Doing Business in the Netherlands

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in the Netherlands.

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Background

Country overview

The Netherlands has more than 17 million inhabitants. With 504 inhabitants per square kilometre, it is densely populated. The capital of the Netherlands is Amsterdam, where 820,000 people live. Amsterdam is part of the 'Randstad', the urban area with a lot of economic activity in the west of the country. The Hague (520,000 inhabitants), where the government is located, and the important port and city of Rotterdam (620,000 inhabitants) are also part of the Randstad, as well as two airports, including Schiphol Airport.

The Netherlands has two official languages: Dutch and Frisian. Many Dutch do not only speak Dutch, but are also quite competent in English.

The Netherlands is part of the Kingdom of the Netherlands, together with Curacao, Aruba, and Saint Martin (Sint Maarten). The government of the Netherlands consists of ministers, led by a prime minister. The king is also part of the government. Following elections, the political parties in the Second Chamber of the States General form the new government.

Economic overview

The official currency of the Netherlands is the euro. The Netherlands was one of the twelve EU countries that adopted the euro as its official currency in 2002. The Netherlands has an open economy with an extensive (international) financial sector, which relies heavily on foreign trade. For example, the Netherlands is an important European transport hub. The port of Rotterdam and Schiphol Airport play an important role here.

Key sectors are Agri & Food, Chemistry, the creative industries (fashion, architecture), energy, High-Tech Systems and Materials, Logistics, Life Sciences & Health (e.g. medical technology), Horticulture, and Water and Maritime. Dutch businesses excel in all of these areas.

The Netherlands does not have exchange controls.

The current corporation tax rate is 20% - 25%. This will decrease in the next few years to 16% - 21% (2021).

Transport infrastructure

In 2017, the Netherlands was proclaimed the most competitive economy in the European Union for the second year in a row by the World Economic Forum (WEF). The main pillars are innovative strength and a good infrastructure.

The Port of Rotterdam even has the best port infrastructure in the world. Besides the Port of Rotterdam, Schiphol Airport is also of major importance to the economy in the Netherlands. The infrastructure has to be good in a densely populated trading country. This also poses the greatest challenge: in the strong regions of the Randstad and Brabant, the major roads for the transport of goods are very busy. The number of traffic jams on these major roads increases rapidly. Traffic jams cause unnecessary economic damage. In 2018, approximately 270 kilometres of new roads will be constructed and the government will focus on the development of new technologies that can contribute to a faster flow of traffic. In addition to roads, the government will invest in inland waterways, bridges and locks (approximately 965 million in 2018). This will be done in a sustainable manner which is properly integrated into the environment.

All major cities in the Netherlands can be reached by train. On the busiest routes, the use of trains will be expanded. This is crucial for a well-functioning labour market.

A very conscious trend is the increasing sustainability of transport. Major cities will eventually only permit access to fully electric trucks. Studies are conducted to determine if economic driving is possible on the main roads, fewer polluting trucks are being deployed and the use of alternative fuel sources is on the rise.

The main trading partners of the Netherlands are its neighbouring countries Belgium and Germany, as well as France, the United Kingdom and Spain.

Choice of Legal Form

If you want to do business in the Netherlands on a permanent basis and thus want to establish permanent offices there, you have to select a legal form for this office. You can choose between a branch office or a subsidiary.

Branches

A branch office is a permanent establishment of your company in the Netherlands. It is not a separate legal entity. Since it is not a separate legal entity, any company that establishes a branch office in the Netherlands is fully responsible and liable for all the activities of this branch office.

Subsidiary

A subsidiary is a legal entity founded and established in the Netherlands in accordance with Dutch law. The (parent) company abroad is the legal owner of a subsidiary. It depends on the chosen legal form whether the foreign parent company is liable for the debts of the subsidiary. The right to profits and control are held by the foreign parent company/companies.

If you want to establish a subsidiary, you must choose its legal form. The legal forms used most often in the Netherlands will be discussed below.

Limited liability company

The BV is a legal entity incorporated by means of a notarial deed. A BV can be founded by one (legal) person. A BV will issue shares to its founder(s) when it is incorporated. The founder will need to pay the (nominal) value of the shares to the BV. The shares usually entitle their holders to profits and control and will always be issued in their name. However, shares can also be created that only grant their holder control, or only grant their holder the right to profits. This allows for the possibility to make specific agreements between the different shareholders.

In a BV, a person is only liable for the amount paid for the shares. By default, there must be at least a certain amount (e.g. € 0.01) of share capital. Dutch legislation includes the so-called directors' liability. This liability only applies to directors and actual policy-makers (e.g. the Board) of the company in case of irresponsible conduct (see below).

The BV has the following bodies:

- General Meeting: consists of the shareholders and with the final say in the BV;
- Supervisory Board (not always required): supervises the Board;
- Management (Board): consists of executive and non-executive directors, responsible for the implementation of the policy and the daily affairs.

Public limited company

The NV is similar to the BV. The main difference is that an NV not only allows for registered shares but also bearer shares. An NV always requires a share capital of at least € 45.000.

All shares in an NV entitle their holders to profit and control.

Cooperative

A cooperative is an association incorporated specifically for the commercial interests of its members. It is always founded by means of a notarial deed and is a legal entity. The notarial deed contains the articles of incorporation. It does not require the deposit of a minimum capital. The members are responsible for the control of the cooperative. It also has a Board to carry out the policy and the daily affairs.

The liability of a cooperative can vary. The members can be fully, partially or not liable for the debts of the cooperative. This must be laid down in its articles of incorporation. The directors and the policy-makers also have directors' liability.

Sole proprietorship

In a sole proprietorship, the ownership, right to profits and control are held by one (legal) person, the owner. This may be the foreign parent company. A sole proprietorship is not a legal entity. The disadvantage of this form is that the liability for all debts of the sole proprietorship is borne directly and fully by the owner.

No (notarial) deed is required to incorporate a sole proprietorship. It also does not require a minimum capital.

General partnership

The most important difference between a partnership and sole proprietorship is that there are more owners (partners). All partners are jointly and severally liable for all debts. It is advisable to record the mutual agreements well.

A CV is a special form of VOF. There are two types of owners in this form: managing partners and limited partners. The managing partners are jointly and severally liable for all debts of the CV. The limited partners are only liable for the amount they contribute to the CV. It is important to note that the limited partners cannot act on behalf of the limited partnership. If they do, they are automatically fully liable for all debts of the limited partnership.

Partnership

A partnership closely resembles the VOF. Basically, the same rules apply, but in this form a participant can only be liable for his own shares of the debts of the partnership. A partnership can only be founded for the exercise of professions (such as doctors, lawyers, civil law notaries, farmers etc.).

Joint venture

A Joint Venture is solely a contractual form of cooperation in the Netherlands. It is not a legal form for a company. A Joint Venture is a contract concluded between different contract parties. These parties may be the foreign parent companies, but also legal entities incorporated by the foreign umbrella companies in the Netherlands.

Directors' Liability

In a legal entity, the owners are by default only liable for the debts to the amount of their contribution (BV and NV) or the amount captured in the articles of incorporation (cooperative). However, the directors and policy-makers can in case of mismanagement be held fully liable for all debts of the company. This principle thus deviates from the limited liability of a legal entity.

Audit Requirements

Requirement and thresholds

In the Netherlands it is statutory (based on legal requirements) mandatory for an medium sized or large company to let do an audit of the financial statements.

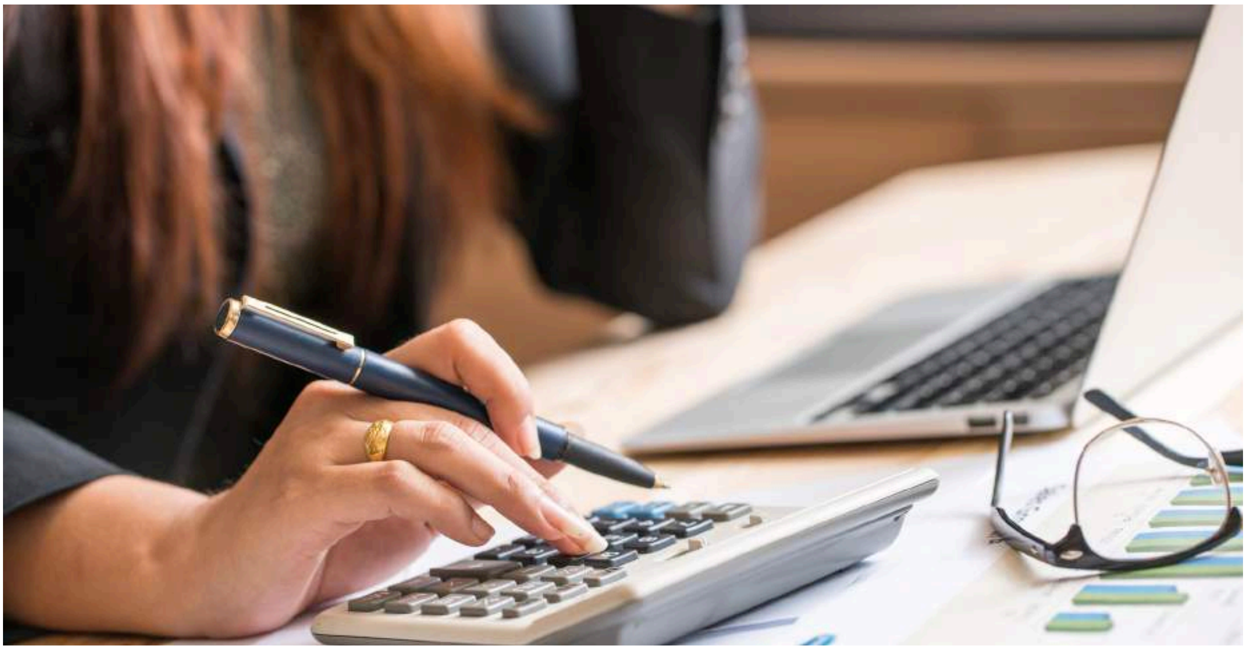
Companies where any two of the three criteria mentioned after this are applicable for two consecutive years classify as medium sized:

- total balance of at least 6 million Euro, and/or
- at least 50 working employees, and/or
- revenue of at least 12 million Euro.

Auditors performing statutory audit engagements in the Netherlands are supervised by the AFM (Authority Financial Markets). Only audit companies with license from the AFM are allowed to perform statutory audits.

The professional body for accountants in the Netherlands is the NBA (Nederlandse Beroepsorganisatie van Accountants - The Netherlands Institute of Chartered Accountants) and all accountants in public practice must belong to this body.

Taxation



Corporation tax

Corporation tax is mainly charged to legal entities of which the capital is partially or fully divided into shares. Examples are the Dutch NV (public limited company) and BV (private limited company). Other bodies, such as associations and foundations, may also be liable for corporation tax in some situations. Bodies established in the Netherlands are taxable for their total worldwide income. Bodies that are not established in the Netherlands are only taxable for their Dutch income.

The corporate tax rates are as follows:

Profit from	Profit up to & including	Rate
-	€200.000	20.0%
More than €200.000		25.0%

Exemptions

The foreign profits and losses of a body with a permanent foreign establishment fall outside the Dutch corporate tax base under a full exemption.

The participation exemption applies if a Dutch body owns 5% or more of the authorized share capital of another company. The results from the participation are exempt from taxation. The participation exemption prevents double taxation within a group.

Advantaged regimes

Innovation-related profits will effectively be taxed at a rate of only 7% (innovation box). In addition, taxpayers within a group may form a tax entity, allowing losses from one group entity to be set off against the profits from other group entities. Tax-neutral restructuring may also be possible.

In the next few years, the rates will decrease to 16% / 21% by 2021.

Lower rates for small and medium-sized enterprises (SME; MKB in Dutch)

A natural person who derives income from business activities may qualify for tax allowances for entrepreneurs in certain circumstances. The maximum tax rate is 51.95%. The tax allowances for entrepreneurs include self-employed persons' deduction, research and development allowance, old-age tax reserve (FOR, fiscale oudedagsreserve), discontinuation relief, and SME profit exemption. In addition, a starting entrepreneur is also entitled to a relief for new businesses. The SME profit exemption (MKB-winstvrijstelling) means that entrepreneurs will be entitled to an additional exemption of 14% of the profits following deduction of the above entrepreneur's allowances (tax allowances).

Branch profits tax

A permanent establishment of a foreign legal entity in the Netherlands is considered to be an established corporate facility and will be taxed in the Netherlands in the same way as a Dutch legal entity.

Income tax

Income tax is levied over the income of natural persons.

Natural persons residing in the Netherlands are subject to taxation for their total world income. Natural persons who do not reside in the Netherlands are only subject to taxation for their Dutch income.

The tax base:

The income tax depends on the type of income. The different components of taxable income are classified in three 'closed' boxes; each at a specific tax rate.

Box 1: Taxable income from work

The tax rate in box 1 is progressive and can accumulate to a maximum of 51,95%.

Box 2: Taxable income from a substantial interest (>5%)

The tax rate in box 2 is 25%

Box 3: Taxable income on net wealth

As from 2017, the fixed return on investments as mentioned above is calculated according to the following schedule:

Net wealth	Fixed return on investment
Up to and including € 75.000	2.87%
More than € 75.000 but less than € 975.000	4.60%
More than € 975.000	5.39%

The tax rate in box 3 is 30%.

Capital gains tax

Capital gains of natural persons are not taxed. Possession of investments, including property, is taxed in box 3 (see the chapter on personal income tax). A fixed percentage is calculated on the value of the capital (assets minus liabilities) as at 1 January.

Capital gains tax is levied on profits from business activities, results from other activities, and income from a substantial interest.

Land tax

Owners and users of property located in the Netherlands pay property tax. The property tax is levied by the municipality in which the property is located.

On average, a property tax of 0.12% of the value of the property is levied, but the rate varies depending on the municipality.

Among others, agricultural lands, nature areas, and churches are exempt from property tax.

Value added tax

The European Union (EU) VAT Directive is implemented in the Netherlands through the “Wet op de omzetbelasting 1968”. VAT is referred to in the Netherlands as “omzetbelasting” or “BTW”.

Dutch value added tax (VAT) applies to the sale of goods and services during the conduct of business in the Netherlands, the import of goods to the Netherlands, and to intra-EC acquisition of goods in the Netherlands.

Taxable persons

The type of business entity is irrelevant for tax liability purposes. Small businesses either do not have to register or enjoy VAT relief. This arrangement applies only if the taxable person is a private individual or a non-legal entity, and their annual net VAT liability (VAT output minus VAT input) must remain below a threshold of EUR 1.345 or EUR 1.883.

There is no registration threshold for foreign legal entities who are required to register for VAT purposes in the Netherlands.

Dutch VAT legislation provides an option for VAT grouping. VAT grouping is usually voluntary, but can be mandatory under certain conditions. A VAT group is assigned a new VAT identification number. However, members of the group keep their own individual VAT numbers which must be used for intra-EC transactions.

Fiscal representative

It is possible to register directly for VAT puposes in the Netherlands. However, a foreign taxable person must appoint a fiscal representative if they wish to apply for the deferred payment license (the so-called “Article 23 license”) for import.

Simplification measures

One of the simplification measures in the Netherlands is the “simplified triangulation rules”. This is a solution for registration obligations in foreign EU countries for specific cross-border ABC transactions.

Distance sales threshold

The distance sales threshold for supplies from other Member States to non-taxable customers in the Netherlands is € 100.000. For supplies shipped from EU countries to Dutch non-taxable customers, it is possible to voluntarily opt for VAT in the Netherlands before the threshold is exceeded.

Import

An exemption can be applied to the import of goods into the Netherlands, if it is followed by an intra-EC supply.

Even more popular is the so called "Postponed accounting on importation". With a specific license, importers avoid payment of VAT at the time of importation and instead pay the VAT due in their Dutch VAT return. Any VAT paid can be reclaimed (if the importer is entitled to a full deduction) in the same VAT return.

Reverse charges

A seller of goods or services is liable to pay tax for all goods or services sold. If the seller is a foreign entity, the tax liability is often shifted to the buyer if the seller is not established in the Netherlands or does not have a fixed place of business in the Netherlands.

In the Netherlands there are also several domestic, obligatory reverse charge rules, for example in case of constructive work in relation to immovable property and shipbuilding.

VAT rates and exemptions

The standard VAT rate in the Netherlands is 21%.

A reduced rate of 6% applies to, for example: the supply of food and beverages, passenger transport, accommodation facilities e.g. hotels, services which offer physical exercise e.g. gyms, entrance fees for cultural and entertainment events and institutions, pharmaceuticals, books etc.

The 0% rate applies to, for example, export and intra-EC supplies.

The Netherlands provides exemptions (without right of deduction) for the following supplies and services: health and medical care, social welfare, general education and vocational training, financial and insurance services, lottery and gambling, etc.

VAT compliance

The standard VAT return is filed quarterly. A domestic taxable person may have to file a monthly VAT return, either on request or if quarterly returns are frequently filed late.

All VAT due must be received in the tax authority's bank account by the last day of the month following the reporting period. The same deadline applies for the VAT return.

A European sales listing must be submitted on a monthly basis if the intra-EC supply of goods exceeds, for example, € 50.000 in the current quarter. The European sales listing for services can be submitted on a quarterly basis.

Intrastat

If the threshold is exceeded, a separate monthly Intrastat (CBS) return must be submitted to the Central Bureau of Statistics (CBS) by the tenth day of the month following the reporting month. The threshold for arrivals in the Netherlands is € 1.000.000 per year and € 1.200.000 per year for dispatches from the Netherlands.

Local taxes

Local municipal levies are, among others: the property taxes, sewerage charges, dog licence fees, tourist tax, and waste collection fees. Companies may also be liable for advertising tax.

Tax treaties

The Netherland has concluded double taxation treaties with a large number of countries. The number of treaties is close to one hundred, which makes the Netherlands attractive as a country in which to set up business.

See Appendix I for an overview of the Dutch tax treaties.

If the Netherlands has not concluded a treaty for cross-border situations, certain conditions for unilateral prevention of double taxation may apply.

Transfer pricing rules

For Dutch corporation tax purposes, related companies are required to do business at arm's length conditions: the terms and conditions must be similar to those that independent parties would apply. If the terms and conditions applied by related companies are not at arm's length, the tax consequences of the transaction may have to be adjusted. This could result in, for example, adjustment of the taxable profit and taxation of payments that are considered to be dividends. In general, records of the transactions should be maintained.

Allowances

Depreciation

Generally, assets owned or used by a company for the purpose of its trade may be depreciated in accordance with sound business practice. According to Dutch tax law however, no more than 20% per year of the acquisition or production costs, less the residual value, may be depreciated on assets.

The maximum depreciation for goodwill is 10% per year.

Further restrictions apply with respect to the depreciation of buildings. Depreciation is not allowed when the book value of the building falls below the official fair market value of the property for tax purposes. Depreciation of owner-occupied buildings however is allowed until the book value of the building matches 50% of the official fair market value of the property for tax purposes. However, at the moment there are government plans to increase this percentage to 100% in 2019.

Depreciation begins on the date an asset is first used.

Accelerated or random depreciation

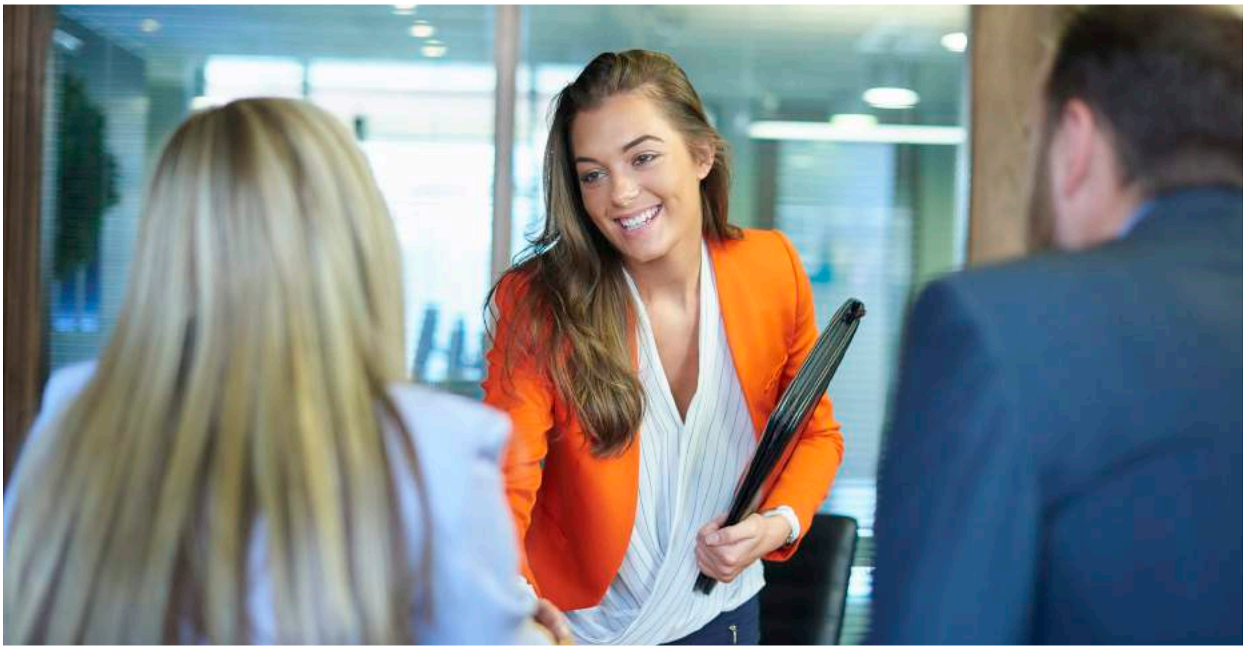
Dutch tax law also provides either accelerated or random depreciation. Accelerated or random depreciation is allowed for assets that have been appointed by the government.

Investment allowance

Investments for the purpose of energy saving or environmental benefits are stimulated by tax incentives such as a supplementary deduction of the profits and allowing arbitrary depreciation.

Several other, direct subsidies or government loans on favourable conditions can be obtained for such investments.

Employment



Social security / unemployment taxes

The social security scheme in the Netherlands is divided in public insurances and employee insurances. The public insurances are included in the wage tax rates, so by withheld on wage tax the employee pays this part itself. The employee insurances (like unemployment insurance) are almost completely payed by employers in the Netherlands. In total, these costs are about 20% extra on gross wage. This will stop on a wage above € 55.000. This is also the maximum insured amount for an (ex)employee.

An employer is often also liable to take out pension insurance for all employees. The cost of this varies often between 5 and 15% of paid salaries.

Employment of foreign personnel

The right to perform gainful employment in the Netherlands is determined according to citizenship as follows:

Citizens of the European Union, Norway, Iceland, Liechtenstein and Switzerland may work in the Netherlands without a worker's residence permit.

The citizens of a member state of the European Economic Area (EEA) are entitled to move to another member state to work or to seek work. The free movement of workers is a basic right, which implies the right to work in some other EEA country on the same conditions that are applied to the host country's own citizens.

Work in another EU country gives the citizens of the Union right to reside in the country in question. If you stay in The Netherlands for less than four months, you have to register as a non-resident. If you stay in the Netherlands for over four months, you should register as a resident of the municipality were you live.

The citizens of countries outside the EEA need a worker's residence permit to work in the Netherlands. The permit is temporary. Additional information is available on the pages of www.rijksoverheid.nl.

Incoming employees can, together with their employer, request for the very advantageous 30%-rule for eight years. This means that 30% of the salary remains untaxed, when they change a part of the gross salary in an exempted cost reimbursement. When a net salary is agreed, the 30%-rule benefits the employer.

Incoming employees can also make a choice in their income tax return so that have to pay less income tax on their foreign assets (including equity interests greater than 5%).

Taxation and social security

If a person stays in the Netherlands only for six months or less, and a company from another country than the Netherlands is paying his salary, he will usually not have to pay tax on his wages in the Netherlands, when a tax treaty applies. Of course, the relevant treaty must always be checked.

If the person stays in the Netherlands for longer than six months, he will be paying tax on his salaries in the Netherlands. It does not make a difference if his employer is Dutch or foreign or if he receives a part of his salary from a Dutch employer and another part from a foreign employer.

The employer have to pay also social insurance premiums (approx. 20%) unless the person has the certificate E 101/A1 of a posted employee. For posted employees, social security insurance is sorted in country of origin.

Medical

A usual resident in the Netherlands is obliged by law to be insured for medical healthcare. There is a mandatory basic insurance limit, which must be taken from an insurer. There is also a mandatory insurance for long-term care. This is financed by the compulsory contributions of Dutch residents. A part of the contribution is calculated within the income tax payments (social contributions), a part is payed directly to the insurer and a part is contributed by employers.

If a non-resident is posted for work in the Netherlands, it is possible that the Dutch social security scheme is appointed. If this is the case, the obligation to insure for medical healthcare is a fact too.

Payroll taxes

The wage withholding tax is an advance tax payment on the employee's income tax. The withheld of this wage tax is a combination of tax and social contributions. This rate is progressive up to 51.95%. The complexity is largely due to the designation of taxable components – or not - and applying deductions. For extra payments, there is also an additional wage tax withheld, based on the progressive rate that is estimated for that year.

The mandatory procedure for every employer in the Netherlands is that periodic (mostly monthly) a declaration is sent to DTA with periodic information about this employees. An administration is being established for every employee, that is the source for any future benefits to this employee. In addition to this declarations, there will also be a calculation of the payments by employer to DTA because of its withholds, contributions, premiums and WKR tax. Immediate fines will result if this declarations are false or not declared in time.

Withholding Taxes

Interest

The Netherlands does not deduct withholding taxes from interest. As a result of international legislation related to tax evasion, the Dutch government will introduce a source tax on outgoing financial flows to low tax jurisdictions in 2020. Interest will, therefore, be taxed in the Netherlands in case of payments to a country designated as a low tax jurisdiction. How and to what extent is currently not clear yet.

Royalties

Royalties are currently not taxed in the Netherlands. As a result of international legislation related to tax evasion, the Dutch government will introduce a source tax on outgoing financial flows to low tax jurisdictions in 2020. Royalties will, therefore, be taxed in the Netherlands in case of payments to a country designated as a low tax jurisdiction. How and to what extent is currently not clear yet.

Dividend payments

The Netherlands levies a 15% withholding tax on dividends paid. In domestic situations, the dividend tax is a recoverable 25% withholding income tax.

If dividends are paid out to foreign shareholders, the relevant double taxation treaty may limit the percentage of the Dutch dividend tax to 10%, 5%, or nil. European legislation, such as the Parent Subsidiary Directive, may also limit the dividend tax to nil.

Deducted and paid dividend tax may be refunded in certain situations.

Dividends entering the Netherlands qualify for the participation exemption and are not subject to taxation. However, there may be exceptions to the rule.

At this moment there are government plans to abolish the withholding tax on dividends paid in 2020. Only a source tax on dividends paid to low tax jurisdictions will remain.

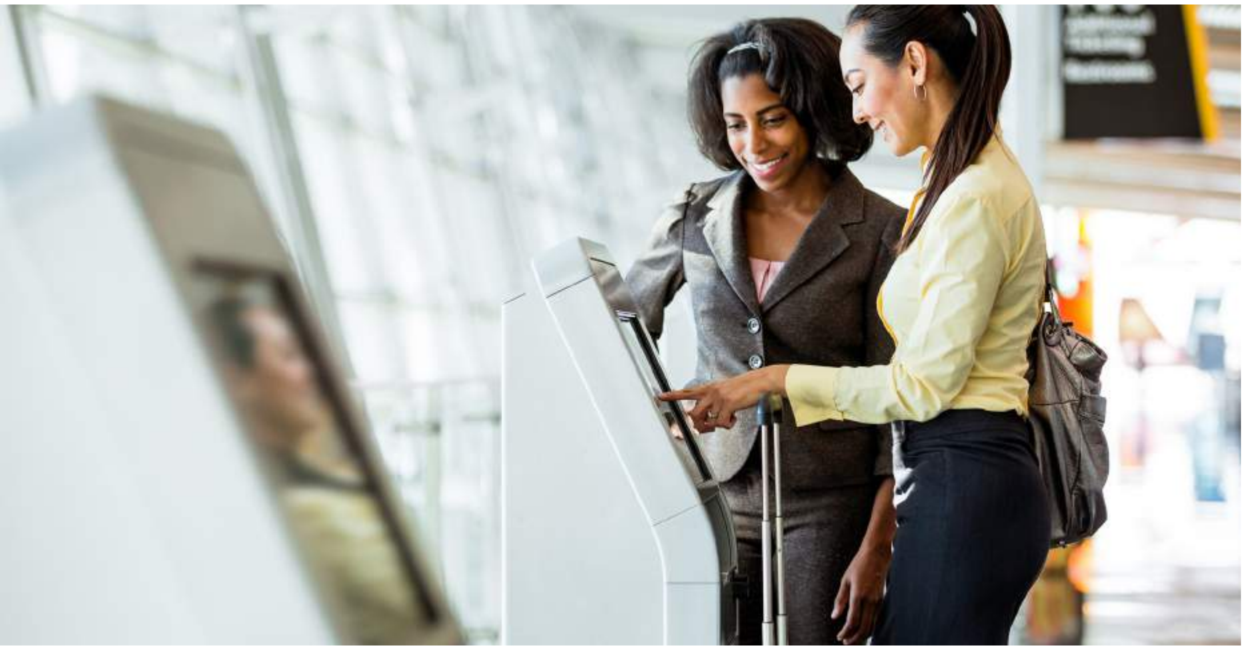
Appendix I, Double Taxation Treaties

Albania	Georgia	Malaysia	Spain
Argentina	Ghana	Malta	Sri Lanka
Armenia	Greece	Morocco	Suriname
Aruba (Dutch “BRK” Taxation)	Hong Kong	Mexico	Sweden
Australia	Hungary	Moldavia	Switzerland
Azerbaijan	Ireland	Nigeria	Taiwan
Bahrain	Iceland	Norway	Thailand
Bangladesh	India	Ukraine	Tunisia
Barbados	Indonesia	Uzbekistan	Turkey
Belarus (White Russia)	Israël	Oman	Uganda
Belgium	Italy	Austria	Venezuela
Brazil	Japan	Pakistan	United Kingdom
Bulgaria	Yugoslavia	Panama	United Arab Emirates (UAE)
Canada	Jordan	Philippines	United States (USA)
China 2013	Kazakhstan	Poland	Vietnam
Curacao	Kenya	Portugal	Zambia
Czech Republic	Kuwait	Qatar	Zimbabwe
Denmark	Korea	Romania	
Egypt	Croatia	Russian Federation	
Estonia	Latvia	Singapore	
Ethiopia	Lithuania	Sint Maarten (Dutch “BRK” Taxation)	
Germany	Luxembourg	Slovenia	
Finland	Macedonia	Slovakia	
France	Malawi	South Africa	

This document is provided by DFK Netherlands Alfa Accountants and Advisors as a general overview of matters to be considered when setting up an overseas business in the Netherlands. It is essential to take advice on specific issues. No liability can be accepted for any action taken or not taken arising from the information provided in this publication.

If you are setting up a business in the Netherlands, the members of DFK International can help you to achieve this efficiently. You will receive practical advice on business issues, tailored to meet your objectives, from experienced business advisers.

For further information on the services available from the DFK member firms in the Netherlands please see overleaf.



Wageningen

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