in their entirety in accordance with Article 362, paragraph 1.

Article 406

1. A legal person which, solely or jointly with another group company, heads its group shall prepare consolidated financial statements, which shall include its own financial information together with that of its subsidiaries in the group, other group companies and other legal persons over which it can exercise control or of which it conducts the central management.
2. A legal person, to which paragraph 1 does not apply but which has in its group one or more subsidiaries or other legal persons over which it can exercise control or of which it conducts the central management, shall prepare consolidated financial statements. These shall include financial information in respect of the part of the group comprising the legal person, its subsidiaries in the group, other group companies which fall under the legal person and other legal persons over which it can exercise control or of which it conducts the central management.
3. A legal person, which is not a bank as referred to in Article 415 and whose consolidated financial statements, for a significant part, contain the financial information of one or more banks, shall, in its explanatory note, at least provide insight of the solvency of the banks as a whole.
4. A legal person, which is not an insurance company as referred to in Article 427, paragraph 1 and whose consolidated financial statements, for a significant part, provide the financial information on one or more insurance companies shall, in an explanatory note, at least provide insight of the solvency of the insurance companies as a whole.
5. In the consolidated financial statements of a legal person, which is not a bank as referred to in Article 415, Article 424 may be applied in respect of companies included in the consolidation which are banks, jointly with the companies referred to in the second sentence of Article 426, paragraph 1.

Article 407

1. The obligation to consolidate shall not apply in respect of information of:
a. companies to be included in the consolidation, the combined significance of which is not material to the whole,
b. companies to be included in the consolidation, the required information of which can only be obtained or estimated at disproportionate expense or with great delay,
c. companies to be included in the consolidation, the interest in which is only held for disposal.
2. Consolidation may be omitted if:

   a. on consolidation, the limits of Article 396 would not be exceeded;
   b. no company to be involved in the consolidation is a legal person as referred to in Article 398 paragraph 7.
   c. the legal person has not been notified in writing by the general meeting of an objection thereto within six months from the commencement of its financial year.
3. If a legal person administers group companies pursuant to a co-operation arrangement with a legal person, the financial information of which is not included in its consolidated financial statements, it may omit its own financial information from the consolidated financial statements. This shall apply only if the legal person has no activities other than the administration and financing of group companies and participating interests and if it applies Article 389 to its balance sheet.

Article 408

1. A part of a group may be excluded from the consolidation, provided:
   a. the legal person has not been notified in writing by at least one-tenth of its members or by holders of at least one-tenth part of its issued capital of an objection thereto within six months from the commencement of its financial year;
   b. the financial information which the legal person should consolidate has been included in the consolidated financial statements of a larger entity;
   c. the consolidated financial statements and the directors' report have been prepared in accordance with the provisions of Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms, amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182), or in accordance with the requirements of one of the Directives of the Council of the European Communities regarding the financial statements and the consolidated financial statements of banks and other financial institutions or insurance companies or, if these provisions need not be observed, in an equivalent manner;
   d. the consolidated financial statements with the accountant`s report and directors' report, insofar as the same have not been written in or translated into Dutch, have been written in or translated into French, German or English and are all in the same language; and
   e. within every six months from the balance sheet date or within one month after a permitted later publication, the documents or translations mentioned in subparagraph d have been filed at the Trade Register.
2. The Minister of Justice may designate provisions for the financial statements which, with such supplementary provisions as he shall consider necessary, shall be considered equivalent to provisions made in accordance with Directive 2013/34/EU of the European Parliament and the Council dated 26 June 2013 in respect of the yearly financial statements, consolidated financial statements and related reports of certain company forms, amending Directive 2006/43/EG of the European Parliament and the Council and repealing Directives 78/660/EEG and 83/349/EEG of the Council (PbEU 2013, L 182). A revocation of such designation may only relate to financial years which have not yet commenced.
3. In its notes, the legal person must mention the application of paragraph 1.
4. This article does not apply to a legal person of which securities are listed at a regulated stock exchange market as referred to in the Financial Supervision Act (Wet op het financieel toezicht) or a similar system to a regulated market from a country that is not a member state.

Article 409

The financial information on a legal person or partnership may be included in the consolidated financial statements pro rata to the interest held therein if:

a. one or more companies included in the consolidation, jointly with other shareholders, members or partners, can exercise the rights or powers referred to in paragraph 1 of Article 24a in such legal person or partnership pursuant to an arrangement for co-operation; and
b. the view required to be given by statute has been complied with.

Article 410

1. The provisions in this Title on financial statements and parts thereof, save for Articles 365, paragraph 2, 378, 379, 383, 383b to 383e, inclusive, 389, paragraphs 6 and 8, and 390, shall apply, mutatis mutandis, to consolidated financial statements.
2. Stocks need not be broken down if, due to special circumstances, this would entail disproportionate expense.
3. Other valuation methods and bases for the calculation of the results may, for well-founded reasons to be stated in the notes, be applied than those applied by the legal person in its own financial statements.
4. If a foreign legal person jointly heads the group, the part of the group of which it is the head may be included in a consolidation in accordance with its law, provided the effect thereof on the assets and liabilities and results is shown.
5. The information referred to in Article 382 shall be shown in total for all companies included in the consolidation and the particulars referred to in the first sentence of Article 382 shall be shown separately in total for the companies included in the consolidation on a pro rata basis.

Article 411

1. Equity need not be broken down in the consolidated financial statements.
2. The share of the group equity and of the consolidated result not accruing to the legal person shall be disclosed.

Article 412

1. The balance sheet date for the consolidated financial statements shall be the same as for the financial statements of the legal person itself.
2. The consolidated financial statements may never be prepared based on information more than three months prior to or after the balance sheet date.

Article 413

If information on a company is included in the consolidation for the first time and as a result a difference in value arises from an earlier valuation of the interest therein, this difference and the manner of calculation must be stated. If the value is lower, paragraph 7 of Article 389 shall apply to the difference; if the value is higher, the difference shall be included in the group net assets, where this does not reflect any disadvantages related to the participating interest.

Article 414

1. A legal person shall disclose, classified according to the following categories, the name and principal place of business of legal persons and partnerships:
   a. which it includes in full in its consolidated financial statements;
   b. the financial information of which is included in the consolidated financial statements to an extent proportionate to the interest held therein;
   c. in which a participating interest is held which is accounted for in the consolidated financial statements in accordance with Article 389;
   d. which are subsidiaries without legal personality and are not disclosed pursuant to subparagraphs a, b or c;
   e. to which one or more companies or subsidiaries thereof, included in full in the consolidation, solely or jointly and for their own account, contribute, directly or indirectly, at least one-fifth of the issued capital and which are not disclosed pursuant to subparagraphs a, b or c.
2. The following shall also be disclosed:
   a. the grounds on which each company is fully included in the consolidation, unless this consists of the ability to exercise the majority of the voting rights and the contribution of a part of the capital proportionate thereto;
   b. in respect of a legal person or partnership, the financial information on which has been included in the consolidated accounts in accordance with Article 409, the reason for such inclusion;
   c. the reason for the non-consolidation of a subsidiary mentioned pursuant to subparagraph c, d or e of paragraph 1, where applicable;
   d. the part of the issued capital contributed;

   e. the amount of the net assets and results of each company mentioned under subparagraph e of paragraph 1 as shown in its latest adopted financial statements.
3. Where the view required by law benefits from the mention of the name and address of and the part of the issued capital held in a subsidiary to which subparagraph c of paragraph 1 applies, such disclosure may not be omitted, even where the participating interest is not material. Subparagraph e of paragraph 2 does not apply in respect of companies in which an interest of less than one half is held and which lawfully do not publish their balance sheets.
4. Article 379, paragraph 4 shall apply, mutatis mutandis, to the items mentioned under paragraphs 1 and 2.
5. If a legal person has issued a declaration of assumption of liability in accordance with Article 403, the legal persons in respect of which this was issued shall be mentioned.

Section 14 – Provisions for banks (not included)

Section 15 – Provisions for insurance companies (not included)

Section 16 - Judicial procedure (not included)

Appendix B – Terminology

English	Dutch
AFM (Financial Markets Authority)	Autoriteit Financiële Markten
amortisation	afschrijvingen
annual report (financial statements, directors' report and other information)	jaarverslag (jaarrekening, bestuursverslag en overige gegevens)
appropriation of profits	winstbestemming
Article 2:xyz DCC	artikel 2:xyz van BW2 titel 9
articles of association	statuten van een rechtspersoon
associations	verenigingen
Auditors' report	controleverklaring van de onafhankelijk accountant
balance test (or equity test) and liquidity test (as defined in the flex legislation)	Balans- (of vermogenstoets) en uitkerings- (of liquiditeits) toets (in het kader van de flex BV)
bearer share	aandeel aan toonder
best estimate	beste schatting
book value	boekwaarde
business	onderneming
business combination	bedrijfsovername
capitalise (to)	activeren
carrying amount	boekwaarde
Chamber of Commerce	Kamer van Koophandel
closing rate	slotkoers
company	algemeen (nv of bv)
company accounts / individual financial statements	enkelvoudige jaarrekening
comparative figures	vergelijkende cijfers
construction contract	onderhanden project
constructive obligation (provisions)	feitelijke verplichting (voorzieningen)
contingent liability	niet uit de balans blijkende verplichting
contract of employment	arbeidsovereenkomst
contract revenue and -cost (in case of construction contracts)	projectopbrengsten en -kosten (bij onderhanden projecten)
contribution in kind	inbreng in natura
control	overheersende zeggenschap
co-operatives	coöperatie
corporate bond	obligatie lening
current cost price	actuele kostprijs
current value	actuele waarde (actuele kostprijs, bedrijfswaarde, marktwaarde of opbrengstwaarde)
currency translation reserve	reserve omrekeningsverschillen
DAS (Dutch Accounting Standards)	RJ (Richtlijnen voor de jaarverslaggeving)
Decree on model accounts	Besluit modellen jaarrekening (BMJ)
Decree on Valuations	Besluit actuele waarde (BAW)
deductible temporary difference	verrekenbaar tijdelijk verschil

English	Dutch
deferred taxes	latente belastingen
defined benefit plan	toegezegd pensioen regeling
depreciation	afschrijving
derecognition	uit de balans verwijderen / niet langer verwerken
director-owner	directeur-grootaandeelhouder (DGA)
directors' report	bestuursverslag
discontinued operations	beëindiging van bedrijfsactiviteiten
dormant partner	stille vennoot
Dutch Accounting Standards (DAS)	Richtlijnen voor de jaarverslaggeving (RJ)
Dutch corporate law	Nederlands vennootschapsrecht
Dutch corporate Income Tax Act	wet op vennootschapsbelasting
Dutch Tax Authorities	belastingdienst
Dutch VAT	btw
earnings per share	winst per aandeel
employee benefits	personeelsbeloningen
entity	andersoortige organisaties
exchange difference	koersverschil
equity	eigen vermogen
fair value	marktwaarde / reële waarde
final pay	eindloon
financial statements (balance sheet, profit-and-loss account, cash flow statement and notes)	jaarrekening (balans, winst-en-verliesrekening, kasstroomoverzicht en toelichting)
Financial Supervison Act	Wet op het financieel toezicht (wft)
fiscal unity	fiscale eenheid
floating interest	variabele rente
foreign operation	bedrijfsuitoefening in het buitenland
functional currency	functionele valuta
government grants	overheidssubsidies
gross operating result (gross margin)	brutomarge
group company	groepsmaatschappij
group exemption	groepsvrijstelling
historical cost	historische kostprijs
impairment loss (or diminution in value)	(bijzondere) waardevermindering
impracticable	praktisch niet uitvoerbaar
in kind	in nature
initial measurement	waardering bij eerste verwerking
intangible assets	immateriële vaste activa
intermediate holding	tussenhoudster
investment property	vastgoed belegging
inventory	voorraad
legal person, legal entity	rechtspersoon

English	Dutch
legal reserve	wettelijke reserve
liability approach (pensions)	verplichtingen benadering (pensioenen)
limited liability companies	bv (besloten vennootschap)
listed entities	beursgenoteerde ondernemingen
major maintenance (tangible fixed assets)	groot onderhoud (bij materiële vaste activa)
management board	het bestuur, Raad van Bestuur
market value	marktwaarde
measurement (of an asset / liability) (sometimes referred to as 'valuation')	waardering (van een actief / verplichting)
monetary item	monetaire post
NBA (Netherlands institute of chartered accountants)	Nederlandse beroepsorganisatie van accountants
notarial deed of incorporation	akte van oprichting
onerous contract	verlieslatend contract
other information	overige gegevens
outflow of resources	uitstroom van middelen
par value	nominale waarde
participating interest	deelneming
participations	onderneming waarin een belang wordt gehouden
pooling of interest	samensmelting van belangen
present value	contante waarde
private company with limited liability	besloten vennootschap (bv)
probable	waarschijnlijk
private loan	onderhandse lening
public limited company	naamloze vennootschap (nv)
reference	verwijzing
realisable value	opbrengstwaarde
recognition (of an asset or liability)	verwerking (van een actief of verplichting)
recoverable amount	realiseerbare waarde
related parties	verbonden partijen
reliable estimate	betrouwbare schatting
restatement (in case of an error or change in accounting policy)	herstel vergelijkende cijfers (bij een fout of een stelselwijziging)
revaluation	herwaardering
risks and rewards (leasing)	voor- en nadelen (bij leasing)
shareholders' meeting (general meeting of shareholders)	vergadering van aandeelhouders
share-based payments	op aandelen gebaseerde betalingen
shares without rights to profits	winstrechtloze aandelen
shares without voting rights	stemrechtloze aandelen
significant influence	invloed van betekenis
statement of total result	overzicht totaalresultaat

English	Dutch
subordinated loan	achtergestelde lening
subsequent events	gebeurtenissen na balansdatum
subsequent measurement	waardering na eerste verwerking
subsidiary	Meerderheidsdeelneming (deelneming waarover feitelijk beleidsbepalende invloed kan worden uitgeoefend)
Supervisory Board	Raad van Commissarissen
tax base	fiscale waarde
taxable temporary difference	belastbaar tijdelijk verschil
trade portfolio	handelsportefeuille
Trade Register (of the Chamber of Commerce)	Handelsregister (van de Kamer van Koophandel)
value in use	bedrijfswaarde
unused tax losses (carry forward losses)	fiscaal verrekenbare verliezen
useful life (expected) of tangible fixed assets	gebruiksduur (verwachte) van materiële vaste activa
Works Council	Ondernemingsraad

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