A GUIDE TO DOING BUSINESS IN THE NETHERLANDS

April 2022

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM

FOREWORD

The Netherlands is amongst the leading European countries when it comes to favourable business climate. Doing business in the Netherlands is a practical guide to help you deal effectively and efficiently with the most important issues that you might face upon arrival in the Netherlands.

The purpose of this detailed manual is to guide you through the investment environment in the Netherlands. It offers practical information about the country and how to set up a business, adopt the ideal legal form, the subsidy schemes, the tax system, labour law and much more. The information contained in this guide is not exhaustive. For more detailed information, please do not hesitate to contact your personal RSM advisor.

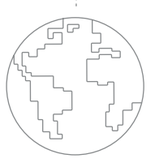
April 2022

RSM – YOUR GLOBAL NETWORK

The world is changing rapidly. With constant advances in technology, communications and infrastructure, barriers are disappearing and the business landscape is becoming more global every day. In this fast-paced environment, you need advisers who think ahead and respond quickly to your changing needs, who will put risk in the spotlight, and who will continually look for new opportunities for your business.

RSM is one of the world's leading audit, tax and consulting networks. We build strong relationships based on a deep understanding of what matters most to you. We take the time to understand your business, strategies and goals, and draw on the power of our global network to deliver insights tailored to your precise needs. By sharing the ideas of our senior professionals, we empower you to move forward, make critical decisions with confidence and take full advantage of the opportunities on the horizon for your business.

It is this strong, collaborative approach that differentiates us. This is the power of being understood. This is RSM.



- We are the 6th largest global audit, tax and consulting network.
- We have firms in over 123 countries and are in each of the top 40 major business centres across the world.
- Across our member firms, we have more than 51,000 staff in over 860 offices covering Africa, Asia Pacific, Europe, Latin America, the Middle East and North America.

Visit rsm.global for a full list of RSM firms and contact details.

CONTENTS

1. INTRODUCTION

Economy

The Netherlands is an open economy, carried along by international economic trends. International economic or financial crises and the Brexit process mainly affect the Dutch economy through exports, as a result of a reduction in world trade. However, these have a relatively limited direct real impact on Dutch exports. It is still difficult to estimate how far Brexit will really affect Dutch exports and hence the Dutch economy. At the same time we can see that because of Brexit international companies are settling or expanding their existing operations in the Netherlands in view of their EU interests.

The worldwide Corona pandemic is also affecting the Netherlands. Partly due to various financial support measures from the Dutch government, the Dutch economy generally seems to be resisting the worldwide effect of the Corona pandemic relatively well.

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

Fiscal climate

For a number of years the Netherlands has adjusted parts of its fiscal regime in line with the worldwide attempt to combat tax avoidance and undesirable use of national legislation and mismatches in the fiscal treatment of income and cost deductions between countries' fiscal regimes. The Dutch government has decided as far as possible to link the fiscal benefits to the real economic activities from which the Dutch economy benefits.

For example the Netherlands wants to shake off its reputation as a fiscal 'transfer country', by reorganising its corporation and dividend tax regime such that tax avoidance by involving the Netherlands is discouraged. Not only by fiscal adjustments, but also by introducing measures that lead to more government control and more transparency regarding the activities of these companies. By gradually pursuing this more the Dutch government wants to focus more on the fiscal stimulation of real activity and maintaining its status as an attractive host country.

Country and Government

The Netherlands has a total population of 17.6 million inhabitants (January 2022) and is governed by a monarchy. The ministers are the people's representatives with respect to the actions of the government. The head of state does not bear political responsibility and can therefore not be held politically accountable by the parliament. The Netherlands has 12 provinces, each with its own local authorities. The Netherlands, together with the countries of Aruba, Curacao and Sint-Maarten form part of the Kingdom of the Netherlands. The islands of Bonaire, Sint-Eustatius and Saba all have a separate status and belong to the Caribbean part of the Kingdom.

Location

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

Export

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

Finances

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

Right to establish a business

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

A most competitive economy

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

2. STARTING A BUSINESS

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

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

Dutch law distinguishes two types of companies both of which possess legal personality: the private limited liability company (besloten vennootschap met beperkte aansprakelijkheid - BV) and the public limited liability company (naamloze vennootschap - NV). These forms of legal entities are most commonly used for doing business in the Netherlands. Other commonly used legal entities in the Netherlands are the cooperative (coöperatie) and the foundation (stichting). The foundation is a common form used within the non-profit and health care sector.

Other common business forms are sole proprietorship (eenmanszaak), general partnership (vennootschap onder firma – VOF), (civil) partnership (maatschap) and limited partnership (commanditaire vennootschap - CV). None of the latter forms possesses legal personality and, as a consequence thereof, the owner or owners will be fully liable for the obligations of the entity.

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

Branch, subsidiary

Branch

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

Subsidiary

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

Private limited liability company (BV)

Incorporation

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

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

In the event of bankruptcy within 1 year of incorporation, the burden of proof lies with the persons responsible.

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

Share capital

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

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

Shares

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

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

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

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

Management structure

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

Board of directors

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

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

A member of the board of directors of the company can be held liable by the BV, as well as by third parties. The entire board of directors can be held liable to the BV for mismanagement.

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

As an alternative to the two-tier board structure where there is a management board and a separate supervisory board, Dutch law provides statutory provisions on the one-tier board structure, a single board comprising both executive and non-executive directors. The law provides a one-tier board structure for NV companies, for BV companies and for companies that are subject to the Large Companies Regime (structuurregime). In a one-tier board the tasks within the management board are divided between executive and non-executive members of the management board.

The executive members will be responsible for the company's day-to-day management, the non-executive members have at least the statutory task of supervising the management performed by all board members.

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

General Meeting of shareholders
At least one shareholders' meeting should be held each year. Shareholders' resolutions are usually adopted by a majority of votes, unless the articles of association provide otherwise. As a rule, the shareholders may not give specific instructions to the board of directors with respect to the management of the company, but only general directions

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

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

In the absence of the minimum capital requirement in the BV creditors may be faced with limited security. In addition to the option of legal redress, in case of directors' liability the law on BVs also offers other legal redress options. Upon any distribution of funds whether this involves repayment of capital or a profit distribution, the management board must first check whether the distribution is not at the expense of the creditors' interests. To do this there is first of all the equity test. Dividend distributions are only possible when the shareholders' equity of the BV is greater than the statutory reserves or the reserves that must be kept according to the articles of association. Secondly a check must be made that after the distribution the BV can continue to pay its debts payable (distribution test). If the general meeting of shareholders decides to distribute a dividend the board must in principle approve the distribution. If in the light of a distribution test the board does however conclude that after distributing the dividend the BV can no longer meet all its debts payable, the board must refuse to cooperate. If the distribution still takes place, the directors and shareholders may be held liable. They must reimburse the deficit. The law does not define any specific timeline for the amount of the debts repayable. It is assumed that this involves debts over a period of at least 12 months after the distribution.

Public limited liability company (NV)

In general, everything mentioned above that applies to the BV also applies to the NV. This section will outline the most significant differences between the NV and the BV.

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

Besides registered shares, an NV may also issue bearer shares. Bearer shares must be fully paid up and are freely transferable. Registered shares have to be transferred by executing a deed of transfer before a civil-law notary. An NV is authorized to issue share certificates (certificaten).
If payment on shares is made in kind upon incorporation of the NV, the incorporators must describe the contributed assets and an auditor must issue a statement to the effect that the value of the contribution is at least equal to the par value of the shares. The auditor's statement is to be delivered to the civil-law notary involved prior to incorporation.

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

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

Large NVs and BVs: special requirements

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

- The company's issued share capital, reserves and the retained earnings according to the balance sheet amount to at least 16 million Euro;
- The company, or any other company in which it has a controlling interest, has a legal obligation to appoint a works council (> 50 employees) and
- The company, alone or together with a company (or companies) in which it has a controlling interest, normally has at least 100 employees in the Netherlands.

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

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

This structure regime is also not compulsory for companies whose holding company is established in the Netherlands and the majority of whose employees work abroad. In fact, such multinationals do have the option to apply the structure regime voluntarily.

The regulations of the structure regime may also apply for the Cooperative (coöperatie) to be discussed below.

Cooperative (coöperatie)

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

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

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

In general, the members of the cooperative are not liable for the obligations of the cooperative during its existence. In case of dissolution or bankruptcy of the cooperative the members and the members who ceased to be members less than 1 year prior thereto, are liable for a deficit on the basis provided for in the articles of association of the cooperative. If a basis for the liability of each member is not provided for in the articles of association, all shall be equally liable. A cooperative may, however by its articles of association (i) exclude or (ii) limit to a maximum, any liability of its members or former members to contribute to a deficit. In the first case it shall place at the end of its name the letters 'U.A.' (Uitsluiting van Aansprakelijkheid – exclusion of liability). In the second case it shall place at the end of its name the letters 'B.A.' (Beperkte Aansprakelijkheid – limited liability). In all other cases the letters 'W.A' (Wettelijke Aansprakelijkheid – statutory liability) shall be placed at the end of its name.

Most cooperatives choose a system of excluded or limited liability. It is also possible to create different classes of members who are each liable to a different extent (or not at all). If the liability is not excluded 'U.A', a copy of the list stating the members must be filed with the Trade Registry of the Chamber of Commerce. Any changes must be filed within 1 month after the end of each financial year.

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

The cooperative is also used as a holding and financing company. The main reasons are the international tax planning opportunities via a cooperative and its corporate flexibility.

Foundation (stichting)

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

- A foundation does not have any members or shareholders and is therefore governed solely by its board; and
- A foundation is incorporated with the aim of realising a specific goal by using capital designated for that purpose. The goals or objective of a foundation are stipulated in its articles of association.

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

Pursuant to mandatory law a foundation may not make distributions to its incorporators and the members of its corporate bodies and may only make distributions to other persons if such distributions are of an ideal or social nature.

The management board of the foundation may consist of individuals and legal entities. After incorporation, members are appointed by the board itself, unless otherwise stated in the articles of association of the foundation. The foundation is represented by the entire management board or by board members acting individually.

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

Governance and supervision of legal entities

With effect from 01 July 2021 the Governance and Supervision of Legal Entities Act (Wet bestuur en toezicht rechtspersonen) will apply for all the (above-mentioned) legal entities. This Act is mainly a response to the call for measures to improve the quality of governance and supervision in the semi-public sector. With this Act the rules that already applied for directors and supervisory directors of BVs and NVs will now also apply for the other legal forms with legal personality

Trust

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

Other common business forms

Sole proprietorship (eenmanszaak)

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

General/commercial partnership (VOF)

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

Partnership (maatschap)

Entrepreneurs in the liberal professions (such as doctors, lawyers and graphic designers) often set up partnerships (maatschap).

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

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

A limited partnership (CV)

A limited partnership is a special form of the general partnership (VOF) which has both active and limited (or sleeping/silent) partners. An active partner is active as an entrepreneur and is liable, as in the case of the general partnership. The silent partner, however, tends to finance the business and stays in the background. The silent partner is liable only up to the amount of his capital contribution. He is not allowed to act as an active partner and his name cannot be used in the name of the partnership.

If the silent partner enters the business (to provide extra finance for growth) he becomes liable as an active partner.

Partnerships Modernisation Act (Wet modernisering personenvennootschappen)

The partnership law was too dated and too complicated for many entrepreneurs. Not only entry and resignation, but also external and mutual liability and many options for legal forms, seemed to lead to problems in practice. The new legislation is intended to facilitate legal matters for the entrepreneur. The intended date of entry into force was 01 January 2021 but it has not yet been adopted by Parliament. After entry into effect the legal distinction discussed above between VOF (general/commercial partnership) and 'maatschap' (partnership) will disappear. Only the term 'vennootschap' (company or partnership) will then be used. The legal form 'commanditaire vennootschap' (limited partnership) will then exist as such. Under the new Act it will be possible to assign legal personality to the partnership (personenvennootschap).

Trust company

A trust company is entitled to perform corporate trust services for payment, such as the administration and management of a company that conducts business in the Netherlands. A trust company can take care of (required) administrative services, such as the preparation of annual reports. In certain instances the trust company is the (sole) director of the company for which it provides the services. A trust company offers expert guidance to tax beneficial international structures and opportunities to foreign legal entities and private persons for their holding, finance or investment activities in the Netherlands. A trust office is subject to authorisation and is supervised by the Dutch National Bank (De Nederlandse Bank).

Branch or subsidiary

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

One major advantage of setting up a branch is that it does not generally require the same legal formalities required for setting up a subsidiary. However, the simplification and flexibilization of the Dutch limited company law (as mentioned above) may well diminish this advantage. Another important aspect to consider with respect to the choice of setting up a branch or a subsidiary in the Netherlands is the matter of local tax regulations.

The choice of setting up a branch or a subsidiary will be determined based on the circumstances and relevant factors with respect to the business as such, and the Dutch tax regulations and tax treaties.

For more detailed information on tax legislation and participations, please refer to Section 5.

UBO register

In order to prevent money laundering and financing of terrorism in a European context several anti-money laundering directives have now been approved. Part of this anti-money laundering policy is the introduction of a UBO register. UBO stands for the Ultimate Beneficial Owner. The latest anti-money laundering directive states that some of the information included in the UBO register must be public.

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

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

Intellectual property

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

A registered merkrecht (trademark) is protected for a period of 10 years from the registration date and the protection can be extended by a further 10 years. Renewal must be requested and all due fees paid. The rightful owner is entitled to claim damages for infringement of its rights (such as the use of the trademark by another party).

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

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

3. FINDING A LOCATION

The office market in the Netherlands is decentralized, which results in each city having a more or less specific office market. Amsterdam focuses on finance and international trade and agencies, The Hague is the national administration centre where the government and public departments are the main users of the local office buildings. Rotterdam has one of the largest ports in the world, as a result of which the office market has a traditional focus on insurance and trade. Utrecht is located in the heart of the country with a focus on transport and domestic commercial services. In Eindhoven occupiers of office space have strong ties with electronics, chemicals, equipment and energy supply.

Rents for office space differ by region and within a region cover a certain range depending on the subsectors and quality of the location and accommodation.

For the main region the range of rents is set out in the table below.

Location	Median letting asking prices (Jan 2021) Euro/sq.m./yr (source Dynamis)
Amsterdam	125 – 450
Rotterdam	100 – 250
The Hague	90 – 250
Utrecht	90 – 280
Eindhoven	100 – 235

Town planning

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

Lease or buy

The general practice in the Netherlands is to lease office space: approx. 65% of all office buildings are owned by investors. Owner-occupier situations are more common in the industrial real estate market, although this has also changed over the past 10 years as a result of sale-and-lease back transactions. Leasing has advantages, such as a positive impact on the company's cash flow, flexibility, the possibility of off-balance presentation and negotiation on incentives with landlords. Lease contracts can be subject to VAT; which may result in VAT savings in specific situations. Depreciation is an important consideration with respect to the ownership of real estate. The tax depreciation on real estate is limited, both for BVs and for IB entrepreneurs (natural persons). Depreciation for tax purposes is exclusively permitted where and in as far as the book value of the building exceeds the so-called base value. The level of the base value depends on the intended use of the building.

Leasing practises and taxes

Offices and industrial

Typical lease length	Negotiable, but the common practice is 5 years + auto-renewals for 5 years
Typical break options	Negotiable
Frequency of payment	Negotiable, but generally quarterly in advance
Annual index	Linked to consumer price index (CPI; all households)
Rent reviews	To market prices only if agreed upon (frequency usually 5 years, by expert panel)
Service charge	Depending on contract
Tax (VAT)	21%, 9% for lease in the hospitality market
Real Estate Transfer tax	Change of ownership; 2% for housing facilities, 8% for other real estate
Tax (others)	Property tax, water tax and sewer tax

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

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

More about taxes
The landlord and the tenant are each partly responsible for the property tax levied by the local authority. Each property is assessed for taxation purposes, known as 'onroerende zaak belasting' (OZB). The local government gives a value for the property and that value applies for 1 year. Each year the authorities collect the tax. The rate depends on the local authorities and this is a percentage of the value according to the Immovable Property Act.

Purchase practises and taxes
The purchaser is responsible for the so-called 'kosten-koper' (buyers' costs), which means that the buyer is liable for the payment of all additional costs. Those costs include transfer tax (8% for offices and industrial buildings), notary costs (0.2-0.4%), legal costs (negotiable) and some minor administration costs, such as land registration (Kadaster).

4. SUBSIDIES AND FINANCING

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

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

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

Mission-driven Top Sectors and Innovation Policy

The Dutch government has defined 10 Top Sectors in which the Netherlands is strong worldwide and to which the government is paying special attention. The Top Sectors are: AgroFood, Horticulture, High Tech, Energy, Logistics, Creative Industry, Life Sciences, Chemicals and Water and Dutch Digital Delta. More venture capital and extra fiscal support should ensure more research and development in companies and institutions that fall within the above sectors.
The innovative capacity to be stimulated in these sectors is linked to a number of defined missions aimed at resolving social challenges, such as technological solutions in the approach for example to climate change, food scarcity and other theme missions.

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

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

The tax benefit under the WBSO can now only be effected via a wage tax rebate (R&D rebate - S&O-afdrachtvermindering). There is a transitional regulation for R&D costs still outstanding from the previous RDA, where these can be entered in the new scheme as R&D costs in phases.

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

From 2022 for the first tranche of
€ 350,000 the rebate is 32% and above this level 16%. For start-up entrepreneurs with a personal enterprise the rebate is 40% on the first € 350,000. An application period relates to a minimum of 3 and a maximum of 12 months. An application must be submitted online and at least 1 month before the start of the application period. However, for enterprises with personnel the application can be made up to the day before the start of the application period.

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

Regional subsidies

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

Investments

MIA (Milieu Investerings Aftrek) (Environment Investment Deduction Scheme)
The purpose of the Environmental Investment Deduction scheme (MIA) is to stimulate investment in environmentally-friendly capital equipment in fields such as circular economy, agriculture and horticulture, mobility, sustainable buildings and climate and air.

Companies that invest in the environment are entitled to additional tax deductions at a percentage of the investment cost. The total amount of environmental investments that are eligible for MIA per enterprise is a minimum of € 2,500 and a maximum of € 25 million per calendar year. For some categories of capital equipment a maximum of € 50 million applies. Depending on the type of investment 45%/36%/27% (2022) of the investment amount for which an MIA declaration has been received can be deducted from the taxable profit. The Environment Investment Deduction scheme is only available for capital equipment listed in the Environment List 2022 (Milieulijst 2022), which is updated on an annual basis.

EIA (Energie Investerings Aftrek) (Energy Investment Deduction Scheme)
The purpose of the Energy Investment Deduction scheme (EIA) is to stimulate investment in energy-saving technology and sustainable energy, i.e. so-called energy investments. Companies that invest in the energy industry are entitled to additional tax deductions at a percentage of the investment cost. The total amount of energy investments per enterprise that are eligible for EIA is a minimum of € 2,500 and a maximum of € 126 million per calendar year. 45.5% (2022) of the investment amount for which an EIA declaration has been received can be deducted from the taxable profit. The energy investment deduction is only available for capital equipment that complies with the specified energy performance requirements. The energy performance requirements and the capital equipment that are subject to the energy investment deduction are available in the Energy List 2022 (Energielijst 2022), which is updated on an annual basis.

KleinschaligheidsInvesteringsAftrek (Small-scale Investment Deduction)
The Small-scale Investment Deduction entitles the entrepreneur to make deductions from investments in capital equipment between € 2,400 and € 332,994 in 2022. You invest in capital equipment in the year in which you buy it and therefore incur a payment obligation. The investment deduction can be applied in the year in question. If you do not intend to use the capital equipment in the year in which the investment is made, then part of the investment deduction is sometimes carried forward to the next year.

Finance

BMKB (Borgstelling MKB Kredieten) (Credit Guarantee Scheme for SMEs)
The purpose of the Credit Guarantee Scheme for SMEs (BMKB) is to stimulate credit provision to small and medium-size enterprises (SME or MKB in Dutch). The scheme is designed for companies with a maximum of 250 employees (FTE) with a year turnover up to € 50 million or a balance sheet total up to € 43 million and includes most professional entrepreneurs. If the entrepreneur is unable to provide the bank with sufficient security or collateral to secure a loan, the bank can appeal to the BMKB for the necessary guarantees. The government will then, under certain conditions, provide the security for part of the credit amount. This reduces the level of the bank's risk exposure and increases the creditworthiness of the entrepreneur. Start-up and innovative companies can profit from additional favourable conditions. The maximum amount guaranteed by the government until 30 June 2022 is € 1.5 million. A government guarantee of 90% applies for the Credit Guarantee Scheme for SMEs (BMKB).

The government has introduced temporary enhanced Corona conditions for use of the scheme.

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

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

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

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

5. TAX LEGISLATION

The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Dutch government is that the tax system may under no circumstances form an impediment for companies wishing to incorporate in the Netherlands. In addition, the Netherlands has also signed tax treaties with many other countries to prevent the occurrence of double taxation.

At the same time, its vast network of tax treaties offers instruments for international tax planning. In this context, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings (ATR) / Advanced Pricing Arrangements (APA). Moreover since 2019 the Dutch ruling policy is still only aimed at making agreements in advance with companies who make a considerable contribution to the national economy (so-called economic nexus presence) with an establishment – branch or subsidiary – in the Netherlands and this establishment in the Netherlands is not primarily for tax reasons.

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

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

Moreover, it should be noted that the fiscally attractive establishment climate in the Netherlands does however also have a shadow side because it can be abused to avoid taxation. Partly due to severe great international and national political pressure, the Dutch government is at present tackling companies and individuals that have set up or wish to set up via the Netherlands tax avoidance schemes, to conduct a tax disincentive policy. In addition to the introduction of various European anti-avoidance laws, in the fight against tax avoidance a Controlled Foreign Corporation regime has been introduced with effect from 2019. In addition it is no longer possible to agree an ATR/APA with the Tax Authorities where transactions are involved that relate to companies established in countries included in the Dutch list of low tax countries or the EU list of non-cooperative jurisdictions for tax purposes. Low tax countries are defined as a country with an income tax rate of less than 9%. In the fight against undesirable tax evasion, as a result of European legislation since 01 January 2021 Mandatory Disclosure Rules apply for taxpayers and their consultants. The most important anti tax avoidance measures are covered below.

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

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

Corporate income tax

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples of such entities are the NV and BV. Companies based in the Netherlands are taxed on the basis of the companies' local revenues.

The question as to whether a company is in effect based in the Netherlands (resident companies) for tax purposes is assessed on the basis of the factual circumstances. The relevant criteria are issues such as where the actual management is based, the location of the head office and the place where the annual General Meeting of shareholders is held. Entities set up under Dutch law are deemed to be established in the Netherlands. A resident company is in principle subject to Dutch corporate income tax for its profits received worldwide. Non-resident companies may be subject to corporate income in the Netherlands on Dutch-source income.
This is outlined later.

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

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

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

Tax base and rates
Corporate income tax (CIT) is charged on the taxable profits earned by the company in any given year less the deductible losses. The following are the applicable corporate income tax rates for 2022:

Profit from	Profit up to and including	Rate
-	€ 395,000	15%
More than € 395,000		25,8%

For financial years up to and including 2018 losses incurred in any given year can be set off against the taxable profits of the previous year and the 9 subsequent years. As of 2019 the carry forward is reduced to 6 years. Part of this reduction is the introduction of a transitional measure, based on which the losses of 2019 and 2020 can be used before the 2017 and 2018 losses.

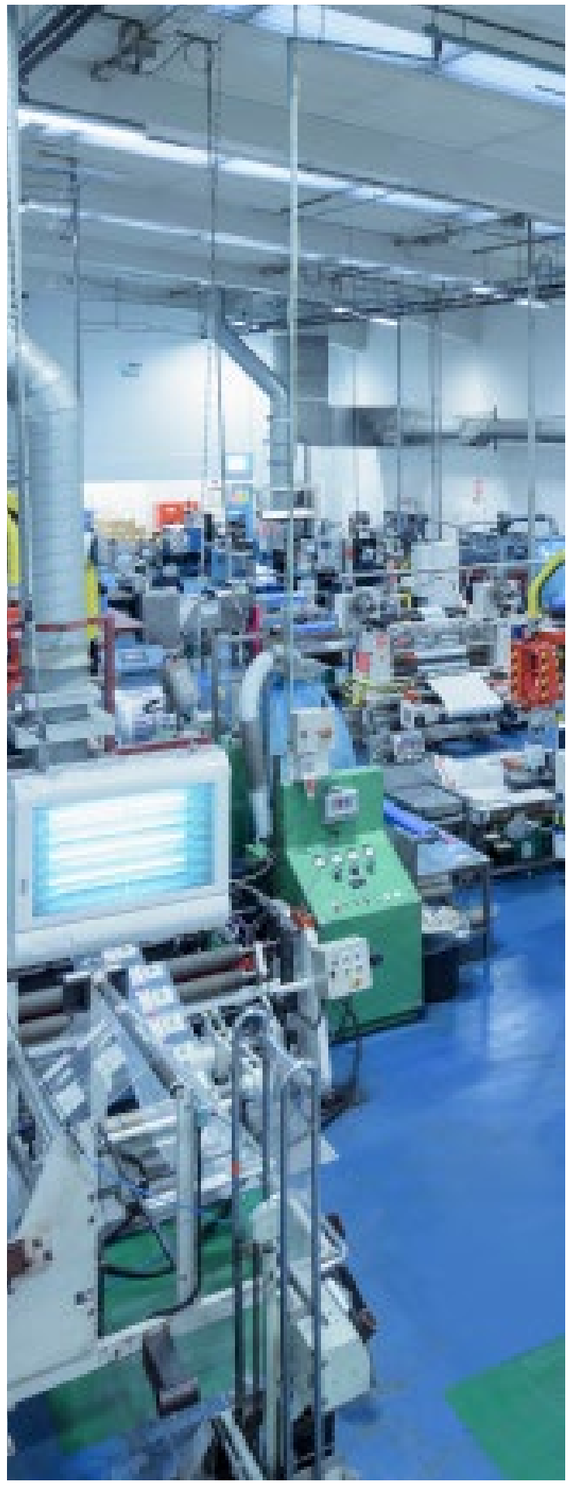
Commencing on 01 January 2022 the carry forward of losses has again been revised. From 01 January 2022 an unlimited carry forward of losses will apply. If the losses from previous years (up to 2022) together exceed an amount of Euro 1 million, the set-off is then carried out in one year up to a maximum amount of
Euro 1 million plus 50% of the taxable profit from that year. These changes will relate to all off-settable losses arising from 01 January 2022 or from the end of 2021 to be carried forward.

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

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

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

Arm's Length Principle
The Dutch corporate income tax legislation includes an article that determines that national and foreign related companies are entitled to charge one another commercial prices for mutual transactions. This is however subject to an obligation to keep due documentation of all relevant transactions. This enables the Dutch tax authorities to determine whether the transaction between the applicable related companies are conducted based on market prices and conditions.



It is possible to obtain prior assurance of the fiscal acceptability of the internal transaction with the use of the so-called 'Advance Pricing Agreement'.

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

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

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

Innovatiebox (Innovation box)
Companies that have developed intangible assets (an invention or technical application) can deduct the development costs from the company's annual profits in the year in which the asset was developed. Under international pressure, including the OECD initiatives relating to Base Erosion and Profit Shifting, the Innovation Box regulations have been tightened up. The new rules for access to the innovation box apply from 01 January 2017 and their application has been to intangible fixed assets produced after 30 June 2016. The innovation box as a facility is in principle now only open to enterprises with actual economic activities in the Netherlands, where the intention is now only to grant a tax subsidy for an innovation developed in the own enterprise in the Netherlands. The innovation box benefits are then determined in the light of a ratio between qualifying and non-qualifying innovation expenditure (nexus break).

Only 'intangible fixed assets' produced by the enterprise itself can qualify for the innovation box.

Purchased intangible fixed assets do not qualify, except that a purchased intangible asset that is then developed further may again qualify if the further development results in a 'new' intangible asset.

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

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

Up until the last financial year ending before 01 July 2021 the 'old' innovation box scheme remains in force, but only for innovations to which the innovation box scheme already applied as of 30 June 2016. The result of this is that all intangible fixed assets qualifying before 01 July 2016 for which the innovation box applied in the declaration for the financial year in which 01 July 2016 falls, calculated from this date may still avail themselves of the old scheme for a maximum of five more years.

The rate for corporation tax for innovative activities amounts to 9% (2022). Losses on innovative activities can from now on be deducted at the normal corporate income tax rate. The outsourcing of R&D work is also possible if the principal has sufficient activities and knowledge present. It is also possible to include innovation advantages obtained between the application for a patent and the granting of a patent in the innovation box. There is no maximum to the profit taxed at the special rate of 9%.

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

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

Participation exemption
Participation exemption or substantial holding exemption is one of the main pillars of corporate income tax. The scheme was introduced to prevent double taxation. Profit distribution between group companies is exempted from tax.
A participation refers to a situation where a company (the parent company) is the owner of at least 5% of the nominal paid-in capital of a company that is based either in the Netherlands or abroad (the subsidiary). A cooperative membership qualifies as well regardless its share in the cooperatives capital.

Under the participation exemption, all benefits derived from the participation are tax exempt. The benefits include dividends, revaluations, profits and losses in the sale of the participation and acquisition and sales costs. The participation exemption also applies to revaluations of assets and liabilities from earn-out and profit guarantee arrangements. If the value of the participation falls due to losses incurred, devaluation by the parent company is in principle not permitted. Losses arising on liquidation of a participation can under certain conditions be deducted.

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

1. Time limit: a liquidation loss must be taken within a period of 3 years after ceasing operations. Up until 2021 there was no time limit for this;
2. Origin limit: only liquidation losses from participations in EU or EEA states may be deducted. Up until 2021 there was a deduction for worldwide losses;
3. Affiliation limit: liquidation losses may only be deducted in the case of a participating interest with 'sufficient' control (often for an interest of over 50%);
4. The origin and affiliation limits only apply for liquidation losses greater than € 5 million.

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

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

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

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

A corporation qualifies as a CFC if:

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

If the foreign company or permanent establishment is qualified as a CFC, undistributed 'passive' income (including interest, royalties, dividends and leasing income) of the CFC are taxed at the level of the Dutch controlling company, unless the activities of the CFC include significant economic activities. The latter is the case when the CFC (a) receives at least 70% non-passive income or (b) meets the Dutch relevant substance requirements, or the CFC qualifies as a financing vehicle for which at least 70% of the tainted benefits are received from third parties.

For profits that on the basis of the CFC legislation are already taxed in the Netherlands and later paid out to the Dutch parent company the avoidance of double taxation is provided.

Object exemption for permanent establishments
An object exemption exists for foreign permanent establishments of companies based in the Netherlands. As a result the profits and losses of a foreign permanent establishment do not affect the Dutch tax basis. Final losses of foreign permanent establishments that remain upon cessation (termination) can however still be deducted.

The object exemption does not apply to profits from so-called passive permanent establishments in low-taxation countries and to passive income of permanent establishments qualifying as CFCs.

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

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

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

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

It is at present unclear whether Brexit prevents or terminates a fiscal unity via a UK company. For the present the Dutch tax authorities are however taking this view.

On 22 February 2018 the Court of Justice of the European Union (CJEU) concluded that the Dutch fiscal unity is in violation of the EU freedom of establishment. According to the CJEU ruling the Dutch fiscal unity regime may not favour domestic groups by allowing a benefit that is not open to cross-border groups, while such a fiscal unity in cross-border situations is not permitted.

As a result, the Dutch government has introduced repair measures which adjust the fiscal unity regime with retroactive effect to
01 January 2018. It is expected that this will ultimately lead to an alternative fiscal consolidation regime.

Limitations of Interest deduction

Earnings stripping rule
The earnings stripping rule came into effect from 01 January 2019 and applies for financial years beginning on or after this date. The earnings stripping rule is a generic interest deduction for the balance of the interest payable on third-party and group loans. It concerns the difference between the interest charges and interest income relating to loans and similar agreements (balance of interest). Using a fixed percentage of earnings before interest, tax, depreciation and amortisation (roughly speaking the gross operating result, EBITDA) the balance of interest is subject to restricted deduction.

The earnings stripping rule limits the deductibility of net interest expenses to the higher of (i) 20% (2022; up to 2022 again 30%) of the EBITDA or (ii) a threshold of € 1 million. The rule does not make a distinction between third party and related party interest and is therefore a generic limitation of interest deduction. By taking the EBITDA for tax purposes as the starting point, the interest deduction is thus linked to the taxable economic activity of a taxpayer. In the case of fiscal unity the earnings stripping rule is applied at fiscal unity level. Finally the earnings stripping rule applies to both existing and new loans. Interest that cannot be deducted based on the earning stripping rule can be carried forward indefinitely.

Anti-base erosion regulation
The anti-base erosion rules in Dutch corporation taxation restricts the deduction of financing costs of intragroup loans if these loans in essence relate to the conversion of equity into financing through debt without sound business motives. This comprises loans relating to inter alia dividend distributions, repayment of formal and informal capital and capital contributions. On the other hand, the anti-base erosion rules also entail the possibility to overrule this restriction in tax deduction of the relating financing costs if the taxpaying company can demonstrate that the sound business motive for this debt financing exists or the interest payment is effectively taxed at a rate of 10% or more.

However, the Dutch tax authorities may demonstrate that in the case of a group transaction no business considerations are involved, even if the recipient pays 10% or more tax abroad. In that case the interest paid within the group is not deductible.
The interest for ordinary business transactions does however remain deductible.

Prevention of mismatches working at arm's length principle
In a group context to determine the profit for tax purposes the starting point is that internal transactions and relationships take place on an arm's length basis. Non-arm's length pricing must be adjusted for tax purposes to the level of arm's length pricing. A correction is not always made in one country to a corresponding correction in the other, resulting in an international mismatch in the tax base. For tax purposes this is processed as a so-called informal capital payment or disguised profit distribution. In international group contexts these mismatches may be abused so that companies pay too little tax (at consolidated level). With effect from 2022 these mismatches are being controlled. The Dutch tax base can no longer be corrected (read: reduced) with an arm's length correction in the absence of a corresponding increase in the tax base for the other party.

The 'at arm's length' correction is however maintained, but the deduction of the correction (in the form of a fictitious cost deduction) is limited. For example, interest-free intragroup financing for a group company established in the Netherlands can no longer lead automatically to a fictitious interest charge (so-called interest imputation) and hence to a reduction in the tax base, but from now on will be linked to the extent to which the receiving foreign group company also charges the correction to its profit. This measure not only looks to payments in the so-called cost sphere, such as an interest imputation to group finance or intragroup fee payments, but also looks to transferred assets resulting in a limitation of the deductible depreciation charge.

Tax liability measure for joint ventures set up according to Dutch law
Joint ventures such as a VOF or CV (see above) do not have any legal personality and for this reason are not independent taxpayers for corporation tax. For these entities there is so-called fiscal transparency. Dutch fiscal transparency of such a joint venture has often been used in recent decades to obtain fiscal (group) benefits. If in the country in which the majority of the members of the joint venture are established in a country that qualifies the joint venture for its national tax on income or profit differently to the Netherlands as an independent taxpayer, there is a so-called hybrid mismatch. This is being prevented with effect from

01 January 2022 by setting aside the fiscal transparency of the joint venture affected and regarding the joint venture as an independent entity in the corporation tax. This measure comes from the second EU Anti-Tax Avoidance Directive (ATAD2).

OESO standard transfer pricing documentation and country-by-country reporting
Documentation obligations apply for multinationals regarding their internal transfer prices used between enterprises in the different countries. New obligations relating to the submission of a country-by-country report, a master file and local file. This applies if the consolidated group revenue is more than € 750 million. The ultimate parent company submits the country-by-country report in the country where it is established. The master file contains a summary of the transfer pricing policy of the group. The local file sets out the intracompany transactions of the local enterprise(s).

Companies established in the Netherlands that form part of a multinational group with a consolidated turnover of at least € 50 million in the previous year must draw up an OECD-based master and local file for transfer pricing and branch profit documentation purposes. These files must be present in the records at the latest on the last day for submitting the return (after any extension granted) for the relevant year.

Tax declarations
The corporate income tax declaration must be submitted to the tax authorities as a rule within 5 months of the end of the company's financial year. If a firm of accountants submits the return a postponement scheme applies. The ultimate deadline for filing, including extension, is 16 months after the end of the financial year.

Income tax

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

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

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

Each source of income can only be entered in one box. A loss in one of the boxes cannot be deducted from a positive income in another box. A loss generated in Box 2 can be deducted from a positive income in the same box in the previous year (carry back) or in one of the 6 subsequent years (carry forward). Where a loss in Box 2 cannot be compensated, the tax law offers a contribution in the form of a tax credit. This means that 26.9% (2022) of the remaining loss is deducted from the tax burden payable, on condition that no substantial interest exists in the current tax year and the previous year. The tax credit amounts to the Box 2 rate of the remaining loss. A loss in Box 1 can be deducted from a positive income in the same box in the 3 preceding years or in one of the subsequent 9 years. Box 3 does not recognize a negative income.

Box 1: Taxable income from work and home

The income from work and home is the sum of:

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

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

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

A non-resident taxpayer who performs the function of director or member of the supervisory board of a body established in the Netherlands is always deemed to have performed this function in the Netherlands either using a permanent Dutch establishment
or by virtue of a Dutch employment relationship or a result obtained in the Netherlands from other work. In this way the scope of the tax levy for foreign taxpayers is extended, barring the effect of a tax treaty on Dutch tax jurisdiction.

For the supervisory director and the non-executive member of a one-tier board more or less comparable with them, their working relationship is not regarded as employment and is not therefore subject to wage tax. A tax obligation for income tax does however apply for their respective income.

The tax rate in Box 1 is progressive and can accumulate to a maximum of 49.50% (2022).

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

The SME Allowance (MKB-winstvrijstelling) means that entrepreneurs will be entitled to an additional exemption of 14% (2022) of the profits following deduction of the above entrepreneur's allowance (tax allowances). The tax advantage of this and the tax allowances for entrepreneurs mentioned is limited by the new rate structure and phasing out of allowances discussed below.

The fiscal profit concept in income tax is virtually identical to the profit concept in corporation tax. For example the provisions discussed under Corporation Income Tax relating to the valuation of work in progress and orders in progress, arm's length principle, limited depreciation on buildings, arbitrary depreciation and WBSO (see under section 4) apply accordingly.

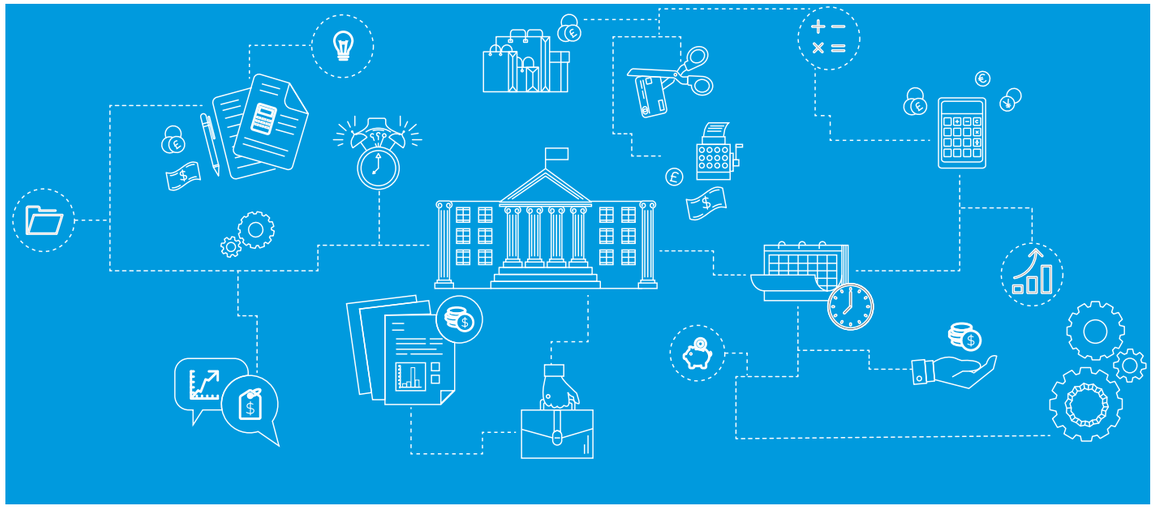
Private house and the Own Home Scheme (Eigenwoningregeling)
A private home is viewed as the complete unit of the home with the garage and other buildings on the property. Houseboats and caravans are also viewed as private homes. The only condition being that they are permanently bound to a single address. A private home is only considered as such where the home is owned by the occupant (taxpayer) and where it serves as permanent domicile and not as temporary domicile. The purchase of a private home is subject to transfer tax. Since 2021 buyers aged under 35 years will on one occasion be exempt from payment of transfer tax (0%) subject to the condition that the purchase price may be a maximum of € 400,000. In other cases, the rate for the home buyer remains 2%. Other buyers, such as investors in housing and buyers of other real estate (e.g. commercial property) will pay 8%.

Once it has been determined that a home can be viewed as an 'Own Home', the home automatically qualifies for tax purposes for the Own Home Scheme based on Box 1 (Work and Home: maximum tax rate 49.50%).

The Own Home scheme works as follows: The fixed sum assumed by the legislator for the enjoyment derived from the own home is expressed for tax purposes in the Own Home fixed sum. The Own Home fixed sum is determined on the basis of a fixed percentage of the value of the home in question. The basis for determining the value of the Own Home is the value of the property, as determined on the basis of the WOZ value. The WOZ value is determined by municipal decree. Certain costs like financing costs (for example interest paid on the mortgage) are under certain conditions deductible from the above-mentioned Own Home fixed sum. The financing costs (including interest
paid on a mortgage bond) are tax deductible where the loan qualifies as an Own Home Debt. The tax deduction is restricted to mortgages with a minimum annuity repayment scheme of 30 years. In other words to qualify for tax deduction the mortgage scheme should guarantee full mortgage payment within 30 years or less.

TThe Own Home financing costs are tax deductible at a tax rate of up to 40.00% (2022). The tax deduction of Own Home costs is being reduced in stages.

New rate structure and phasing out of allowances
The income tax and payroll tax includes a two-tranche rate, a basic rate of 37.07% (for an income up to € 68,398) and a maximum rate of 49.50%. On the other hand, a further phasing out of allowances has come into effect. From 2020 there is a reduction of 3% per year over 4 years in the maximum deduction rate of virtually all allowances (including Own Home financing costs and entrepreneur's allowances) to the (expected) basic rate of 37.05% (in 2023).



Box 2: Taxable income from substantial interest

Substantial interest applies where the taxpayer, with or without his partner, is a direct or indirect holder of a minimum of 5% of the issued capital in a company of which the capital is distributed in shares. The income from substantial interest is the sum of the regular benefits and/or sales benefits less deductible costs. Regular benefits include dividend payments and payments on profit-sharing certificates. Sales benefits include the gains or losses on the sale of shares. Examples of deductible costs include the following: consultancy fees and the interest on loans taken out to finance the purchase of the shares. A non-resident taxpayer is subject to tax for income from substantial interests if the interest is held in a company residing in the Netherlands. If this company was resident in the Netherlands for a minimum of five years in the past ten years, the company is regarded as being resident in the Netherlands.

The tax rate in Box 2 is 26.90% (2022).

Box 3: Taxable income from savings and investments

Box 3 charges tax on the taxpayer's assets. The taxable base is based on a fixed return on investment of the yield base. The yield base is the difference between the assets and the liabilities. The yield base is determined on 01 January of the calendar year. The reference date of 01 January also applies if a taxpayer does not yet owe any inland tax on 01 January or if the inland tax obligation ends during the calendar year for reasons other than death. The assets in box 3 include: Savings, a second home or holiday home, properties that are leased to third parties, shares that do not fall under the substantial interest regime and capital payments paid out on life insurance.

Liabilities in box 3 include: Consumer loans and mortgage bonds taken out to finance a second house. Per person, the first € 3,200 (2022) of the average debt is not deductible from the assets.

Since 2017 to determine the taxable income in box 3 a lump sum asset mix has been assumed on the assumption that the capital partly consists of savings and partly of investments. The income is calculated on the basis of a lump sum yield that increases progressively according to 3 (asset) tranches (see below). Inherent in the lump sum asset mix and the gradual tariff setting linked to this for the taxpayer with a relatively large proportion of savings (with a negligible yield) the actual yield obtained exceeds the effective tax. At the end of 2021 the highest tax court (Supreme Court) ruled for 2017 and 2018 that the box 3 tax in its current set-up contradicts the European Convention on Human Rights (ECHR). The tax must be in line with the actual yield obtained. The result is a lack of clarity about the effects of the ruling for the box 3 tax as now included in the law.

A revision of the ruling (whether or not with retroactive effect) is expected in the course of 2022. For the sake of completenesss, the ruling still included in the law is summarised briefly below (with the 2022 rates).

Taxed assets

All taxpayers are entitled to untaxed assets in Box 3 of € 50,650 (2022). The amount is intended to reduce the yield base. A fixed return, depending on the assets, is calculated on the amount remaining after deduction of the exemption. Three tranches apply for the fixed return. In the first tranche (after deduction of the tax-free assets of € 50,650 for taxable box 3 assets) up to € 50,650 the fixed return is 1.82% (2022). In the second tranche (€ 50,650 - € 962,350) the fixed return is 4.37% (2022) and above this the fixed return is 5.53% (2022). These fixed returns are adjusted annually in the light of the statutory returns in prior years. The tax rate is then paid on this return. The tax rate in Box 3 is 31%.

Tax allowances

Once the tax due has been calculated for each box, certain tax allowances are deducted from those amounts. All domestic taxpayers are entitled to a general tax allowance of € 2,888 (2022). The general tax allowance is reduced by 6.007% of the taxable income from work and home exceeding € 21,317 (2022), as a result of which the general tax credit may ultimately be zero for an income of € 69,398 (2022). Depending on the personal situation of the taxpayer and the actual amount of the annual income, the taxpayer may also be entitled to specific tax deductions.

Advance tax payments

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

Tax declaration

The income tax declaration for any given tax year must be submitted to the tax authority in principle before 01 April of the next year. For the return for 2021 the deadline has been extended until 01 May 2022. If a firm of accountants produces the return, an extension scheme applies. This means that the return may also be submitted later in the year.

Dividend tax

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

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

Cooperatives

Up to 2018 cooperatives were in principle not obliged to deduct dividend tax on profit distributions to a holder of a membership right, unless the main objective or one of the main objectives of the membership of the cooperative is to avoid dividend tax or foreign tax and the chosen structure has not been set up for business reasons that reflect the economic reality. This anti-abuse regulation was replaced with effect from 01 January 2018 by the introduction of a more generic dividend tax obligation for qualifying holder cooperatives established in the Netherlands. These are holder cooperatives established in the Netherlands whose actual work includes at least 70% holder work in the year preceding the profit distribution. The deduction of dividend tax moreover only concerns membership rights that give a right to at least 5% of the annual profit or profit on liquidation, irrespective of whether this entitlement falls independently to the holder of the membership right or in combination with the rights of associated persons or the cooperating group.

Exemption

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

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

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

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

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

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

Tax rate
The tax rate for dividends is 15% (2022). The tax is withheld by the company that pays out the dividends and pays it to the tax authorities. The dividend tax withheld serves as an advance tax payment on income and corporate income tax. The Netherlands has signed tax treaties with various other countries, as a result of which a lower tax rate will apply in many instances.

The government has indicated that it wishes to introduce an additional dividend tax on dividend payments to a low-taxation country as of 2024. This is an additional instrument to discourage using the Netherlands as a link in undesirable fiscal evasion routes.

Proposal for dividend tax exit levy
Parliament is discussing a bill to retain the Dutch dividend tax claim when companies move abroad. This is a levy that involves situations where the registered office is moved to a country with no dividend tax or where a so-called step-up for (potential) distributable profit reserves is granted. This exit dividend tax is only levied from investors in non-EU/EEA states with which the Netherlands has not signed a tax treaty. The levy is included in the existing tax system for dividend tax and levied directly immediately without the option for postponement of payment or a debt moratorium.

For reasons of efficiency a threshold (tax-free allowance) of € 5 million will apply for this scheme. The scheme will apply for registered office moves and cross-border mergers, divisions and share mergers.

If one of these taxable conditions occurs, a dividend tax declaration must be submitted with the tax base 'net profit' (visible and deferred tax reserves). The recognised paid-up capital and tax-free allowance are then deducted from this amount. Withholding exemptions in participating interests are not affected. In practice this exit levy will in particular affect profit reserves to which portfolio shareholders of listed companies are entitled.

The dividend tax is withheld by the distributing company. In both situations the exit dividend tax qualifies as an (offsettable) withholding tax or the final tax levy for the shareholder in question.

In the reverse situation in which a company has moved its registered office to the Netherlands, a step-up applies for the existing 'net profit'.

Another important aspect of the bill relates to legal entities established according to foreign law. On certain conditions for the application of this exit levy these entities are still deemed for a period of up to 10 years after moving their registered office to be established in the Netherlands. The bill provides for a retroactive effect up to 8 December 2021.

Withholding tax on interest and royalties
With effect from 2021 the Netherlands has introduced a withholding tax on interest and royalty payments to affiliated entities in designated low-taxation countries as well as in situations of abuse. The withholding tax is the same as the highest corporation tax rate (in this case 25,8% for 2022). The effect of a tax treaty may mean that the actual rate is lower. Withholding tax arises for payments between affiliated entities. Affiliation here means a case where the shareholder can exercise a direct or indirect decisive influence on the operations of the Dutch entity and must therefore be looked at on a case-by-case basis.

A formal interest such as a minimum voting right of 50% does in any case result in an affiliation. For the levy of withholding tax the receiving entity must be established in a jurisdiction with a tax on profits of a maximum statutory rate of 9% or in a jurisdiction included in the EU list of non-cooperative jurisdictions (so-called Designated Low-Taxation Jurisdictions).

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

Mandatory Disclosure Rules (MDR)
From 01 January 2021 taxpayers and their agents have a disclosure obligation under the so-called Mandatory Disclosure Rules. These rules are the effect of the European Directive dating from 2018 on the mandatory automatic exchange of information in the area of taxation relating to disclosable cross-border arrangements (DAC6). The disclosure obligation (to the Tax authorities) applies for potentially aggressive cross-border tax arrangements. The scope of the rules is still not very clear. It is intended for fiscal arrangements where residents of various countries are involved and which can be used for tax evasion. The disclosure obligation also has retroactive effect to 25 June 2018, in the sense that the disclosure obligation arises for cross-border arrangements in which taxpayers and their agents are involved from 25 June 2018.

Prevention of double taxation
Residents of the Netherlands and companies that are registered in the Netherlands must pay tax on all revenue generated worldwide. This could result in any given income component being taxed both in the Netherlands and abroad.

To prevent this kind of double taxation, the Netherlands has signed tax treaties with many other countries. The treaties are largely modelled on the OESO Model Treaty for the prevention of double taxation.

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

Double taxation of dividend payments and interest payments and royalties is prevented with the use of the settlement method. The use of this method means that the Dutch tax is reduced by the amount of tax charged abroad. In certain situations it is also possible to deduct the foreign tax directly from the profits or as costs related to income.

In 2017 the government signed the multilateral treaty on international tax evasion (Multilateral Instrument or MLI). This treaty is a result of the BEPS project against tax avoidance. This treaty offers the opportunity to implement measures against tax evasion in one go, without the need for separate negations and also provides for faster mutual agreement procedures. The MLI bill came into effect as of 01 July 2019.

Wage tax

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

Withholding obligation

The Wage Tax Act links the withholding obligation with the presence of an employment relationship, whether or not a notional one. One of the characteristics of an employment relationship is the employer-employee relationship. With the big increase in the labour market of freelancers and self-employed sole traders (ZZP), the importance of delimiting 'whether or not' there is an employment relationship and the associated withholding obligation and social security obligation has grown considerably.

To this end, the so-called law on the Deregulation of the Assessment of Employment Relationships (DBA) was adopted and formally came into force in 2016. Government came up with the law on the Deregulation of the Assessment of Employment Relationships (DBA) to replace the so-called Declaration of Independent Contractor Status (VAR). The VAR in principle indemnifies the client from the risk of a withholding obligation. Under the DBA the client can only still get an indemnification for the absence of a withholding obligation when using the (model) agreements assessed and approved by the tax authority. However, because of the apparent social impact and the implementation problems for this law, the habituation period has been extended repeatedly. Meanwhile the government has decided to replace the current DBA law with the aim of bringing in new measures in 2021. Until then the DBA law remains in force. Enforcement of the law (i.e. imposing penalties and retrospective assessments) is only aimed at malicious parties and serious cases.

As regards the function of supervisory director or non-executive member of a one-tier-board, the income tax section above has already stated that for both relationships from 2018 there will no longer be a fictitious employment relationship and corresponding withholding obligation. There will however still be the option via the opting-in regulation to create or maintain an employment relationship, for example in the case of a non-executive board member who qualifies for the 30% scheme discussed below.

Tax rate

The wage tax rates in 2022 are:

- On the first € 35,472 of taxable income: a percentage of 37.07% is withheld (9.42% wage tax and 27.65% social security premium);
- On the next € 33,926 of taxable income: a percentage of 37.07% (37.07% wage tax);
- On all additional income: a percentage of 49.50% is withheld.

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

Taxable wage

For wage tax a broad wage definition is used. Dutch tax legislation allows numerous options for rewarding personnel in fiscally friendly ways. Wage tax is calculated on the full value of the remunerations received by the employee based on the employment contract.

The remuneration may take the form of cash, such as a salary, holiday allowances, overtime, commissions and payments for a thirteenth month. Employees can however also receive remuneration 'in kind', such as products from the company or holiday trips. The concept of remuneration also includes various other claims, compensations and provisions.

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

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

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

It should be noted that the current Corona pandemic has led to changes in work patterns and conditions, where compulsory working from home has become the norm. It is anticipated that even after the Coronas pandemic working from home will continue to be common. As a result the amount of travel to and from work in an office will fall. This also has consequences for the nature and amount of employees' work expenses. The government is now considering revising the reimbursement system to take this into account. It is therefore possible that in the course of 2021 the scheme described below will in part be amended and supplemented with reimbursements geared to more common working from home.

Work expenses scheme

Compensations and provisions to employees are subject to the work expenses scheme. Through this scheme an employer may spend a maximum of 1.7% of the total wage for tax purposes (the 'free scope') up to a total wage bill of € 400,000 and 1.18% on the additional wage bill on untaxed compensations and provisions for employees. On the amount above the free scope, the employer pays wage tax in the form of a final levy of 80%.

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

1. *Compensations and provisions that are exempted from final levy payment.*
   This includes among other things private use of company car, company bike and reimbursement of fines.
2. *Compensations and provisions belonging to another final levy payment*
   This category includes for example gifts and provisions to a third party and additional assessments not recovered from the employee.
3. *Specific exemptions of work expenses*
   Exempted work expenses include compensations and provisions for business travel expenses by public transport (100% compensation), travel expenses by own transport (max. € 0.19 per km), course costs, study and training, meals during overtime and business travel (see below), extraterritorial costs (e.g. 30% rule; see below), costs of tools and ICT equipment (see below) and products from the company's own sector (see below). For some of the specific exemptions a lump sum applies (see below). A tax-free travel expenses allowance must be based on the actual journeys made. For working at home days a free allowance of € 2 per day can be granted.
4. *Provisions to be valued at zero*
   This includes provision of work clothing, provisions in the workplace, refreshments provided in the workplace.

If and insofar as compensations and provisions do not fall under the above-mentioned exemptions, the employer then has the choice of regarding the (remaining) compensations and provisions as final levy payment or as regular wage (with the deduction of wage tax from the employee). The employer may indicate compensations and provisions as a component of final levy payment on condition that these do not differ substantially from what is usual in similar circumstances. This means that depending on the nature it is usual to indicate the relevant compensation or provision as a component of the final levy payment. A compensation or provision relating to costs incurred by the employee in relation to the proper exercise of the employment relationship will be qualified as usual rather than the indication of pure salary elements, such as bonuses. With regard to the scope of the compensation or provision this may not be substantially (30% or more) higher than are indicated as usual in comparable circumstances.

The additional amount shall be included in the levy as regular wage. For some work expenses such as meals at the workplace, which are taxed by the employer as regular wage different lump sum valuations apply in addition.

The final levy payment is then first deducted from the free scope and the additional amount taxed by the employer at 80%.

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

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

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

- These must be products that are not from another sector;
- The maximum discount or compensation per product must be 20% (2022) of the market value (including VAT) of the product;
- The total value of the discount or compensation may not exceed € 500 (20212) per calendar year.

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

Relocation
If an employee is required to relocate for work purposes, the employer is entitled to compensate the employee free of tax for the moving costs for his household goods. In addition the employer may give a tax-free moving expenses allowance of a maximum of € 7,750 (2022). The condition is however that this is a move that is entirely related to the employment. This in any case applies if the employer gives the allowance within 2 years after the employee accepts the new employment (or after transfer) and the employee lives more than 25 kilometres from his work and moves, as a result of which the distance between his new home and his work is reduced by at least 60%.

The 30% ruling

Foreign employees who come to work in the Netherlands temporarily qualify for the 30% ruling under certain circumstances. The ruling means that the employer is entitled to pay the employee a tax-free remuneration to cover the extra costs of their stay in the Netherlands (extraterritorial costs). The compensation amounts to 30% of the salary, including the compensation, or 30/70 of the salary excluding the compensation. The condition is that, based on this salary, the employee is not entitled to prevention of double taxation. If the employer reimburses more than the maximum amount, this salary is subject to wage tax. The employer may deduct a final levy on this additional amount. Since 01 January 2019 the disposition is only valid for a maximum period of 5 years. Up until 2019 this was 8 years. A transitional ruling applies for employees who already used this scheme before 2019. For this group the change comes into effect on 01 January 2021.

Conditions for qualification for the 30% rule

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

An employee is regarded as fulfilling the conditional specific expertise if the employee's remuneration exceeds a defined salary standard. The salary standard is indexed annually. For 2022 the salary standard is fixed at a taxable annual salary of € 39,467 (2021: € 38,961) or € 56,381 including the 30% allowance (2021: € 55,658). This salary standard of € 39,467 (2022) is excluding the final levy components and thus excluding the 30% allowance. In most cases no more specific check is made for scarcity, but this is done if for example all the employees with a particular expertise meet the salary standard. The following factors are then taken into account:

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

For scientists and employees who are physicians in training as specialists there is no salary standard. For employees coming
in who are aged under 30 years and have completed their
Master's degree there is a reduced salary standard of € 30,001 for 2022 (2021: € 29,616) or € 42,858 (2022) including the
30% allowance.

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

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

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

- extra cost of living because of the higher cost of living in the Netherlands than in the country of origin (cost of living allowance);

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

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

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

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

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

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

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

In addition, up until 2021 the employee with the 30% ruling could also submit an application for registration as a partial foreign taxpayer for tax purposes in the Netherlands. This means that he would be entered as a foreign taxpayer in Box 2 and 3. In that case, as a foreign taxpayer the income to be reported is limited to Dutch source income and not to his worldwide (investment) income. With effect from 2021 the latter option ceased for the partial foreign taxpayer status.

Value Added Tax (VAT)

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

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

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

Exemptions

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

Capital goods

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

The VAT system in the internal European market

The European Union has recognized the free traffic of goods, persons, services and capital in the EU. Performances within the European Community are referred to as the intracommunity supply and acquisition of goods and intracommunity services. VAT is charged based on the destination country principle. This means that goods that cross the border to another EU country are taxed in the destination country. The rules differ considerably for business to business and business to consumer activities.
Over the years it has been found that the current VAT system for B2B supplies between businesses in EU member states is prone to fraud. The European Commission has therefore submitted a proposal to make a significant change to this. The intention in the new system is for the supplier to charge the VAT of the EU member state where the customer is established. This supply will then be declared via a One Stop Shop and the VAT due (by the other EU member state) paid. The above VAT procedure may however be ignored if the customer is registered in the other EU member state as a Certified Taxable Person (CTP). The qualification requirements for CTP status are not yet known. The intended commencement date of this new system is as from 1 July 2022.

Digital services

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

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

As of 01 January 2019, additional simplifying rules have been implemented for taxable persons providing digital services, specifically electronic services:

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

From 01 July 2021 the other (bigger) part of the e-commerce VAT Directive related to distance sales of goods has been implemented. This new Directive has a major impact for EU and non-EU suppliers of goods to private consumers, as well as for market places facilitating such supplies. For example, upon entry into force in all EU countries one threshold of € 10,000 will apply, instead of the present different thresholds for each country. The threshold will then apply for the total of distance sales of goods including the sale of digital services to consumers in the EU.

Once the total amount of sales within the EU in a year exceeds
€ 10,000, the consumer must be charged the VAT of the member state in which they are established. The VAT due in the other member state is then declared and paid via the OSS portal of the (national) tax authority. The national tax authority is responsible for the further distribution of the VAT paid.

In addition, from 01 July 2021 upon importation of goods irrespective of the value of the consignment (EU) VAT is payable. Until 01 July 2021 there existed a VAT exemption for goods of low value (€ 22 value limit).

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

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

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

Tax rates
The general VAT tax rate is 21%. The Netherlands also has a low VAT rate of 9%. Goods and services falling under the low tax rate are specified in Table 1 of the Turnover Tax Act (Wet op de omzetbelasting 1968).

This applies, among other things, to foodstuffs, medicines and services in the leisure and hospitality area. The zero rate is mainly intended for goods exported to outside the EU and for goods exported to other EU members states.

Excise and other duties and taxes

Excise duty
The Netherlands charges excise duties on alcohol-containing beverages, tobacco, fuel and other mineral oils. Manufacturers, traders and importers pay excise duties to the tax authorities. The Excise Duty Act (Wet op de accijns) in the Netherlands is fully harmonized with the applicable EU directives.

Environmental taxes
The Netherlands charges the following environmental taxes:

- Tax on mains water
- Fuel tax
- Energy tax
- Waste tax

Tax on mains water
The Netherlands charges tax on mains water. All companies and households pay tax on a maximum amount of 300 cubic metres of water per connection per annum. The rate is € 0.359 (2022) per m3.

Fuel tax
Fuel tax is paid by the producers and importers of coal. The rate is € 15.49 (2022) per 1,000 kg coal.

Energy tax
The purpose of energy tax is to reduce CO2 emissions and to reduce energy consumption. The energy tax is charged to the user of the energy (natural gas, electricity and certain mineral oils). The rates are related to the amounts used, whereby the rates are progressively reduced as consumption increases. By means of a Climate Agreement the government is promoting an energy transition from the use of fossil fuels to sustainable energy with the ultimate aim of being CO2-neutral in 2050. The rate is expected to be used as a policy tool in the coming years. As part of a broad package of measures to encourage industrial companies to become sustainable, as of 01 January 2021 the Industrial CO2 Levy Act (Wet CO2-heffing industrie) came into effect for industrial companies falling under the European Emissions Trading Scheme (EU ETS).

Waste tax
The tax rate for 2022 is € 33.58 per 1,000 kg of landfill.

Bank tax
Legal entities carrying out banking activities inside the Netherlands are subject to bank taxation. The bank tax is levied on unsecured debt. The rate is 0.044% (2022) for short term debt (term of less than 1 year) and 0.022% for longer term debt.

Insurance premium tax
The insurance premium tax is levied upon the conclusion of an insurance contract with an insurer. The insurance premium tax rate amounts to 21% of the premium due. Some types of insurance contracts are exempt from this taxation, such as health insurance, unemployment insurance, accident, transport, disability and life insurance. The insurance premium tax imposed is paid by the designated intermediaries and insurers.

6. PERSONNEL

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

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

Employment relationships

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

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

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

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

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

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

Minimum wage
There is a statutory minimum wage for employees aged 21 or over. In addition there is a minimum wage for employees aged between 15 and 21, the level of which varies according to age. These minimum wages are indexed and may be adjusted twice a year on January 1 and July 1 (as of January 2022, the statutory minimum wage for employees aged 21 or over is € 1,750 gross per month, excluding 8% holiday allowance). This amount applies for a full working week. The duration of a working week may differ by type of business sector and is normally between 36-40 hours. Since 2018 there has also been a minimum wage for self-employed contractors. These are people who do not have an employment contract, but work on the basis of a specific agreement, such as the above-mentioned contracting agreement ('aannemingsovereenkomst'). The new regulation does not apply for self-employed contractors who are hired.

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

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

Employment agreements
An employment agreement may be agreed for an indefinite or fixed period of time. If an employment agreement for a fixed period of time is continued, a new agreement will then be deemed to have been entered into under the same conditions and for the same period of time (subject to a maximum of 1 year) as the former employment agreement.
Parties are free to enter into consecutive employment agreements for a fixed period of time, ending by operation of law, however two restrictions (chain provision) apply:

- Since 01 January 2020 the aggregate duration of the consecutive employment agreements (with interruptions of not more than 6 months) may not exceed 36 months; if the aggregate duration is longer than 36 months (interruptions included), the last employment agreement shall be deemed to be an employment for an indefinite period of time.
- The number of consecutive employment agreements must be less than 4. If the number of consecutive employment agreements exceeds 3 (while there are no interruptions of more than 6 months in between the employment agreements), the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

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

The chain provision described above forms part of a wider revision package of the labour and dismissal law, the Balanced Labour Market Act (Wet Arbeidsmarkt in balans/ WAB) came into effect as of 01 January 2020. The new legislation also includes the introduction of limiting conditions for so-called standby contracts.

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

As from 01 January 2020, flexible work that meets the new legal definition of 'on-call worker contract' creates specific new employer's obligations, including the duty to offer an on-call worker a new employment contract each year with a fixed number of hours. The incentive for offering a permanent contract has been created by introducing a differentiation in employer's charges, where the social insurance contributions applicable for employees with a permanent contract is more favourable than for an employee without a permanent contract.

Termination of an employment agreement

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

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

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

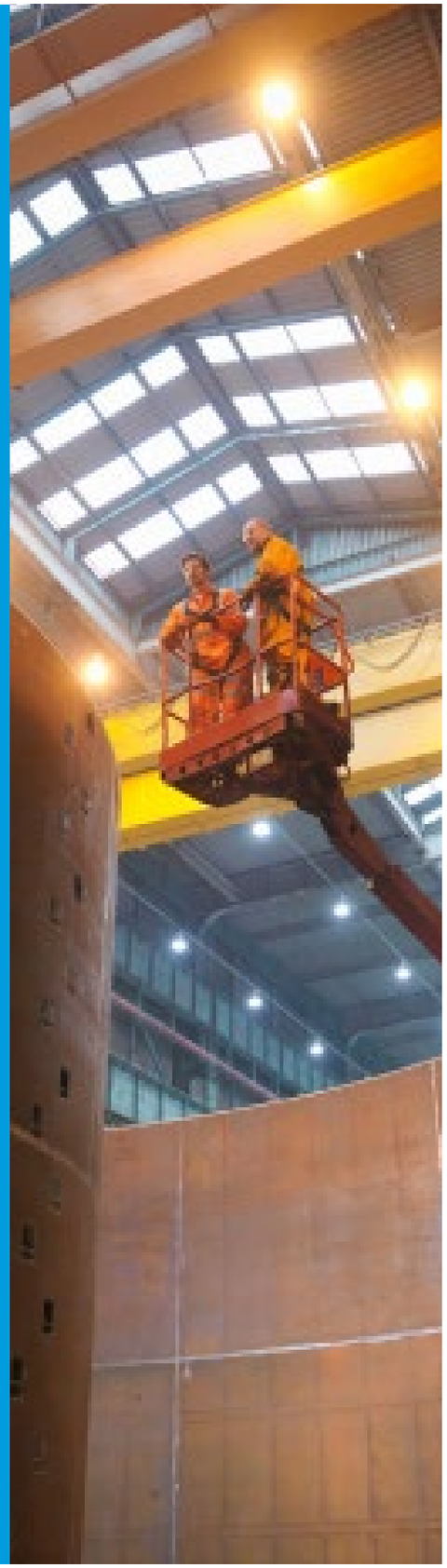
For temporary contracts with a term of at least 6 months a notice period has been introduced. At least 1 month before the expiry of the agreement term the employee must be informed of an extension or termination of the employment contract. Upon extension the employer is obliged to indicate the extension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

During the probation period both the employer and the employee can terminate the employment contract directly at any time. In order to be valid, the probation period has to be expressly agreed upon by parties in writing. Any deviation from the aforementioned rules will result in a void probation period.

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

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

The employee may challenge the dismissal itself within 2 months, stating that he is still employed and is thus entitled to pay. Alternatively, the employee may acquiesce in the termination of the employment, but claim damages for reasons that the grounds for the dismissal were not valid.



As a risk containment measure, it is advisable to file for dissolution of the employment (see below).

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

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

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

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

Until the introduction of the Balanced Labour Market Act (WAB) employees had the right to a transitional allowance intended to be used for training and transferring to a different profession or employer after an employment contract (temporary or permanent) of a minimum of two years. The transitional allowance ruling was also amended with the arrival of the WAB. With effect from 01 January 2020 all employees have the right to a transitional allowance if the employment contract ends on the initiative of the employer. This also applies for notice of termination during the probation period discussed above. Before the introduction of the WAB, for both employees aged 50 years or older and who had been employed for more than 10 years under certain conditions a different scheme applied which could result in a higher transitional allowance than for other employees. This difference in treatment will lapse as from 01 January 2020. The amount of the transitional allowance will with effect from 2020 be calculated based on the actual number of days that the employment contract has lasted. The formula for the calculation is equal to A x B, where A stands for the duration of the employment (in days) and B for 1/3 of the gross monthly salary. The gross monthly salary includes gross hourly pay, plus holiday allowance (8%) and other fixed wage components multiplied by the contractual duration of employment per month. The allowance is payable from the 1st day of employment. For the transitional allowance in 2022 a statutory maximum of € 86,000 applies. For an annual salary of over € 86,000, the maximum transitional allowance is the relevant annual salary, irrespective of the result of the above calculation formula.

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

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

Sham Employment Arrangements Act (Wet aanpak schijnconstructies)
To combat exploitation, underpayment of personnel and unfair competition on the labour market the Sham Employment Arrangements Act (WAS) provides for various measures. One of the measures concerns the supply chain liability for clients to make the correct payment of the agreed wage. This is the case for the hiring of personnel from another employer or in the performance of work by an employee of another employer based on an assignment agreement or contracting agreement. If the latter employee does not receive the (full) wage from his formal employer, this employee must make a claim against his employer and in the absence of (full) payment this employee has the option of then holding the client jointly and severally liable. The court rules on the joint and several liability of the client. In practice, by assessing contractors for reliability a liability risk may be reduced or avoided.

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

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

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

Foreign Nationals (Employment) Act (Wet arbeid vreemdelingen)
Workers from the European Union, EEA countries (Norway, Iceland and Liechtenstein) and Switzerland do not need special permits to work in the Netherlands. As of 01 July 2018 employees from Croatia can be employed in the Netherlands without the requirement for a work permit. To work legally in the Netherlands, depending on their work situation non-qualifying nationals, however, do need either a work permit (TWV) or a combined permit for residence and work (GVVA).

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

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

To be admitted as a highly skilled migrant income requirements are laid down. To be admitted as a trainee doctor or (guest) lecturer, the employer making the application must be a sponsor authorised by the IND (Immigration and Naturalisation Service of the Ministry of Security and Justice). Authorisation is carried out by the IND.

The authorisation as a sponsor is in a number of cases a condition for the application for the residence permit.

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

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

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

7. USEFUL INFORMATION

Rijksdienst voor Ondernemend Nederland (most important subsidy agency in the Netherlands)
P.O. Box 93144 NL–2509 AC Den Haag
www.rvo.nl or **T** +31 (0)70 379 80 00

Belastingdienst/kantoor Buitenland (Foreign office of the Department of Inland Revenue)
P.O. Box 2865 NL–6401 DJ Heerlen
www.belastingdienst.nl or **T** +31 (0)55 538 53 85

P.O. Box 90404 NL–2509 LK Den Haag
www.boip.int or **T** +31 (0)70 349 11 11

P.O. Box 2475 NL–3500 GL Utrecht
www.cnv.nl or **T** +31 (0)30 751 10 01

P.O. Box 80510 NL– 2508 GM Den Haag
www.cpb.nl or **T** +31 (0)88 984 60 00

P.O. Box 3070 NL–6401 DN Heerlen
www.douane.nl or **T** +31 (0)45 574 30 31

P.O. Box 5818 NL–2280 HV Rijswijk
www.epo.org or **T** +31 (0) 70 340 20 40

P.O. Box 9208 NL–3506 GE Utrecht
www.fnv.nl or **T** +31 (0)88 368 03 68

P.O. Box 17 NL–9560 AA Ter Apel
www.ind.nl or **T** +31 (0)88 043 04 30

P.O. Box 48 NL–3500 AA Utrecht
www.kvk.nl or **T** +31 (0)88 585 15 85

P.O. Box 20011 NL–2500 EA Den Haag
www.government.nl/ministries/bzk or
T +31 (0)70 426 64 26

P.O. Box 20061 NL–2500 EB Den Haag
www.government.nl/ministries/bz or **T** +31 (0)70 348 64 86

P.O. Box 20401 NL–2500 EK Den Haag
www.government.nl/ministries/ez or **T** +31 (0) 70 379 89 11

For more detailed information and questions, please contact your advisor within one of the RSM-offices:

RSM in the Netherlands

Alkmaar, **T** 072 541 11 11
Amsterdam, **T** 020 635 20 00
Eindhoven, **T** 040 295 00 15
Heerlen, **T** 045 405 55 55
Hoofddorp, **T** 023 530 0400
Maastricht, **T** 043 363 90 50
Rotterdam, **T** 010 455 41 00
Utrecht, **T** 030 231 73 44
Venlo, **T** 077 354 28 00

www.rsmnl.com

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM