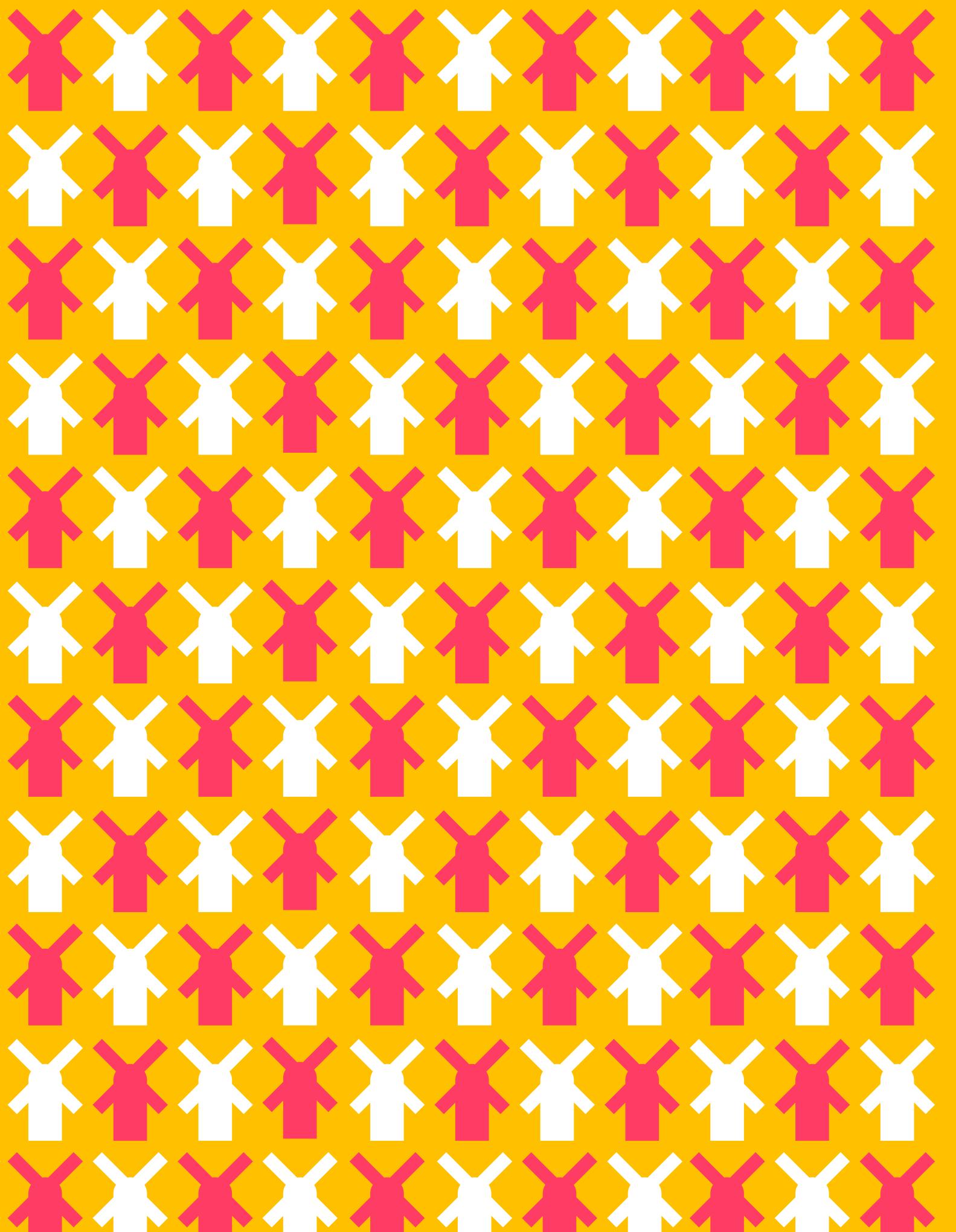


# Doing Business in the Netherlands 2020





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# Introduction



## PwC

I am pleased to present the 2020 edition of PwC's publication Doing Business in the Netherlands. Doing business internationally expands a company's horizon and offers unique opportunities for growth, development, contribution to society's and profit building. The Netherlands is one of the most open economies in the world. It offers an outstanding infrastructure – including Europe's largest port –, a competitive business climate and a strong workforce. The Dutch tax system features several tax incentives to stimulate innovation and business activities. And as an internationally oriented country, the Netherlands is home to many – most of them highly educated – foreign workers.

In a world that is rapidly changing, whether it is from an economic or political point of view, the Netherlands has proven to stay a stable country. And the fact that the Netherlands is a stable country with a flourishing economy is even more important, considering global developments and uncertainties like Brexit. The imminent Brexit and international trade disputes are two recent examples of developments that have caused the global economy to have to refind its balance. The struggle of governments and business to form policies to still minimize climate change also leads to uncertainties. However, the Dutch financial, economic and social climate is stable and the government is keen to keep it that way. And perhaps just as important: the Netherlands continues to be a great place to live. Dutch children are ranked the happiest children in the world, and that is not without reason.

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

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

As a result, this publication guides you through all the key aspects of doing business in the Netherlands: the economic climate, big industries and business segments, what it is like to live in the Netherlands and workforce aspects. It describes the most popular legal forms of businesses in the Netherlands and the key aspects of tax, human resources, employment law, and audit and accountancy.

However, as a guide, this publication primarily serves as a starting point. If you need more information, our advisors will be very happy to assist you.

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

Marc Diepstraten  
Chairman of PricewaterhouseCoopers Belastingadviseurs N.V.



## Netherlands Foreign Investment Agency

Whether you are considering locating in the Netherlands, or have existing operations here, the Netherlands Foreign Investment Agency (NFIA) is ready to assist your company at every stage of establishing or expanding operations here.

As an operational unit of the Dutch Ministry of Economic Affairs and Climate Policy, the NFIA is your key development partner. The NFIA, however, does not operate in isolation. Through our Invest in Holland network, we connect you with an extensive array of business partners, regional economic development organizations and government institutions to facilitate your international expansion. The Invest in Holland network is a highly-motivated and enthusiastic team consisting of the NFIA, regional economic development agencies, several major cities and the Holland International Distribution Council.

Foreign investors are particularly valuable to us, as they create jobs, link us to international networks and add significant value to the Dutch economy. In turn, we can offer a strong economy, excellent employment opportunities, inspiring cities and high quality of life. The World Economic Forum, in its 2019 Global Competitiveness Index, ranks us No.1 in the world for macroeconomic stability, the most competitive economy in Europe, and the 4th most competitive economy in the world. This emphatically underlines our credentials as a world-class location for business and a nurturing environment for companies in which to settle and grow.

One of the core aspects of the NFIA's mission is to place the Dutch business climate systematically on the country's political agenda, by serving as an advocate and liaison between business and government. As a result, the Dutch government, and of course the Invest in Holland network in particular, is highly motivated to support you on an ongoing basis, as we want to see you settle and succeed here.

We look forward to welcoming you in the Netherlands.

Yours sincerely,

Jeroen Nijland  
Commissioner NFIA



# Why invest in the Netherlands?

A pro-business climate, its strategic location, attractive tax system, a highly educated multilingual workforce and superior infrastructure are just some of the many advantages of doing business in the Netherlands

In this chapter we will show you why the Netherlands is considered the perfect stepping stone into the European market and the gateway to the EU.

## Economic overview

### Best country for business and a great place to live

Ranked No. 4 in the world by Forbes' "Best Countries for Business", the Netherlands, being home to 15,000 foreign companies, is a truly world-class destination and has a very competitive international climate. In fact, 50 per cent of Dutch GDP is derived internationally.

According to the 2019 ranking of the Competitive Index of World Economic Forum (WEF), the Netherlands has the most competitive economy in Europe. The WEF ranks the Netherlands highest in the world for macroeconomic stability and the report also sees the country performing particularly well in infrastructure and business dynamism.

The strategic location at Europe's front door provides the perfect springboard into the European market – with access to 95 per cent of Europe's most lucrative consumer markets within 24 hours of Amsterdam or Rotterdam.

### Proximity to Clients & Customers

**170**  
million consumers  
within **500km**

**244**  
million consumers  
within **1,000km**



Add to that our supportive tax structure to set up operational business, highly educated, multilingual workforce, and superior logistics and technology infrastructure and it's no wonder so many multinational businesses – from small and mid-sized to Fortune 500 leaders – have chosen the Netherlands as their gateway to Europe.

In addition to having an outstanding business climate, the Netherlands offers an affordable cost of living and an exceptional quality of life. Ranked as the 5th happiest place on earth by the World Happiness Report, the Netherlands has a high standard of living. Also, according to the latest OECD better life index, the Netherlands is the country with the best work-life balance. Its very low rates of youth unemployment, high literacy levels, high levels of life satisfaction in childhood and the amount and quality of leisure time of Dutch employees are factors that contribute to the country's top position in the better life index.

## Government

### Enjoying a good international reputation

According to the World Bank, the government of the Netherlands is one of the most effective in the world. Also, the Netherlands is one of the most stable nations in the world, thus making it easier for companies to make medium and long-term decisions. Besides, government finances are healthy. According to the CPB - the Netherlands Bureau for Economic Policy Analysis - the Dutch government will have a budget surplus of 0.3 per cent. The government debt is expected to show a further decrease to 47.6 per cent in 2020, from 49.3 per cent in 2019.

## Workforce

### Highly skilled, productive and multilingual workforce

The Netherlands is home to a highly skilled, productive, flexible and multilingual workforce. The country ranks first out of 100 countries on the EF English Proficiency Index 2019. In addition to English a higher percentage of the Dutch population than their counterparts elsewhere also speaks German and French. According to the OECD Skills Outlook 2019, the Netherlands, together with a few other countries, is ahead in the digital transformation of the workplace, with most of its workers intensively using technology in their job and predominantly performing non-routine tasks. It also mentions the Netherlands as being among the countries with the highest share of individuals with well-rounded cognitive (literacy,

numeracy and problem-solving) skills.

In INSEAD's Global Talent Competitiveness Index 2019 the Netherlands has been named as one of the world's best countries for talent competitiveness. The Netherlands was ranked in first place in the report for its professional management, and also ranked in the top three for its utilisation of technology, the quality of its business schools and innovation output.

The Netherlands has a population of 17.4 million people. A large proportion of the Dutch population is in the economically 'active' age range (15-67 years) and the availability of skilled labour outpaces major competitors. The Dutch workforce outranks many of its competitors when it comes to productivity, largely as a result of our high standard of education and training, pragmatic labor laws and commitment to IT investment. Thanks to the stability of the Dutch government and its pragmatic approach to business, very little time is lost to labor disputes or labor relations compared to Europe as a whole.

As an internationally oriented country, the Netherlands is home to many foreign workers and offers a 'Highly Skilled Migrant Visa', which allows companies to bring highly qualified expats to their Dutch operations. According to the IBM Global Location Trends 2019 report the Netherlands is the top attractor of quality Foreign Direct Investment jobs worldwide.

The Netherlands also outpaces many of its competitors when it comes to workforce flexibility and adaptability. As a result, businesses in the Netherlands benefit from the assurance that labour is ready when they need it, for as long as they need it.

## Innovation

### Part of the Dutch DNA

Ranked number four on the Global Innovation Index 2019 the Netherlands is home to an attractive test market, adaptive consumers and an open culture. The Global Innovation Index 2019 report states that innovation outputs remain a strength for the Dutch innovation ecosystem, ranking third in knowledge and technology outputs, and fifth in creative outputs. Furthermore, the Netherlands received a top score for knowledge absorption, regulatory quality, online participation, collaboration between universities and industries and cluster development.

Dutch industry includes a large number of innovative and knowledge-intensive companies that enjoy a worldwide high reputation and that carry out a great deal of R&D.

The Netherlands has many innovation hubs across the country, including the European Space Agency, TNO, Brainport Eindhoven, and the universities of Wageningen, Utrecht, Leiden, Delft, Amsterdam, Groningen, Maastricht, Tilburg, Nijmegen and Rotterdam, plus a number of renowned technical schools.

## Infrastructure

### A superior logistic and technology infrastructure

In the 2018 edition of DHL's Global Connectedness Index the Netherlands tops the list being the world's most globally connected country. It is praised for its deep integration of global trade and links to many different countries.

Driven by world-class seaports and airports, an extensive network of roads and rail and a telecommunications network that ranks among the world's best for quality, speed and reliability, the Dutch infrastructure is one of the best on the planet. With its logistics infrastructure and central location in the heart of the European Union, the Netherlands gives companies unparalleled access to the continent and beyond. By, rail, road or water, companies can reach 160 million consumers within 24 hours of Amsterdam or Rotterdam.

Furthermore, the Dutch dense, high-quality telecommunications infrastructure offers fast connections no matter how or where you and your

products or services are traveling. With one of the highest broadband penetration per capita in the world as well as one of the world's fastest average broadband speeds, the Netherlands is also the digital gateway to Europe. It directly links continental Europe to North America, with most transatlantic sea cables going directly to the Netherlands.

## Incentives and taxes

### Stimulating Foreign Investment and Entrepreneurship

With a competitive corporate income tax rate in Europe – 16.5 per cent on the first EUR 200,000 and 25 per cent for taxable profits exceeding EUR 200,000 – as well as a number of attractive incentive programs, the Netherlands offers a supportive fiscal climate for international companies. In 2021 the corporate income tax rate for profits up to and including EUR 200,000 will be further reduced to 15 per cent. In the same year the rate for profits exceeding 200,000 EUR will be reduced to 21.7 per cent.

The Netherlands also offers a wide tax treaty network, special measures for highly skilled expats and certainty in advance of interpretation of tax law – just a few of the features that help multinational companies to thrive in the Netherlands.

The Netherlands actively promotes engaging in R&D activities through a favourable corporate tax structure and specific R&D tax incentives to stimulate innovation.

We will elaborate on the Dutch incentives and taxes later on.



# Business operations

## Headquarters



Strategically located at the center of Europe's largest markets, the Netherlands has established itself as a magnet for international companies and a leading site for European or regional headquarters. With its strong international orientation, pro-business environment, highly educated workforce and superior logistics and technology infrastructure and being one of the European Union's most dynamic trading and industrial hubs, the Netherlands offers companies a perfect climate to compete successfully in Europe.

Ranked number six in the world for overall logistics performance (2018), the Netherlands is a hub for foreign-owned logistics and distribution operations. In fact, the Netherlands is the true gateway to Europe and home to an abundance of European and regional distribution centers across a multitude of industries like agri/food, fashion, high-tech and medical technology and for e-commerce and spare parts logistics activities.

The Dutch transport and logistics infrastructure, including world-class seaports, centrally located airports and an extensive, modern network of roads and highways, and presence of top-grade logistic service providers is a major asset to companies looking to establish international logistics/distribution operations in Europe.

## Logistics and distribution



## Start-ups



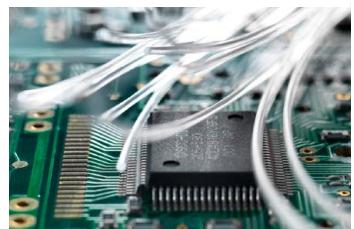
Renowned internationally for its open culture and emphasis on entrepreneurship and innovation, the Netherlands is home to a vibrant, collaborative startup ecosystem. Ranked number 4 in the EU on the 2019 European Innovation Scoreboard of the European Commission, the Netherlands is home to more than ten leading innovation hubs, where start-ups benefit from world-class incubators and R&D facilities. The Netherlands boasts a creative atmosphere for entrepreneurs and is developing into a startup hub in Europe. In 2018 several Dutch companies made it to the Financial Times FT1000 fastest growing company list. Dutch society is open to new concepts and thus seen by many as a 'living lab'.

Under conditions, a residence permit as 'start-up' gives ambitious starters a year to start an innovative company in the Netherlands.

Fueled by world-class research institutes, supportive R&D tax credits and a number of strategic partnerships between science, industry and government, the Netherlands is a hub for R&D activities.

As the European R&D location of various major multinationals, the Netherlands has the second highest number of patent applications per million inhabitants in Europe (2018, European Patent Office). Also, the flourishing startup scene results in a large number of patents every year.

## Research and development



## Marketing and sales



Home to marketing and sales operations of major multinational companies and a thriving creative industry, the Netherlands has established itself as a magnet for foreign-owned marketing and sales operations.

The Netherlands' strategic location in Europe ensures easy access to Europe's most lucrative markets. Moreover, the presence of international talents allows international companies to reach a wide range of consumers around the world.

The Netherlands' strategic location, highly developed telecommunications and transportation infrastructure and international service-oriented culture, provide an ideal environment to establish or consolidate a shared service centre (SSC) in Europe.

As one of the multilingual hotspots in Europe, the Netherlands is home to a diverse, skilled and productive workforce. The Netherlands' cultural amenities and relatively low cost and high standard of living make it easy to attract skilled employees and expatriates to your SCC.

## Service centres



## Data centres



Considered one of the most wired and cyber-secure countries in the world, the Netherlands is home to one of the most advanced markets for data center operations in Europe. About one third of all European data centers are located in the Amsterdam area and take advantage of AMS-IX – one of the world's largest internet exchanges. According to the Dutch Datacenter Association almost all important players in the international digital economy are established in our country with equipment and head offices.

The Dutch telecommunications network ranks among the world's best for quality, speed and reliability. Plus, the country's mild climate and robust renewable energy cluster provide sustainable and affordable options for data center energy efficiency needs.

The Netherlands' highly skilled engineering workforce and advanced collaborative networks of suppliers in a wide variety of value chains offer major advantages to companies looking to establish or reshore manufacturing operations in Europe.

In fact, major multinationals in a wide range of industries have already established advanced manufacturing operations in the Netherlands - from life sciences to chemicals, maritime industry and IT.

## Manufacturing



# Industries

From life sciences & health to creative industries, the Netherlands is home to thriving industry clusters driven by talent, innovation and collaboration. Some of the biggest and fastest growing companies in every sector have chosen the Netherlands as their gateway to Europe.

In order to remain a leader in solving global challenges, the Dutch focus lies on measures for all businesses and a number of key industries in particular. We elaborate on some key industries below:

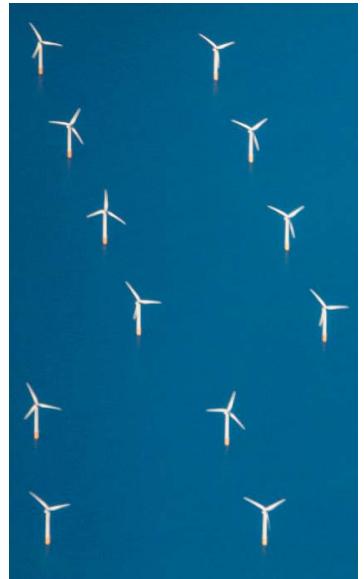


## Agrifood

- No. 1 largest exporter in EU
- No. 2 largest exporter worldwide
- Leading Dutch export sector - 18.2 per cent of total exports
- One of the highest private agrifood R&D investment rates (as a percentage of GDP) in Europe
- Export € 90.3 billion in 2018
- 12 of the world's largest agrifood companies have major production or R&D sites in the Netherlands
- Best global university for agricultural sciences - category agriculture and forestry (Wageningen University)
- More than a third of all global trade in vegetable seeds originates in the Netherlands

## Energy

- Leader in offshore, renewable and smart energy
- Top position in renewable energy R&D, particularly in wind turbine technology
- Several large offshore wind installations planned for the next few years
- The Dutch government has invested heavily in smart grid innovations and solutions and smart energy technology
- Delft University of Technology is one of the world's leading specialists in sustainable energy
- The Netherlands is leading the way with Waste-to-Energy initiatives
- Home to oil supermajors, maritime engineering multinationals and the offshore services industry being active on the North Sea Continental Shelf and far beyond
- Home to some of the world's best engineering talent in the energy sector
- One of the world's leading countries with respect to the adoption of electric vehicles
- Innovations in other new sources of energy such as tidal energy and hydrogen powder (H2Fuel)



## Information and technology

- 3rd position in the EU Digital Economy and Society Index and among the global leaders in digitalisation
- One of the highest broadband penetration per capita in the world and one of the world's fastest average broadband speeds.
- A hotspot for companies active in the global gaming industry — both serious and entertainment gaming
- A world leader in quantum technology
- Europe's largest security cluster and one of the most advanced markets of data centers in Europe
- Europe's hotspot for leading international information and communications companies
- Home to one of the world's leading internet exchanges – AMS-IX

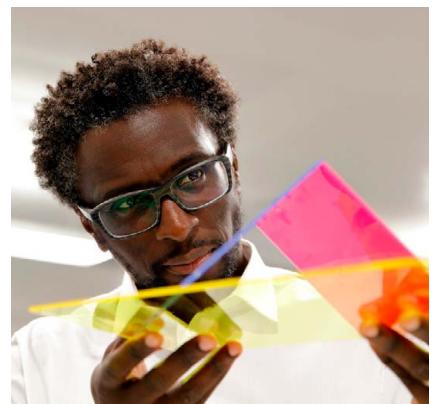


## Logistics

- 6th in the World Logistics Performance Index of the World Bank (2018)
- The Netherlands is known for its excellent knowledge of logistics, innovative transport and logistics concepts and chain management
- The quality of Dutch infrastructure is among the best in the world
- Over 1.000 American and Asian companies have centralised their European distribution activities in the Netherlands
- Rotterdam is the maritime capital of Europe and the world's 11th largest port (2018)
- The Port of Rotterdam has the largest inland shipping fleet in Europe
- Schiphol, occupies the 3rd position on the list of Europe's busiest airports as well as on the list of Europe's largest cargo airports

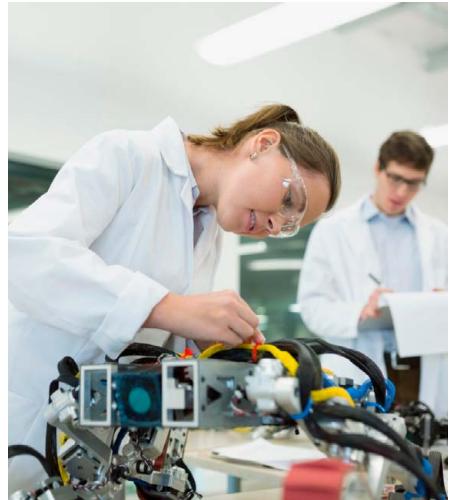
## Creative Industries

- Renowned internationally for its entrepreneurial spirit and out-of-the-box thinking
- One of the world's most multicultural hubs for creative talent
- Home to a thriving creative industry for fashion, advertising, entertainment and media and architecture
- The Dutch creative industries employ around 172,000 people
- 3rd largest exporter of television formats globally
- One of the world's top 5 most attractive countries for digital media and entertainment investments
- Home to more than 1,300 fashion designers, top design schools and some of the industry's most iconic brands



## High Tech Systems

- World leader in the development of new technologies and materials for use in communication systems, aircraft and automobiles, medical devices, energy generation and semiconductor production
- Home to major high tech multinationals
- On the front of the digital manufacturing revolution, from 3D printers to the Internet of Things, cloud computing and big data to smart robots
- The Netherlands is a leader in the field of automotive and mobility solutions
- At the heart of Dutch high tech innovation are robust public-private partnerships and cutting-edge R&D ecosystems
- High Tech Campus Eindhoven is considered the smartest high tech kilometre in the Netherlands and houses 10.000+ R&D staff and entrepreneurs
- Other world class technology and research centres are YES!Delft (Delft University of Technology) and Kennispark Twente (University of Twente)



## Chemicals

- One of Europe's leading suppliers of chemical products and services
- Home to 2,000 leading chemical companies located over 8 major chemical industrial clusters and covering the entire supply chain
- Approximately 80 per cent of the chemical products manufactured in the Netherlands are exported
- Host to 19 of the world's top 25 leading chemical companies
- 16 certified chemical incubators and pilot/demo locations
- Port of Rotterdam is one of the strongest refining and chemical clusters in the world
- High-tech clusters for industrial biotechnology, fine chemicals and high-performance materials
- World-class R&D institutes for fundamental and applied research such as TNO, NOW, ECN and the universities of Delft, Eindhoven, Twente and Wageningen

## Life Sciences and Health

- Proud new home of the European Medicine Authority
- World-renowned for its healthcare system, consistently ranked in the top three of the EuroHealth Consumer Index since 2005
- One of the most concentrated life sciences regions in the world, home to more than 3,100 innovative life sciences and health companies (including medical technology)
- Excellent medical research infrastructure, strongly focused on translational research in areas such as oncology, cardiovascular, immunology and neuroscience
- The Netherlands has the highest amount of public-private partnerships in the world and some €2 billion is invested in R&D
- Solidly in the international top 10 of patent applications
- In the top 10 in biochemistry, genetics and molecular biology when it comes to research and cited publications





# Legal system

## Doing business via a legal entity

There are several ways to operate a business in the Netherlands via a legal entity. A distinction can be made between entities with legal personality (corporate entities) and entities without legal personality (non-corporate entities). It is also possible to perform business activities through a branch office of a foreign legal entity. Below we discuss the main legal entities used by foreign investors and companies expanding their businesses to the Netherlands.

### Corporate entities

#### The bv and nv

Under Dutch law, two types of limited liability companies can be distinguished:

- bv ('besloten vennootschap', a private limited liability company); and
- nv ('naamloze vennootschap', a public limited liability company).

Both the bv and the nv are entities with legal personality and a capital divided in shares. They can be used for the same business purposes, which should be included in their articles of association. The bv is the more flexible



legal entity form of the two. Consequently, the bv is the most frequently used corporate entity form in the Netherlands. Due to its flexible character, the bv is highly popular as a holding company in (international) group structures and as an operational company.

Incorporation of a bv or nv:

- In general, an establishment permit is not required to start a business in the Netherlands. This may be different for certain regulated sectors. An example is the food sector, where an environmental permit may be required, or the financial sector, where licences to operate are required.
- Incorporation of a bv or nv requires a notarial deed of incorporation, to be executed by a Dutch civil law notary. Execution of the notarial deed of incorporation can be done on the basis of powers of attorney to avoid unnecessary travelling or delays.
- There are no minimum capital requirements for the bv; an nv should be incorporated with a capital of at least EUR 45,000.
- Incorporation of an nv, requires a statement by a bank or an auditor, confirming that the minimum share capital has been paid up. This statement must be obtained prior to incorporation. No such requirement for a bv.
- The articles of association should contain the name, corporate seat and objects of the bv/nv. The name of the bv/nv must be unique to the extent that it does not cause confusion with the names of other companies or brand names.
- A bv or nv must be registered with the trade register of the Dutch Chamber of Commerce. The trade register holds publicly available information of the company, such as the registered address of the company, names of board members and the articles of association.
- A bv or nv can already conduct business while it is in the process of being incorporated. However, for the bv this possibility lost most of its interest as the incorporation of a bv requires only few formalities and can be carried out very quickly and easily.

For more information about the bv and nv we refer to the box on page 19.

### **The cooperative**

The Dutch cooperative ('coöperatie') was historically used mainly in the agricultural sector. Over the last few decades, this legal entity form has been reinvented as a holding company in international group structures, among others due to its corporate flexibility. A cooperative is a special type of association. Similar to the nv and bv, it is an entity with legal personality, governed by its articles of association.

Participants in a cooperative are members (instead of shareholders) and a minimum of two members is required to incorporate a cooperative. By law, the purpose of a cooperative should be to 'provide for physical needs' of its members. When used in holding structures, it is customary that the purpose of a cooperative is to make profits through investments. The members' entitlement to the cooperative's profits is usually (pro rata) related to their respective contributions. Members can be individuals, partnerships or legal entities. Member liability can be unlimited to the entire deficit in a bankruptcy situation, limited to a certain maximum amount or excluded in the articles of association. In general, a cooperative is a very flexible legal entity form with no minimum capital requirements and a less regulated governance structure.

Incorporation of a cooperative:

- A cooperative is incorporated by a notarial deed of incorporation by a Dutch civil-law notary.
- No bank statement or auditor's statement is required for the incorporation of a cooperative.
- Dutch law requires that a cooperative is incorporated by at least two incorporators, which, unless the deed of incorporation explicitly states otherwise, will become members of the cooperative.
- The word "coöperatief" must be included in the official name of the cooperative as well as one of the following abbreviations: WA ('wettelijke aansprakelijkheid', full

statutory liability); BA ('beperkte aansprakelijkheid', liability limited to a certain amount) or UA ('uitsluiting van aansprakelijkheid', exclusion of liability), which indicates the extent of potential liability of its members.

- A cooperative must be registered with the trade register of the Dutch Chamber of Commerce.

## Non-corporate entities

The two most common forms of Dutch partnerships are the general partnership ('vennootschap onder firma' or, abbreviated, 'vof') and the limited partnership ('commanditaire vennootschap' or, abbreviated, 'cv'). Both partnerships should be formed by two or more partners ('vennoten') who may be either individuals or legal entities. The legal requirements for entering into a partnership are limited, a partnership agreement is sufficient. There is a very high level of flexibility with respect to the partnership agreement. A Dutch partnership does not have legal personality, meaning that it cannot own assets in its own name. Legal title to assets is generally held by the general partner ('beherend vennoot') or by all partners jointly. One or more partners (in case of a vof) or the general partner(s) (in case of a cv) can enter into legal acts (such as agreements with third parties) for and on behalf of the partnership. Although depending on the exact design, a Dutch partnership is usually transparent for Dutch tax purposes.

All partners in a vof are jointly and severally liable for all obligations of the partnership. Liability of a general partner ('beherend vennoot') in a cv is unlimited, whereas liability of limited partners ('commanditaire vennoten') is limited to the amount of their capital contribution as long as such limited partners do not perform acts of management and/or representation of the partnership.

## Branch

Another possibility to conduct business activities in the Netherlands is to create a Dutch branch of a foreign legal entity. Setting up a branch does not require prior governmental approval. Establishment of a branch (only) requires the registration of the relevant foreign legal entity with the trade register of the Dutch Chamber of Commerce.

A Dutch branch cannot be considered a legal entity which is separated from the relevant foreign legal entity. Consequently, the Dutch branch is governed by the rules and legislation applicable to the foreign legal entity. Depending on the nature and scope of the activities, the branch may qualify as a 'permanent establishment' for taxation matters. If so, the transactions and/or financial results of the branch may be taxable in the Netherlands.

## What we can do for you?

A brief overview of services we provide:

- Advise you on the pro's and con's of the different legal entity forms through which you can do business in the Netherlands
- Assist with the incorporation of a legal entity or with setting up a partnership
- Setting up a post Brexit corporate structure to do business in the EU
- Advise on the corporate governance structure
- Register the legal entity, partnership or branch with the trade register of the Dutch Chamber of Commerce
- Drafting of (intra group) contractual arrangements
- Assist you with annual compliance requirements, such as arranging the annual general meeting, adoption and filing of the annual accounts, etc.
- Advise you on how Dutch entities can be relevant in international restructuring projects, for example in connection with pre-deal carve-outs, acquisitions, post-deal integrations, migrations, rationalisations, cash extractions or single entity projects

The bv	The nv
<p><b>The bv</b></p> <p>A bv is a private company comparable to the 'limited liability company' (Ltd.) in the United Kingdom or the 'Gesellschaft mit beschränkter Haftung' (GmbH) in Germany. The legislation applicable to a bv changed in 2012 which made it very flexible and 'user friendly'. The main characteristics of a bv under the current rules are:</p> <p><b>Shares</b></p> <ul style="list-style-type: none"> <li>• No minimum share capital required. The founders determine the issued capital (at least one voting share) and required paid-up capital. The issued capital and paid-up capital at the moment of incorporation will be documented in the notarial deed of incorporation.</li> <li>• Different types of shares can be created which provides the possibility to vary with regard to (among others) voting rights and profit sharing rights. It is even possible to issue non-voting shares.</li> <li>• Shares with no rights to profit or liquidation proceeds must always have voting rights.</li> <li>• The articles of association may (i.e. not mandatory) contain transfer restrictions related to the transfer of shares.</li> </ul> <p><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Annual general meeting (GM) for shareholders (in principle, also for shareholders without voting rights) and other holders of meeting rights, if any.</li> <li>• Both a one-tier board (consisting of executive directors and non-executive directors) and a two-tier board (managing directors and supervisory directors are separated in two boards) are possible.</li> <li>• A supervisory board is generally optional. However, large companies may be subject to the so-called 'Large Company Regime'. In that case, a supervisory board is mandatory and it will have special powers. For example the right to appoint and dismiss executive directors. Depending on the situation at hand (e.g. majority of the employees is working outside the Netherlands), the Large Company Regime may be less restrictive.</li> <li>• The articles of association may grant shareholders the right to give specific instructions to the management board.</li> </ul> <p><b>Allocation of profits</b></p> <ul style="list-style-type: none"> <li>• The GM decides on profit distribution, based on the company's accounts prepared by the management board, unless otherwise provided in the articles of association.</li> <li>• Depending on the outcome of a balance sheet test and a liquidity test, the management board may refuse to approve distribution of profits, if an intended distribution is detrimental to the continuity of the company.</li> <li>• No other capital and creditor protection rules apply.</li> <li>• It is possible (and very easy) to make interim distributions.</li> </ul>	<p><b>The nv</b></p> <p>An nv is a public company comparable to the 'public limited company' (plc.) in the United Kingdom or 'Aktiengesellschaft' (AG) in Germany. In general, an nv is more strictly regulated and mainly used to incorporate companies that are very large and/or will be listed on a stock exchange. The main characteristics of the nv are:</p> <p><b>Shares</b></p> <ul style="list-style-type: none"> <li>• Minimum share capital of EUR 45,000 required.</li> <li>• Different types of shares are possible .</li> <li>• All shareholders have voting rights and profit rights. By creating depositary receipts for shares, it is possible to separate the voting rights attached to shares and the economic (profit sharing) rights.</li> <li>• The articles of association may include share transfer restrictions.</li> </ul> <p><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Annual general meeting (GM) for shareholders (in some cases, depositary receipt holders may also attend the meeting).</li> <li>• Both a one-tier board (consisting of executive directors and non-executive directors) and a two-tier board (managing directors and supervisory directors are separated in two boards) are possible.</li> <li>• A supervisory board is generally optional. However, large companies may be subject to the so-called 'Large Company Regime'. In that case, a supervisory board is mandatory and it will have special powers. For example the right to appoint and dismiss the managing / executive directors. Depending on the situation at hand (e.g. majority of the employees is working outside the Netherlands), the Large Company Regime may be less restrictive.</li> <li>• The articles of association may grant shareholders limited possibilities to give instructions (only general guidelines) to the management board.</li> </ul> <p><b>Allocation of profits</b></p> <ul style="list-style-type: none"> <li>• The GM decides on profit distribution, based on the company's accounts prepared by the management board.</li> <li>• Distributions are limited by formal rules on capital preservation and creditor protection.</li> </ul>

# Taxation in the Netherlands

The Netherlands has an excellent fiscal climate. This is again supported by the global Paying Taxes study: PwC annually assesses the ease with which tax obligations can be met. Paying Taxes compares the tax burden and compliance obligations of 190 countries around the world. Paying Taxes 2020 shows that the Netherlands has an excellent climate in this regard: in the overall ranking the Netherlands scores high. This is caused by clear administrative processes, relatively modest tax rates and the use of technology to facilitate tax compliance. Please find more information in [our Paying Taxes study](#).

The Netherlands has a competitive statutory corporate income tax rate compared to the rest of Europe: 16.5 per cent on the first EUR 200,000 and 25 per cent for taxable profits exceeding EUR 200,000. The tax rates will be further reduced to 15 per cent and 21.7 per cent respectively in 2021. The Dutch tax system has a number

of attractive features for international companies.

## A competitive fiscal climate

The Dutch tax ruling practice has a 30-year track record and has given many international groups clarity on their tax position when setting up successfully in the Netherlands. Although some changes have been made to the Dutch tax system and the ruling practice, these are generally part of a worldwide trend towards transparency and paying one's fair share. And thanks to the Netherlands' stable government and highly accessible and cooperative tax administration, companies can feel confident that any possible further adjustments to this practice will be implemented in such a way that it maintains attractiveness for foreign investors, minimises impediments for business and guarantees cooperation and transparency from Tax Authorities.

### Attractive features of the Dutch tax system



A wide network of **nearly 100 bilateral tax treaties** to avoid double taxation and to provide, in many cases, reduced or no withholding tax on dividends, interest and royalties

**Clarity and certainty in advance** on the tax consequences of proposed major investments in the Netherlands.

**Fully compliant and aligned** with the international developments in the OECD and EU and often one of the driving forces behind a coordinated approach to taxation

An **efficient fiscal unity regime**, providing tax consolidation for Dutch activities within a corporate group

A **broad participation exemption** (100 per cent exemption for qualifying dividends and capital gains) which is vital for European headquarters.

**Favourable expat tax program** with a 30 per cent personal income tax advantage for qualified, skilled foreign employee.



## Rulings and cooperative compliance

### The Dutch ruling practice

One of the specific features of the Dutch tax system is the possibility to discuss the tax treatment of certain operations or transactions in advance. Upfront clearance can be obtained from the Dutch Tax Authorities. The Dutch Tax Authorities conclude Advance Pricing Agreements (APA) as well as Advance Tax Rulings (ATR).

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

An ATR is an agreement with the Dutch Tax Authorities determining the tax rights and obligations in accordance with the law in the taxpayer's specific situation.

Both are binding for the taxpayer and the Dutch Tax Authorities. To obtain an APA or ATR, certain substance requirements must be met. In general, the Dutch Tax Authorities will be able to handle requests for APAs, ATRs and other requests (e.g. a request for a fiscally facilitated merger, a VAT registration or a (VAT) fiscal unity) within a reasonable amount of time.

In accordance with EU law the Dutch Tax Authorities are obliged to exchange information regarding rulings and transfer pricing arrangements with the Tax Authorities of other EU member states automatically. The Dutch Tax Authorities use a standard form that taxpayers have to fill in when concluding a cross-border ruling or transfer pricing arrangement. All EU Tax Authorities are obliged to exchange this information.

The exchange of information increases the transparency for corporate taxation within the EU. It is expected that in the future similar information may be exchanged with the Tax Authorities of non-EU member states as well.

Starting 1 July 2019 the Netherlands' policies on the issuing of tax rulings with an 'international character' were adjusted. The main characteristics of the new ruling process are as follows:

- Transparency: building on international developments in transparency in tax matters, the Dutch tax authorities will publish anonymised summaries of individual rulings with an international character.
- Economic nexus: rulings with an international character will only be available to taxpayers with (sufficient) economic nexus in the Netherlands.
- Main purpose: rulings will no longer be available in case the main purpose of the business structuring is obtaining a tax advantage, be it a Dutch or foreign tax advantage.
- No rulings on transactions with entities in black listed countries (generally low tax jurisdictions or jurisdictions on the EU list of non-cooperative countries)

### Cooperative compliance

Another specific feature of the Netherlands is that the Dutch Tax Authorities allow businesses, under certain conditions, to apply for an enhanced relationship ('horizontal monitoring'). This is a form of cooperative compliance in which the organisation signs a Horizontal Monitoring covenant with the Dutch Tax Authorities. It provides a timing benefit and certainty: it prevents unpleasant tax surprises when it is too late to do something about them. But horizontal monitoring encompasses more than just complying with laws and regulations: the organisation must be able to demonstrate it is in-control of its tax processes and tax risks, via a so-called 'Tax Control Framework'.

The Dutch Tax Authorities will adjust the methods and intensity in which they perform their monitoring to the level of tax control of the taxpayer. As a result, audits performed by the Tax Authorities will shift from reactive (tax audits over past years) to proactive (providing 'assurance' upfront). Under horizontal monitoring, the company's relationship with the Dutch Tax Authorities is based on mutual trust, understanding and transparency.

The main benefit of Horizontal Monitoring is that relevant tax risks and positions can be dealt with when they occur. The company is required to act with a transparent attitude towards the Dutch Tax Authorities, and they will in return provide a quicker response with respect to tax issues that are brought to their attention by the company. This proactive assurance prevents unpleasant surprises afterwards. Apart from this, it helps with accurately determining the tax cash flow, deferred and current taxes, and ascertains that the company has as little uncertain tax positions as possible. This saves the company both time and costs. We do note that the Tax Authorities currently reformulated Horizontal Monitoring.

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

Horizontal monitoring can be applied to all taxes including corporate income tax, value added tax, customs, wage tax and social security. PwC has developed a special tax management maturity model (T3M) to help companies determine their existing level of tax risk management and the path towards the intended maturity level of their tax risk management. T3M is inspired by the common standards on general and financial risk management, such as COSO, and in line with the latest report of the OECD on 'Building better Tax Control Frameworks'.

## What we can do for you?

- Define tax governance and roles and responsibilities for tax
- Process mapping and improvement
- Enhance tax risk management, e.g. by means of defining clear key tax controls
- Quick and smooth communication with the Dutch Tax Authorities
- Assisting your organisation in its discussions with the Tax Authorities towards horizontal monitoring
- Assessing the current and desired state of the tax function and the Tax Control Framework (by means of T3M assessment)
- Designing and implementing your Tax Control Framework via our Sustainable Tax methodology
- Performing statistical sampling in line with the approach of the Tax Authorities, as part of monitoring the Tax Control Framework as well as tax data analytics and key control testing as part of showing that you are in control of tax
- Help you to clearly communicate the maturity of your Tax Control Framework to internal and external stakeholders



# International developments

## BEPS

As a member of the OECD, the Netherlands is an active participant in the Anti-Base Erosion and Profit Shifting (BEPS) project of the OECD. The Netherlands supports the goals as set by the OECD in this respect and adheres to the outcomes of the BEPS project. The Netherlands also adheres to the international developments on transparency in tax matters, including those involving the outcomes of the BEPS project on the exchange of information in tax matters. The Netherlands has signed and ratified the Multilateral Instrument (MLI), albeit with some reservations to certain provisions, and has brought all the Netherlands' tax treaties within the scope of the MLI except for the few tax treaties that were being negotiated or not yet in force at the time of the MLI signature.

## Transfer pricing: country-by-country reporting, master file and local file

One example of 'BEPS' legislation is the OECD country-by-country reporting implementation package. The reporting requirements are primarily meant to be a (tax) risk assessment tool for the (international) Tax Authorities. Based on the OECD report, a multinational group with a turnover of at least EUR 750 million will have to file a country-by-country report in the state where the ultimate parent company is a resident. The Tax Authorities will then exchange this information with Tax Authorities of other countries to which the information may be relevant and that have agreed to mutually exchange these reports.

Besides, the agreed OECD report prescribes that each individual company within such group will be obliged to have a master file and a local file available in its administration. The master file contains information on the transfer pricing within the entire group while the local file contains information on all intra group transactions of the local company. All this information will be kept confidential, not accessible to the general public.

The Netherlands has enacted legislation implementing the OECD country-by-country reporting package which corresponds with the system and methods as prescribed in this reporting package. In addition, in the Netherlands companies with a consolidated turnover of at least EUR 50 million are obliged to have a local file and a master file available.

As mentioned in the above only the ultimate parent

company of a multinational group has to file a country-by-country report. A Dutch group entity of a multinational group with a turnover of at least EUR 750 million must notify the Tax Authorities whether the ultimate parent company or surrogate parent company will file the country-by-country report. If not, it must notify the tax authorities which group company and its tax residence will file the report. This notification should be made at the latest on the final day of the financial year.

Further, a Dutch company that must file a country-by-country report, must file this report within 12 months after the end of the financial year. The master file and local file must be in the company's administration within the same deadline that holds for filing the tax return. Please also see page 43.

Moreover, in 2018, the Dutch Ministry of Finance published a new Transfer Pricing (TP) Decree. The Decree provides further guidance on the application of the arm's-length principle and aims to incorporate recent changes following the OECD BEPS project and related amendments to the 2017 OECD TP Guidelines.

The new Decree provides additional guidance on the position of the Dutch Tax Authorities in the post-BEPS era, among others, concerning the application of various BEPS provisions as included in the 2017 OECD TP Guidelines (e.g. TP methods, hard-to-value intangibles and valuation methods) into Dutch tax practice.

## ATAD I

The EU adopted the Anti-Tax Avoidance Directive (ATAD I), which contains several measures to combat tax avoidance. The ATAD I includes measures regarding the limitation of interest deductibility, exit taxation, a general anti-abuse rule (GAAR), a Controlled Foreign Company (CFC) rule and rules addressing mismatches between EU member states arising from the use of hybrid instruments or entities. These rules must be transposed into all EU member states laws and apply, in principle, as from 1 January 2019. The Netherlands, as an EU member state, also implemented this legislation that applies as per 1 January 2019.

More specifically, to implement ATAD I, the Netherlands included a CFC-rule, an earnings stripping rule and slightly reformed its exit taxation rules for corporate income tax (CIT) purposes. The CFC-regime targets corporate taxpayers that hold a direct or indirect interest, either standalone or with affiliated companies, of more

than 50 per cent in a subsidiary, or owns a permanent establishment, in either

- a) a low-taxed country (i.e. less than 9 per cent as listed by the Dutch Ministry of Finance on an annual basis) or
- b) a jurisdiction included in the EU list of non-cooperative jurisdictions.

The ATAD's GAAR was not implemented as such, since, according to the Ministry of Finance, the GAAR was already effectively present by means of the standing Dutch *fraus legis* doctrine.

The new earnings stripping rule limits the deduction of the on balance interest cost to 30 per cent of the taxpayer's EBITDA with a threshold of EUR 1 million and a carry forward rule. In conjunction to the introduction of the earnings stripping rule, the Dutch interest limitation rules regarding excessive participation debts and excessive acquisition debts were abolished as per 1 January 2019.

The exit taxation regime for CIT purposes were slightly altered, by providing that an exit levy must be paid in full within the 5 years following the exit but no later than the moment of realisation, e.g. the sale of the asset(s).

## ATAD II

As an expansion to the legislation included in the ATAD I, the European Commission proposed rules addressing hybrid mismatches between EU member states and in relation to third countries (ATAD II). A hybrid mismatch must lead to either tax deduction with no inclusion of the income or double deduction in cases involving entities, (financial) instruments, permanent establishments or the location of an entity. ATAD II has already been adopted at the EU level and the EU member states must implement the ATAD II rules, in principle, by 31 December 2019 and apply them as per 1 January 2020. The Netherlands applies ATAD II as per book years starting on or after 1 January 2020.

## DAC6

DAC6 (Directive 2011/16/EU on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements) imposes mandatory disclosure requirements for certain arrangements with an EU cross-border element. Where such an arrangement falls within certain "hallmarks" mentioned in the directive and in certain instances where the main or expected benefit of the arrangement is a tax advantage, the arrangement should be reported. In short, the legislation covers all taxes except value added tax and excise duties. All EU member states must implement the DAC6 rules by 31 December 2019 and apply them as from 1 July 2020.

The Netherlands will therefore also apply the DAC6 rules as per 1 July 2020. Furthermore, the Netherlands has decided not to go further than the EU Directive. For example, no additional hallmarks have been proposed and the scope of the legislation has not been extended to other taxes.

## CCTB and CCCTB

In 2011, the European Commission proposed a Directive for a Common Consolidated Corporate Tax Base (CCCTB), which has been pending in Council. The Directive aimed to provide companies with the option for a single set of corporate tax rules for doing business across the internal market. Discussions in Council have shown that the 2011 CCCTB Proposal would be unlikely to get adopted in its entirety without a staged approach. In the EC's 2015 Communication on an Action Plan for a Fair and Efficient Corporate Tax System in the EU, the European Commission therefore advocated a step-by-step approach. The first step could be regarded as the adoption of the ATAD in July 2016. The adoption of a mandatory set of rules for a CCTB is then the second step. Third is the adoption of rules for consolidation: CCCTB, the EC's ultimate goal in this regard. The difference between CCTB and CCCTB thus is the cross-border consolidation of profits and losses which only arises with CCCTB in the final step, as well as the elimination of intra-group transactions. The 2011 CCCTB Proposal is withdrawn with the adoption by the European Commission of the new proposals for a CCTB and CCCTB. It should be noted that whereas the ATAD is a minimum standards Directive, the current proposals for CCTB and CCCTB are more prescriptive.

## State aid

The European Commission has been investigating for several years whether certain schemes/regimes as well as individual tax rulings between companies and local authorities are in breach of EU State aid rules. In some of these cases the European Commission has already issued final decisions concluding that these schemes and tax rulings constitute unlawful State aid. One of these final State aid decisions concerns a Dutch tax ruling. The Dutch government has appealed this decision with the General Court (that is the court of first instance within the EU). In its judgment, the General Court annulled the decision of the European Commission because, in the Court's view, the European Commission did not demonstrate the existence of an economic advantage within the meaning of EU State aid rules.

The European Commission has also investigated other Dutch tax rulings for which a final State aid decision is expected. The Dutch government has also taken the position that the Dutch tax ruling practice in general does not allow for State aid, considering that Dutch tax rulings do not deviate from Dutch tax law as the goal of Dutch tax rulings is to obtain certainty in advance.

## What we can do for you?

- Assess the effects of BEPS and the new legislation
- Assess the impact of the MLI on your business
- Determine the need to file a country-by-country report
- Assist you in preparing and filing the country-by-country report
- Help you set up a local file and a master file
- Assess how the ATAD I and the ATAD II legislation may affect your business
- Help you recognise possible DAC6 reportable transactions
- Inform you on State aid developments
- Discuss the possible consequences of the CC(C)TB for your business



# Dutch taxes

## Corporate income tax

### Scope

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

### Residence

In the Netherlands, corporate residence is determined by a company's specific facts and circumstances. Management and control are important factors in this respect. Companies incorporated under Dutch law are deemed to be residents of the Netherlands. To obtain a Dutch tax residency certificate or a tax ruling, minimum substance requirements are guidelines in ensuring that effective management and control of the company are based in the Netherlands.

### Tax rate

The standard CIT rate is 25 per cent and will be reduced to 21.7 per cent in 2021. A lower rate of 16.5 per cent applies to taxable income up to EUR 200,000, this rate will be lowered to 15 per cent in 2021. If the criteria are met, fiscal investment funds are taxed at a CIT rate of nil per cent. Under conditions, certain investment funds are eligible to opt for an exempt status for Dutch CIT purposes.

### Income determination

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

important one being the participation exemption, which will be discussed on page 27.

The Dutch tax system provides several tax incentives, for example to stimulate certain investments. If the conditions are met, tax incentives are available for small-scale investments, investments in energy-efficient or environmental assets and for research and development activities. For more information see Tax incentives on page 41. The Netherlands also provides for an optional favourable regime for the calculation of profits from qualifying activities of seagoing vessels. Certain conditions have to be met.

The remuneration for activities performed should be at arm's length, meaning that terms, conditions and pricing of transactions between affiliated companies should be similar to those applied between independent third parties. Dutch companies are obliged to produce and maintain appropriate transfer pricing documentation substantiating the transfer prices used. The documentation should, among other things, include a functional analysis (description of the functions, risks and assets), an economic analysis (including benchmarks) as well as transfer pricing policy documents and internal contracts. Depending on the situation, the documentation obligations also include a country-by-country report, a master file and a local file. We refer to page 23.

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

### Interest deduction

In principle, interest expenses are deductible for corporate income tax purposes. However, various interest deduction restrictions do apply, such as the aforementioned earnings stripping rule. The earnings stripping rule limits the deduction of the on balance interest cost to 30 per cent of the taxpayer's EBITDA with a threshold of EUR 1 million and a carry forward rule. Furthermore, there are specific interest deduction restrictions to prevent tax base erosion by interest deduction. However, in certain cases, if business considerations are substantiated, interest is not limited in deduction.

### Depreciation

Generally, depreciation may be computed by using a

straight-line or a reducing-balance method or on the basis of historical cost. However, Dutch tax law includes specific rules that can limit the depreciation of immovable property, goodwill and other assets.

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

### **Functional currency**

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

### **Participation exemption**

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

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

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

For non-qualifying portfolio investment participations, an indirect tax credit system is applicable for foreign taxes instead of the exemption. Income and expenses relating to earn-out receipts and payments are not taxable. Note that expenses relating to the sale or purchase of participations are non-deductible.

As from 2019 the participation exemption includes a CFC-rule. The CFC-regime targets corporate taxpayers that hold a direct or indirect interest, either standalone or with affiliated companies, an interest of more than 50 per cent in a subsidiary or disposes of a permanent establishment in either a low-taxed, i.e. less than 9 per cent, or a non-cooperative jurisdiction that is explicitly listed by the Dutch Ministry of Finance.

### **Implementation Parent-Subsidiary Directive**

Since 1 January 2016 a corporate taxpayer is not eligible for the participation exemption or participation credit for received distributed profits to the extent that such distributed profits are deductible by the subsidiary. This might be the case for certain hybrid financial instruments. The intention of the taxpayer is irrelevant in this respect. With these changes the adjustments of the EU's Parent-Subsidiary Directive are implemented, something which all EU Member States were obliged to do. The Netherlands has chosen a practical and business friendly implementation in this respect. We refer to page 24 for further rules addressing hybrid mismatches based on ATAD II.

Furthermore, the scope of the current minimal substance requirements is broadened to include certain intermediate companies. In general, however, no significant changes in the existing practice were intended.

### **Innovation box regime**

A special regime applies with respect to profits, including royalties, derived from a self-developed intangible asset. Under the innovation box, the taxpayer may opt, under certain conditions, for the application of a lower effective tax rate on taxable profits derived from these intangible assets. The effective tax rate of the innovation box is a

maximum of seven per cent, by means of a reduction of the tax base. For profits up to and including EUR 200,000 (i.e. the first bracket), this effective tax rate is even lower. As per 1 January 2021 the effective tax rate of the innovation box is intended to be increased to nine per cent.

The innovation box regime applies mostly to profits from innovative activities that take place in the Netherlands. The innovation box can be a very important facility. In combination with other facilities (see 'Tax incentives' on page 41), it makes the Netherlands the ideal location for R&D companies.

### **Fiscal unity**

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

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

The advantages of the fiscal unity include:

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

A fiscal unity only comes into existence after a request has been filed with the Tax Authorities and can have maximum retroactive effect of three months (provided that the conditions have been met during this term). Disadvantages of a fiscal unity may be that each company is jointly and severally liable for the corporate income tax debts of the fiscal unity and the more limited application of certain tax incentives.

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

Note however, that some changes were made to the fiscal unity regime that have retroactive effect to 1 January 2018. This may reverse some of the effects of the fiscal unity. These changes result from the case law of the ECJ in which it ruled the 'per element approach' applicable to the Dutch regime. The amendments result, among others, in disregarding the fiscal unity for the purpose of the provision on the interest on related party debts, the provision of the participation exemption regime on portfolio investment participations, the 'anti-mismatch' rule of the participation exemption regime and the provision on loss utilisation in cases of significant changes in ultimate ownership.

### **Net operating losses**

Tax losses can be carried back one year and carried forward six years (whereas tax losses up to and including 2018 can be carried forward nine years). Complex rules however may prohibit the utilisation of net operating losses after a change of 30 per cent or more of the ultimate control in a company.

No cross-border relief is available with regard to foreign permanent establishments. Foreign source losses cannot be offset against Dutch source profits. An exception applies to 'final losses', losses realised upon the discontinuation of foreign business operations. Under certain conditions, the 'cessation regime' allows final losses of foreign permanent establishments to be taken into account for Dutch CIT calculation purposes.

### **Foreign income and double tax relief**

The worldwide income of a resident corporate taxpayer is included in the Dutch CIT base, but the Dutch system usually subsequently provides for double tax relief. The Netherlands has concluded almost 100 tax treaties for the avoidance of international double taxation ('DTC'). In case no DTC applies, the Netherlands often unilaterally

provides for double tax relief. In addition, taxpayers may benefit from the favourable rules provided by EU directives and EU law. The Netherlands, like over 90 other jurisdictions, ratified the OECD's multilateral instrument ('MLI') to swiftly implement several measures to update its tax treaties and lessen possibilities for tax avoidance.

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

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

In most circumstances, foreign dividend is exempt from Dutch CIT under the participation exemption, as previously discussed. As a consequence, foreign withholding tax cannot be credited, and constitutes a real cost for the companies concerned. However, if a Dutch company re-distributes such dividends, a credit of the foreign withholding tax may be granted against Dutch dividend withholding tax due on the distribution. The credit amounts to a maximum of three per cent of the gross dividend paid. Note that the Netherlands, as a tax treaty policy, aims to achieve an agreement on a low or nil withholding tax rate for dividends from a participation in a bilateral tax treaty.

### Exit tax

If, for any reason, you wish to migrate your company from the Netherlands, an exit tax is due on realised and unrealised profits (hidden reserves and goodwill). The taxable amount is calculated at the time of migration and is formalised in an assessment. If the new place of residence is within an EU/EEA Member State, the tax due may, on request, be paid in 5 annual instalments. The company has to comply with certain administrative requirements and may have to provide security in order to obtain the deferral.

## What we can do for you?

- Advise you on the application of Dutch CIT and dividend withholding tax to your business
- Assist you in complying with the formal and administrative rules
- Inform you on the impact of the Parent-Subsidiary Directive - or any other EU directive -, and the changes to your business
- Advise and assist you on the application of the innovation box regime to your business
- Advise you on the application of the fiscal unity regime and participation exemption to your business
- Determine the impact of anti-avoidance provisions like CFC legislation and interest deduction limitation rules such as the 30 per cent EBITDA restriction



## Value added tax

### EU context

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

### The VAT system

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

VAT is charged on the supply of goods and services created in the Netherlands by a taxable person in the course of exercising a business, unless the supplies are zero-rated or exempt. A VAT taxable person is anyone performing business activities in the Netherlands. Furthermore, the intra-Community (i.e. within the EU) acquisition in the Netherlands by taxable persons or non-taxable legal persons, the intra-Community acquisition of a new means of transport by any person, and the importation of goods are also considered taxable events.

All the above-mentioned events are taxable if performed in the Netherlands, even when they are carried out by non-residents.

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

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

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

### Rates

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

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

### Deferment of import VAT

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

### Form-free administration and e-invoicing

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

Another advantage is that the Netherlands has introduced legislation that allows for form-free e-invoicing. This means that, although the standard invoicing requirements

have to be met, the way in which the electronic invoices are sent is up to the entrepreneur, as long as the authenticity of origin, the integrity and completeness of the content and the readability of the electronically stored invoices are guaranteed.

### **VAT refund request**

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

### **Quick Fixes**

Effective 1 January 2020, the EU Member States, including the Netherlands, are required to implement four quick fixes aiming to improve the day-to-day functioning of the VAT system for EU cross-border B2B trade.

These Quick Fixes (QF) have consequences for the company's administrative systems, VAT registrations, contracts, (electronic) documents and invoices.

#### **QF 1: VAT identification number and EU Sales Listing**

As of 1 January 2020, obtaining and validating the customer's VAT ID number as well as filing correct recapitulative statements (EU Sales Listings) will be a hard condition for the application of the zero VAT rate.

As a practical consequence, there is an increased need for businesses to include all VAT identification numbers of customers in their ERP systems. The reason is that they should be able to raise invoices stating the correct VAT-identification number of their customers and to submit EU Sales Listings with the correct information.

It is therefore important to validate these VAT identification numbers periodically (or even before each shipment) in the EU VIES-system. Proper documentation of these controls is also very important in this respect. In addition, the submission of a recapitulative statement (EU Sales Listing) with correct information will be a hard condition for the application of the zero VAT rate. In the Netherlands, the supplier will be allowed to repair any omissions.

#### **QF 2: Proof of transport**

A common framework for the documentary proof needed for application of the zero VAT rate to intra-Community supplies is introduced.

In case of transport by or on behalf of the supplier, the

proof should consist of two supporting documents drawn up independently of each other, e.g.: a signed CMR in combination with the transport insurance policy for the respective supply of goods. When the buyer arranges for the transport, the supplier should also possess a written statement from the buyer/acquirer. If the supplier is in possession of the required evidence, it is presumed that the goods have been transported from one EU Member State to another. The Tax Authorities may rebut this presumption if they can demonstrate that transportation did not take place after all.

These new rules do not affect current (Dutch) practice. All proof that is currently considered sufficient evidence based on Dutch rules and CJEU/national case law will continue to be accepted as sufficient proof of transportation. The new EU rule is an add-on to the existing Dutch rules: it provides for a rebuttable presumption.

#### **QF 3: Call-off stock**

In case of call-off stock, a supplier moves goods to a warehouse/stocking location of a known customer to enable the customer to pick the goods from the stock at a later stage and trigger a VAT supply.

If a company transfers own stock to a warehouse in another EU Member State, the supplier must report a (fictitious) intra-Community supply in the Member State of departure and a corresponding intra-Community acquisition in the Member State of arrival. The subsequent removal of goods from that stock is a domestic supply in the country of the warehouse. By default, the transfer of stock and the subsequent supply require the supplier to register for VAT purposes in this EU country and to fulfill the relevant VAT obligations. Under the new regime, subject to conditions the physical transfer does not constitute a fictitious intra-Community supply, so that the supplier does not have to register in the Member State of the customer. One of the conditions is that the customer calls off the goods within one year.

The new rules on call-off stock provide for a uniform system because of which the transfer of call-off stock is treated equally in all EU Member States. The application of these call-off stock rules is not optional: it is a mandatory regime. There is no transitional arrangement for call-off stock transferred before 1 January 2020. The Dutch Tax Authorities will introduce the new scheme in phases, because of their IT implementation schedule.



Businesses should assess the current (2019) VAT treatment of call-off and consignment stock and similar situations and gain insight into the steps necessary to comply with the VAT treatment under this Quick Fix. To be VAT compliant in 2020, it is key to align document governance with stock management data.

#### **QF 4: Chain transactions**

Cross-border chain transactions consist of successive supplies of goods between traders in more than one Member State, but with only one cross-border transport movement, usually from the first to the last party in the supply chain.

For VAT, this transport movement can only be assigned to one of the supplies in the chain and hence the zero VAT rate for intra-Community supplies can be applied only to one leg of the supply chain. The other supplies in the

chain normally lead to 'local' VAT and to VAT-registrations in the respective Member State(s).

Under the rules per 2020, the zero-rated intra-Community supply is by default assigned to the supply to the supplier in the supply chain who arranges the transport or has the transport arranged in their own name.

Yet if such suppliers (intermediaries/middlemen) are not the first company in the supply chain, and provide a VAT identification number of the Member State in which the dispatch commences, they are considered to perform the zero-rated intra-Community supply themselves. Under those circumstances, the supply to the intermediary is a local supply and the supply by the intermediary is the zero-rated intra-Community supply.

## **What we can do for you?**

- Developing a VAT Control Framework
- Adjusting the ERP system (accounting system) for VAT purposes
- Mapping the potential risks and opportunities for VAT purposes
- Help you with finding solutions for extending SAP-systems that give an insight into all data which is relevant to determine the VAT payable (e.g. PwC's Taxmarc)
- Assist in determining the impact of Brexit on your business and how to mitigate negative consequences where possible
- Help you map out the consequences of the quick fixes



## Customs and excise

### EU: customs union

With Brexit taking place in 2020 and uncertainty on the future relationship with the UK, the Netherlands is increasingly chosen as primary logistic hub for the EU. If your business imports goods into the Netherlands from outside the EU, the goods will have to be declared for customs purposes and may be subject to customs duties and VAT. The EU is a customs union, which means that the EU is treated as a single territory for customs purposes and that in principle the same rules and rates apply in each Member State. This means that, once goods are in 'free circulation' (i.e. all duties paid and import formalities completed) in one Member State, such as the Netherlands, they can move freely between all other Member States, without further payment of customs duties or further customs formalities.

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

### Customs duties

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

#### *Classification*

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

Upon application, the Dutch Customs Authorities will issue a decision on the classification of the product. A Binding Tariff Information (BTI) provides security on the classification as it binds both the holder of the BTI as well as the Customs Authorities in each EU member

state. We can assist with determining the classification of your goods and subsequently with the preparation and substantiation of the BTI application.

#### *Valuation*

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

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

#### *Origin*

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

Unlike the US the EU does not have a general refund system for customs duties paid. This means that when goods are imported and subsequently re-exported the customs duties paid upon importation will not be refunded. Therefore, in order to avoid unnecessary payment of customs duties for products that are not destined for the EU market, various suspension arrangements can be applied, e.g. for transportation (customs transit), for storage (customs (bonded)

warehousing) or for processing (inward processing). Some of these arrangements may also be applied for postponing the payment of customs duties and import VAT. For the application of such suspension regimes typically authorisations are required, which may only be available for EU established companies.

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

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

In recent years, the EU has concluded various free trade agreements, of which the ones with Japan and Singapore are the latest.

### **Excise duty**

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

### **UCC**

The new 'Union Customs Code' has entered into effect on 1 May 2016 and has introduced some radical changes. Although the general principles as mentioned above remain the same, the provisions relating to customs value, for example, have changed, and furthermore, it is no longer possible to determine customs value on the basis of a 'First Sale'.

### **Game of Trade**

PwC has recently developed the Game of Trade. 'Game of Trade' is a strategic digital game. This engaging simulation allows organisations and governments to raise awareness about the impact of trade wars. Business leaders can explore the effects of tariff increases, non-tariff measures and protectionist policies on business operations, international trade and supply chains.

## **What we can do for you?**

- Assist you with getting insight in the classification of your products (and the corresponding duty rate)
- Apply for a Binding Tariff Information (BTI)
- Assist with the implementation of Global Trade Management systems
- Determining a correct customs value; evaluate which elements should be included or excluded from your customs value
- Help your business to get in control of its customs processes. For this purpose, there are a number of tools (e.g. our Customs Monitoring Tool and our Customs Insights Tool) that have proven to help businesses to be in control
- Evaluate whether using free trade arrangements can lower the amount of payable customs duties in the EU
- Assess whether any customs suspension regimes and/or simplifications may be applicable
- Assist you with the application of customs authorisations (e.g. AEO, authorised exporter)
- Help with getting the relevant authorisations (such as a tax warehouse authorisation) to be able to store and transport excise goods under suspension of excise duties
- Assist with the process of determining whether goods would qualify as excise goods
- Assess the impact of Brexit on your customs and excise position and help with optimising your supply chain



## Personal income tax

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

### Residence

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

### Qualifying non-resident taxpayer

Qualifying non-resident taxpayers of the Netherlands (i.e. individuals who reside in the EU, EEA, Switzerland or the BES islands (Bonaire, St. Eustachius and Saba) and who earn 90 per cent of their worldwide income in the Netherlands) are also eligible for personal/familial deductions, tax credits, et cetera, which are normally only available to Dutch tax residents.

Under the provisions of the 30 per cent ruling (see 'Extraterritorial costs and the 30 per cent ruling' on page 37), employees who are considered resident taxpayers may opt to be treated as partial non-residents. 'Partial' in this respect implies that they are treated as residents for box 1 and as non-residents for box 2 and box 3 purposes (please find the explanation of the boxes underneath).

### Boxes

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

#### Box 1

##### Scope

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

#### Rates

Box 1 has a progressive rate.

Income (EUR)	Tax rate (%)	Social security (%)	Total (%)
0 - 20,711	9.70	27.65	37.35
20,711 - 34,712	9.70	27.65	37.35
34,712 - 68,507	37.35	None	37.35
> 68,507	49.50	None	49.50

#### Income determination

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

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

The rules regarding 'excessive' remuneration, brings 'lucrative investments' (carried interest arrangements) under taxation in box 1. The income from a lucrative investment, both income and capital gains, will in principle be considered 'income arising from other activities' and, as such, be taxable in box 1. Under certain circumstances the income may be taxed in box 2 (lower tax rate of 26.25 per cent).

Mortgage interest payments in relation to the financing, renovation, or maintenance of the primary residence may be deducted from box 1 income. To determine the net amount of the deduction, deemed income of, generally, 0.60 per cent of the value of the property is taken into account. An increased rate applies when the value exceeds EUR 1,080,000: 2.35 per cent on the portion exceeding EUR 1,080,000. The interest paid on mortgage loans concluded on or after 1 January 2013 can only

be deducted if the full mortgage loan is paid off on a periodical basis within 30 years. Starting from 1 January 2014, the maximum effective tax rate against which the mortgage interest is deducted is lowered. In the year 2020 the mortgage interest paid can be deducted against a (maximum) tax rate of 46 per cent. The mortgage interest deduction will be further reduced in steps from three percentage points to 37.10 per cent in 2023.

#### *Levy rebates*

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

### **Box 2**

#### *Scope*

Box 2 refers to taxable income from a substantial interest.

#### *Rates*

The box 2 rate will be increased from 25 to 26.25 per cent as from 2020. In 2021 the box 2 rate will be 26.9 per cent.

#### *Income determination*

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

### **Box 3**

#### *Scope*

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

#### *Rates*

Box 3 income is taxed at a flat rate of 30 per cent (see table below for fixed return on investment).

#### *Income determination*

Income from savings and investments is, as such, not taxable. However, the net assets (assets minus debts) valued at 1 January are deemed to generate a fixed return on investment per year. The fixed return on investment depends on the amount of the net assets. This fixed return is taxed in box 3. All net assets that are not intended for daily use and that are not taxed in box 1

or box 2 classify for the box 3 taxable base.

For residents and non-residents, part of the taxable base is exempt (2020: EUR 30,846 per adult) and several specific deductions apply. Non-residents are subject to taxation only on the net value of a limited number of Dutch assets, including Dutch real estate not used as the primary residence, and Dutch profits rights unrelated to shares or an employment.

Assets	Notional yield	Effective tax rate
Up to €30,846	Tax free	0.00%
€30,846 - €103,643	1.80%	0.54%
€103,643 - €1,036,418	4.22%	1.27%
€1,036,418 and more	5.33%	1.60%

#### **Foreign tax relief**

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

#### **Social security**

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

The system can be classified as follows:

- National insurance tax: under the national insurance tax regulations, contributions are levied up to a maximum income of EUR 34,712. At present, the contributions are capped at EUR 9,598 per annum. From this amount several levy rebates may be deducted. National insurance contributions paid by an employee are not deductible from taxable income. National insurance contributions and income taxes are included as a combined amount in the first and second income tax brackets.
- Employee's insurance: this is paid by the employer. It includes unemployment and disability benefits. The average maximum annual contribution amounts to approximately EUR 6.576 for an employee with a permanent employment contract and EUR 9.438 for an employee with a temporary employment contract.
- Health insurance: the employee should individually conclude a health insurance policy with a Dutch

health insurance company irrespective of whether international health insurance is available. In addition, the employer is required to make a contribution as well. This contribution is capped at EUR 3,835.

### Extra-territorial costs and the 30 per cent ruling

The actual costs incurred by employees who are hired/assigned from abroad may be reimbursed tax free provided that these expenses can be proven. These extra-territorial costs basically include all costs that the employee would not have incurred had he or she not been assigned to the Netherlands. Costs that qualify as extra-territorial costs include, among others, costs related to double housing, language courses, residence permits, and home leave.

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

The 30 per cent reimbursement is intended to cover all extra-territorial costs. If the 30 per cent ruling is applied, the actual extra-territorial costs cannot be reimbursed tax free in addition to the 30 per cent reimbursement.

However, if the actual extra-territorial costs are higher than the 30 per cent reimbursement, you can choose to reimburse these higher actual costs tax free if proof of the costs is available.

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

- The foreign employee should have specific expertise that is not available, or is scarce in the Dutch labour market. This is based upon a salary norm: the general gross salary has to amount to a minimum of EUR 38,347 (i.e. EUR 54,781 including tax free reimbursement of 30 per cent). A lower norm amounting to EUR 29,149 (i.e. EUR 41,641 including tax free reimbursement of 30 per cent) applies to individuals with a university degree who are younger than 30.
- The employee must have lived outside a 150 kilometer radius of the Dutch border during more than 2/3 of a 24-month period before taking up Dutch employment in order to qualify for the 30 per cent ruling.

- An application for the 30 per cent ruling must be filed within four months after starting the Dutch employment. If this period is exceeded, the ruling, if granted, will only apply as of the month following the month in which the application was filed. The 30 per cent ruling may only be applied if the employee is included in a Dutch wage tax administration.

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

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

#### Example of the 30 per cent ruling

The example shows the difference in effective tax rate between applying the 30% ruling and reimbursement of the actual tax free costs for an employee with an income of 75,000 euro and 10,000 euro actual extraterritorial costs.

	With 30% ruling	Without 30% ruling
Paid by employer	€ 75,000	€ 75,000
Less: extra-territorial costs	€ 22,500 (30% of remuneration)	€ 10,000 (actual costs)
<b>Wage for income tax</b>	<b>€ 52,500</b>	<b>€ 65,000</b>
Less: Income tax	€ 10,011	€ 14,680
Less: National insurance tax	€ 9,598	€ 9,598
Plus: Levy rebates	€ 3,674	€ 2,215
<b>Net income</b>	<b>€ 59,065</b>	<b>€ 52,937</b>
Effective tax rate	21%	29%

## Payroll taxes

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

Withholding agents for the payroll taxes are obliged to withhold wage tax and the national insurance contributions from the employee's wage and bear the cost of the employee's insurance contributions and the income-related contribution pursuant to the Health Care Insurance Act (jointly: payroll taxes). Please note that the social security premiums are only due in case the employee is covered by the Dutch social security system.

The wage tax and national insurance contribution are a withholding tax on the income tax of employees. The insurance contributions and the income-related contribution pursuant to the Health Care Insurance Act are costs for the employer. For 2020, the maximum premium for the employee's insurance contributions is approximately EUR 6,576 for an employee with a permanent employment contract and EUR 9,438 for an employee with a temporary employment contract. The maximum income-related contribution pursuant to the Health Care Insurance Act is EUR 3,835.

The wages are understood to mean everything the employee receives pursuant to the employment contract although some items may be tax exempt (under the general work-related cost scheme or specific exemptions). Employers who provide reimbursements or benefits in kind to employees will have to assess the wage tax implications. When no specific exemption applies (specific exemptions apply for example to entitlements to Dutch pension benefits and certain jubilee bonuses), the reimbursement or benefit in kind is individual wage for the employee or can be included in the work-related cost scheme.

### Work-related cost scheme

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

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

## What we can do for you?

- Provide clarity in view of the changes and transitional law of the 30 per cent ruling
- Advise on tax efficient wage tax payments and the work-related cost scheme
- Set up a Dutch payroll administration and apply for a voluntary registration for wage tax agent.
- Assist you to understand and manage the risk and compliance of your global talent deployments (preparation of income tax returns, most efficient application for your social security statements and 30 per cent ruling applications)
- Putting the right people in the right locations, at the right times, in a cost effective and efficient way (manage your global workforce with our technology and benefit from the applicable tax, pension and social security benefits)





## Other taxes

### Real Estate Transfer Tax

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

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

### Dividend withholding tax

Dividends from Dutch corporations are generally subject to a 15 per cent Dutch dividend withholding tax. In general, in a business-driven structure this does not apply to a Dutch cooperative. Dividend withholding tax on dividends received by taxpayers or corporate entities is creditable against the personal income tax and the corporate income tax due.

On request and under conditions - mostly EU/EEA - certain non-resident shareholders who qualify as beneficial owner of revenues with regard to which they do not pay personal income tax or corporate income tax in the Netherlands can receive a refund of withheld dividend tax. This is the case insofar as this levy is higher than the personal income tax or corporate income tax they would owe if they would have resided or been based in the Netherlands.

Dividends paid to corporate entities in other EU/EEA countries are often exempt from dividend tax due to the EU Parent/Subsidiary Directive or EU/EEA law. This exemption has been broadened as per 1 January 2018 and since then also includes dividends paid to corporate entities in countries with which the Netherlands has a bilateral tax treaty. The exemption for the withholding of Dutch dividend withholding tax are subject to targeted anti-abuse rules, which are interpreted in accordance with the OECD BEPS Project.

A 'holding cooperative' might be obliged to withhold dividend withholding tax if, in the preceding year, at least 70 per cent of the actual operations of a holding cooperative domiciled in the Netherlands consist of holding activities, a holding cooperative will have a duty to withhold dividend tax. Cooperatives that have membership rights comparable to shares remain obliged to withhold dividend tax regardless of their qualification as a holding cooperative.

### Withholding tax on interest and royalties

The Netherlands will introduce a conditional withholding tax on outbound interest and royalty payments to affiliated entities in countries which levy no tax on profits or at a statutory rate of less than 9 per cent, countries on the EU list of non-cooperative jurisdictions, or in tax abuse situations. The withholding tax rate is equal to the highest corporate income tax rate, namely 21.7 per cent (2021 rate). The law will enter into force on 1 January 2021.

### Car taxes and regional taxes

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

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

## What we can do for you?

- Assess whether an obligation to withhold dividend tax exists
- Inform you on the developments regarding potential changes to the withholding taxation on dividends and the introduction of a withholding levy on interest and royalties
- Help you to determine your tax liability, both for withholding tax and income tax purposes
- Inform you about the conditions and application of a bilateral tax treaty
- Inform you on the effects of the Netherlands' MLI signature on specific bilateral tax treaties
- Advise you on the application of national and international law
- Assist you in complying with the formal and administrative rules such as notification deadlines, application forms, objection and appeal



## Tax incentives

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

### Research and development incentives

Apart from the innovation box (see 'Innovation box regime' on page 27), the Dutch tax system stimulates R&D activities by providing for a reduction of wage tax due on the wages of employees engaged in R&D of technologically new products.

### R&D costs

A company can reduce the costs of its R&D activities by making use of the scheme for reducing the payroll tax and national insurance contributions to be remitted (Wet bevordering speur- en ontwikkelingswerk: WBSO). The WBSO rebate for R&D covers salary costs and other costs and expenses related to R&D. The subsidy accrues to the employer when the employee is credited for the normal amount of wage tax. For the year 2020, the regular reduction of the payroll tax and social security contributions amounts to 32 per cent of the first EUR 350,000 in R&D costs (first bracket) and sixteen per cent of the excess R&D costs. The rebate is limited at the total amount of wage tax due. For start-ups, the reduction may amount to 40 per cent of the first bracket.

To obtain the relief under the R&D incentive programme, taxpayers must file an electronic/online application with RVO.nl, a department of the Ministry of Economic Affairs. If approved, the taxpayer will receive an R&D declaration. The budget for this subsidy is fixed, so the amount of the subsidy is dependent on budget availability. Note that, subject to certain conditions, self-developed and utilised software falls within the scope of the R&D incentive.

### Investment incentives

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

### Energy-efficient and environment-improving assets

An investment in a new energy-efficient asset may qualify for an additional deduction (EIA) if the amount exceeds EUR 2,500 and the asset satisfies the requirements on the Energy List 2020. The EIA amounts to 45 per cent of the qualifying investments. A similar tax incentive is available for investments in new environment-improving assets. Such an investment may qualify for an additional deduction (MIA) if the amount exceeds EUR 2,500 and the asset satisfies the requirements on the Environment List 2020. The MIA is set at 36, 27 and 13.5 per cent (dependent upon eligibility) of the amount of the qualifying investments. The taxpayer must report the qualifying investment within three months to RVO.nl. Both for EIA and MIA, limitations to the maximum amount of benefit apply.

### Arbitrary depreciation

If conditions are met, entrepreneurs are permitted to apply an arbitrary depreciation scheme. In contrast to a regular scheme, a higher or lower depreciation rate may be selected annually depending on which would be the most suitable at the time.

Arbitrary depreciation is available to, among others, investments in business assets that are in the interest of the protection of the Dutch environment and that meet certain requirements. For more details, refer to the paragraph "Depreciation" under Corporate income tax.

## What we can do for you?

- Inform you about the availability of tax incentives for your business / investments
- Advise you on the application of the tax incentives to your business
- Assist you in complying with the formal and administrative rules such as notification deadlines, application forms, objection and appeal



# Tax compliance

## Corporate income tax

### CIT return and assessment

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

The Dutch Tax Authorities will issue a preliminary CIT assessment at the start of a financial year. For financial years that do not coincide with the calendar year, other timing considerations than those discussed below are relevant.

A first preliminary CIT assessment is normally issued in January of the relevant year. Generally, the taxable amount in this first assessment is based on either the average of the two preceding years' taxable income or on a preliminary tax return submitted by the taxpayer. The payment date is mentioned in the assessment. Normally, these assessments must be paid within six weeks after the issue date of the assessment or in eleven monthly instalments, starting at the end of the second month of the current year (i.e. February to December). However, the amount due on the assessment can also be paid in one lump sum payment. A taxpayer will then receive a

discount on the amount payable, although this discount system will be abolished as from 2021.

Please note that at any time the taxpayer has the possibility to request the Dutch Tax Authorities to issue a revised preliminary CIT assessment. Such a request can be filed electronically and is normally accepted, after which a revised preliminary assessment will follow.

Following the end of a financial year, a CIT return should be filed within five months, with a possible extension of five months (before 1 June respectively 1 November of the subsequent financial year in case of a financial year equal to the calendar year). If the CIT return is prepared by a professional tax firm like PwC, under certain conditions a longer extension for filing the CIT return can be obtained, up to a total of sixteen months after the end of a financial year. This means that for financial years that end on 31 December 2019, an extension for filing the CIT return may be granted up to 1 May 2021. The maximum extension of eleven months (in addition to the standard five months) after the end of the financial year also applies to companies with a financial year that is not equal to the calendar year.

After the tax return has been filed, a revised preliminary tax assessment is often issued. Once the Dutch Tax Authorities have examined the CIT return, the final CIT

## What we can do for you?

- Prepare corporate income tax returns
- Prepare tax accounting positions for annual accounts (Dutch GAAP, IFRS or US GAAP)
- Advise and implement on tax (compliance) process set-up
- Advise on and delivery of tax technology solutions (accounting, monitoring, country-by-country reporting, workflow)
- Unlock the potential of your existing ERP systems for tax
- Preparation of CbC report, including data gathering, process design etc.
- Filing of CbC report and CbC notification
- Analysis and understanding of CbC data
- Conversion from client data into XML for filing of CbC report
- Preparation of Master File and Local File
- Global support CbC filing requirements



assessment will be issued. The final assessment should be issued within a period of three years as from year end plus the period of the extension granted for filing the tax return. An objection against the final CIT assessment must be filed within six weeks after the date of the assessment.

Note that the actual term of the granted extensions and the actual date/period/terms that the Dutch Tax Authorities will use to issue assessments may vary from case to case. Also depending on the filing history of the client and/or PwC, the Dutch Tax Authorities may reduce the extension for filing deadlines.

### Payment

Tax is payable within six weeks of the date of assessment. Interest is payable on any difference between the final assessment and the preliminary assessments. The interest is calculated from six months following the financial year up until the payment date of the final assessment. It is advisable to ensure that a correct preliminary tax assessment is imposed, given the high level of tax interest payable of at least 8 per cent. In situations where the final assessment shows a lower amount of tax due than the preliminary assessment, please note that ordinarily no interest is refunded to the taxable entity. In light of the above, it is important to make sure the preliminary assessments are as close to the expected final assessments as possible.

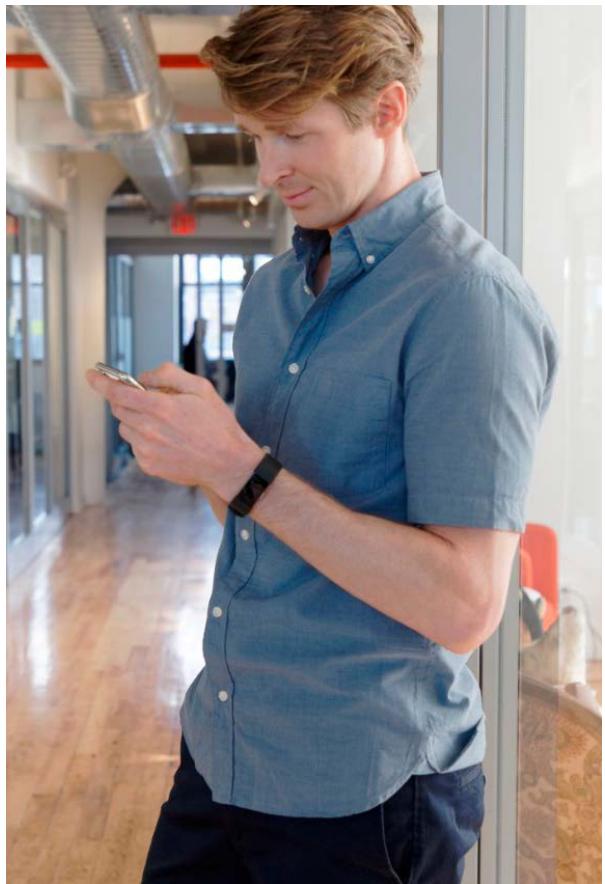
### Additional assessments

The Dutch Tax Authorities can raise an additional assessment after the final assessment is raised within five years after the fiscal year has ended, if new data become available of which the tax inspector could not reasonably have been aware at the time the final assessment was made. This period of five years is prolonged by the period with which the filing of the tax return has been extended. With regard to income from abroad, such additional assessments are allowed within twelve years. An additional assessment may involve interest and a penalty of up to 100 per cent of that assessment. This penalty is not tax deductible.

### Country-by-country reporting

The country-by-country report needs to be submitted to the Dutch Tax Authorities within twelve months after the end of the financial year. Furthermore, Dutch companies forming part of a multinational group with a consolidated turnover of at least EUR 50 million must retain a master file and a local file as part of the administration, irrespective of the tax jurisdiction of its ultimate parent company. These need to be in the administration of the Dutch companies in the timeframe set for filing the tax return (see also page 23).

A Dutch group entity of a multinational group with a turnover of at least EUR 750 million must notify the Tax Authorities whether the ultimate parent company or surrogate parent company will file the country-by-country report. If not, it must notify the Tax Authorities which group company and its tax residence will file the report. This notification should be made at the latest on the final day of the financial year.



## Dividend withholding tax

Dividend payments, distributions treated as dividends and interest on certain profit participating loans paid by resident companies to residents or non-residents are subject to dividend withholding tax.

The tax is withheld by the distributing company at the moment the dividends are put at the disposal of the recipient. The distributing company must file a self assessment and pay the tax withheld to the Tax Authorities within one month of the distribution. Note that as of 1 January 2018 in most cases a self assessment has to be filed even though no dividend withholding tax is due.

In some situations and subject to several conditions, if a Dutch entity has received a dividend from a subsidiary that is resident within the Netherlands or a country that has concluded a tax treaty with the Netherlands and

that was subject to withholding tax in that jurisdiction, it is possible that Dutch dividend withholding tax due on subsequent dividend distributions by the Dutch entity to its shareholders is lowered by three per cent (of the distribution by the Dutch entity).

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

### What we can do for you?

- Asses the dividend withholding position
- Prepare dividend withholding returns



## Value added tax

### VAT return

The tax period is usually a calendar quarter. However, the taxpayer can request the Dutch Tax Authorities to file a monthly VAT return. If the taxpayer is in a refund position, this could lead to a cash flow advantage. The taxpayer can also request filing a yearly VAT return provided that some specific conditions are met.

VAT returns are due by the last day of the month following the tax period to which they relate for companies established in the Netherlands. For foreign companies with only a VAT registration in the Netherlands, the returns are due by the last day of the second month following the tax period to which they relate. Taxable persons filing an annual return are automatically allowed to defer filing until 31 March of the following year. This applies even if no business has been conducted in the Netherlands during that period or if there is no right to refund of Dutch VAT.

As VAT returns must in general be filed electronically there is no need for rescheduling these dates because of weekend or bank holidays. VAT returns can be filed 24/7. The VAT payable regarding a tax period ultimately has to be paid when the VAT return has to be filed.

Adjustments can be made to a submitted VAT return by lodging an objection within six weeks after filing the VAT return (in most cases within six weeks after the ultimate date of payment of the VAT due). Furthermore, an additional VAT return can be submitted within five years after filing the VAT return. However, in the latter case, no formal appeal is allowed if the changes are rejected by the Tax Authorities. A special electronic form exists for filing additional VAT returns. A special form is required

if the correction of VAT payable to the Tax Authorities is more than EUR 1,000.

### Recapitulative statement

A recapitulative statement needs to be submitted if the taxpayer supplied goods or services to an entrepreneur in another EU country and, in the case of the supply of goods, these goods are dispatched from the Netherlands. Taxpayers transporting their own goods to another EU country must also submit these statements. The period for which the taxable person must submit a recapitulative statement depends on the actual situation (the amount of supplies and/or acquisitions and the type of transactions). The following situations are possible: monthly, bimonthly, quarterly and annually.

In the Netherlands the threshold for monthly listing of intra-community supplies of goods (the so-called 'Opgaat ICP') is EUR 50,000. The 'Opgaat ICP' for services can be filed on a quarterly basis. If a taxable person is allowed to file annual VAT returns, it is possible, provided certain conditions are met, to apply for annual submission of the statements. The statements are due by the last day of the month following the applicable reporting period.

### Intrastat declaration

Intrastat declarations have to be filed for dispatches of goods to other EU countries if these dispatches exceed EUR 1,200,000 per year and (separately) for arrivals of goods from other EU countries if these exceed EUR 1,000,000 per year. The Intrastat declarations must be filed monthly and are due on the tenth day of the calendar month following the period to which they relate.

## What we can do for you?

- Prepare and file the VAT returns, recapitulative statements, Intrastat declarations and refund requests
- Matching general ledger and VAT return



## Personal income tax

### PIT return

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

### Advance payment or preliminary tax refund

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

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

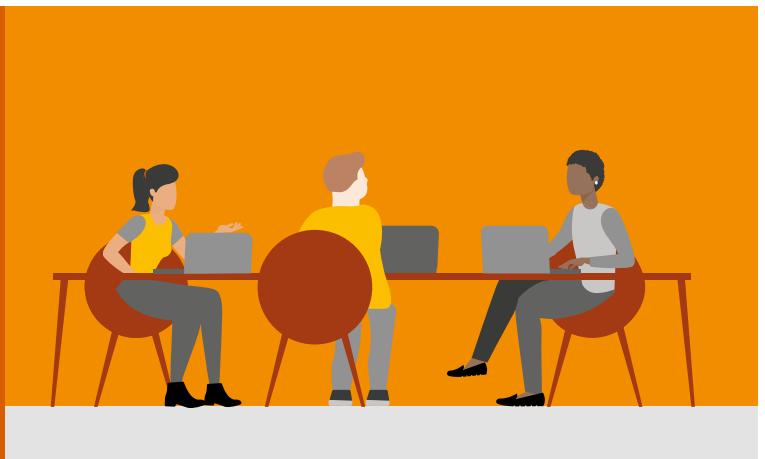
The amount due on each payroll tax return has to be paid within the deadline given by the Tax Authorities.

## Payroll taxes

Payroll taxes are calculated for each wage period, i.e. the period for which the employee receives his/her wage (usually monthly or four-weekly). The employer is required to timely and correctly file the payroll tax returns per wage period. The payroll tax return consists of a collective section (general information concerning the employer) and an employee's section (detailed information concerning each employee. As of 2019 in this section the foreign home address of the employee needs to be included in order to implement the correct levy rebate).

## What we can do for you?

- Payroll tax compliance review
- Employment tax reorganisation services
- Prepare Dutch personal income tax returns
- File requests for preliminary assessments
- Set up and run Dutch payroll processes
- Run our digital assessment tool to identify risks and opportunities





# Human resources and employment law

## Human resources

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

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

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

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

Dutch employers can also hire 'self-employed persons'. A self-employed person is not an employee. In practice it is sometimes hard to make a distinction between an employee and a self-employed person. The employer should make sure that the Dutch Tax Authorities cannot consider the relationship with the self-employed person as an employment.

The government is currently working on a webmodule to provide employers with certainty, if possible, that a labour relationship with a self-employed person is not an employment. The government is also working on new legislation that includes a minimum rate for self-employed persons and a so-called self-employed persons' declaration for self-employed persons at the top of the labour market. The government aims to introduce the new legislation by 2021. However, the proposals might be amended due to criticism and it is unsure whether new legislation with respect to the labour market will be in place by 2021.

In the meantime, enforcement of labour relationships with self-employed persons has been suspended until 1 January 2021, with an exception for so-called malicious parties, for whom enforcement is possible. However, as of 1 January 2020, the Tax Administration will also be able to enforce if organisations do not (or insufficiently) follow the Tax Administration's instructions within a reasonable period of time.

## What we can do for you?

- Up-to-date information about the developments in the Dutch labour market
- Advise about employment terms and conditions
- Advise about the position of a self-employed person



## Employment law requirements

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

These include:

- The requirement to establish a works council for every company with 50 employees or more. The employees elect the members. The works council facilitates the communication between management and staff and has a legal right to advise on, or approve, certain decisions of the company.
- A general duty to provide a safe place of work, safe access and safe work systems, supported by related obligations such as consulting with employees or their representatives on health and safety issues and providing staff with certain health and safety information.
- An obligation not to discriminate against employees, including job applicants, on a range of grounds. It is possible that the activities of an enterprise fall within the scope of an industry collective labour agreement (CLA) concluded by employers' and employees' organisations.
- An obligation to pay employees at least the minimum wage, which is a fixed monthly rate and is increased annually (as of 1 January 2020 EUR 1.654 for those aged 21 and over).
- Various benefits for the employee in connection with childbirth, adoption and other family situations (including the right to at least sixteen weeks of pregnancy and maternity leave).
- A full-time work week that normally contains not more than 40 hours per week.
- A duty to give each employee paid holiday leave at a minimum of four times the average number of days worked per week.
- A limitation of the employer's freedom to process personal data obtained about its employees and job applicants.
- The limitation of the number of temporary employment contracts that can be offered to an employee.

It is recommended that employers have a comprehensive employment contract in place for every employee, which includes all the terms and conditions of employment and in addition protects the employer's business interests by imposing obligations on the employee (e.g. about confidentiality of business secrets or restrictions of certain competitive activities after the employment ends).

## Immigration

All foreign nationals who intend to work and stay in the Netherlands are required to comply with the immigration regulations of the Netherlands. The Netherlands has a less restrictive admittance policy for highly skilled workers of multinational companies who meet specific (salary) criteria.

### EEA/Swiss national

No immigration requirements are applicable to EEA (or Swiss) nationals. In case the stay of an EEA national exceeds four months he/she needs to register with the local municipality in the city of residence (see 'Registration municipality' under 'Non-EEA national').

The departure of the United Kingdom from the EU will have an impact on the immigration formalities required or UK nationals residing and/or working in the Netherlands. The exact impact will depend on the approval of the proposed withdrawal agreement and future trade relation.

### Non-EEA national

According to the Dutch Foreign Employment Act an employer needs to be in possession of a work permit for a non-EEA national who will perform work activities in the Netherlands.

For stays shorter than three months the non-EEA national may need a Schengen visa (for business or tourist purposes) to enter the Netherlands. A (business) Schengen visa does not allow the non-EEA national to work in the Netherlands.

In case the intended stay will exceed 90 days (within a period of 180 days) a residence permit is required to legally be allowed stay in the Netherlands. In addition, a long term entry visa (MVV) is required before entering the Netherlands for most nationals (except for nationals from the US, Canada, Australia, South Korea, Vatican City, New Zealand, Monaco and Japan). In case the company of the foreign national is registered as a recognised sponsor and the foreign national is in possession of a valid residence permit issued by another Schengen country, no long term entry visa (MVV) is required. This exemption applies to the highly skilled migrant procedure (see below).

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

### **Work permit procedure**

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

For a non-EEA national assigned to a Dutch entity within the same group, the intra-company work permit procedure for key personnel might be applicable. The worldwide turnover of the group needs to be at least 50 million. Furthermore, the employee must be in the possession of at least a bachelor's degree, have a management or key position and earn a gross monthly salary of at least EUR 4,612 (EUR 4,981 including holiday pay, figure 2020).

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

### **Highly skilled migrant procedure**

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

The following requirements have to be met:

- The company must be registered as a recognised sponsor with the Dutch Immigration and Naturalisation Service ('IND').
- The employee should have a gross monthly market conform salary of EUR 4,612 (EUR 4,981 including holiday pay, figure 2020) or EUR 3,381 (EUR 3,651 including holiday pay, figure 2020) if the employee is younger than 30 years.

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

Please note that a 30 per cent tax allowance for this category of employees might be applicable (see 'Personal income tax' on page 37).

### **Registration municipality**

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

For a stay of at least four months within a period of six months, registration with the Municipal Population Database is required.

## **What we can do for you?**

- Setting up a works council which can include but is not limited to drafting works council regulations, organising works council elections, time-planning etc.
- Give guidance in creating a safe and healthy work environment
- Analyse whether the activities of your company fall under the scope of a mandatory CLA
- Advise about Dutch labour law such as the various minimum leave requirements, (drafting) employment contracts and (strategies on) how to terminate an employment contract
- Advise on how to deal with personal data of employees
- Apply for work and residence permits

# Accounting and audit



## Accounting requirements

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

With regard to the location of where the accounting records are kept, there are no special regulations. The accounting can be done in any country (although for tax residency purposes, in certain situations accounting should take place in the Netherlands), but the records must be made available within a reasonable time upon

request. A company may decide not to keep records in euros, but to maintain its own functional currency. The same applies to the financial statements. In principle, all companies residing in the Netherlands must prepare annual financial statements, which are then adopted by the shareholders of the company. Subsequently, the financial statements are published, most often by filing them with the Chamber of Commerce. If a foreign company only has a branch in the Netherlands, it normally suffices to file a copy of the annual financial statements filed in its home country.

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



# The annual report

## Size of the company

For all companies, except those applying the International Financial Reporting Standards (IFRS) as endorsed by the EU in the preparation of their financial statements, the requirements to prepare and file annual reports and the requirement for an audit are determined, *inter alia*, by the size of that company. Companies are classified as 'micro', 'small', 'medium-sized' or 'large' on the basis of three criteria, being total assets, net turnover and the average number of employees during the financial year. These criteria are evaluated on a consolidated basis, unless the company qualifies for a consolidation exemption (further details provided further on). The criteria are listed in the table below.

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

A company will be classified as micro, small, medium-sized or large when it satisfies at least two out of the three criteria for that size for two consecutive years (or the first year for newly formed companies). Please note that the reliefs of the micro, small and medium-sized regimes cannot be used by companies applying IFRS in the preparation of their financial statements, as these automatically fall under the large company regime.

## Content of the annual report

In general, the annual report contains the following documents:

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

The auditor's report must include, among other things,

the following points: (a) whether the financial statements have been prepared, in all material respects, in accordance with the applicable accounting principles and provide a true and fair view of the financial position and result for the year, (b) whether the directors' report meets the legal requirements, is consistent with the financial statements and does not contain material inaccuracies; and (c) whether the other information has been provided. In the auditor's report for so-called OOBs (Public Interest Entities), the auditor also needs to include information on materiality, group scoping and key audit matters in the opinion for these companies.

Micro-sized and small companies do not have to include a directors' report and have no audit requirement. They may file an abbreviated balance sheet and, for small companies only, explanatory notes with the Chamber of Commerce. Notwithstanding the general requirements, a micro-sized or small company may at its discretion prepare financial statements based on tax accounting principles. As a result, the equity and the profit according to the financial statements are equal to the equity and profit according to the corporate tax return. This facility was introduced in Dutch law in order to reduce the administrative burden for small entities.

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

## Basis of preparation of the financial statements

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

The financial statements can be prepared either under Dutch GAAP or IFRS. IFRS is required for the consolidated financial statements of listed companies. In the past the Dutch Accounting Standards Board (DASB) amended and updated many of its Dutch Accounting Standards to align them to IFRS. However, many differences remain between Dutch GAAP and IFRS. A standard in which IFRS fundamentally differs from Dutch GAAP is, for example, employee benefits. To overcome the major differences, the DASB has allowed the use of standards from other GAAPs in Dutch GAAP financial statements.

Such facilities exist for:

- IFRS 9 'Financial instruments' in respect of the expected credit loss model for impairment of financial assets;
- IFRS 15 'Revenue from contracts with customers' in respect of revenue accounting;
- IFRS 16 'Leases' in respect of lease accounting;
- IAS 19 'Employee benefits' in respect of pension accounting; and
- US GAAP topics and subtopics dealing with pension accounting.

## Consolidation

The important issue of group financial statements is one that affects most foreign investors in the Netherlands, particularly in cases where a Dutch company is being used as an intermediate holding company in the group structure. While, as a general rule, a company with subsidiaries must prepare consolidated financial statements, there are significant exemptions available.

Small and micro-sized companies in the Netherlands are exempt from preparing and filing consolidated financial statements. If the (intermediate) holding company meets the small company criteria on a consolidated basis, there is no need to prepare and file consolidated accounts (Article 2:407 section 2 of the Dutch Civil Code).

Moreover, intermediate holding companies that do not meet the small company criteria on a consolidated basis, may be exempt from preparing consolidated financial statements when applying Article 2:408 of the Dutch Civil Code. When applying this exemption, the company can apply the size criteria only to its company accounts, due to which it will generally fall under the regime for small companies.

It is very important that the intermediate holding meets all the conditions stipulated in Article 2:408 of the Dutch Civil Code in order to be able to use this exemption. Some of these conditions are that the financial information which the company should otherwise consolidate has been included in the financial statements of its (ultimate) parent company and that these financial statements have been prepared in accordance with the provisions of EU legislation, and have been filed with the Chamber of Commerce within the allowed timeframe, accompanied by a directors' report and auditor's report.

## Timetable

The timetable below shows the timeframes and possible extensions relating to the financial statements process. Please note that this does not apply to listed companies. For those companies, the financial statements must be prepared and made generally available within four months after year-end. They must be adopted within six months after year-end.

## Penalties for non-compliance

In the event that the statutory requirements for preparing and filing financial statements have not been met, this will constitute an economic offence on the part of the directors.

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

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

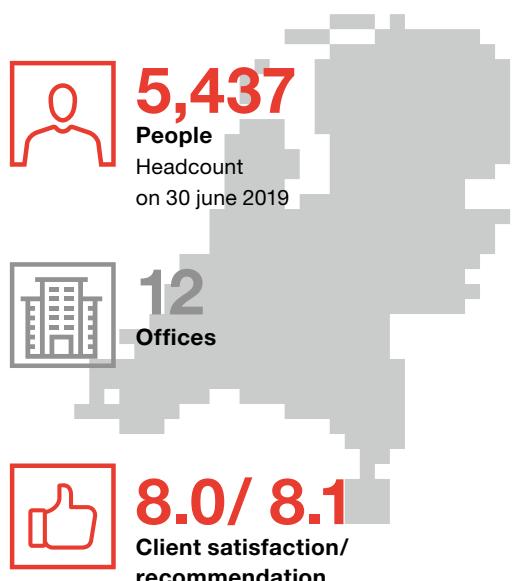
# Who we are

PwC is an independent member firm of a global network of firms and provides assurance, tax and advisory services for listed and private companies and not for profit and governmental organisations. Our people are part of one of our Lines of Service (Assurance, Tax & Legal and Advisory). In practice, colleagues from different Lines of Service often work closely together and call on each other's expertise because the work is becoming more complex, because society expects this from us and because the large transformational challenges of our clients demand a multi-competence solution.

At PwC in the Netherlands, more than 5,500 people work together from twelve offices. Creating value for our clients, our people and the communities we live and work in is at the heart of PwC.

What binds us is one common purpose – to build trust in society and solve important problems.

We embrace technology to improve the way we work and foster innovation to create new products and services for our clients and ourselves.



## We make a difference by offering multi-competence services and solutions

The world around us is changing. We are in an unprecedented landscape characterised by transformations, disruptive technologies and system changes. Borders between traditional industries are blurring as a result of digitisation. New types of companies are emerging, entering apparently unrelated industries, and challenging industrial conventions that have existed for decades. Established companies are increasingly digitising and acquiring the characteristics of a technology company. At the same time we see themes arise that go beyond sectors or industries, such as cyber, privacy and risk, sustainability and the workforce of the future. This requires responsiveness, agility and (digital) transformation. Our clients' challenges require integrated solutions that allow them to remain relevant and resilient for the future. The strength of our organisation really lies in the combined expertise and competencies of all our professionals. Making a real difference and improving quality demands that we apply a variety of ideas, lenses or perspectives aimed at building trust in society and solving important problems. To the extent permitted by laws and regulations, we offer (innovative) solutions on an integrated basis, bringing together a variety of experience and competencies from Assurance, Tax & Legal and Advisory.

## Strong network

- In-house knowledge necessary to optimise your business activities and tax position.
- Very good contacts with the Dutch Tax Authorities, resulting in quick and smooth communication about your requests, filings and questions.
- PwC is the leading provider of tax services worldwide both in terms of the size and scope of our tax practice and our reputation. We lead the debate with tax authorities and governments around the world, changing the way we all think about tax.
- PwC Legal has a network of lawyers all over the world unrivalled by traditional law firms. As legal consultants, we combine the qualities of traditional lawyers, consultants and in-house legal counsels.
- In our "PwC Europe" collaborative association we work closely together with other member firms in Germany, Austria, Belgium, Turkey and Switzerland.
- We work together and share knowledge across competences, sectors and specialisms.

**Assurance** focuses on the audit of information and processes and provides assurance thereon. Statutory audit of financial statements constitutes the majority of our Assurance practice. Another part of the assurance practice is focused on the design, implementation and the provision of assurance on systems, processes and numerical (non-financial) information and advice on complex accounting issues.



## People and Organisation

brings together a combination of tax, industry, business, strategy, talent, HR, analytics and technology expertise. Providing advice on such matters as global mobility, employment tax and payroll, HR transformation and technology, organisation design, retirement and pensions.

**Tax** assists companies, individuals and organisations with their tax strategies, planning and compliance, and provides advisory services in the area of taxation. For example, with respect to transfer pricing, indirect taxes, corporate income tax, mergers and acquisitions, data extraction and analysation.

**Legal** combines high quality legal advice with the skills, can-do approach and technology support to handle complex projects. Providing advice on such matters as corporate law, commercial contracts, employment law, financial services regulatory, public sector, privacy & data protection and legaltech.

**Advisory** (including Strategy&) focuses on assisting clients in their (digital) transformation, from strategy to execution. Advisory also provides services in the area of mergers and acquisitions, from strategy advice to assistance with business (unit) integration or carve-out. Advisory also includes crisis management services to companies of institutions affected by fraud, disputes, cyber security breaches and near-insolvency.

## We integrated the SDGs in our strategy

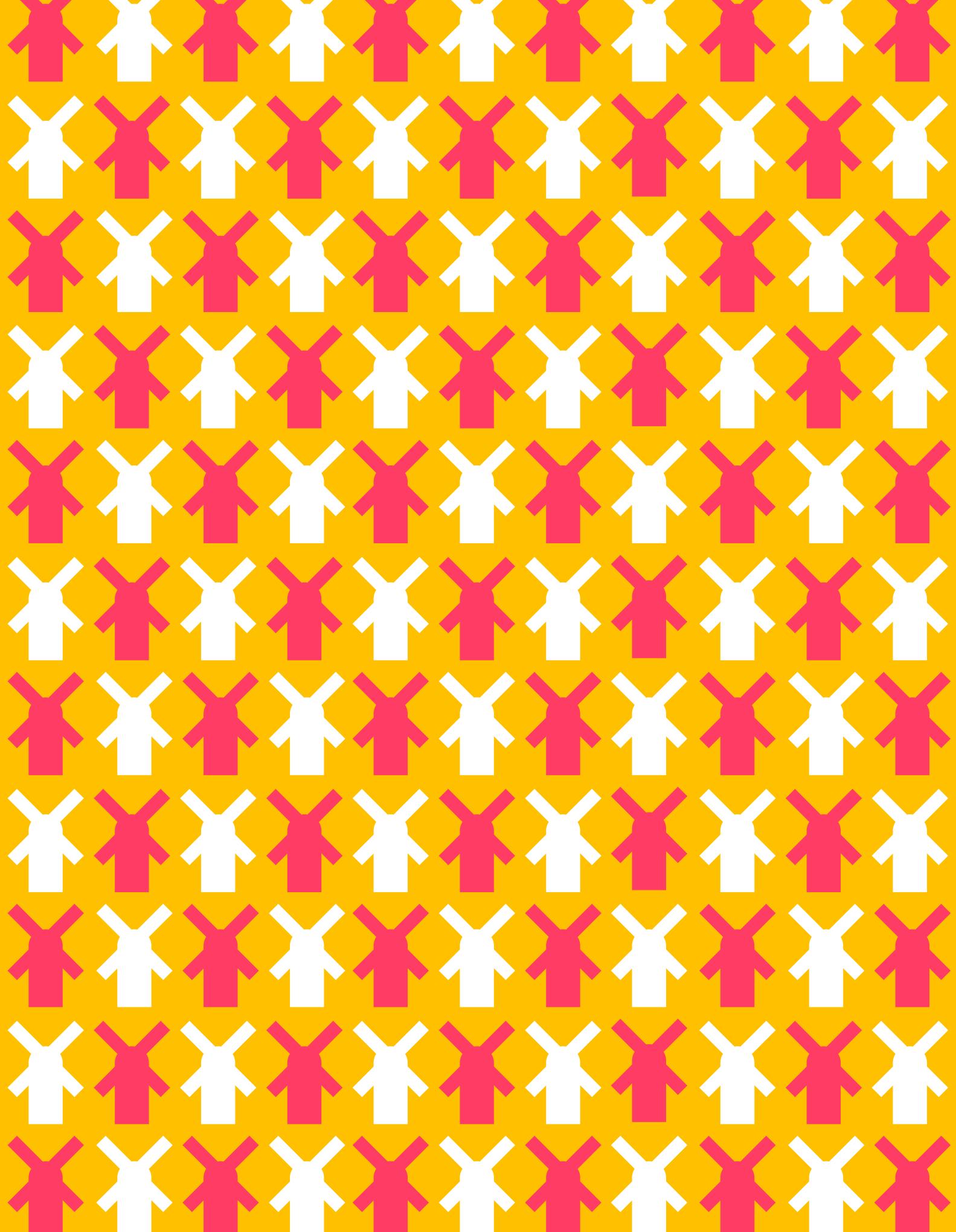
The 17 UN Sustainable Development Goals form an ambitious international agenda to find solutions to the global challenges we all face by 2030.

In the Netherlands there is widespread support for these goals that cover a broad range of ecologic, social and economic issues.

PwC aims to contribute to the SDGs by linking the goals most relevant to us into our strategy and operating activities. We selected four SDGs in which we can really make a difference, as they are closest to our business and capabilities.

### PwC ambition

<b>8 DECENT WORK AND ECONOMIC GROWTH</b> 	Ensure decent work and economic growth by continuous adaptability of our organisation
<b>10 REDUCED INEQUALITIES</b> 	Achieve an inclusive culture in which we embrace diversity
<b>12 RESPONSIBLE CONSUMPTION AND PRODUCTION</b> 	To be 100% circular by 2030 (no waste, no carbon emissions, optimal re-use)
<b>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</b> 	Contribute to the (re)shaping of tax laws and regulations on social relevant topics



# Contact information

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

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Links for more information:

PwC the Netherlands:  
[www.pwc.nl](http://www.pwc.nl)

Tax specific:  
[www.taxsummaries.pwc.com](http://www.taxsummaries.pwc.com)

NFIA:  
[www.nfia.nl](http://www.nfia.nl)

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At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 276,000 people. At PwC in the Netherlands over 5,400 people work together. We're committed to delivering quality in assurance, tax and advisory services. Tell us what matters to you and find out more by visiting us at [www.pwc.nl](http://www.pwc.nl).

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

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