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Doing business in the Netherlands

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Introduction

Doing Business in the Netherlands is published by Cox360 B.V., accountants and advisers in IJmuiden. The purpose of this guide is to give you an orientation on the investment environment in the Netherlands. It offers practical information about the country and how to set up a business, choose a legal form, the subsidy schemes, the tax system, labour law and much more. For more detailed information, please do not hesitate to contact us.

Economy

The Netherlands is an open economy that moves with international trends. International economic or financial shocks therefore work through in the Dutch economy mainly via trade. Trade with the United Kingdom, which is no longer part of the EU internal market, is subject to customs formalities and border controls, which structurally increases the cost of doing business with that market. A considerable number of international companies have established or expanded operations in the Netherlands in order to serve the EU market from within the Union.

Price increases have moderated and the Dutch economy shows modest growth. Unemployment is low by historical standards and the labour market is tight in most sectors, which is itself one of the main constraints on growth. Geopolitical tensions, energy prices, the nitrogen emission rules that affect construction and permits, and a persistent housing shortage are the principal points of uncertainty.

For many companies and certainly companies operating internationally it can also be said that the financial situation of these companies (profitability and solvency) is on average in good health. This underlines the attractive investment climate in the Netherlands.

Country and Government

The Netherlands has a population of just over 18.1 million inhabitants (1 January 2026) and is governed by a monarchy. The ministers are the people's representatives with respect to the actions of the government. The head of state does not bear political responsibility and can therefore not be held politically accountable by the parliament. The Netherlands has 12 provinces, each with its own local authorities. The Netherlands, together with the countries of Aruba, Curacao and Sint-Maarten, forms part of the Kingdom of the Netherlands. The islands of Bonaire, Sint-Eustatius and Saba have a separate status and belong to the Caribbean part of the Kingdom.

Location

Most of the major industries in the Netherlands are situated in the country’s western regions. The Port of Rotterdam is one of the biggest ports in the world. The railway line, the ‘Betuweroute’, ensures fast and efficient transport from the port to the European hinterland, including Central and Eastern Europe and even China. Utrecht is a central traffic junction and Schiphol is also home to the main Dutch airport which is also one of the world’s biggest hub-airports. The Low Lands, as the Netherlands is also known, play an extremely important role in the functioning of the transport artery.

Export

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

Finance

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

Right to establish a business

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

A most competitive economy

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

1 Starting a business in the Netherlands

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

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

Dutch law distinguishes two types of companies both of which possess legal personality: the private limited liability company (besloten vennootschap met beperkte aansprakelijkheid - BV) and the public limited liability company (naamloze vennootschap - NV). These forms of legal entities are most commonly used for doing business in the Netherlands.

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

1.1 Private limited liability company (BV)

Incorporation

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

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

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

Share capital

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

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

Shares

A BV may only issue registered shares. Besides ordinary shares, a BV may also issue priority shares, to which certain (usually voting) rights are allocated in the articles of association, and preference shares, which entitle the shareholder to fixed dividends that have preference over any dividends on ordinary shares. Within a given type of share, the articles of association may also create different classes of shares (e.g. A, B and C shares) to which certain specific rights are allocated (e.g. upon liquidation). The voting right is linked to the nominal value of the share. However it is possible to attach different voting rights to classes of shares (even when the nominal values of the various classes are the same). Moreover, it is possible to create non-voting shares and shares without any profit right. Non-voting shares must give a right to profit.

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

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

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

Management structure

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

Board of directors

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

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

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

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

The tasks of the non-executive members therefore extend beyond those of the supervisory director. The one-tier board is even chaired by a non-executive member. The general course of affairs of the company will be the responsibility of all board members (executive and non-executive). The non-executive members in a one-tier board are part of the management board and are therefore subject to director's liability..

General Meeting of shareholders

At least one shareholders' meeting should be held each year. Shareholders' resolutions are usually adopted by a majority of votes, unless the articles of association provide otherwise.

As a rule, the shareholders may not give specific instructions to the board of directors with respect to the management of the company, but only general directions.

Supervisory board

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

Liability

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

In the absence of the minimum capital requirement in the BV creditors may be faced with limited security. In addition to the option of legal redress, in case of directors' liability the law on BVs also offers other legal redress options. Upon any distribution of funds whether this involves repayment of capital or a profit distribution, the management board must first check whether the distribution is not at the expense of the creditors' interests. To do this there is first of all the equity test. Dividend distributions are only possible when the shareholders' equity of the BV is greater than the statutory reserves or the reserves that must be kept according to the articles of association. Secondly a check must be made that after the distribution the BV can continue to pay its debts payable (distribution test). If the general meeting of shareholders decides to distribute a dividend the board must in principle approve the distribution.

If in the light of a distribution test the board does however conclude that after distributing the dividend the BV can no longer meet all its debts payable, the board must refuse to cooperate. If the distribution still takes place, the directors and shareholders may be held liable. They must reimburse the deficit. The law does not define any specific timeline for the amount of the debts repayable. It is assumed that this involves debts over a period of at least
12 months after the distribution.

1.2 Governance and supervision of legal entities

The Governance and Supervision of Legal Entities Act (Wet bestuur en toezicht rechtspersonen) applies to the B.V. This Act is a response to the call for measures to improve the quality of governance and supervision in the semi-public sector. Under this Act the rules that apply for directors and supervisory directors of BVs and NVs also apply for the other legal forms with legal personality.

1.3 Trust

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

1.4 UBO register

In order to prevent money laundering and financing of terrorism in a European context several anti-money laundering directives have been adopted. Part of this anti-money laundering policy is the UBO register. UBO stands for Ultimate Beneficial Owner. The register is not open to the public. Access is limited to competent authorities and the Financial Intelligence Unit, to institutions subject to the Wwft (such as accountants, notaries, banks and tax advisers) in the context of their client due diligence, and to parties that can demonstrate a legitimate interest. The Dutch rules on access are being brought further into line with the sixth anti-money laundering directive (AMLD6).

In the fight against money laundering or financing of terrorism it is considered essential to have sight of the ultimate stakeholder (UBO), being the party that has the ultimate control or who is entitled to the results of the corporate body. The responsibility for investigating the correct UBO data is laid on the so-called institution falling under the WWFT (Wet ter voorkoming van witwassen en financieren van terrorisme - Act to prevent money laundering and financing of terrorism), which includes among others members of professions such as auditor, lawyer, tax adviser and notary. The UBO is at all times a physical person, who can exercise more than 25% of the voting rights in a corporate body or has an interest of more than 25% in it or has the actual control over the corporate body. If it is not possible to trace the UBO by the voting right or ownership structure, it is possible to register a pseudo-UBO in the person of the management. Direct and indirect interests must be totalled here.

Foreign legal entities with only a branch in the Netherlands are not obliged to register UBOs in the Netherlands. They must however be registered in the UBO register of the EU state in which they are established. The UBO will be registered in the commercial register of the Chamber of Commerce. In the case of international structures the setting up of a UBO may not be easy. Consult your adviser
on this.

1.5 Intellectual property

The Benelux Convention on Intellectual Property regulates the provisions regarding the registration, use and protection of intellectual property (trademark and model right = merk- en modelrecht) in the Netherlands, Belgium and Luxembourg and in cooperation with BIP SXM also the trademark registration for Sint Maarten (part of the Kingdom of the Netherlands). Intellectual property includes various forms, such as copyright, database right, trademarks, trademark right, model right or patent.

A registered merkrecht (trademark) is protected for a period of 10 years from the registration date and the protection can be extended by a further 10 years. Renewal must be requested and all due fees paid. The rightful owner is entitled to claim damages for infringement of its rights (such as the use of the trademark by another party).
A model is the new appearance of a utility product. A registered model is protected for 5 years from the registration date onwards and the protection can be extended by 4 periods of 5 years each, up to a maximum of 25 years. Renewal will be effective upon timely settlement of all fees due. The rightful owner is entitled to claim damages for any infringement of its rights (such as the use of the model or design by another party).

The Council of the European Union created the European Union trademark as a legal instrument in EU law and established the European Union Intellectual Property Office (EUIPO). The EUIPO (formerly the OHIM) has financial, administrative and legal autonomy. The result is that this Community trademark system of the European Union enables the uniform identification of products and services of enterprises throughout the European Union. Requiring no more than a single application to EUIPO, the Community trade mark has a unitary character in the sense that it produces the same effects throughout the Community. The Community trade mark contains provisions concerning the registration and use of Community trademarks by (legal) persons and the protection of the rightful owners of such Community trademarks. The unitary patent for Europe offers protection in all EU member states.

2 Subsidies and financing

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

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

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

2.1 Innovation subsidies

Top Sector policy

The Dutch government has defined 10 Top Sectors in which the Netherlands is strong worldwide and to which the government is paying special attention. The Top Sectors are: AgroFood, Horticulture, High Tech, Energy, Logistics, Creative Industry, Life Sciences, Chemicals and Water and Dutch Digital Delta. More venture capital and extra fiscal support should ensure more research and development in companies and institutions that fall within the above sectors.

To achieve this, each top sector has signed an innovation contract in a Public Private Partnership (PPP) with the Dutch government, setting out the innovation agenda. Special programs (MIT-programs) are open for SMEs in each Top Sector for feasibility studies, research and development, cooperation arrangements and research vouchers. If you are active in or with a project in a Top Sector, contact your adviser about the current subsidy options.

WBSO (Wet Bevordering Speur & Ontwikkeling)

WBSO stands for the Dutch Research and Development Act. Technological innovation is extremely important. The competitor never rests. The WBSO will help you if you wish to renew your technical processes or develop new technical products or software by tax allowances for research and development expenditure. The WBSO offers a tax benefit for wage costs and other R&D costs by setting off a percentage of the costs against the wage tax to be deducted. Up until 2016 the WBSO only provided tax allowances for wage costs while other R&D costs, such as the purchase of equipment, were subsidised by the so-called RDA (Research & Development Allowance). The RDA offered a tax benefit, namely an allowance in the income tax or corporate tax return. The WBSO and RDA have been combined into one scheme under the name WBSO. The tax benefit under the WBSO can now only be effected via a wage tax rebate (R&D rebate - S&O-afdrachtvermindering). There is a transitional regulation for R&D costs still outstanding from the previous RDA, where these can be entered in the new scheme as R&D costs in phases.

The level of the R&D rebate depends on the total qualifying costs. R&D projects qualifying for the WBSO can be split into technical-scientific research (technisch-wetenschappelijk onderzoek - WTO), the development of a product and development of a technically new physical product/production process/new software. There are assessment criteria that apply for categories of R&D projects. For pharmacy there is even a separate list of R&D work eligible for the WBSO. Contact your consultant for the specific options and qualifying criteria.

In 2026 the rebate amounts to 36% of the first € 391,020 of the qualifying R&D base and 16% above that amount. For start-up entrepreneurs the rebate on the first € 391,020 is 50%. An application period relates to a minimum of
3 and a maximum of 12 months. An application must be submitted online and at least 1 month before the start of the application period. However for enterprises with personnel the application can be made up to the day before the start of the application period.

Innovation box

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

2.2 Regional subsidies

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

2.3 Investments

MIA (Milieu Investerings Aftrek) (Environmental Investment Deduction Scheme)

The purpose of the Environmental Investment Deduction scheme (MIA) is to stimulate investment in environmentally-friendly capital equipment in fields such as circular economy, agriculture and horticulture, mobility, sustainable buildings and climate and air. Companies that invest in the environment are entitled to additional tax deductions at a percentage of the investment cost. The minimum investment per asset is € 2,500. Depending on the type of investment 45%, 36% or 27% (2026) of the investment amount for which an MIA declaration has been received can be deducted from the taxable profit, on top of the normal depreciation. The scheme is only available for capital equipment listed in the Environment List (Milieulijst), which is updated annually, and the investment must be reported to the Netherlands Enterprise Agency (RVO) within three months of entering into the investment obligation.

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

The purpose of the Energy Investment Deduction scheme (EIA) is to stimulate investment in energy-saving technology and sustainable energy. Companies that invest in energy-saving assets are entitled to additional tax deductions at a percentage of the investment cost. The minimum investment per asset is € 2,500; in 2026 the deduction applies up to an investment amount of € 153 million per calendar year. 40% (2026) of the investment amount for which an EIA declaration has been received can be deducted from the taxable profit. The energy performance requirements and the qualifying capital equipment are set out in the Energy List (Energielijst), which is updated annually, and the investment must be reported to the RVO within three months of entering into the investment obligation.

KleinschaligheidsInvesteringsAftrek (Small-scale Investment Deduction)

The Small-scale Investment Deduction entitles the entrepreneur to make deductions from investments in capital equipment between € 2,901 and € 398,236 in 2026. The deduction amounts to 28% for investments up to € 70,602 and is then gradually reduced as the amount invested increases. You invest in capital equipment in the year in which you buy it and therefore incur a payment obligation. The investment deduction can be applied in the year in question. If you do not intend to use the capital equipment in the year in which the investment is made, then part of the investment deduction is sometimes carried forward to the next year.

2.4 Finance

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

The purpose of the Credit Guarantee Scheme for SMEs (BMKB) is to stimulate credit provision to small and medium-size enterprises (SME or MKB in Dutch). The scheme is designed for companies with a maximum of 250 employees (FTE) with a year turnover up to € 50 million or a balance sheet total up to € 43 million and includes most professional entrepreneurs. If the entrepreneur is unable to provide the bank with sufficient security or collateral to secure a loan, the bank can appeal to the BMKB for the necessary guarantees. The government will then, under certain conditions, provide the security for part of the credit amount. This reduces the level of the bank's risk exposure and increases the creditworthiness of the entrepreneur. Start-up and innovative companies can profit from additional favourable conditions.
The maximum guaranteed credit and the guarantee percentage are set by the government and published by the Netherlands Enterprise Agency (RVO), which also administers the scheme. The guarantee reduces the bank's risk and thereby improves the entrepreneur's access to credit.

The sectors property management, insurance and finance companies, publically insured care, agriculture, horticulture and fisheries are excluded from the scheme because of the set-up of sector-specific schemes.

GO (Garantie Ondernemingsfinanciering) (Corporate Credit Guarantee)

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

Other financial schemes

In addition to the instruments mentioned above, the Dutch government offers the business community an extensive range of financial schemes to enable the businessman to convert ideas more easily and quickly into profitable new products, services and processes. It consists of various financial instruments that are available for innovation and finances rapidly growing innovative enterprises. There are schemes that are open to SMEs and to companies bigger than the SME.

Contact a consultant for detailed information on the current subsidies and financing options.

3 Tax legislation

The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Dutch government is that the tax system may under no circumstances form an impediment for companies wishing to incorporate in the Netherlands. In addition, the Netherlands has also signed tax treaties with many other countries to prevent the occurrence of double taxation. At the same time, its vast network of tax treaties offers instruments for international tax planning. In this context, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings (ATR) / Advanced Pricing Arrangements (APA). Moreover since 2019 the Dutch ruling policy is still only aimed at making agreements in advance with companies who make a considerable contribution to the national economy (so-called economic nexus presence) with an establishment – branch or subsidiary – in the Netherlands and this establishment in the Netherlands is not primarily for tax reasons.

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

- The Netherlands does not charge withholding tax on interest and royalties, except for payments to low-taxation countries and in situations of abuse.
- In most cases all the profits that the Dutch parent company receives from foreign subsidiaries are exempted from tax in the Netherlands (participation exemption).
- The Netherlands offers attractive tax-free compensation in the form of the 30% rule for some foreign personnel who are temporarily employed in the Netherlands.
- A highly competitive system of rates for tax on profits.

Moreover it should be noted that the fiscally attractive establishment climate in the Netherlands does however also have a shadow side because it can be abused to avoid taxation. Partly due to severe great international and national political pressure, the Dutch government is at present tackling companies and individuals that have set up or wish to set up via the Netherlands tax avoidance schemes, to conduct a tax disincentive policy. In addition to the introduction of various European anti-avoidance laws, in the fight against tax avoidance a Controlled Foreign Corporation regime has been introduced with effect from 2019. In addition it is no longer possible to agree an ATR/APA with the Tax Authorities where transactions are involved that relate to companies established in countries included in the Dutch list of low tax countries or the EU list of non-cooperative jurisdictions for tax purposes. Low tax countries are defined as a country with an income tax rate of less than 9%. In the fight against undesirable tax evasion, as a result of European legislation since January 1, 2021 Mandatory Disclosure Rules apply for taxpayers and their consultants.

The Dutch government wants the current fiscal establishment climate as far as possible to serve the business community with a realistic economic presence in the Netherlands.

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

3.1 Corporate income tax

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples of such entities are the NV and BV. Companies based in the Netherlands are taxed on the basis of the companies' local revenues. The question as to whether a company is in effect based in the Netherlands (resident companies) for tax purposes is assessed on the basis of the factual circumstances. The relevant criteria are issues such as where the actual management is based, the location of the head office and the place where the annual General Meeting of shareholders is held. Entities set up under

Dutch law are deemed to be established in the Netherlands. A resident company is in principle subject to Dutch corporate income tax for its profits received worldwide. Non-resident companies may be subject to corporate income in the Netherlands on Dutch-source income. This is outlined later.

Non-resident companies

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

The first way is if the non-resident company operates in the Netherlands using a Dutch permanent establishment or permanent representative. The determination of taxable profits of a permanent establishment/representative is similar to the rules applicable to a subsidiary. A second way to receive Dutch-source income arises if a non-resident company has a so-called substantial interest representing at least 5% of the shares in a company established in the Netherlands, if the main aim or one of the main aims of holding a substantial interest is to avoid the levying of Dutch personal income tax at (in)direct shareholder level and there is an artificial arrangement or a series of artificial arrangements which are not put in place for valid commercial reasons reflecting economic reality. The taxation applies to dividend income and capital gains derived from its Dutch subsidiary.

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

Tax base and rates

Corporate income tax (CIT) is charged on the taxable profits earned by the company in any given year less the deductible losses. The following are the applicable corporate income tax rates for 2021:

Profit from	Profit up to and including	Rate
-	€ 200,000	19%
More than € 200,000		25.8 %

Qualifying profits from self-developed intangible assets are effectively taxed at 9% under the innovation box (see below). In addition, the Minimum Tax Act 2026 (Wet minimumbelasting 2026) implements the EU directive on global minimum taxation: groups with a consolidated annual turnover of € 750 million or more are subject to an effective minimum tax rate of 15% per jurisdiction, levied in the Netherlands through a domestic top-up tax and, where applicable, an income inclusion rule and an undertaxed profits rule.

Losses can be carried back to the previous year and carried forward indefinitely. However, in any given year losses can only be set off against taxable profit up to an amount of € 1 million plus 50% of the taxable profit above that amount. The part of the loss that cannot be used as a result remains available for subsequent years.

This regime applies to losses arising from 1 January 2022 onwards and to losses from earlier years that were still available for carry forward at the end of 2021.

The company profits must be determined on the basis of sound commercial practice and on the basis of a consistent operational pattern. This means, among other things, that unrealized profits do not need to be taken into consideration. Losses, on the other hand, may be taken into account as soon as possible. The system of valuation, depreciation and reservation that has been chosen must be fiscally acceptable and, once approved, must

be applied consistently. The tax authorities will not subsequently accept random movements of assets and liabilities.

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

Valuation of work in progress and orders in progress

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

Arm's Length Principle

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

Limited depreciation on buildings

The annual depreciation is deductible from the annual profits from business operations. The taxpayer is entitled to depreciate the building until the book value has reached the so-called base value. The base value is determined with reference to the WOZ value. The base value is equivalent to the WOZ value (WOZ for 'Wet waardering onroerende zaken' or Real Estate Valuation Regulations). Based on the latter regulations, the value of a building for tax purposes is determined, to the greatest extent possible, on the basis of its value in the economic environment. The tax base value for buildings used as investments is 100% of the WOZ value, which as of 2019 also applies to owner-occupied buildings. The previous tax base value of this type of building was 50% of the WOZ-value.

There is a transitional ruling for buildings taken into use before 2019 and which have not yet been written down over 3 full financial years before 2019. In this case for the remaining period a building in own use can be written down on the basis of 50% of the WOZ. This further restriction in writing down does not apply as of 2019 for the entrepreneurs/natural persons discussed above.

Arbitrary depreciation

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

Innovatiebox (Innovation box)

Companies that have developed intangible assets (an invention or technical application) can deduct the development costs from the company's annual profits in the year in which the asset was developed. Under international pressure, including the OECD initiatives relating to Base Erosion and Profit Shifting, the Innovation Box regulations have been tightened up. The new rules for access to the innovation box apply from January 1, 2017 and their application has been to intangible fixed assets produced after 30 June 2016. The innovation box as a facility is in principle now only open to enterprises with actual economic activities in the Netherlands, where the intention is now only to grant a tax subsidy for an innovation developed in the own enterprise in the Netherlands. The innovation box benefits are then determined in the light of a ratio between qualifying and non-qualifying innovation expenditure (nexus break).

Only 'intangible fixed assets' produced by the enterprise itself can qualify for the innovation box. Purchased intangible fixed assets do not qualify, except that a purchased intangible asset that is then developed further may again qualify if the further development results in a 'new' intangible asset.

Under the new rules access to the innovation box is only open to intangible assets for which a so-called R&D declaration was issued by the Netherlands Enterprise Agency (RVO). This is a departure from the legislation applicable up to 2017, under which holding a patent was already sufficient for the company's option to place the benefits in the so-called innovation box.

Furthermore for access to the innovation box from now on a distinction is made between small and bigger taxpayers. Bigger taxpayers (consolidated group turnover of more than € 50 million per year and turnover from intangible fixed assets of more than € 7.5 million per year) must in addition to an R&D declaration have a recognised legal access ticket. This includes among other things patents, rights similar to patents such as utility models, cultivator rights, drugs and software. Intangible assets that relate to biological crop protection products based on live (micro-)organisms may also qualify for the innovation box. These stricter access requirements of a recognised legal access ticket do not apply for smaller qualifying enterprises as such.

The transitional regime for intangible assets that still qualified under the 'old' innovation box scheme has expired. All taxpayers therefore apply the current rules described above.

The effective rate of corporate income tax for qualifying innovation profits is 9% (2026). Losses on innovative activities can be deducted at the normal corporate income tax rate. The outsourcing of R&D work is also possible if the principal has sufficient activities and knowledge present. It is also possible to include innovation advantages obtained between the application for a patent and the granting of a patent in the innovation box. There is no maximum to the profit taxed at the special rate of 9%.

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

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

Participation exemption

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

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

Under the participation exemption, all benefits derived from the participation are tax exempt. The benefits include dividends, revaluations, profits and losses in the sale of the participation and acquisition and sales costs. The participation exemption also applies to revaluations of assets and liabilities from earn-out and profit guarantee arrangements. If the

value of the participation falls due to losses incurred, devaluation by the parent company is in principle not permitted. Losses arising on liquidation of a participation can under certain conditions be deducted.

With effect from 2021 the conditions have however been tightened up and the following limits introduced:

1. Time limit: a liquidation loss must be taken within a period of 3 years after ceasing operations;
2. Origin limit: only liquidation losses from participations in EU or EEA states may be deducted;
3. Affiliation limit: liquidation losses may only be deducted in the case of a participating interest with 'sufficient' control (often for an interest of over 50%);
4. The origin and affiliation limits only apply for liquidation losses greater than € 5 million.

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

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

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

Controlled Foreign Companies

As of 2019 CFC rules have been introduced, which (further) aim to prevent profit shifting to low taxed jurisdictions. The new CFC ruling ensures that certain 'tainted' income categories of a CFC are included directly in the Dutch tax basis. Examples are income in the form of interest, royalties and dividends.
A corporation qualifies as a CFC if:

1. the Dutch tax paying body – together with a related body or natural person – has a direct interest of more than 50% in a foreign body, or if this is a permanent establishment; and
2. the foreign body or the permanent establishment is in a country with a low statutory income tax rate (less than 9%) or in a country included in the EU list of non-cooperative jurisdictions for tax purposes.

If the foreign company or permanent establishment is qualified as a CFC, undistributed 'passive' income (including interest, royalties, dividends and leasing income) of the CFC are taxed at the level of the Dutch controlling company, unless the activities of the CFC include significant economic activities. The latter is the case when the CFC (a) receives at least 70% non-passive income or (b) meets the Dutch relevant substance requirements, or the CFC qualifies as a financing vehicle for which at least 70% of the tainted benefits are received from third parties. For profits that on the basis of the CFC legislation are already taxed in the Netherlands and later paid out to the Dutch parent company the avoidance of double taxation is provided.

Object exemption for permanent establishments

An object exemption exists for foreign permanent establishments of companies based in the Netherlands. As a result the profits and losses of a foreign permanent establishment do not affect the Dutch tax basis. Final losses of foreign permanent establishments that remain upon cessation (termination) can however still be deducted. The object exemption does not apply to profits from so-called passive permanent establishments in low-taxation countries and to passive income of permanent establishments qualifying as CFCs.

Fiscal unity

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

Fiscal unity is only permissible where all of the companies concerned are effectively established in the Netherlands. The current legislation provides the option to include in the tax consolidation of the fiscal unity a Dutch permanent establishment of a non-resident group. In addition, the parent company and the subsidiaries must also use the same financial year and be subject to the same tax regime.

Dutch legislation also permits a fiscal unity via a foreign company. As a result fiscal unity is permitted between:

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

A fiscal unity with or through a UK company is not possible, as the United Kingdom is not an EU or EEA member state.

On February 22, 2018 the Court of Justice of the European Union (CJEU) concluded that the Dutch fiscal unity is in violation of the EU freedom of establishment. According to the CJEU ruling the Dutch fiscal unity regime may not favour domestic groups by allowing a benefit that is not open to cross-border groups, while such a fiscal unity in cross-border situations is not permitted. As a result, the Dutch government has introduced repair measures which adjust the fiscal unity regime with retroactive effect to January 1, 2018. It is expected that this will ultimately lead to an alternative fiscal consolidation regime.

3.2 Limitations of Interest deduction

Earnings stripping rule

The earnings stripping rule came into effect from January 1, 2019 and applies for financial years beginning on or after this date. The earnings stripping rule is a generic interest deduction for the balance of the interest payable on third-party and group loans. It concerns the difference between the interest charges and interest income relating to loans and similar agreements (balance of interest). Using a fixed percentage of earnings before interest, tax, depreciation and amortisation (roughly speaking the gross operating result, EBITDA) the balance of interest is subject to restricted deduction.

The earnings stripping rule limits the deductibility of net interest expenses to the higher of (i) 24.5% of the EBITDA for tax purposes or (ii) a threshold of € 1 million (2026). For companies whose assets consist largely of immovable property let to third parties the € 1 million threshold does not apply. The rule does not make a distinction between third party and related party interest and is therefore a generic limitation of interest deduction. By taking the EBITDA for tax purposes as the starting point, the interest deduction is linked to the taxable economic activity of a taxpayer.
In the case of fiscal unity the earnings stripping rule is applied at fiscal unity level. Finally the earnings stripping rule applies to both existing and new loans. Interest that cannot be deducted based on the earning stripping rule can be carried forward indefinitely.

Anti-base erosion regulation

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

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

Documentation obligations apply for multinationals regarding their internal transfer prices used between enterprises in the different countries. New obligations relating to the submission of a country-by-country report, a master file and local file. This applies if the consolidated group revenue is more than € 750 million. The ultimate parent company submits the country-by-country report in the country where it is established. The master file contains a summary of the transfer pricing policy of the group. The local file sets out the intracompany transactions of the local enterprise(s). Companies established in the Netherlands that form part of a multinational group with a consolidated turnover of at least € 50 million in the previous year must draw up an OECD-based master and local file for transfer pricing and branch profit documentation purposes. These files must be present in the records at the latest on the last day for submitting the return
(after any extension granted) for the relevant year.

Tax returns

The corporate income tax return must be submitted to the tax authorities as a rule within 5 months of the end of the company’s financial year. If your accountant submits the return a

postponement scheme applies. The ultimate deadline for filing, including extension, is 16 months after the end of the financial year.

3.3 Income tax

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

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

Tax base

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

Each source of income can only be entered in one box. A loss in one of the boxes cannot be deducted from a positive income in another box. A loss generated in Box 2 can be deducted from a positive income in the same box in the previous year (carry back) or in one of the 6 subsequent years (carry forward). Where a loss in Box 2 cannot be compensated, the tax law offers a contribution in the form of a tax credit. This means that 24.5% (2026) of the remaining loss is deducted from the tax burden payable, on condition that no substantial interest exists in the current tax year and the previous year. The tax credit amounts to the Box 2 rate of the remaining loss. A loss in Box 1 can be deducted from a positive income in the same box in the 3 preceding years or in one of the subsequent 9 years. Box 3 does not recognize a negative income.

3.4 Dividend tax

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

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

Exemption

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

- Where, in inland relationships, benefits are enjoyed from the shares, profit-sharing certificates and cash loans of participations to which the participation exemption applies;
- If a Dutch company pays out dividends to a company established in a member state of the European Union/EER and the participation exemption would have been applicable in case the shareholder was a resident in The Netherlands.

As of 2018, the exemption has been extended to qualifying dividends paid to residents (for tax treaty purposes) in a state with which the Netherlands has concluded a tax treaty including a dividend provision;

- The dividend withholding tax exemption is subject to anti-abuse regulations, which entail that the beneficiary of the dividends dividend should not be considered to hold the interest in the distributing entity with the main purpose to avoid taxation with another entity or individual (subjective test) and the arrangement transaction should not be considered artificial (objective test).
- In addition, several specific provisions have been introduced in case the shareholder of the Dutch entity is a hybrid entity. If the distributing entity applies to the withholding tax exemption, the tax authorities should be notified of this within one month after payment.

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

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

Refund scheme for foreign taxpayer

The law includes a provision that provides for the refund scheme for dividend tax for foreign taxpayers (natural person or a legal entity). For foreign taxpayers with a holding in Dutch shares under certain conditions it is possible to request a refund of dividend tax deducted. The shareholder must qualify as beneficial owner of income from shares for which a foreign taxpayer exists. A refund is possible where the dividend tax is higher than the income or corporation tax that would be payable if the relevant taxpayer had been resident or established in the Netherlands. Refund of dividend tax is not granted if the foreign taxpayer is entitled to a full offset of the Dutch tax in the state of residence or establishment based on a tax treaty signed between the Netherlands and the relevant state of residence or establishment.

Tax rate

The tax rate for dividends is 15%. The tax is withheld by the company that pays out the dividends and pays it to the tax authorities. The dividend tax withheld serves as an advance tax payment on income and corporate income tax. The Netherlands has signed tax treaties with various other countries, as a result of which a lower tax rate will apply in many instances.

An additional conditional withholding tax applies to dividend payments to affiliated entities in designated low-taxation jurisdictions and in abusive situations. The rate is equal to the highest rate of corporate income tax (25.8% in 2026). This is an additional instrument to discourage using the Netherlands as a link in undesirable tax avoidance routes.

Proposal for dividend tax exit levy

Parliament is discussing a bill to retain the Dutch dividend tax claim when companies move abroad. This is a conditional levy that involves situations where the registered office is moved to a country with no dividend tax or where a so-called step-up for (potential) distributable profit reserves is granted. For reasons of efficiency a threshold (tax-free allowance) of € 5 million will apply for this scheme. The scheme will apply for registered office moves and cross-border mergers, divisions and share mergers. If one of these taxable conditions occurs, a dividend tax declaration must be submitted with the tax base ‘net profit’ (visible and deferred tax reserves). The recognised paid-up capital and tax-free allowance are then deducted from this amount. Withholding exemptions in participating interests are not affected. In practice this exit levy will in particular affect profit reserves to which portfolio shareholders of listed companies are entitled.

The dividend tax claim is eligible for deferred payment. When a dividend payment is finally made the deferred dividend tax is converted into an immediate deduction borne by the shareholder. In case of regular dividends the dividend tax is withheld by the distributing company. In both situations the dividend tax qualifies as an (offsettable) withholding tax or the final tax levy for the shareholder in question.

In the reverse situation in which a company has moved its registered office to the Netherlands, a step-up applies for the existing ‘net profit’. Another important aspect of the bill relates to legal entities established according to foreign law. For a minimum period of establishment of 2 years in the Netherlands, for this exit levy this company is deemed still to be established in the Netherlands for up to 10 years after moving. The bill provides for a retroactive effect up to 18 September 2020.

3.5 Withholding tax on interest and royalties

The Netherlands levies a withholding tax on interest and royalty payments to affiliated entities in designated low-taxation countries as well as in situations of abuse. The

withholding tax is the same as the highest corporation tax rate (25.8% in 2026). The effect of a tax treaty may mean that the actual rate is lower. Withholding tax arises for payments between affiliated entities. Affiliation here means a case where the shareholder can exercise a direct or indirect decisive influence on the operations of the Dutch entity and must therefore be looked at on a case-by-case basis. A formal interest such as a minimum voting right of 50 % does in any case result in an affiliation. For the levy of withholding tax the receiving entity must be established in a jurisdiction with a tax on profits of a maximum statutory rate of 9 % or in a jurisdiction included in the EU list of non-cooperative jurisdictions (so-called Designated Low-Taxation Jurisdictions).

Another option to tax arises in situations of abuse. These are artificial arrangements where payments are diverted via an entity with marginal substance in non-low-taxation jurisdictions with the decisive motive of evading this withholding tax. An arrangement set up without substantive reasons that reflect the economic reality is regarded as artificial.

3.6 Mandatory Disclosure Rules (MDR)

From January 1, 2021 tax payers and their agents have a disclosure obligation under the so-called Mandatory Disclosure Rules. These rules are the effect of the European Directive dating from 2018 on the mandatory automatic exchange of information in the area of taxation relating to disclosable cross-border arrangements (DAC6). The disclosure obligation (to the Tax authorities) applies for potentially aggressive cross-border tax arrangements. The scope of the rules is still not very clear. It is intended for fiscal arrangements where residents of various countries are involved and which can be used for tax evasion. The disclosure obligation also has retroactive effect to 25 June 2018, in the sense that the disclosure obligation arises for cross-border arrangements in which taxpayers and their agents are involved from 25 June 2018.

3.7 Prevention of double taxation

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

If an income tax component is nevertheless double-taxed as income or corporate income tax, the taxed amount is reduced based on the exemption method (i.e. reduction in double taxation with progression clause) or the credit tax method (i.e. offset of foreign tax). The method to be used is linked to the form of the income component. The reduction of double taxation on the income tax is calculated per income tax box.

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

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

In 2017 the government signed the multilateral treaty on international tax evasion (Multilateral Instrument or MLI). This treaty is a result of the BEPS project against tax avoidance. This treaty offers the opportunity to implement measures against tax evasion in one go, without the need for separate negations and also provides for faster mutual agreement procedures. The MLI bill came into effect as of July 1, 2019 .

3.8 Wage tax

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

Withholding obligation

The Wage Tax Act links the withholding obligation with the presence of an employment relationship, whether or not a notional one. One of the characteristics of an employment relationship is the employer-employee relationship. With the big increase in the labour market of freelancers and self-employed sole traders (ZZP), the importance of delimiting 'whether or not' there is an employment relationship and the associated withholding obligation and social security obligation has grown considerably.
To this end, the so-called law on the Deregulation of the Assessment of Employment Relationships (DBA) was adopted and formally came into force in 2016. Government came up with the law on the Deregulation of the Assessment of Employment Relationships (DBA) to replace the so-called Declaration of Independent Contractor Status (VAR). The VAR in principle indemnifies the client from the risk of a withholding obligation. Under the DBA the client can only still get an indemnification for the absence of a withholding obligation when using the (model) agreements assessed and approved by the tax authority. However, because of the apparent social impact and the implementation problems for this law, the habituation period has been extended repeatedly.
Meanwhile the government has decided to replace the current DBA law with the aim of bringing in new measures in 2021. Until then the DBA law remains in force. Enforcement of the law (i.e. imposing penalties and retrospective assessments) is only aimed at malicious parties and serious cases.

As regards the function of supervisory director or non-executive member of a one-tier board, the income tax section above has already stated that neither relationship constitutes a fictitious employment relationship with a corresponding withholding obligation. There is however still the option, via the opting-in regulation, to create or maintain an employment relationship, for example in the case of a non-executive board member who qualifies for the expat scheme discussed below.

Tax rate

The wage tax rates in 2026 are:

- On the first € 38,883 of taxable income: a percentage of 35.75% is withheld (8.10% wage tax and 27.65% national insurance contributions);
- On the next € 39,543 of taxable income (up to € 78,426): a percentage of 37.56% (wage tax only);
- On all additional income: a percentage of 49.50% is withheld.

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

Taxable wage

For wage tax a broad wage definition is used. Dutch tax legislation allows numerous options for rewarding personnel in fiscally friendly ways. Wage tax is calculated on the full value of the remunerations received by the employee based on the employment contract. The remuneration may take the form of cash, such as a salary, holiday allowances, overtime,

commissions and payments for a thirteenth month. Employees can however also receive remuneration ‘in kind’, such as products from the company or holiday trips. The concept of remuneration also includes various other claims, compensations and provisions.

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

- Fringe benefits (e.g. attention in case of illness);
- Intermediary costs, being costs incurred by the employee on behalf and for the account of the employer;
- Exempt claims and benefits (e.g. pension claims, benefits on death, travel allowance).

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

Working from home has become a permanent feature of Dutch working practice and the tax rules have been adapted accordingly. An employer may pay a tax-free homeworking allowance of a maximum of € 2.45 per day worked at home (2026), alongside the tax-free travel allowance for the days on which the employee travels to work. The two allowances cannot be paid for the same day.

Work expenses scheme

Compensations and provisions to employees are subject to the work expenses scheme. Through this scheme an employer may in 2026 spend a maximum of 2% of the total wage for tax purposes (the 'free scope') up to a total wage bill of € 400,000 and 1.18% on the additional wage bill on untaxed compensations and provisions for employees. As of 1 January 2027 the percentage for the first € 400,000 increases to 2.16%. On the amount above the free scope, the employer pays wage tax in the form of a final levy of 80%.

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

1. *Compensations and provisions that are exempted from final levy payment*
   This includes among other things private use of company car, company bike and reimbursement of fines.
2. *Compensations and provisions belonging to another final levy payment*
   This category includes for example gifts and provisions to a third party and additional assessments not recovered from the employee.
3. *Specific exemptions of work expenses*
   Exempted work expenses include compensations and provisions for business travel expenses by public transport (100% compensation), travel expenses by own transport (max. € 0.25 per km), course costs, study and training, meals during overtime and business travel (see below), extraterritorial costs (the expat scheme; see below), costs of tools and ICT equipment (see below) and products from the company's own sector (see below). For some of the specific exemptions a lump sum applies (see below). A tax-free fixed travel allowance must be based on the journeys actually made; where an employee works partly from home, the fixed allowance must be adjusted accordingly.
4. *Provisions to be valued at zero*
   This includes provision of work clothing, provisions in the workplace, refreshments provided in the workplace.

If and insofar as compensations and provisions do not fall under the above-mentioned exemptions, the employer then has the choice of regarding the (remaining) compensations

and provisions as final levy payment or as regular wage (with the deduction of wage tax from the employee). The employer may indicate compensations and provisions as a component of final levy payment on condition that these do not differ substantially from what is usual in similar circumstances. This means that depending on the nature it is usual to indicate the relevant compensation or provision as a component of the final levy payment. A compensation or provision relating to costs incurred by the employee in relation to the proper exercise of the employment relationship will be qualified as usual rather than the indication of pure salary elements, such as bonuses. With regard to the scope of the compensation or provision this may not be substantially (30% or more) higher than are indicated as usual in comparable circumstances. The additional amount shall be included in the levy as regular wage. For some work expenses such as meals at the workplace, which are taxed by the employer as regular wage different lump sum valuations apply in addition. The final levy payment is then first deducted from the free scope and the additional amount taxed by the employer at 80%.

Group scheme

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

Tools and ICT equipment

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

Company products

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

- These must be products that are not from another sector;
- The maximum discount or compensation per product must be 20% (2026) of the market value (including VAT) of the product;
- The total value of the discount or compensation may not exceed € 500 (2026) per calendar year.

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

Relocation

If an employee is required to relocate for work purposes, the employer is entitled to compensate the employee free of tax for the moving costs for his household goods. In addition the employer may give a tax-free moving expenses allowance of a maximum of € 7,750 (2026). The condition is however that this is a move that is entirely related to the employment. This in any case applies if the employer gives the allowance within 2 years after the employee accepts the new employment (or after transfer) and the employee lives more than 25 kilometres from his work and moves, as a result of which the distance between his new home and his work is reduced by at least 60%.

3.9 The 30% ruling

Foreign employees who are recruited from abroad to work in the Netherlands temporarily qualify, under certain conditions, for the expat scheme (expatregeling, formerly known as the 30% ruling). The scheme entails that the employer is entitled to pay the employee a tax-free remuneration to cover the extra costs of their stay in the Netherlands (extraterritorial costs). In 2026 the compensation amounts to 30% of the salary including the compensation, or 30/70 of the salary excluding the compensation. With effect from 1 January 2027 the maximum is reduced to 27%; employees who were already applying the scheme before 2026 keep the rate of 30% for the remainder of their term. The scheme may only be applied to salary up to the public sector pay cap (WNT standard) of € 262,000 in 2026, so that the maximum tax-free allowance is € 78,600 per year. If the employer reimburses more than the

maximum amount, the excess is subject to wage tax. The scheme applies for a maximum period of 5 years.

Conditions for qualification for the 30% rule

1. The employee is hired from abroad; and
2. The employee has a specific expertise that is scarce or not available at all on the Dutch employment market. This is called the scarcity and expertise requirement. For this the specific expertise the legislator introduced a salary norm; and
3. The employee has lived in the 24 months preceding the first working day in the Netherlands more than 150 km from the Dutch border.

An employee is regarded as fulfilling the conditional specific expertise if the employee's remuneration exceeds a defined salary standard. The salary standard is indexed annually. For 2026 the salary standard is fixed at a taxable annual salary of € 48,013, which corresponds to € 68,590 including the 30% allowance. The salary standard is exclusive of the final levy components and thus exclusive of the 30% allowance. With effect from 2027 the salary standard will be increased substantially, to approximately € 52,500; the increase does not apply to employees who were already applying the scheme before 2026. In most cases no more specific check is made for scarcity, but this is done if for example all the employees with a particular expertise meet the salary standard. The following factors are then taken into account:

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

For employees who carry out scientific research at a designated institution and for physicians in training as specialists there is no salary standard. For employees coming in who are aged under 30 years and have completed a recognised Master's degree a reduced salary standard applies of € 36,497 (2026), which corresponds to € 52,139 including the 30% allowance.

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

150 Kilometre distance limit

The 30% rule only applies if the incoming employee can substantiate that the employee has lived for a minimum period of two thirds of 24 months (i.e. 16 months) outside the 150 kilometre area from the Dutch border preceding the start of the employment in the Netherlands.

Extraterritorial costs

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

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

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

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

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

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

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

The decision is valid for a maximum period of 5 years (8 years until 2018). Should the request be made within
4 months after the start of employment as an extraterritorial employee by the employer, the decision shall be retroactive to the start of employment as an extraterritorial employee. If the request is made later, the decision shall apply starting the first day of the month following the month in which the request is made. The five-year period is reduced by previous periods of stay or employment in the Netherlands.

The partial foreign taxpayer status has been abolished. Employees who were already applying the 30% ruling in December 2023 may, under transitional law, continue to apply the status up to and including 2026. After that, the employee is taxed in Box 2 and Box 3 on worldwide income in the same way as any other resident taxpayer.

3.10 Value Added Tax (VAT)

The Dutch turnover or value added tax system is based on Directive 2006/112/EC - the EU's common system of value added tax (VAT) or 'BTW' in Dutch). This means that tax is charged at each and every stage of the production chain and in the distribution of goods and services. Taxable persons (VAT-registered businesses) charge one another VAT for goods and/or services provided. The taxable person that charges the VAT is required to pay the VAT amount to the tax authorities. If a taxable person is charged VAT by taxable person, it is entitled to reclaim this VAT if the taxable person performs VAT taxable activities itself. By doing so, the system ensures that the end user is effectively responsible for paying the VAT.

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

As a basic rule, VAT returns have to be filed quarterly. On request or as a 'penalty' for late payment, returns may also have to be filed monthly or yearly. For services and goods moving from one EU member state to another EU member state, an intracommunity listing

has to be filed. In principle this return also has to be filed quarterly. However, if the threshold (per quarter) of € 50,000 for goods is met, monthly returns have to be filed. If a taxable person acquires more than € 1,000,000 of goods or has transferred more than € 1,200,000 of goods to other countries per year, Intrastat declarations have to be filed (in principle monthly). All the above returns and declarations help the EU authorities to keep track of goods and services and whether sufficient tax has been paid. It is becoming more common for a member state to request specific data from another member state to tax and penalize a taxable person that did not pay tax or did not follow procedures. Data analysis is often the basis for the requests.

Exemptions

Not all goods and services in the Netherlands are subject to VAT. The following services are VAT exempt: medical services, services provided by educational institutions, most banking services, insurance transactions, services performed by sports organizations and property rentals. Taxable persons that provide exempted services are not entitled to charge VAT for their services. In addition, they are also not entitled to deduct the VAT charged to them for goods and services, however there are some exceptions. Taxable persons that perform both VAT liable and VAT exempt services will assign VAT to those specific services on which VAT is due. A specific pro rata percentage may in that case determine the reclaim rate of VAT on general costs.

Capital goods

The legislation also includes various provisions to limit the VAT deductible. One important provision aims to review VAT on capital goods sold. In the case of tangible capital goods the deductible VAT must be reviewed for a period of 5 years and for 10 years in the case of immovable goods. This is called ‘the capital goods scheme’ or ‘revision period’. The entrepreneur that reclaimed VAT on such acquisitions needs to re-establish the right to reclaim VAT in each of the revision years. Following the first year of use, 20% or 10% of the reclaim basis is attributed to each year. In the first year, the full amount may have to be revised. The reclaim percentage is usually determined on the basis of the revenue (VAT taxable revenue divided by total revenue) or actual use (square meters, time, etc.). The rules and case law are quite specific and should be closely monitored on a case by case basis. So far this ‘revision period’ does not apply for expensive services. The government has meanwhile launched a proposal to apply this review provision for this category of expenditure as well. No commencement date has yet been fixed. This new measure will mainly be for sectors with a relatively big purchases of expensive services, such as the health care, financial and real estate sectors.

The VAT system in the internal European market

The European Union has recognized the free traffic of goods, persons, services and capital in the EU. Performances within the European Union are referred to as the intracommunity supply and acquisition of goods and intracommunity services. VAT is charged based on the destination country principle. This means that goods that cross the border to another EU country are taxed in the destination country. The rules differ considerably for business to business and business to consumer activities. Because the VAT system for B2B supplies between businesses in EU member states is prone to fraud, the European Commission is working on a fundamental reform of the system and on the digitalisation of VAT reporting and invoicing. The proposals have not yet been implemented.

Digital services

Digital services (communication, broadcasting and electronic services) are taxed in the country where the customer is resident. It is not relevant whether or not the customer is (a business) registered for VAT. To facilitate the administration of this, at the same time the ‘mini One Stop Shop scheme’ has been introduced. This scheme offers the business

registered for VAT the option to declare the VAT in one EU member state for the digital services provided to private customers in all Member States. Note that taxable persons supplying digital B2C services in general need two separate and non-contradictory pieces of evidence to determine where their customers are resided (billing address, IP address, bank details, etcetera).

As of January 1, 2019, additional simplifying rules have been implemented for taxable persons providing digital services, specifically electronic services:

1. Taxable persons supplying B2C electronic services in the EU with a turnover under € 10,000 may apply the VAT rate applicable in their own Member State
2. The MOSS scheme can also be used, unlike previously, by taxable persons that are not established in the EU, nor have a fixed establishment
3. Taxable persons using the MOSS scheme may apply the invoicing rules of their own Member State instead of the customer's Member State
4. Taxable persons supplying B2C electronic services in the EU with a turnover under € 100,000 can determine the residence of their customers with one piece of evidence.

For distance sales of goods to private consumers one single threshold of € 10,000 applies in all EU countries. The threshold applies to the total of distance sales of goods including the sale of digital services to consumers in the EU. Once the total amount of such sales within the EU in a year exceeds € 10,000, the consumer must be charged the VAT of the member state in which he is established. The VAT due in the other member state is then declared and paid via the One Stop Shop portal of the (national) tax authority, which is responsible for the further distribution of the VAT paid. These rules have a major impact for EU and non-EU suppliers of goods to private consumers, as well as for market places facilitating such supplies.

There is no VAT exemption on the importation of goods of low value: (EU) VAT is payable upon importation of goods irrespective of the value of the consignment.

The new rules for e-commerce also hold a business liable for the VAT payment on products which are sold to consumers via a platform, in the situation where the platform plays an 'active part' in the purchase and delivery. Examples here are the additional facilitation of orders and the financial transaction. Simply bringing supply and demand together digitally is not sufficient to be classed as playing an active part.

VAT deferment

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

It is also possible to appoint a fiscal representative to make use of the deferment licence. In some cases it is even restricted to using a fiscal representative.

Tax rates

The general VAT rate is 21%. The Netherlands also has a reduced rate of 9%. Goods and services falling under the reduced rate are specified in Table 1 of the Turnover Tax Act (Wet

op de omzetbelasting 1968). This applies, among other things, to foodstuffs, medicines, books, cultural and sporting services and the supply of food and drink in the hospitality sector. The provision of short-stay accommodation (hotels, pensions, holiday homes, caravans and camp sites) is subject to the general rate of 21%. The zero rate is mainly intended for goods exported to outside the EU and for goods supplied to VAT-registered businesses in other EU member states.

4 Personnel

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

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

4.1 Employment relationships

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

Essential features of the employment agreement are: the obligation to perform labour in person in return for pay, and the authority of the other party to give instructions as to how the labour is to be performed. Other agreements lack one or more of these features. The employment agreement itself is not subject to rules as to its form (oral agreements are perfectly valid, although problems as to proof may arise). However, according to Dutch labour law the employer is under the obligation to provide certain information in writing to the employee with respect to the employment agreement. This relates among others to place of work, job title, the date the employment agreement enters into force, remuneration, working hours, terms and conditions relating to holidays and the applicability of any collective labour agreement.

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

Governing law

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

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

Employment law regulations

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

Minimum wage

There is a statutory minimum wage for employees aged 21 or over. In addition there is a minimum wage for employees aged between 15 and 21, the level of which varies according to age. The minimum wage is laid down as an hourly amount, so that the monthly amount depends on the number of hours worked, and is indexed twice a year, on 1 January and 1 July. With effect from 1 July 2026 the statutory minimum wage for employees aged 21 or over is € 14.99 gross per hour, excluding 8% holiday allowance. The duration of a working week may differ by type of business sector and is normally between 36-40 hours. There is also a minimum wage for self-employed contractors. These are people who do not have an employment contract, but work on the basis of a specific agreement, such as the above-mentioned contracting agreement ('aannemingsovereenkomst'). The rule does not apply for self-employed contractors who are hired out.

Collective labour agreements ('CAOs')

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

Trade unions

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

Employment agreements

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

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

- Since January 1, 2020 the aggregate duration of the consecutive employment agreements (with interruptions of not more than 6 months) may not exceed 36 months;

if the aggregate duration is longer than 36 months (interruptions included), the last employment agreement shall be deemed to be an employment for an indefinite period of time.
- The number of consecutive employment agreements must be less than 4. If the number of consecutive employment agreements exceeds 3 (while there are no interruptions of more than 6 months in between the employment agreements), the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

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

The chain provision described above forms part of a wider revision package of the labour and dismissal law, the Balanced Labour Market Act (Wet Arbeidsmarkt in balans/WAB) came into effect as of January 1, 2020. The new legislation also includes the introduction of limiting conditions for so-called standby contracts.

With the introduction of the WAB it has been decided to make a considerable amendment to labour law. The WAB aims for a better balance between permanent and flexible contracts. Flexible work has become more expensive, dismissal slightly easier and as a result cheaper than before. In addition it will be made more attractive for employers to offer employees a permanent contract at a sooner stage.

As from January 1, 2020, flexible work that meets the new legal definition of ‘on-call worker contract’ creates specific new employer’s obligations, including the duty to offer an on-call worker a new employment contract each year with a fixed number of hours. The incentive for offering a permanent contract has been created by introducing a differentiation in employer’s charges, where the social insurance contributions applicable for employees with a permanent contract is more favourable than for an employee without a permanent contract.

4.2 Termination of an employment agreement

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

Probation period

Parties can agree upon a probation period. However, it should be noted that a probation period is subject to strict rules. It is not permitted to include a probation period in temporary employment contracts of a maximum of 6 months. This also applies for a subsequent contract unless the content of the contract differs in essence from the old contract. In a Collective Labour Agreement different rules may apply for probation periods for temporary employment contracts.

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

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

During the probation period both the employer and the employee can terminate the employment contract directly at any time. In order to be valid, the probation period has to be expressly agreed upon by parties in writing. Any deviation from the aforementioned rules will result in a void probation period.
An employment agreement for a fixed period of time will terminate by operation of law at the end of the agreed period of time without formalities.

Summary dismissal

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

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

As regards the grounds for dismissal the WAB introduced aims to simplify the dismissal procedure. The employer can now also combine several grounds for dismissal and in this way (before the court) provide one valid reason for dismissal.

Death of the employee

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

Mutual consent

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

Dismissal procedure

The dismissal procedure is subject to a clearly defined process: dismissal for economic reasons and dismissal in case of long-term sickness will be via the UWV and dismissal for all other reasons, such as personal reasons, is reviewed by the district court. In all cases the employee has the right to a statutory transitional allowance.

Until the introduction of the Work and Security Act (WAB) employees had the right to a transitional allowance intended to be used for training and transferring to a different profession or employer after an employment contract (temporary or permanent) of a minimum of two years. The transitional allowance ruling was also amended with the arrival of the WAB. With effect from January 1, 2020 all employees have the right to a transitional allowance if the employment contract ends on the initiative of the employer. This also applies for notice of termination during the probation period discussed above. Before the introduction of the WAB, for both employees aged 50 years or older and who had been employed for more than 10 years under certain conditions a different scheme applied which could result in a higher transitional allowance than for other employees. This difference in treatment will lapse as from
The amount of the transitional allowance is calculated on the basis of the actual number of days that the employment contract has lasted. The formula for the calculation is equal to A x B, where A stands for the duration of the employment (in days) and B for 1/3 of the gross monthly salary. The gross monthly salary includes gross hourly pay, plus holiday allowance (8%) and other fixed wage components multiplied by the contractual duration of employment per month. The allowance is payable from the 1st day of employment. For 2026 a statutory maximum of € 102,000 applies. For an annual salary of over € 102,000, the maximum transitional allowance is the relevant annual salary, irrespective of the result of the above calculation formula.

Notice

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

After having obtained such approval to terminate the employment agreement, the notice period may be shortened by 1 month. The statutory notice period that has to be observed may vary from 1-4 months, depending of the duration of the employment. An employee whose employment has been properly terminated (i.e. after consent of the UWV and with due observance of the applicable notice period) may nevertheless claim damages on the grounds that he has been unreasonably dismissed (comparable to ‘unfair dismissal’). There is no general rule for the calculation of such damages.

Sham Employment Arrangements Act (Wet aanpak schijnconstructies)

To combat exploitation, underpayment of personnel and unfair competition on the labour market the Sham Employment Arrangements Act (WAS) provides for various measures. One of the measures concerns the supply chain liability for clients to make the correct payment of the agreed wage. This is the case for the hiring of personnel from another employer or in the performance of work by an employee of another employer based on an assignment agreement or contracting agreement. If the latter employee does not receive the (full) wage from his formal employer, this employee must make a claim against his employer and in the

absence of (full) payment this employee has the option of then holding the client jointly and severally liable. The court rules on the joint and several liability of the client. In practice, by assessing contractors for reliability a liability risk may be reduced or avoided.

Another obligation for employers is that they must as a minimum transfer the net legal minimum wage to the employee by bank giro. The net legal minimum wage is equal to the gross legal minimum wage (see above) less the compulsory and permitted deductions, such as pension contributions and wage tax payments. The excess may however be paid in cash. An additional prohibition on deductions and offsets (e.g. for a traffic penalty or damages charged to the employee) applies for the minimum wage or the payment of part of the minimum wage as reimbursement of expenses. An exception to the ban on deductions and offsets has been introduced. Under certain conditions the ban does not apply to the costs of accommodation and healthcare insurance.

4.3 Working conditions

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

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

Foreign Nationals (Employment) Act (Wet arbeid vreemdelingen)

Workers from the European Union, EEA countries (Norway, Iceland and Liechtenstein) and Switzerland do not need special permits to work in the Netherlands. As of July 1, 2018 employees from Croatia can be employed in the Netherlands without the requirement for a work permit. To work legally in the Netherlands, depending on their work situation non-qualifying nationals, however, do need either a work permit (TWV) or a combined permit for residence and work (GVVA).

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

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

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

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

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

The government considers it necessary to make the Foreign National Employment Act more flexible and future-resistant and at the same time to strengthen the position of employees. A proposal to amend the law is expected in the near future.

5 Conclusion

This Abbreviated Doing Business in the Netherlands Guide is a practical guide to help you to deal effectively and efficiently with the most important issues that you might face regarding doing business through a B.V. (Ltd).

Obviously the information contained in this manual is limited. Only the main points are stipulated as a result of which you may need to consult a specialist.

I would be happy tot assist you in the Netherlands,

Wim Cox