Doing Business Guide

The Netherlands

1st Edition

DHW International

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About This Booklet

This booklet has been produced by DHW International for the benefit of their clients and associate offices worldwide who are interested in doing business in the Netherlands.

Its main purpose is to provide a broad overview of the various things that should be taken into account by organisations considering setting up business in the Netherlands.

The information provided is not exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend that anyone considering doing business in the Netherlands or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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Contents

Introduction

Economy

The Dutch economy slowed down by 1.25% in 2013 (Table 1). A slight recovery is anticipated for 2014, with a growth in GDP of 0.5%. In particular, domestic spending is putting pressure on growth: both household and government consumption fell in both years. Investments will grow slightly again in 2014 after slowing down in 2013. Exports are performing well among other things because of a recovery in world trade in 2013. The Netherlands Bureau for Economic Policy Analysis (*Centraal Planbureau* - CPB) predicts that in 2014, the economy will recover and grow by 0.5%.

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

The labour market remains gloomy. Employment will fall due to low production both this year and next. In 2013 unemployment averaged 7% and is expected to rise to 7.5% in 2014. *(Source: According to the CPB's Macro Economic Outlook 2014)*

Table 1. Key data for the Netherlands, 2010–13 (changes per year in %)

	2010	2011	2012	2013	2014
Gross domestic product	1.5	0.9	-1.2	-1.25	0.5
Household consumption	0.3	-1.1	-1.6	-2.25	-1
Unemployment (in % labour force)	4.5	4.4	5.3	7	7.5
Gross investment by companies	-5.7	12.3	-2.9	-11	1.75
Export of goods (excl. energy)	13.4	4.4	1.9	2.75	4.25
Import of goods	11.9	4.7	3.6	-0.25	4

(Source: CPB 2012, Macro Economic Outlook 2014)

Country and government

The Netherlands has a total population of 16.8 million inhabitants (2014) 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 therefore cannot be held politically accountable by the parliament. The Netherlands has 12 provinces, each with its own local authorities.

Location

Most of the major industries in the Netherlands are situated in the country's western regions. The Port of Rotterdam is one of the biggest ports in the world. A new railway line, the '*Betuweroute*', will ensure fast and efficient transport from the port to the European

hinterland. Utrecht is a central traffic junction and Schiphol, the Dutch airport, is growing at a rapid rate. The Low Lands, as the Netherlands is also known, plays 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, Great Britain, France and the United States are the country's main import partners. All these countries, together with Italy, are also the country's most influential export partners.

Finances

The Euro monetary unit was officially introduced on 1 January 2002. The central bank of the Netherlands (*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 in order to contain inflation. Dutch banks offer an extensive range of financial services: some are specialised, while others offer an extremely wide range of services. Dutch banks are reliable: most financial institutions use organisational structures that prevent the possibility of entanglement of interests.

Right to establish a business

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

A competitive economy

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

On their own, letterbox companies (companies only established in the Netherlands on paper), set up in the Netherlands by global enterprises, account for more than €12,000 billion per year. (*Source: Netherlands Broadcasting Foundation* (*Nederlandse Omroep Stichting* - NOS) http://nos.nl/artikel/448307-kamer-wil-af-van-brievenbusfirmas.html.)

Starting business

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

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 entity are most commonly used for doing business in the Netherlands. Another commonly used legal entity in the Netherlands, which is becoming more and more popular, is the cooperative (*coöperatie*).

Other common forms of business entities are sole proprietorship (*eenmanszaak*), foundation (*stichting*), general partnership (*vennootschap onder firma* – VOF), (civil) partnership (*maatschap*), and limited partnership (*commanditaire vennootschap* – CV). None of these possesses legal personality, so the owner(s) will be fully liable for the obligations of the entity.

All entrepreneurs engaged in commercial business and all legal entities have to register their business with the Trade Register (*Handelsregister*) at the local Chamber of Commerce (*Kamer van Koophandel*).

Branch vs. subsidiary

Branch

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

Subsidiary

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

Private limited liability company (BV)

Incorporation

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

While the BV is in the process of incorporation, business may be conducted on its behalf provided that it adds to its name the letters, 'i.o.' (*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 specified par value. There are no requirements for a minimum share capital for a BV. It will be sufficient if at least one share with voting rights is held by a party other than the BV.

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

Shares

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

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

It is not mandatory to include share transfer restrictions in the articles of association. However, if a BV opts to include such restrictions in its articles of association, it will 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

The management 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.

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 interests 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.

Board of directors

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

The articles of association may provide that certain acts of the board of directors require the prior approval of another corporate body such as the shareholders' meeting or the supervisory board. Such a provision is only internally applicable 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 be exonerated if they can prove that they are not responsible for the negligence or improper management.

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 Bill of 6 March 2011 (came into force 1 January 2013) provides a one-tier board structure for NV companies, for BV companies and for companies that are subject to the Large Companies Regime. In a one-tier board, the tasks within the management board are divided among executive and non-executive members of the management board. The executive members will be responsible for the company's day-to-day management, while non-executive members have at least the statutory task of supervising the management performed by all board members. The general course of affairs of the company will be the responsibility of all board members (both executive and non-executive). The non-executive members in a one-tier board are part of the management board, and are therefore subject to directors' liability.

Public limited liability company (NV)

In general, everything mentioned above that applies to the BV also applies to the NV; this section outlines the most significant differences between the NV and the BV.

Share capital and shares

A NV must have an authorised capital. At least 20% of the authorised capital must be issued and at least 25% of the par value of the issued shares must be paid up. The issued and paid-up capital of an NV must amount to at least €45,000.

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

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

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

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

Large NVs and BVs: special requirements

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

- The company's issued share capital, reserves and the retained earnings according to the balance sheet amount to at least €13 million;
- The company, or any other company in which it has a controlling interest, has a legal obligation to appoint a works council; and
- The company, alone or together with a company (or companies) in which it has a controlling interest, normally has at least 100 employees in the Netherlands.

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

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

In addition, such a supervisory board is governed by the following rules:

- The supervisory board will be required to draw up a profile indicating its size and composition, taking into account the nature of the company, its activities and the desired expertise and backgrounds of the supervisory board directors. The profile must be discussed at the general meeting and with the works council before adoption or amendment
- The general meeting will appoint the members of the supervisory board on the recommendation of the supervisory board. The general meeting may, however, reject a recommendation, subject to a requirement for an absolute majority of the votes cast, which must together represent at least one third of the issued share capital. In such situations, the supervisory board may submit a new recommendation, whereas the general meeting will not be authorised to do so. The general meeting will then be asked to vote on the new recommendation.

The works council has the right to make 'strong' recommendations for up to one-third of the total number of supervisory board directors. The supervisory board may only object to a recommendation if it expects the candidate to prove unsuitable and unable to fulfil the duties of a supervisory board director or if appointment of the proposed candidate would result in the supervisory board not being properly constituted. The supervisory board will then consult the works council and, if agreement cannot be reached with the works council, ask the Enterprise Section of the Amsterdam Court of Appeal (*Ondernemingskamer*) to rule on the objection. If the Enterprise Section accepts the objection, the works council will be asked to make a new recommendation. If the objection is rejected, the supervisory board will appoint the nominated candidate.

The general meeting may enforce the collective dismissal of the supervisory board by passing a resolution of no confidence in the board. This will require an absolute majority of the votes cast, which must together represent at least one-third of the issued share capital. The management board and the works council must be granted the option to advise on the proposed resolution and the reasons for it at least 30 days before the general meeting. If the works council has the right to express a view on the proposed resolution, this view must be communicated to the supervisory board and the general meeting by the management board. The works council may explain its view at this general meeting. If the resolution is passed by the general meeting, the supervisory board will be dismissed with immediate effect. The management board must then request the Enterprise Section of the Amsterdam Court of Appeal to appoint one or more supervisory board directors for a temporary period. The Enterprise Section will determine the consequences of the appointment and the date by which a new board must be established. Under certain conditions, companies subject to the structure regime can be fully or partially exempt from these requirements. A supervisory board of a company under a partially exempt structure regime has powers only in approving certain specified decisions/actions of the management board and in appointing the supervisory board.

Cooperative (*coöperatie*)

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

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

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

In general, the members of the cooperative are not liable for the obligations of the cooperative during its existence. In case of dissolution or bankruptcy of the cooperative, the members, and the members who ceased to be members <1 year beforehand, are liable for a deficit on the basis provided for in the articles of association of the cooperative. If a

basis for the liability of each member is not provided for in the articles of association, all shall be equally liable. A cooperative may, however by its articles of association (i) exclude or (ii) limit to a maximum, any liability of its members or former members to contribute to a deficit. In the first case, it shall place at the end of its name the letters 'UA' (*Uitsluiting van Aansprakelijkheid* – exclusion of liability). In the second case, it shall place at the end of its name the letters 'BA' (*Beperkte Aansprakelijkheid* – limited liability). In all other cases, the letters 'WA' (*Wettelijke Aansprakelijkheid* – statutory liability) shall be placed at the end of its name. Most cooperatives choose a system of excluded or limited liability. It is also possible to create different classes of members who are each liable to a different extent (or not at all). If the liability is not excluded ('UA'), a copy of the list stating the members must be filed with the Trade Registry of the Chamber of Commerce. Any changes must be filed within 1 month after the end of each financial year.

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

The cooperative is increasingly used as a holding and financing company. The main reasons are its favourable tax treatment and its corporate flexibility.

Other common forms of business entity

Sole proprietorship (*eenmanszaak*)

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

Foundation (*stichting*)

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

- It has no members or shareholders, and is therefore governed solely by its board
- It is incorporated with the aim of realising a specific goal by using capital designated for that purpose. The goals or objective of a foundation are stipulated in its articles of association.

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

Pursuant to mandatory law, a foundation may not make distributions to its incorporators and the members of its corporate bodies and may only make distributions to other persons if such distributions are of an ideal or social nature (i.e. conservation of the environment, support of poor people or dissemination of culture).

The management board of the foundation may consist of individuals and legal entities. After incorporation, members are appointed by the board itself, unless otherwise stated in

the articles of association of the foundation. The foundation is represented by the entire management board or by board members acting individually.

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

General/commercial partnership (VOF)

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

Partnership (*maatschap*)

Entrepreneurs in professions such as doctors, lawyers and graphic designers often set up partnerships.

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

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

Limited partnership (CV)

A limited partnership is a special form of VOF that has both active and limited (or sleeping/silent) partners. An active partner is active as an entrepreneur and is liable, as in the case of the general partnership. The silent partner, however, tends to finance the business and stays in the background. The silent partner is liable only up to the amount of their capital contribution, and is not allowed to act as an active partner. Their name cannot be used in the name of the partnership. If the silent partner enters the business (to provide extra finance for growth), then they become liable as an active partner.

Trust company

A trust company is entitled to perform corporate trust services for payment, such as the administration and management of a company that conducts business in the Netherlands. A trust company can take care of (required) administrative services, such as the preparation of annual reports. In certain instances, the trust company is the (sole) director of the company for which it provides the services.

Intellectual property

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

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

A design or model is the new appearance of a utility product. A registered model or design is protected for 5 years from the registration date and the protection can be extended by four 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 (for example the use of the model or design by another party).

Copyright Act 1912 (*Auteurswet 1912*) contains provisions regarding the protection of copyrights. Copyright does not require registration in the Netherlands and applies (amongst other things) to literature, dramatic, musical and artistic work, sound recordings, films and computer programs. A copyright expires 70 years after the author's death.

Council Regulation (EC) No. 40/94 on the Community Trademark introduces a system for the award of Community trademarks by the Office for Harmonisation in the Internal Market (OHIM). The Community trademark system of the European Union enables the uniform identification of products and services of enterprises throughout the EU. Requiring no more than a single application to OHIM, the Community trademark has a unitary character in the sense that it produces the same effects throughout the Community. The Community trademark contains provisions concerning the registration and use of Community trademarks by (legal) persons and the protection of the rightful owners of such Community trademarks. A registered trademark is protected for 10 years from the registration date and the protection can be extended repeatedly by subsequent 10-year periods. Renewal must be requested and all fees due settled in good time. The rightful owner is entitled to claim damages for infringement of its rights (for example, the use of the trademark by another party).

Branch or subsidiary

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

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

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

Finding a location

The Dutch office market

The office market in the Netherlands is decentralised, which results in each city having a specific office market:

- Amsterdam (approx. 6.6 million m^2 office stock) focuses on finance and international trade
- The Hague (approx. 4.1 million m^2) is the national administration centre, where the government and public departments are the main users of the local office buildings
- Rotterdam (approx. 3.4 million m^2) has one of the largest ports in the world, as a result of which the office market has a traditional focus on insurance and trade
- Utrecht (approx. 2.6 million m^2) is located in the heart of the country, with a focus on transport and domestic commercial services
- Eindhoven (approx. 1.4 million m^2) and Arnhem (approx. 1.1 million m^2) have strong ties with electronics, chemicals and energy supply.

In general, the office leasing market reflects the trends in the national economy. After 2000, when GDP fell, the demand for office space also dropped, and supply increased rapidly. Like the Dutch economy, take-up levels increased in the period 2004–07. Since 2008, the take-up has decreased due to the changing economic climate. Occupiers are increasingly cautious in decision-making; activity is driven by cost reduction and is focused primarily on good quality, well-located space. The occupiers' approach to leasing new space has put pressure on take-up levels, resulting in only 1 million m^2 of take-up in 2012. Furthermore, supply has been rising in recent years, although the transformation of vacant, obsolete offices has put supply slightly below last year´s figure, at just over 7 million m^2 (approx. 14.5%) for the country. A vast proportion of this supply, however, is obsolete and unlikely to be let in the near future.

Owners are aware of the fact that the market has changed and it has become more difficult to attract new tenants. In all markets, incentives continue to play an important role; incentives are the highest in areas confronted with high vacancy rates.

Within the major cities, relatively stable conditions have prevailed; but interest has weakened outside these key markets. The occupier market in 2012 was driven by some large occupier deals in the first and final quarters of the year, while the second and third quarters registered low occupier activity. Nevertheless, supply levels declined slightly because of transformation processes that were started throughout the year in several locations. Prime rents in the top CBD locations across the country are still stable, while secondary and non-core locations are under downward pressure (Table 2).

Table 2. Rental rates for office space

Location	Prime rent (Jan 2014) Euro/m²/year
Amsterdam – Zuidas	370
Amsterdam – Central	270
Amsterdam – South-East	195
Rotterdam	180
The Hague	175
Utrecht	195
Eindhoven	120

Town planning

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

Lease or buy

The general practice in the Netherlands is to lease office space: approx. 65% of all office buildings are owned by investors. Owner-occupier situations are more common in the industrial real-estate market, although this has also changed over the past 10 years as a result of sale-and-leaseback transactions.

Leasing has advantages, for instance it has a positive impact on the company's cash flow, flexibility, the possibility of off-balance presentation and negotiation on incentives with landlords. Lease contracts can be subject to VAT, which may result in VAT savings in specific situations. Depreciation is an important consideration with respect to the ownership of real estate. Since the beginning of 2007, the possibility for depreciation of real estate has been limited.

Depreciation is exclusively permitted where and insofar as the book value of the building exceeds the so-called 'base value', which depends on the intended use of the building.

Leasing practices and taxes

Offices and industrial

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

In all instances

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

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

More about taxes

The owner and the tenant are each partly responsible for the property tax levied by the local authority (Table 3). Each property is assessed for taxation purposes, known as *onroerende zaak belasting* (OZB). The local government gives a value for the property, and that value applies for 1 year. Each year, the authorities collect the tax. The rate depends on the local authorities; it is a percentage of the value according to the Immovable Property Act. (Act, 15 December 1994.)

Purchase practices and taxes

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

Table 3. General building costs

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

Market outlook

Despite the increased occupier activity in 2011 compared to 2010, the occupier market in 2012 fell back to the lowest take-up in years. Uncertainty in the market, generally caused by the weak economy throughout Europe, has put occupier demand at a low level. Nevertheless, easily accessible locations were popular throughout the year and supply decreased for these locations. Furthermore, non-prime locations saw a renewal of initiatives for office transformations in 2012, resulting in a slight decrease of the total supply in the country. Also, private equity firms that entered the market by purchasing office portfolios lowered the rents in 2012, which resulted in an occupier-friendly market in 2013 and 2014. Nevertheless, demand is expected to remain relatively low throughout the year, with an ongoing focus on cost-cutting. Overall, incentives will remain high and prime rents will remain stable, while secondary rents will be put under downward pressure. Overall, consolidation, cost reduction and lease extensions will dominate the market.

Investment in immovable property

It is possible to make private immovable property profitable by leasing it to private or corporate tenants. The market can be broken down into three fiscal situations, as outlined below.

The Dutch taxation system of income taxes contains a box system:

- Box 1: Taxation of (taxable) income from work and home
- Box 2: Taxation of (taxable) income from a substantial interest in a private company (B.V., >5%)
- Box 3: Taxation of (taxable) income from savings and investments.

Personal investment

In most instances, the income from immovable property is subject to a fixed tax rate via Box 3. In the case of leasing beyond the scope of normal active asset management, the income is not taxed via Box 3, but via Box 1, as income from other work. The balance of the value applicable to the immovable property, at 1 January of each year, minus the financing debts on 1 January is taxed at 1.2% via Box 3. Immovable property subject to tax based on the principles applicable to Box 3 is, in principle, valued at current market value at the reference date. Box 3 is a fixed tax rate for income from immovable property. The actual income, whether rent or lease is irrelevant.

Income from other work

In the case of private entities, income from ordinary investment and speculation does not translate into taxable income from other work. However, where the activities go beyond ordinary active asset management (for example in the case of the preparation and sale of immovable property, where the sales profit is increased by carrying out major maintenance in-house), the work will not be considered normal investment or speculation. The income will be viewed as taxable income where the work has a favourable influence on the financial outcome. The actual lease revenue is taxed in Box 1 at a maximum progressive rate of 52%. The (business) costs are deductible. If the immovable property is sold, the profits (sales value minus the fiscal book value) will also be taxed progressively.

Income from business operations

This is processed in a similar way to that of income from other work.

Depreciation

The annual depreciation is deductible from the annual profits in situations of income from other work and income from business operations. However, as of 1 January 2007, the fiscal book value may not fall below the so-called 'base value'. The base value is equivalent to the WOZ value (*Wet waardering onroerende zaken*; Real Estate Valuation Regulations). If the immovable property is not leased, but used by the company itself, then the base value is equivalent to 50% of the WOZ value.

Private house

A private house is viewed as the complete unit of the house with the garage and other buildings on the property. Houseboats and caravans are also viewed as private houses, on the condition that they are permanently bound to a single address. A private house is only considered as such where the house is owned by the occupant (taxpayer) and where it serves as permanent domicile and not as temporary domicile. The purchase of a private house is subject to transfer tax of 2%.

The 'Own Home' scheme (*Eigenwoningregeling*)

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

The Own Home scheme works as follows: The fixed sum assumed by the legislator for the enjoyment derived from the own home is fiscally expressed in the Own Home fixed sum. The Own Home fixed sum is determined on the basis of a fixed percentage of the value of the house in question. The basis for determining the value of the Own Home is the value of the property, as determined on the basis of the WOZ value. The WOZ value is determined by municipal decree. Certain costs like financing costs (e.g., interest paid on the mortgage) are under certain conditions deductible from the above-mentioned Own Home fixed sum. The financing costs (including interest paid on a mortgage bond) are tax deductible where the loan qualifies as Own Home Debt. With effect from 1 January 2013, the tax deduction is restricted to mortgages with a minimum annuity repayment scheme of 30 years. In other words, to qualify for tax deduction the mortgage scheme should guarantee full mortgage payment within 30 years. Taxpayers with an 'Own Home' and an 'Own Home Debt' as of 31 December 2012 are not affected by this new restrictive tax deduction rule, whether or not the existing debt will be repaid or refinanced. However, an increment of 'Own Home Debt' is subject to the new rules.

The Own Home financing costs are tax deductible at a tax rate of up to 51.5% (2014). Starting in 2014 the tax deduction of Own Home costs is being reduced in stages. Each year the maximum deduction rate is being reduced by 0.5% until the deduction rate reaches 38%. Up until 2013 there was no maximum for the tax deduction rate (up to the maximum income tax rate of 52%).

Subsidies

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

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

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

Innovation subsidies

Top Sector policy

The Dutch government has defined nine 'top sectors' in which the Netherlands is strong worldwide and to which the government is paying special attention: agrofood, horticulture, high tech, energy, logistics, creative industry, life sciences, chemicals and water. More venture capital and extra fiscal support should ensure more research and development (R&D) in companies and institutions that fall within these sectors. To achieve this, each top sector has signed an innovation contract in a Public Private Partnership (PPP or PPs) arrangement with the Dutch government, setting out the innovation agenda. In 2014, special programmes will open for SMEs in each top sector for feasibility studies, R&D, 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.

The Dutch Research and Development Act (*Wet Bevordering Speur & Ontwikkeling 1994 – WBSO*)

WBSO is a tax incentive scheme that forms part of the compensation of salary and wage expenditures for R&D work. It is intended to support technological innovation by supporting the renewal of technical processes or development of new technical products or software.

R&D Allowance (RDA)

The RDA aims to reduce the financial burdens of R&D work. The WBSO provides a tax incentive for the hours worked or labour costs. For other costs, such as the purchase of equipment, the RDA applies. The RDA offers a tax benefit, namely an allowance in the income tax or wage tax return. You are only eligible for the RDA if you also apply for the WBSO incentive scheme (see page 24).

Innovation box

The innovation box provides for a special tax regime for innovation profits to stimulate R&D activities. (This is explained on page 24.)

Regional subsidies

Under the European Fund for Regional Development (European EFRD) programme for 2007–2013, different regions in the Netherlands are conducting their own incentive policy. For 2014-2020 a new EFRD programme is underway. Within this new programme the focus will be on subsiding projects on innovation and research, digital agenda, SME support and low-carbon economy. The various regions in the Netherlands have drafted various incentive plans under this new programme. The regional programmes are in the process of approval by the EU Commission. The subsidy programmes for 2014-2020 are expected to start in the fall of 2014.

Investments

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

The purpose of the MIA is to stimulate investment in environmentally friendly capital equipment. Companies that invest in the environment are entitled to additional tax deductions at a percentage of the investment cost. This scheme is only available for capital equipment listed on the Environment List 2014, which is updated on an annual basis. (*Milieulijst* 2014, http://www.agentschapnl.nl/subsidies-regelingen/miavamil/milieulijst)

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

The purpose of the EIA is to stimulate investment in energy-saving technology and sustainable energy (so-called 'energy investments'). Companies that invest in the energy industry are entitled to additional tax deductions at a percentage of the investment cost. The energy investment deduction is only available for capital equipment that complies with the specified energy performance requirements. The energy performance requirements and the capital equipment that are subject to the energy investment deduction are available in the Energy List 2014, which is updated on an annual basis. (Energielijst 2014, http://www.agentschapnl.nl/subsidies-regelingen/energie-investeringsaftrek-eia/energielijst)

Small-scale Investment Deduction (*KleinschaligheidsInvesteringsAftrek*)

The Small-scale Investment Deduction entitles the entrepreneur to make deductions from investments in capital equipment between €2,300 and €306,931 in 2014. You invest in capital equipment in the year in which you buy it and therefore incur a payment obligation. The investment deduction can be applied in the year in question. If you do not intend to use the capital equipment in the year in which the investment is made, then part of the investment deduction is sometimes carried forward to the next year.

Finance

Credit Guarantee Scheme for SMEs (*Besluit Borgstelling MKB Kredieten - BBMKB*)

The purpose of the BBMKB is to stimulate credit provision to small and medium-size enterprises (SME; MKB, in Dutch). The scheme was designed for companies with a maximum of 250 employees and includes most professional entrepreneurs. If the entrepreneur cannot provide the bank with sufficient security or collateral to secure a loan, the bank can appeal to the BBMKB 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.

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

Corporate Credit Guarantee (*Garantie Ondernemingsfinanciering - GO*)

The GO enables large and medium companies to 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 was established in the Netherlands and if the business activities mainly take place in the Netherlands. You can borrow €1.5–150 million.

SME+ Innovation Fund *(MKB+)*

The SME+ Innovation Fund enables business ideas to be converted more readily into profitable new products, services and processes. The '+' indicates that this scheme is also open to companies bigger than the SME. The SME+ Innovation Fund includes financial instruments that are available for innovation and finances rapidly growing innovative enterprises. The fund comprises of three pillars:

1. The innovation credit: Granted directly to enterprises, the innovation credit encourages development projects (products, processes and services) associated with substantial technical and as a result financial risks. Enterprises have no or insufficient access to the capital market for these projects.
2. The SEED capital scheme: this makes it possible for investors to help technological and creative starters to convert their expertise into usable products or services.
3. Fund-of-Funds: this also improves access to the risk capital market for rapidly growing innovative enterprises.

Environment and energy

Stimulation of Sustainable Energy production (*Stimulering Duurzame Energieproductie - SDE*)

The SDE is an operating subsidy. This means that producers receive a subsidy for sustainable energy generated and not for the purchase of the production installation, as with an investment subsidy. The SDE is aimed at companies and (non-profit) institutions that want to produce sustainable energy. The cost of sustainable energy is higher than that of grey energy, so the production of sustainable energy is not always profitable. The SDE reimburses the difference between the cost of grey energy and that of sustainable energy over a period of 12 or 15 years. This involves a phased introduction of the various technologies. For each phase, the subsidy amount increases per kWh, but the chance that the subsidy will actually be obtained falls. This challenges applicants to invest for the lowest possible operating costs. As of 2014 a SDE+ subsidy excludes the tax benefit of the EIA (see page 25).

Foreign markets

Private Sector Investment Programme (*Private Sector Investeringsprogramma - PSI*)

The purpose of the PSI is to contribute to the sustainable economic development of a number of developing countries with the use of the knowledge and capital available in Dutch companies and institutions. If you are planning to invest in a developing market, but the associated risks are excessively high, PSI might offer a suitable solution. The scheme could contribute to (partial) compensation of your investment costs. The programme applies to selected countries in Africa, Latin America, Asia and Eastern Europe. Foreign companies from a selected number of countries can also apply for the PSI.

Partners for Water (*Partners voor Water - PvW*)

Partners for Water is a programme aimed at combining forces to improve the international position of the Dutch water sector and hence to help provide solutions for world water problems. The PvW programme will run until 2015 and has an annual budget of €9.5 million.

Tax legislation

The tax system in any given country is invariably a crucial factor when companies are seeking a suitable country of incorporation. The view taken by the Dutch government is that the tax system should under no circumstances form an impediment for companies wishing to incorporate in the Netherlands. Within that framework, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called 'advance tax rulings'. In addition, the Netherlands has signed tax treaties with many other countries to avoid double taxation. At the same time, its vast network of tax treaties offers instruments for international tax planning.

Some of the benefits offered by the Dutch tax system include:

- No tax charged at source on interest and royalties
- In most cases, all profits that the Dutch parent company receives from foreign subsidiaries are tax exempt (participation exemption)
- Attractive tax-free compensation in the form of the 30% rule for some foreign personnel who are temporarily employed in the Netherlands.

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

Corporate income tax

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples of such legal entities are the Dutch NV and BV. Companies based in the Netherlands which 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.

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:

1. 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.
2. If a non-resident company has a so-called substantial interest representing at least 5% of the shares in a Dutch company, unless the shares in the Dutch company are held as part

of an active trading business for the investor. In addition, the shares shall not be held mainly to avoid Dutch personal income tax or dividend withholding tax.

3. Non-resident companies could be liable to corporate income tax on the remuneration for formal directorship of companies residing in the Netherlands. As of 1 January 2013, the taxation scope is expanded for fees received for executive management services. Under a tax treaty, the taxation right for these remunerations are mostly allocated to the state of residence of the non-resident company.

Tax base and rates

Corporate income tax is charged on the taxable profits earned by the company in any given year less the deductible losses (Table 4).

Table 4. Corporate income tax rates for 2014.

		Rate
Profit up to and including	€200,000	20%
Profit from	More than €200,000	25%

If a company incurred a loss in any given year, that loss can be deducted from the taxable profit of the previous year or from the taxable profit over 9 subsequent years. The company profits must be determined on the basis of sound commercial practice and on the basis of a consistent operational pattern. This entails, among other things that as yet unrealised 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.

In principle, all business expenses are deductible when determining corporate profits. There are, however, a number of restrictions with respect to what qualifies as a business expense.

Valuation of work in progress and orders in progress

In work and/or orders in progress, profit-taking may no longer 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 transactions 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

As of 2007, certain restrictions apply with respect to the depreciation of business buildings. Effectively, this means that the taxpayer is entitled to depreciate the building until the book value has reached the so-called 'base value', which is determined with reference to the WOZ value (see page 14). Based on the latter regulations, the value of a building is determined, to the greatest extent possible, on the basis of its value in the economic environment. The base value for owner-occupied buildings is 50% of the WOZ value; for buildings used as investments, it is 100% of the WOZ value.

Arbitrary depreciation

In the Netherlands, in principle, 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.

R&D allowance

With effect from 2012, a special allowance for R&D work has been included in corporation tax: the Research and Development Allowance (RDA). This allowance aims to make it more attractive for companies to carry out R&D work. There is already an allowance for wage costs for R&D in the wage tax (S&O Allowance) via the reduced contribution for R&D work. The RDA aims to provide an allowance for non-wage costs and investments relating to R&D. The RDA is taken into account as an extra allowance when determining the profit for tax purposes. For 2014, the allowance is 60% (2013: 54%) of the costs and expenditure determined by the Dutch subsidy agency RVO (see page 49 for contact details) that are directly attributable to R&D recognised in an R&D declaration. The allowance becomes effective in the year of the R&D declaration.

Innovation box (*Innovatiebox*)

In 2007, the patent box was introduced. Companies that have developed intangible assets (an invention or technical application) can deduct the development costs from the company's annual profits in the year in which the asset was developed. As soon as a patent has been granted for the intangible asset, the company can opt to place the benefits in the so-called 'patent box'. Plant variety rights also fall under this. With effect from 1 January 2008, the patent box has been extended with intangible assets for which a patent has not been granted but which have arisen from a R&D project. The taxpayer must have received an R&D declaration for this from the RVO.

With effect from 2010 the patent box was renamed: the innovation box The rate for corporation tax for innovative activities is 5% (2014). Losses on innovative activities can from now on be deducted at the normal corporate income tax rate. The outsourcing of R&D work is also possible if the principal has sufficient activities and knowledge present. With effect from 2011, it is also possible to include innovation advantages obtained between

the application for a patent and the granting of a patent in the innovation box. There is no maximum to the profit taxed at the special rate of 5%.

As of 2013, 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.

To qualify for these tax benefits, a number of conditions must be fulfilled: for example, the intangible assets must contribute at least 30% to the profit that the company receives from the intangible asset. The patent box does not apply to brands, logos, TV formats, software copyrights, etc. 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.

'Participation' refers to a situation where a company (the parent company) is the owner of at least 5% of the nominal paid-up capital of a company that is based either in the Netherlands or abroad (the subsidiary).

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 participation can under certain conditions be deducted.

In principle, 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, of for example, liquid assets, debentures, securities and debts is regarded as an investment. In the latter case, the participant is not entitled to participation exemption, but can appeal for a participation settlement. It is common practice to apply for an advance tax ruling on the qualification of the participation under the participation exemption provision.

Because a number of conditions have to be satisfied in order to apply for the participation exemption, factual and circumstantial changes can affect the tax (exempt) status of participation. In this case, the capital gains or losses on this participation must be partitioned into a taxable and non-taxable part (partitioning doctrine).This doctrine will be codified by a bill released by the Dutch government in 2013. In addition, the bill provides for a participation to be revalued at fair market value once the participation tax regime changes. The revaluation result (positive or negative) is, amongst other qualifying occurrences, added

to a separate reserve (partitioning reserve). The reserve must be released upon disposal of the corresponding participation. A partial disposal triggers a pro rata release. The rules under this bill should apply retroactively as from 14 June 2013. Before its enactment the bill may be subject to amendments due to EU law, the Parent-Subsidiary Directive in particular.

Property exemption for permanent establishment

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

Fiscal unity

If the parent company owns at least 95% of the shares of a subsidiary, the companies can submit a joint application for fiscal unity to the tax authorities, whereby the companies will be viewed as a single entity for corporate income tax purposes. The 95% shareholding should represent 95% or more of the voting rights and at least a 95% entitlement to the subsidiary's capital. The subsidiary is thereby effectively absorbed by the parent company. One of the most important advantages of fiscal unity, and its tax consolidation of companies, is the fact that the losses of one company can be offset 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 permissible only where all of the companies concerned are effectively established in the Netherlands. It is however possible 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.

Restriction on deduction for interest paid on holdings taken over

As of 1 January 2012 there is within the fiscal unity regime a restriction on the deduction for interest paid on a take-over liability. If a Dutch company is taken over with borrowed money, the interest on the take-over liability can, in principle, no longer be set off against the profit of the company taken over. The take-over interest can however still be deducted up to an amount of €1 million or in the case of healthy financing. This is the case if the take-over liability in the year of take-over is not more than 60% of the take-over price. This percentage is then reduced over 7 years, by 5% per year, to 25%. Several exceptions as well as thresholds may be applicable to this restriction rule

Interest deduction restrictions

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

Anti-base erosion regulation

The anti-base erosion rules in Dutch corporation taxation restrict the deduction of financing costs of intragroup loans if these loans in essence relate to the conversion of equity into financing through debt without sound business motives. This comprises loans relating to *inter alia* dividend distributions, repayment of formal and informal capital and capital contributions. On the other hand, the anti-base erosion rules also entail the possibility to overrule this restriction in tax deduction of the relating financing costs if the taxpaying company can demonstrate that the sound business motive for this debt financing or the interest payment is effectively taxed at a rate of 10% or more. With effect from 1 January 2008, it should be noted that the existing anti-base erosion regulation has been tightened up further. The Dutch tax authorities may from now on 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 – though the 'evidence to the contrary ruling' can be used to revoke the deduction of interest.

Restriction on loans for investments in participations

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

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

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

Restriction on deduction for interest paid on holdings taken over

As of 1 January 2012, there is a restriction on the deduction for interest paid on a take-over liability. If a Dutch company is taken over with borrowed money, the interest on the take-over liability can in principle no longer be offset against the profit of the company taken over.

The take-over interest, can however, still be deducted up to an amount of €1 million or in the case of the company not holding too much debt. This is the case if the take-over liability in the year of take-over is not more than 60% of the take-over price. This percentage is then reduced over 7 years, by 5% per year, to 25%. Several exceptions, as well as thresholds, may be applicable to this restriction rule.

Tax declarations

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

Income tax

Income tax is levied on the income of natural entities with domicile in the Netherlands (domestic taxpayers). They are taxed on their full income, wherever it is earned in the world. Any natural person who is not domiciled in the Netherlands, but earns an income in the Netherlands, is liable to pay income tax on the income (foreign taxpayers). Foreign taxpayers can also opt to pay domestic taxes. In the latter instance, the taxpayer is subject to all the rules applicable to domestic taxpayers.

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 (see Box 1: explanation). A loss in one of the boxes cannot be deducted from a positive income in another box. A loss generated in Box 2 can be deducted from a positive income in the same box in the previous year (carry back) or in one of the 9 subsequent years (carry forward). Where a loss in Box 2 cannot be compensated, the tax law offers a contribution in the form of a tax credit. This means that 25% of the remaining loss is deducted from the tax burden payable, on condition that no substantial interest exists in the current tax year and the previous year. The tax credit amounts to 25% of the remaining loss. A loss in Box 1 can be deducted from a positive income in the same box in the 3 preceding years or in one of the subsequent 9 years. Box 3 does not recognise a negative income.

Box 1: Taxable income from work and home

The income from work and home is the sum of:

- The profit from business activities
- The taxable wages

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

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

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

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

Business allowances and exemptions for SME (*MKB in Dutch*)

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

The SME Allowance (*MKB-vrijstelling*) means that entrepreneurs will be entitled to an additional exemption of 14% (2013) of the profits following deduction of the above entrepreneur's allowance (tax allowances).

Box 2: Taxable income from substantial interest

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

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

The tax rate in Box 2 is 25%. For 2014 only the first €250,000 of taxable Box 2 income rate is subject to a rate of 22% and the remaining at the standard rate of 25%.

Box 3: Taxable income from savings and investments

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

The assets in Box 3 include:

- Savings
- A second house or holiday house
- Properties that are leased to third parties
- Shares that do not fall under the substantial interest regime
- Capital payments paid out on life insurance.

Liabilities in Box 3 include consumer loans and mortgage bonds taken out to finance a second house. Per person, the first €2,900 (2014) of the average debt is not deductible from the assets.

Untaxed assets

All taxpayers are entitled to untaxed assets in Box 3 of €21,139 (2014). The amount is intended to reduce the yield base. Taxpayers aged 65 and older are entitled to an extra increase up to a maximum of €27,984 (2014) under certain conditions. A fixed return of 4% is then calculated on the amount remaining after deduction of the exemption. The tax rate is then paid on this return. The tax rate in Box 3 is 30%.

Tax allowances

Once the due tax has been calculated for each box, certain tax allowances are deducted from those amounts. All domestic taxpayers are entitled to a general tax allowance of €2,103 (2014). As of 2014 the general tax allowance is reduced by 2% of the taxable income from work and home exceeding €19,645, but with a maximum of €737. Depending on the personal situation of the taxpayer and the actual amount of the annual income, the taxpayer may also be entitled to additional tax deductions.

Advance tax payments

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

Tax declaration

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

Dividend tax

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

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

The company (liable for withholding the tax) that pays out the dividend is bound to withhold the dividend tax and to pay it to the tax authorities.

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 an EU member state and the company holds at least a 5% share of the Dutch company.

Tax rate

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

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

Prevention of double taxation

Residents of the Netherlands, and companies 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. These treaties are largely modelled on the OECD Model Treaty for the prevention of double taxation.

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

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

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

Wage tax

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

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 '13th 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.

A claim is a right to receive a benefit or provision after a period of time or subject to certain predetermined conditions. One example of the latter is the right to receive retirement benefits. Examples of provisions include tools, meals, public transport tickets, etc. 'Compensation' normally refers to amounts that the employer pays its employees to cover costs incurred by the employee in the fulfilment of their job.

Tax rate

The wage tax rates in 2014 are:

- On the first €19,645 of taxable income: 36.25% is withheld (5.1% wage tax, 31.15% social security premium)
- On the next €13,718 of taxable income: 42% is withheld (10.85% wage tax, 31.15% social security premium)

- On the next €23,168 of taxable income: 42% is withheld
- On all additional income: 52% is withheld.

When withholding the wage tax, the employer must also take into account the general tax allowance and the labour allowance (as outlined earlier).

The employer, rather than the employee, is liable for certain taxable components of the wage – the so-called 'final levy' components. Certain forms of compensations in kind are eligible for final levy payment, such as traffic fines not charged to the employee and benefits with an economic value of a maximum of €272 on an annual basis and a maximum of €136 per benefit (for example, a gift voucher or a bottle of wine). An important example of a compulsory final levy component is a redundancy payment for an older employee; this actually qualifies as an early retirement payment.

Pseudo final levy on high salaries

In 2013, as a temporary crisis levy, the pseudo-levy on high salaries was introduced. Initially it was only intended to apply for 2013. The levy has been extended by one year and also applies for 2014. This final levy (for account of the employer) is 16% and is calculated on the annual salary, where this salary for the employee is more than €150,000.

Work expenses scheme

Since 1 January 2011, a new wage tax scheme has applied for compensations and provisions to employees: the work expenses scheme. Through this scheme, in 2014 an employer may spend a maximum of 1.5% (2013: 1.5%) of the total wage for tax purposes (the 'free scope') on untaxed compensations and provisions for employees. In addition, certain things can continue to be paid or given untaxed. These are expenses for which the business character prevails (specific exemptions). There are also expenses that fall under the scheme, but for which a zero valuation applies.

On the amount above the free scope, the employer pays wage tax in the form of a final levy of 80%. The work expenses scheme has replaced the old rules for free compensations and provisions. Employers are not yet obliged to use the work expenses scheme. Up until 2014, it is possible to choose each year either the work expenses scheme or the old rules for free compensations and provisions. From 2015, the work expenses scheme will apply for all employers. For employers not yet choosing the work expenses scheme, the following old rules for compensations and provisions apply.

Tax-free compensations and provisions

Not all compensations and provisions are taxable components of the wage. Compensations are tax free in as far as they are deemed to be issued to cut costs, liabilities and depreciations with respect to the proper fulfilment of the employment contract. Compensations paid by the employer to the employee, and which are not generally perceived by society as remuneration and which society considers the reasonable duty of the employer to pay or provide, are also included in the latter category. A 'free' compensation is always paid out

in the form of cash, while a 'free' provision could also be provided in the form of goods and services. The concepts are considered equivalent to the greatest extent possible. If something can be provided untaxed, then it can generally also be compensated untaxed. Certain forms of compensation and provisions are, however, only exempted up to a certain limit, and in some instances standard amounts apply.

The following are a number of 'free' compensations and provisions.

Travel expenses

Employers are entitled to pay their personnel untaxed compensation of €0.19 (2014) per km for daily commuting and other work-related travel, regardless of the means of transport used. When using public transport, the employer is entitled to choose between the completely untaxed compensation of the actual cost of the public transport or an untaxed compensation of €0.19 per km. Alternatively, the employer may provide the employee with a car (in case of any private use of the car, a percentage of the catalogue price must be added to the employee's taxable income).

Coffee and refreshments

Expenses for refreshments taken during work hours (for example coffee, tea, confectionery and fruit) may be provided untaxed. The employer is entitled to provide the above items free of tax without the need for documentary proof, to the value of €2.75 per week or €0.55 per day (2014).

Meals

Meals may be provided untaxed provided that the business character is of more than incidental interest. The value of a meal at a company canteen is set at the fixed amount of €2.40 (2014) for a coffee, meal or breakfast and €4.60 (2014) for a cooked meal.

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 unique to the industry in which the company operates
- The maximum discount or compensation per product must be 20% (2014) of the market value of the product
- The total value of the discount or compensation may not exceed €500 (2014) per calendar year. If in any calendar year the employee does not make use of this facility, any remaining amounts may be carried forward for a maximum of 2 calendar years.

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

Study/training

Study and/or training expenses incurred by the employee with a view to obtaining an income can be compensated free of tax. This includes study and course fees, and the cost of study books and other study materials. The following items are exceptions, and are taxed:

compensation for costs related to a work room or study space, including its design and furnishing; and compensation for foreign travel, insofar as the compensation exceeds €0.19 per km.

Relocation

If an employee is required to relocate for work purposes, the employer is entitled to compensate the employee free of tax for the costs of moving house. In addition, the employer may give a tax-free moving expenses allowance of a maximum of €7,750 (2014), on condition that the move 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 km from work and moves in order to reduce the distance between home and work by at least 60%.

Courses and congresses

Employers are entitled to compensate employees free of tax for the cost of courses, congresses, seminars, symposiums, excursions, study trips and so forth. This also covers the related travel (maximum €0.19 per km) and accommodation. This must, however, involve professional expenses.

Representation costs

The cost of receptions, festivities, gifts, promotional gifts and entertainment, including the associated travel (maximum €0.19 per km) and accommodation, can also be tax compensated. This must, however, involve professional expenses.

The 30% ruling

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

Conditions for qualification for the 30% rule :

1. The employee has a permanent job
2. The employee has a specific expertise that is scarce or not available at all on the Dutch employment market (referred to as the 'scarcity and expertise' requirement). For this the specific expertise, the legislator introduced a salary norm.

An employee is regarded as fulfilling the conditional specific expertise if the employee's remuneration exceeds a defined salary standard. The salary standard is indexed annually. For 2014, the salary standard is fixed at a taxable annual salary of €36,378 (2013: €35,770) or

€51,968 including the 30% allowance (2013: €51,100). This salary standard of €36,378 (2014) is excluding the final levy components and thus excluding the 30% allowance. In most cases, no further checks are 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:

- The employee's level of the training
- The employee's relevant experience
- The pay level of the present job in the Netherlands in relation to the pay level in the employee's country of origin.

For scientists and employees who are physicians in training, as specialists, there is no salary standard. For employees coming in who are aged under 30 years and have completed their Master's degree, there is a reduced salary standard of €27,653 for 2014 (2013: €27,190) or €39,504 including the 30% allowance.

As of 2013, the 30% ruling is amended with a rule on post-departure remuneration. Now, 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. This amendment comes into effect retroactively from 1 January 2012.

150-km limit

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

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 (e.g., hotel costs), because the employee will continue their residence in the country of origin.

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

- The overseas posting allowance, bonuses and comparable compensations (foreign service premium, ex-pat allowance, overseas allowance)
- Loss of assets
- The purchase and sale of a house (reimbursement of house purchase expenses, agent's fee)
- The compensation for higher tax rates in the Netherlands (tax equalisation).

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 1964*).

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, as long as it can be demonstrated that the costs incurred are justifiable.

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

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

In addition, the employee with the 30% ruling can also submit an application for registration as a partial foreign taxpayer for tax purposes in the Netherlands, by declaring themselves as a foreign taxpayer in Boxes 2 and 3 (see page 31). In that case, as a foreign taxpayer the income to be reported is limited to Dutch source income, and not to its worldwide (investment) income.

Value Added Tax/VAT (*BTW,* in Dutch)

The Dutch turnover or value-added tax system is based on the European Directive concerning tax on added value. This entails that tax is charged at each and every stage of the production chain and in the distribution of goods and services. Businesses charge one another VAT for goods and/or services provided. The company that charges the VAT is required to pay the VAT amount to the tax authorities. If a company is charged VAT by another company, it is entitled to deduct the VAT amount from VAT due on the company's

part. By doing so, the system ensures that the end user is effectively responsible for paying the VAT. Foreign companies that perform taxed services in the Netherlands are in principle also liable to pay VAT. Those companies, too, will be required to pay the VAT due in the Netherlands and will therefore also be able to claim the VAT invoiced to it by Dutch companies. The VAT system entails strict invoicing rules. The rules are determined by the mandatory EU Directive on VAT invoicing rules and implemented by EU member states in their national VAT Law. As of 1 January 2013, new invoicing rules apply that introduce *inter alia* electronic invoicing, along with simplification of invoicing exemptions and information requirements.

Exemptions

Not all goods and services in the Netherlands are subject to VAT. The following services are VAT exempt: medical, services provided by educational institutions, most banking services, insurance transactions, services performed by sports organisations, and property rentals. Companies that provide exempted services are not entitled to charge VAT for their services; nor can they claim VAT charged to them for goods and services. Companies that perform both VAT-liable and VAT-exempt services will assign VAT to those specific services on which VAT is due.

The VAT system in the internal European market

Europe has recognised the existence of an internal European market since 1 January 1993. Since that date, the EU has recognised the free traffic of goods, persons, services and capital in the EU. Performances within the European Community are referred to as the intracommunity supply and acquisition of goods and intracommunity services. VAT is charged based on the 'destination country' principle: goods that cross the border to another EU country are taxed in the destination country. With effect from 1 January 2010, there is a new main rule for business-to-business (B2B) services, which are now usually taxed in the country where the customer is established or has a permanent establishment.

Tax rates

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

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

Excise and other duties and taxes

Excise duty

The Netherlands charges excise duties on alcoholic beverages, tobacco, fuel and other mineral oils. Manufacturers, traders and importers pay excise duties to the tax authorities. The Excise Duty Act (*Wet op de accijns*, 31 October 1991) in the Netherlands is fully harmonised with the applicable EU directives.

Environmental taxes

The Netherlands charges the following environmental taxes:

- Tax on mains water: All companies and households pay tax on a maximum amount of 300 m^3 of water per connection per annum. The rate is €0.33 per m^3, up to 1 July 2014. From 1 July 2014 on the rate is related to the amounts used, starting at €0.33 and reducing up to €0.05) per m^3
- Fuel tax: Fuel tax is paid by the producers and importers of coal. The rate is €14,27 (2014) per 1,000 kg coal
- Energy tax: The purpose of energy tax is to reduce CO_2 emissions and to reduce energy consumption. The energy tax is charged to the user of the energy (natural gas, electricity and certain mineral oils). The rates are related to the amounts used, whereby the rates are progressively reduced as consumption increases
- Waste tax: As of 1 April 2014 the waste tax is being reintroduced. The tax rate is €17 per 1,000 kg of landfill
- Bank tax: As of 1 October 2012, legal entities carrying out banking activities inside the Netherlands are subject to bank taxation. The bank tax is levied on unsecured debt. The rate is 0.044% (2014) for short-term debt (term of less than 1 year) and 0.022% for longer-term debt
- Insurance premium tax: Insurance premium tax is levied upon the conclusion of an insurance contract with an insurer. The insurance premium tax rate amounts to 21% of the premium due. Some types of insurance contract – such as health insurance, unemployment insurance, accident, transport, disability and life insurance – are exempt from this taxation. The insurance premium tax imposed is paid by the designated intermediaries and insurers.

Personnel

Finding and retaining personnel is essential for the existence and growth of an organisation. Companies are distinguished by the personnel they employ. Dutch tax legislation (see page 24) allows numerous options for rewarding personnel in fiscally friendly ways.

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

Employment relationships

According to Dutch law, three different general types of agreement are used to determine the rights and duties of persons performing activities in the course of a business for another party:

1. The employment agreement (*arbeidsovereenkomst*) is the most common agreement
2. 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
3. The contracting agreement (*aannemingsovereenkomst*) 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 of proof may arise). However, according to Dutch labour law, the employer is obliged 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). In principle, 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 that 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': 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 (passed 28 January 1971) and the Working Conditions Act (passed 18 March 1991). As a result of the unification of Europe, Dutch regulations are increasingly influenced by European treaties and case law of the European Court of Justice. Furthermore, employment regulations are laid down in the Collective Labour Agreements.

Minimum wage

There is a statutory minimum wage for employees aged 23 or over. In addition, there is a minimum wage for employees aged between 15 and 22, the level of which varies according to age. These minimum wages are indexed and may be adjusted twice a year on 1 January and 1 July (as of January 2014, the statutory minimum wage for employees aged 23 or over is €1,485.60 gross per month, excluding 8% holiday allowance).

Collective labour agreements (CAOs)

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

Trade unions

Although the influence of trade unions in the Netherlands is generally waning, trade unions are still well organised in the manufacturing industry and the semi-public sector or privatised sector. The most important trade unions are the National Federation of Christian

Trade Unions (*Christelijk Nationaal Vakverbond*; CNV) and The Netherlands Trade Unions Confederation (*Federatie Nederlandse Vakbeweging*; FNV). The main employers' association is the Confederation of Netherlands Industry and Employers (VNO-NCW).

Employment agreements

An employment agreement may be agreed for an indefinite or fixed period of time. If an employment agreement for a fixed period of time is continued, then a new agreement will 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 apply:

1. The aggregate duration of the consecutive employment agreements (with interruptions of not more than 3 months) may not exceed 36 months; if the aggregate duration is longer than 36 months (interruptions included), then the last employment agreement shall be deemed to be an employment for an indefinite period of time
2. The number of consecutive employment agreements must be less than four. If the number of consecutive employment agreements exceeds three (while there are no interruptions of more than 3 months in between the employment agreements), then the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

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. Various ways for employment agreements to terminate are outlined below.

Probation period

Parties can agree upon a probation period. However, it should be noted that a probation period is subject to strict rules. A probation period for maximum of 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 of 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. 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 these rules will result in a void probation period.

Lapse of the agreed period

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

Summary dismissal

The employment agreement can be terminated for urgent cause; for instance, if the employee has committed a serious crime – such as, but not limited to, theft or fraud. Before a summary dismissal can be given, all circumstances must be taken into consideration. Dismissal must be given without delay; usually, only the time necessary to investigate the facts is allowed. The grounds for 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. It is therefore important to consult a legal advisor before deciding on a summary dismissal.

The employee may challenge the dismissal within 6 months, stating that s/he is still employed and thus entitled to pay. Alternatively, the employee may acquiesce in the termination of the employment, but claim damages on the basis that the grounds for dismissal were not valid. As a risk containment measure, it is advisable to file for dissolution of the employment (see below).

Death of the employee

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

Mutual consent

The employment agreement can be terminated by mutual consent; the entitlement to unemployment benefits still exists unless the employee themselves have taken the initiative for termination, or has acted in such a way that there is an urgent cause for summary dismissal.

Dissolution by the Court

The Court can terminate the employment agreement through dissolution, though the employer will need a sound reason to have the contract dissolved in this way – for example company restructuring and non-performance of the employee. The proceedings will take around 6–8 weeks. No notice period is called for; the Court sets the termination date in its verdict (usually at a date around 2 weeks after the verdict). The Court can grant a severance payment to the employee in the case where the employment agreement is dissolved. A rule of thumb for calculating severance (Cantonal Court Formula) is widely used. It is based on age, years of service, salary and circumstances. A rough indication for severance due is 1 month's salary for every year of service.

The Cantonal Court Judges may take into consideration the employee's position on the job market, the employer's financial position and the position of older employees who are close to retirement.

No appeal is possible against the decision of the Court, either to dissolve the employment contract or to grant a severance payment, apart from exceptional cases where the Court has clearly failed to apply the law correctly.

Notice

An employer wishing to terminate an employment agreement for an indefinite period of time can give notice to the employee observing the notice period; fixed-period employment agreements 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 Employee Insurance Agency (UWV) before serving the notice of termination, stating the reason(s) for the intended termination. The UWV approval procedure will usually take about 2 months, as long as the reasons for termination are clear.

Once approval to terminate the employment agreement is obtained, the notice period may be shortened by 1 month. The statutory notice period can vary from 1 to 4 months, depending on the duration of 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 grounds of unreasonable dismissal (comparable to 'unfair dismissal'). There is no general rule for the calculation of such damages.

The Work and Security Act also results in a change to the dismissal procedure. There will be a clearly defined route: dismissal for economic reasons will be via the UWV and dismissal for personal reasons is reviewed by the district court. In all cases the employee has the right to a statutory transition allowance.

In the new situation after an employment contract of a minimum of 2 years, employees will have the right to a transition allowance intended to be used for training and transferring to a different profession or employer. The allowance depends on the duration of the contract and is 1/3 of the monthly salary per year of service and 1/2 the monthly salary for each year of service where the employee was employed for more than 10 years. The maximum allowance is €75,000 or one annual salary for employees with an annual salary of over €75,000, this bill still has to be formally adopted.

Working conditions

By comparison with international worker protection standards, 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 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 organising 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 urged 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 (e.g., the occupational health medical examination). Under certain circumstances, the employer's own employees may provide this assistance, provided they are certified to this end.

Immigration law

Workers from EEA countries (EU, Norway, Iceland and Liechtenstein) do not need special permits to work in the Netherlands. Non-EEA nationals and Bulgarian and Romanian nationals, however, do need work permits to work legally in the Netherlands. As of 1 January 2014 the Foreign Nationals (Employment) Act is being amended. The employer applies for the residence permit. There are different types of residence 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 residence permit for a search year is possible. This residence permit gives the right to find an appointment as a highly skilled migrant within 1 year.

Residence permit

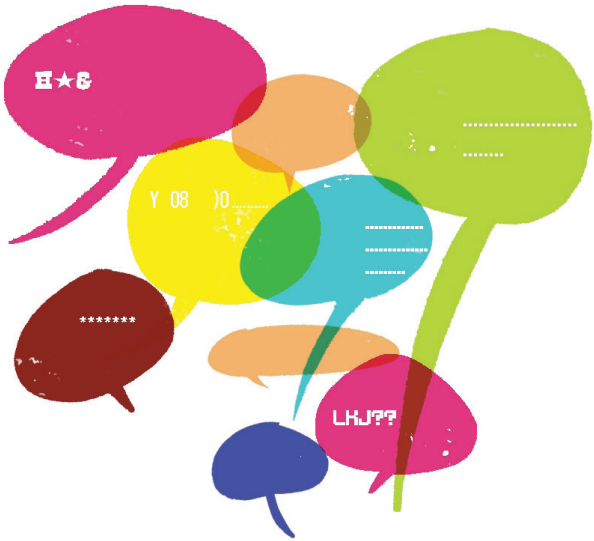
A Provisional residence permit (MVV visa) is necessary prior to travelling to the Netherlands for a stay of over 3 months, as well as to be able to apply for a residence permit upon arrival. One can apply for an MVV visa at the Dutch Embassy or Consulate or the prospective employer can contact the Immigration and Naturalisation Service (*Immigratie- en Naturalisatie Dienst* - IND). This authority approves requests for visas and investigates whether there is any objection against issuing an MVV visa. If there is no objection, the IND will send the visa to the Dutch Embassy in the home country. This visa must also be requested for accompanying family members. When applying for the residence permit, the employer acts as sponsor. The sponsor is responsible for the employee complying with the conditions. A residence 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.

Work permit

Non-EEA nationals, Bulgarian and Romanian nationals must obtain work permits to work in the Netherlands. The work permit must be applied for at the same time as the application for an MMV visa. The prospective employer has to submit a request for the work permit with the *UWV WERKbedrijf* (UWVI). The work permit will be based upon the duration of employment, as laid down in the employment agreement submitted by the prospective employer.

With effect from 2014 the UWV is now obligated to every year to check a job taken by a foreign employee (from outside the EU, EEA countries or Switzerland) against the labour mar-

ket 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 1 year (up to 2014 a maximum of 3 years). After 5 years (up to 2014 after 3 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.



Useful addresses

Rijksdienst voor Ondernemend Nederland (most important subsidy agency in the Netherlands)
P.O. Box 93144 NL-2509 AC Den Haag
Web: www.rvo.nl
Tel: +31 88 602 50 00

Belastingdienst/kantoor Buitenland (Foreign Office of the Department of Inland Revenue)
P.O. Box 2865 NL-6401 DJ Heerlen
Web: www.belastingdienst.nl
Tel: +31 55 58 53 85

Benelux Merkenbureau (Benelux Trademark Agency)
P.O. Box 90404 NL-2509 LK Den Haag
Web: www.boip.int
Tel: +31 70 349 11 11

CNV (National Federation of Christian Trade Unions the Netherlands)
P.O. Box 2475 NL-3500 GL Utrecht
Web: www.cnv.nl
Tel: +31 30 751 11 00

CPB (Netherlands Bureau for Economic Policy Analysis)
P.O. Box 80510 NL 2508 GM Den Haag
Web: www.cpb.nl
Tel: +31 70 338 33 80

Douane (Customs and Excise Department)
P.O. Box 3070 NL-6401 DN Heerlen
Web: www.douane.nl
Tel: +31 45 574 30 31

European Patent Office (EPO)
P.O. Box 5818 NL-2280 HV Rijswijk
Web: www.epo.org
Tel: +31 70 340 20 40

FNV (The Netherlands Trade Union Confederation)
P.O. Box 8456 NL-1005 AL Amsterdam
Web: www.fnv.nl
Tel: +31 20 581 63 00

IND (Immigratie- en Naturalisatiedienst) (Immigration and Naturalisation Service) Afdeling Voorlichting
P.O. Box 287 NL-7600 AG Almelo
Web: www.ind.nl
Tel: +31 20 889 30 45

Kamer van Koophandel Nederland (Chamber of Commerce)
P.O. Box 191 NL-3440 AD Woerden
Web: www.kvk.nl
Tel: +31 348 426 276

Ministerie van Binnenlandse Zaken en Koninkrijksrelaties (Ministry of the Interior and Kingdom Relations)
P.O. Box 20011 NL-2500 EA Den Haag
Web: www.government.nl/ministries/bzk
Tel: +31 77 465 67 67

Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs)
P.O. Box 20061 NL-2500 EB Den Haag
Web: www.government.nl/ministries/bz
Tel: +31 70 348 64 86

Ministerie van Economische Zaken (Ministry of Economic Affairs)
P.O. Box 20401 NL-2500 EK Den Haag
Web: www.government.nl/ministries/ez
Tel: +31 70 379 89 11

Ministerie van Financiën (Ministry of Finance)
P.O. Box 20201 NL-2500 EE Den Haag
Web: www.government.nl/ministries/fin
Tel: +31 70 342 80 00

Ministerie van Sociale Zaken en Werkgelegenheid (Ministry of Social Affairs and Employment)
Anna van Hannoverstraat 4 NL-2595 BJ Den Haag
Web: www.government.nl/ministries/szw
Tel: +31 77 333 44 44

MKB-Nederland (Dutch Agency for Small and Medium-size Enterprises or SMEs)
P.O. Box 93002 NL-2509 AA Den Haag
Web: www.mkb.nl
Tel: +31 15 219 12 12

Netherlands Foreign Investment Agency (NFIA)
P.O. Box 93144 NL-2509 AC Den Haag
Web: www.nfia.nl
Tel: +31 88 602 80 60

NMa (Nederlandse Mededingingsautoriteit/Netherlands Competition Authority
P.O. Box 16326 NL-2500 BH Den Haag
Web: www.nma.nl
Tel: +31 70 330 33 30

UWV (Employee Insurance Schemes Implementing Body)
P.O. Box 58285 NL-1040 HG Amsterdam
Web: www.uwv.nl and www.werk.nl
Tel: +31 88 898 20 01

SRA (Umbrella body for accountants with the SRA Quality Mark)
Postbus 335 NL-3430 AH Nieuwegein
Web: www.sra.nl
Tel: +31 30 656 60 60

The next step

Contact DHW International to discuss your needs.

www.dhw-international.com

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