

Taxation and Investment in Netherlands 2011

Reach, relevance and reliability



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1.0 Investment climate

1.1 Business environment

The Netherlands is a constitutional monarchy with a bicameral parliament, the *Staten Generaal*. Legislative power is vested in the Parliament, comprised of an upper and lower house. Executive power is exercised by the crown and the cabinet, which must have the support of a majority in the parliament. Judicial power is vested in the courts and tribunals.

The Netherlands is a member of the EU, the European Economic Area (EEA), the World Trade Organization and the OECD. As an EU member state, it is required to comply with all EU directives and regulations. The Netherlands follows EU regulations on trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations.

The Netherlands has an advanced economy, which combines high income per head with a fairly even income distribution. As exports and imports of goods and services account for over 60% of nominal GDP, the lifeblood of Dutch prosperity is foreign trade. Rotterdam is Europe's largest port. The country's geographical position at a hub of Europe's transport system and the small size of its domestic market have made the Dutch economy one of the most open and outward-looking in the world. The scarcity of natural resources and raw materials has turned the country into a processing economy, with the manufacturing sector dependent on imported materials.

The Netherlands exports many of the products it imports, often after processing. Major export industries include oil and related products, natural gas, chemicals, raw plastics, electronics and related components, office machines, telecommunications devices, pharmaceuticals, and fruits and vegetables. Major import industries are similar but with the addition of clothing, paper, cartons, iron and steel.

The majority of Dutch exports are directed to other EU member states, followed by Asia.

Price controls

The Price Control Act of 1961 gives the government substantial power to control prices, which it has occasionally exercised in times of high inflation. The act provides that a decree fixing prices remains effective for only one year before being revised or withdrawn, and it covers only Dutch-made goods supplied to the home market. Few sectors have had price controls since the 1980s.

Intellectual property

The Netherlands offers legal recognition and good protection to patents, trademarks, copyrights, industrial designs and models. The Patent Center deals with protecting the knowledge and the distribution of patent information in the Netherlands. The Benelux Trademarks Office and the Benelux Designs Office handle trademark and industrial design registration and information. As part of a 2006 Benelux treaty, the trademarks and designs offices were merged to form the Benelux Office for Intellectual Property.

The primary benefit of securing intellectual property rights in the Netherlands is access to the court in The Hague, which is well equipped to deal with the enforcement of patent rights. District courts throughout the country deal with trademark and design infringements, but cases must be adjudicated in the place where the infringement took place.

1.2 Currency

The national currency in the Netherlands is the Euro (EUR).

Countries participating in the Economic and Monetary Union		
Austria	Germany	Netherlands
Belgium	Greece	Portugal
Cyprus	Ireland	Slovakia
Estonia	Italy	Slovenia
Finland	Luxembourg	Spain
France	Malta	

1.3 Banking and financing

The most important financial institutions are the domestic “universal” banks (i.e. banks that follow the Continental, as opposed to the Anglo-Saxon, tradition of no separation between banking and securities functions). Through their affiliates and close ties with large institutional investors, universal banks can provide all types of financing. Savings banks and agricultural credit banks also provide a large and growing amount of credit. The distinction between banks has largely disappeared, as all the major groupings operate to varying degrees as universal banks, offering a wide range of retail and wholesale services and financial products.

There are no legal restrictions on the lending practices of financial institutions.

Amsterdam is the main financial center.

1.4 Foreign investment

The Netherlands has a strong international orientation and a liberal policy towards foreign investment. Many Dutch companies are multinational and many are listed on foreign exchanges. There are no regulatory restrictions on foreign direct investment -- foreign companies may hold 100% of most Dutch enterprises; freely repatriate capital, profits, royalties and fees; borrow locally and on international markets; and make all types of trade-related payments. There have been substantial flows of foreign investment, both into and out of the country

The Information Office for International Tax Services supplies information on all types of taxation in the Netherlands. Foreign investors may also be referred to the Tax Inspectorate in Rotterdam, which handles many of the advance ruling requests. The Rotterdam office also has sole responsibility for the taxation of all foreign investments valued at more than EUR 4.5 million.

Companies must obtain a concession permit from the Ministry of Economic Affairs for oil and gas exploration on the mainland or in the Dutch sector of the North Sea.

1.5 Tax incentives

Most government aid for establishing a company is available through regional development schemes. These are operated by the North Netherlands Co-operative, the East Netherlands Development Agency and several provincial development corporations. Investors also may consult the Ministry of Economic Affairs and its unit, the Netherlands Foreign Investment Agency (NFIA), for investment information and information on regional subsidies. An agency of the Ministry of Economic Affairs coordinates and administers the government’s subsidies for technology development, energy efficiency, environmental protection, international cooperation and exports.

Various kinds of aid are available, including direct subsidies, loans and grants for environmental and R&D projects, employment premiums for investments that create jobs, interest subsidies, equity participation from the regional development corporations, export assistance and financing, and training grants and assistance in obtaining EU loans. Aid packages may provide help in finding a business site, settling pre-establishment negotiations and developing joint research projects.

The “patent royalty box” regime provides for a significant reduction of corporate income tax rates on any profits derived from intellectual property, including royalty income. Under the patent royalty box, profits derived from intellectual property developed by the company, and for which a patent is granted, are taxed at an effective rate of 5%. Up to a threshold sum of the costs incurred to develop the intellectual property, profits derived from the property are taxed at the regular corporate income tax rate. Losses incurred on the utilization of the intellectual property are treated the same way as development costs. The scope of the patent box was extended in 2008 to intellectual property that does not qualify for a legal patent (provided the tax authorities issue an R&D declaration) to make the patent box more attractive for small and medium-sized enterprises, but the measure also applies to large companies.

Perhaps the most significant incentive in the Netherlands for international firms is the willingness of the Dutch tax authorities to provide advance tax rulings on proposed transactions. These rulings attract international investors by providing certainty on tax structures and allowing companies to negotiate multi-year rulings with the tax authorities.

1.6 Exchange controls

There are no exchange controls and few restrictions on foreign investment in the Netherlands, but some reporting requirements are imposed. All transactions between residents and nonresidents or foreign institutions exceeding EUR 50,000 must be reported to the central bank for statistical purposes. Payments between the Netherlands and other countries may be made in any currency.

Foreign companies face no special restrictions in the Dutch market and, under EU rules, firms from EU/EEA countries must receive national treatment.

Residents may hold foreign currency accounts both locally and abroad. Authorization is not necessary for the former; for the latter, the central bank must be notified for statistical purposes. Nonresidents may hold Euro and foreign currency accounts. Residents may make payments abroad without limit through any authorized bank under a registration mechanism operated by the central bank. Under this system, the central bank's balance-of-payments department receives notice of all international settlements, although it is not necessary to complete forms for payments up to EUR 50,000.

2.0 Setting up a business

2.1 Principal forms of business entity

The two most common forms of company structure in the Netherlands are the privately owned company (*besloten vennootschap*—BV) and the public company or corporation (*naamloze vennootschap*—NV). BVs are the most common form of commercial enterprise and the form most frequently used by foreigners. Like the U.K. plc or the German GmbH, the liability of shareholders in a BV is limited to their paid-up capital contributions. A BV is an independent legal entity that may enter into contracts, sue and be sued. Shares may be transferred but only under conditions set out in the articles of association. Shares may not be offered for public subscription or trading. Firms that want to raise capital publicly must adopt the NV form.

Other business forms include the general partnership (*vennootschap onder firma*—VOF), the traditional form of partnership where all partners are jointly liable for the firm's debts and obligations. The limited partnership (*commanditaire vennootschap*—CV) is similar to the VOF, but one or more partners have limited liability. A foreign firm may set up a branch, which is not a separate legal entity.

Formalities for setting up a company

A new business must be entered into the Commercial Registry with the local chamber of commerce and provide a copy of its constitution document in Dutch or English, which gives the name, trade name, purpose and registered address of the firm. It also must give a statement of its authorized, issued and paid-up share capital and annually file any changes to issued and paid-up capital. The names, addresses, nationalities and other personal details of the company founders and the managing and supervisory directors must be provided. A single shareholder of a BV or NV must provide personal details. Each managing director's authority to represent the firm in dealings with third parties should be clearly stated.

Individuals or companies forming a BV must sign the articles of incorporation before a public notary (known as a civil law notary in the Netherlands). The notary must submit a draft of the articles to the Ministry of Justice for a "declaration of no objection." This is usually a formality unless the background of the persons involved suggests a risk that a firm may be used for improper purposes, the articles conflict with the law or the fee (EUR 90) has not been paid. The articles of incorporation must be written in Dutch and set out the firm's aims, objections and internal regulations, including rules for the transfer of shares. The notary will initiate checks to ensure that the chosen name of the company is valid.

Formalities for incorporating a company usually take about two months. Until the declaration of no objection is received, a firm may operate on a provisional basis, but it must signify this by adding the initials "i.o." to the BV after its name to signify the firm is "in formation." The management of a BV i.o. may sometimes be held personally liable for any problems.

A "large enterprise," also known as a *structuur vennootschap* (SV), must establish a supervisory board that approves certain decisions of the management board. These include changes in share and loan capital, issues of depositary receipts, mergers and takeovers, significant investments, changes in the articles of incorporation, proposals to dissolve the company, radical changes in the number of employees or working conditions, and the filing of a petition for bankruptcy or the suspension of payments. Shareholders in SVs may vote on approval of supervisory board members, vote on executive remuneration packages, approve the annual accounts and vote on any major joint ventures or divestments.

To avoid discouraging foreign investment in the Netherlands, foreign-owned subsidiaries are partially exempt from the SV requirements. They must have a supervisory board with a right to approve important management decisions, but, unlike their Dutch counterparts, these boards do not have authority to hire or dismiss managing directors. To obtain this partial exemption, the majority of the firm's employees must be located outside the Netherlands. A subsidiary of a Dutch parent is excluded from the rules if the parent already has a supervisory board.

A corporate governance code provides shareholders with more control over management, tightens internal accounting standards and reduces possible conflicts of interest among management.

Companies listed on the stock market are required to explain to shareholders how the code is implemented or why they cannot meet any particular requirements. The government has formed an independent commission to monitor adherence to the code; legislation that would codify parts of the code forms part of the Financial Regulation Act and a proposed law on takeovers.

Forms of entity

Requirements of a BV and NV

Capital. Minimum paid-up capital and minimum authorized capital are EUR 18,000 for a BV and EUR 45,000 for an NV. Authorized capital must be paid up to at least the legal minimum; 20% of authorized capital must be issued. For a BV and an NV, at least the minimum issued capital must be paid up upon formation. Capital may be supplied in cash or in kind.

Founders, shareholders. *Both forms:* Only one founder is required; it is also possible to have one shareholder after formation of the company. There are no nationality or residence requirements.

Board of directors. *Both forms:* The managing directors need not be Dutch nationals or residents, or shareholders in the company. Banks and insurance firms must have one board member with Dutch banking or insurance experience. A corporate body may act as a managing director.

Management. Dutch law is flexible, with each company allowed to adopt whatever management structure suits its operation. This usually includes a management board, a shareholders' committee comprised of priority shareholders and a works council. There are no restrictions on nationality or numbers, although the statutes usually stipulate these. The shareholders and, if applicable, the supervisory board appoint the managing directors of the board. Foreign-controlled firms retain the right to appoint management.

A supervisory board is sometimes added but is not obligatory unless the company is an SV. An SV is a large enterprise with more than EUR 16 million in issued capital and reserves and with more than 100 employees in the Netherlands. Management resolutions on important matters require approval by the supervisory board.

Companies with more than 50 employees must have a properly constituted works council. Its representatives are entitled to participate in discussions and to give advice on important company matters, which include proposed mergers and acquisitions, mass dismissals and company closings.

Taxes and fees. *Both forms:* The capital tax was abolished in 2006. A civil law notary charges a fee, usually around EUR 1,200, to draw up and execute the articles of incorporation for a BV. The fee increases for an NV or if there are any issues that require much correspondence, translation or discussion. The Ministry of Justice charges EUR 90 to issue a declaration of no objection. There is also a fee based on the share capital and long-term loans of a firm, payable to the chamber of commerce, with the maximum based on the number of employees: around EUR 150 for fewer than 50 staff; EUR 375 for 50-250 employees; and EUR 950 for more than 250 staff (the exact amount varies by region).

Types of shares. Every share must have a par or nominal value. A BV may acquire its own shares but no more than 50% of the subscribed value; such shares have no voting or dividend rights. A BV may not issue bearer shares. All shareholdings must be in registered form and recorded in its share register. The types of shares are similar to those in other countries. Ordinary shares are most common, but there are also preferred shares, which may or may not have cumulative rights. Fractional shares or sub-shares are permitted. Priority shares are sometimes issued, although these are not customary in foreign-owned companies.

The regulations applicable to NVs are generally the same as those for BVs. An NV is the usual form adopted when finance is to be raised publicly. An NV may issue registered and bearer shares, except that shares may not be in bearer form until they are fully paid up. In cooperation with the issuing NV, a trustee may also issue registered or bearer trust certificates.

Control. *Both forms:* Shares of equal value must have equal voting rights, and those of a different value must have proportionate voting rights. Dutch companies sometimes restrict votes per shareholder under certain conditions, although the articles may not deprive a shareholder of the right to at least one vote. A resolution normally requires a simple majority of the votes cast, although the articles may specify a larger majority for special resolutions. When the resolution concerns the appointment or dismissal of managing directors, the majority required may not

exceed two-thirds of the votes cast at a meeting representing more than one-half of the subscribed shares. Shareholders may call special meetings; holders of depositary receipts may attend and speak, but they may not vote. A special general meeting can be called by obtaining the written consent of at least 10% of the subscribed capital (unless the articles stipulate a lower percentage). A shareholder with a personal interest in a contract with the company is permitted to vote on any decisions concerning that contract.

Branch of a foreign corporation

Branches are not often used in the Netherlands. When a branch does exist, it is usually a stepping-stone to a BV or an NV. A branch of a foreign firm is subject to similar Commercial Registry requirements as a foreign-owned Dutch BV or NV. This applies to both independent and representative offices. The information must include the name and address of the foreign enterprise, its constitution documents (in Dutch, English, French or German), the amount of capital, and the names and addresses of the directors. The firm's Dutch address and statement of purpose are also required, but it is not necessary to publish financial accounts. The cost to establish a branch is minimal; indeed, the only official costs are the fee to the local chamber of commerce and the cost of translating documents. Once formed, a branch does not need to comply with any particular regulations.

The speedy establishment process and relative privacy, compared with a BV or NV, may prove useful in the early stages of conducting business in the Netherlands. Nevertheless, foreign-owned companies tend to prefer to operate as a BV or an NV. One tax advantage for firms from outside the EU looking to establish a branch is that branches are not subject to withholding tax on dividends returned to the foreign parent company (the dividend withholding tax rate is 15%, unless reduced by tax treaty). If certain conditions are satisfied, it may be possible—with the permission of the Ministry of Finance—to convert a branch into a subsidiary company without giving rise to tax disadvantages.

2.2 Regulation of business

Mergers and acquisitions

EU and Dutch authorities share the supervision of mergers.

The EU generally has authority over larger combinations and those that affect several EU countries.

Under its Merger Control Regulation, the EU has jurisdiction in two situations:

- Where the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million (unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in a single member state); and
- Where the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states is more than EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each achieves more than two-thirds of its aggregate EU-wide turnover within one and the same state.

In cases where a merger would not normally fall within the European Commission's purview, the companies may request the Commission's review if they are obliged to notify three or more EU Member States. The Commission proceeds as a "one-stop shop" only if none of the relevant member states objects within 15 days.

The Competition Act of 1998 tightened the procedure for mergers, requiring that the Competition Authority (NMa) be notified of mergers, takeovers and joint ventures. Only firms with a combined annual global turnover of at least EUR 113.45 million and at least EUR 30 million in annual sales in the Netherlands must notify the NMa of mergers and takeovers. For financial and credit institutions, the criterion is adapted to at least 1/10th of fixed and current assets exceeding the sales threshold of EUR 113.45 million, with EUR 22.69 million in tangible fixed assets held in the

Netherlands. For insurance companies, notification is required if at least EUR 4.54 million in annual gross premiums are from Dutch residents. Failure to properly notify the NMa of the terms of a proposed merger can lead to a fine.

Within four weeks of notification, the NMa investigates whether the concentration might result in a dominant position that would significantly restrict competition in the Dutch market or part of it. If the NMa decides that the merger would not result in a dominant position or restrict competition, it grants a license for the combination to proceed. It can attach operating or divestment conditions to a license. The NMa must decide within 13 weeks whether to issue a license or investigate the merger further. Other rules apply to public bids or exchange bids to acquire share capital in a company.

Companies that wish to challenge an NMa ruling can request a second ruling from the Ministry of Economic Affairs, which has eight weeks to decide. The district court of Rotterdam also hears NMa ruling disputes. Firms are not required to file a complaint with the NMa or the ministry before seeking a court decision, but they must file the appeal within six weeks of the NMa's ruling.

The Social Economic Council (SER) implements the voluntary Dutch Takeover and Mergers Code of 1970, which requires companies to consult trade unions and employees on any merger or takeover plans to avoid negative effects on personnel. Consultation is required for all companies with at least 50 employees. Foreign parties to takeovers and mergers in the Netherlands also must comply with the SER code, which is designed to protect the interests of shareholders and employees. Although the SER cannot penalize firms for not adhering to the code, shareholders and employees can use the code to challenge management decisions in court, with a special companies' chamber available at the district court in Amsterdam. A merger, acquisition or joint venture is often suspended pending the result of a court-appointed investigation into management decisions and shareholder interests relating to the transaction.

Monopolies and restraint of trade

The Competition Act of 1998 prohibits agreements or acts between enterprises that "infringe, limit or falsify" competition, but the law does not prohibit monopolies or market dominance per se. However, the abuse of a dominant market position is prohibited. A dominant position is defined as the ability of one or more enterprises to act independently of customers, suppliers, competitors or end-users in a way that prevents effective competition. One or more companies may come under scrutiny for a dominant market position if the relevant market share exceeds 30%. Most investigations by the Netherlands Competition Authority (NMa) are the result of competitor complaints.

The Competition Act prohibits cartels, defined as agreements between companies that limit competition. EU Directive 1/2003/EC on modernizing cartel rules took effect in 2004. Co-operation between companies previously required a permit from the NMa exempting them from the ban on cartels, but companies are allowed to assess themselves to determine if their cooperation violates the law. To facilitate self-regulation among enterprises, the NMa has published guidelines on how various forms of commercial cooperation are viewed under the Competition Act. Violations of the act may lead to a fine of EUR 450,000 or 10% of a company's annual turnover, whichever is greater.

2.3 Accounting, filing and auditing requirements

For large BVs and NVs, annual reports containing a balance sheet and a profit-and-loss statement that compare results from previous years must be presented to shareholders and published within eight days of adoption. Financial accounts must be audited by an outside registered accountant. Details of production need not be published, but data on such matters as output and exports must be supplied on a confidential basis to the Central Bureau of Statistics.

Specified "closed" NVs (whose shares are 100% privately owned) that are subsidiaries may be exempt from publishing annual reports if the results of their activities are included in a consolidated report issued by the parent company, which is expected to assume full responsibility for their accounts. NVs that raise capital publicly must publish remuneration, including share options and bonuses to management and supervisory board members, in their annual reports.

Medium-sized BVs or NVs meeting two out of three requirements (net turnover of EUR 8.8 million-EUR 35.0 million, a balance sheet total of EUR 4.40 million-EUR 17.5 million and 50-249

employees) must file an audited balance sheet, profit and loss statement, management summary and details on profit distribution with the chamber of commerce. Larger companies must provide details on subsidiaries and any special voting rights. A registered outside accountant must certify all figures. Smaller BVs or NVs need only publish a balance sheet and an explanatory note. All BVs or NVs must give their works councils a balance sheet showing total fixed assets, net assets, provisions, current and long-term investments, and long- and short-term obligations, along with comparable figures for the previous year and a statement of the net profit or loss before distribution.

Companies registered in the Netherlands are regulated principally under Book 2 of the Netherlands Civil Code. The provisions relating to annual reporting and auditing are based largely on EU Directives and are incorporated in Part 9 of the Civil Code. These rules apply to legal entities such as NVs, BVs and limited and general partnerships where all partners who are fully liable to creditors of the partnership for partnership debts are capital companies under foreign law. Part 9 covers annual accounts, the directors' report and other information, such as the auditors' opinion, the provisions of the articles of association governing profit appropriation, dividend proposals and information on events with material financial consequences taking place after the balance sheet date. Part 9 has provisions for both the annual accounts to be prepared and those to be published. The information to be published need not to be the same in every case as that submitted to the company's own bodies. The information required to be published by small and medium-sized legal entities is far less than that which must be included in their annual accounts.

Legal entities can prepare financial statements in accordance with IFRS or Dutch generally accepted accounting principles (GAAP). Dutch GAAP is the term used to indicate the whole body of authoritative accounting law, standards and literature, including the Netherlands Civil Code, the Framework and Dutch Accounting Standards published by the Dutch Accounting Standards Board (DASB).

Consolidated financial statements can be prepared in accordance with IFRS. The company's financial statements can be prepared according to IFRS if no consolidated financial statements are prepared or if consolidated financial statements according to IFRS are prepared as well. The entity can apply the same accounting principles in the company financial statements that are applied in the consolidated financial statements according to IFRS, which effectively means that the legal entity prepares the company financial statements according to the IFRS accounting principles that have been applied in the consolidated financial statements, except for the valuation of participations where a significant influence is exercised. These participations are valued at net asset value. The legal entity will then state the net asset value in accordance with the IFRS accounting principles that have been applied in the consolidated financial statements. Thus the shareholders' equity in the company financial statements can still be reconciled to the equity in the consolidated financial statements.

In principle, every legal entity subject to Part 9 should publish its annual accounts within eight days of adoption by the general meeting of shareholders (which should be reported in the annual accounts). Publication is effected by depositing a copy at the offices of the commercial register in the district in which, according to its memorandum and articles of association, the legal entity has its registered office. Exemption from compulsory publication of the full annual accounts can be granted on the grounds of the limited size of the legal entity. For this purpose, the distinction made between small, medium-sized and large legal entities is important.

3.0 Business taxation

3.1 Overview

The Dutch tax system has many features that make the country an attractive location for businesses with international operations. Examples include the tax treatment of business profits, the participation exemption (where dividends and capital gains on the sale of shares in foreign subsidiaries are exempt from corporate tax), the absence of withholding taxes on interest and royalties and an extensive tax treaty network. A corporate income tax reform in 2007 modernized and simplified the Corporate Income Tax Act (CITA).

There are no provincial or municipal corporate income taxes, but some municipal taxes apply to companies in the Netherlands. Municipal rates, the most important of which is the property tax, vary considerably.

Companies pay a variety of environmental taxes indirectly through suppliers. These include taxes on fuels, groundwater, tap water, waste and energy consumption, and packaging. The Netherlands does not impose a branch tax, an excess profits tax or an alternative minimum tax.

As discussed above (under Tax Incentives), the patent royalty box regime provides for a significant reduction of corporate income tax rates on profits derived from intellectual property, including royalty income.

The Netherlands also has a beneficial ruling process.

3.2 Residence

The CITA stipulates that all companies incorporated under Dutch law are deemed to be established in the Netherlands. Other factors taken into account in determining whether a company is established in the Netherlands include: (1) the place of effective management; (2) the location of the head office; and (3) the location of shareholders' meetings.

3.3 Taxable income and rates

Resident companies are subject to taxation on their worldwide income and nonresident companies are subject to corporate income tax on certain Dutch-source income. Branches and subsidiaries are treated the same in determining corporate income tax. However, branches are usually exempt from withholding tax on profit remittances to foreign head offices.

The Netherlands has a two-tier corporate income tax system with progressive rates. The applicable tax rates are 20% on profits up to EUR 200,000 and 25% on the excess.

Taxable income defined

Taxable profit is defined as profit less deductible expenses and allowances. No distinction is made between trading income and capital gains—both are included in a company's profit-and-loss account; both are therefore included in taxable profit. Profit and taxes are calculated in Euros.

Taxable profit must be calculated on the basis of "sound business practice," a legal concept supported by case law, but which may differ from GAAP. For example, unrealized losses may be taken into account, whereas unrealized profits may be deferred until actually realized. Consistency is required and the method of determining profits may be changed only if the new method of determining profits is compatible with sound business practice.

Since profits must be calculated in Euros, currency results will affect the profit of the company. As a rule, taxation of unrealized positive currency results may be deferred until they are effectively realized, while unrealized negative currency results can be charged to the profit immediately. Taxation of currency results regarding short-term receivables and short-term payables is not entirely clear. Both resident taxpayers and nonresident taxpayers have the option, subject to certain conditions, not to calculate the profit in Euros, but in their functional currency. The corporate income tax due, however, always must be paid in Euros. It is not possible to use the functional currency facility for the dividend withholding tax.

“Work in progress” and “current engagements” must be calculated using the percentage of completion method.

In addition to operating expenses, standard allowances exist for maintenance, investment in fixed assets and depreciation.

The CITA provides for a “participation exemption,” which is designed to avoid the double taxation of profits distributed by a subsidiary to its parent company. Qualifying dividends and capital gains from the sale of shares in subsidiaries are tax-exempt and, under certain conditions, losses from liquidating a subsidiary may be written off. However, costs relating to the acquisition and alienation of subsidiaries are not deductible.

The participation exemption generally applies where a parent company holds at least 5% of the shares in a subsidiary. If the parent company’s shareholding drops below 5%, the participation exemption will remain effective for three years, provided certain conditions are satisfied. There are many exceptions to the participation exemption, most of which relate to potential abuse (e.g. the participation exemption does not apply to shares in a portfolio investment company if its assets consist mainly of portfolio investments and the company is not subject to a profit tax resulting in an effective tax rate that is considered substantial according to Dutch standards). Active low-taxed companies will therefore be able to qualify for the participation exemption. A credit system applies to passive investment participations that do not meet the effective tax rate test.

The participation exemption also applies to currency gains and losses arising from instruments used to hedge conversion risks on investments in foreign subsidiaries, to options and to profits derived from converting convertible bonds.

Deductions

In general, all expenses related to the carrying out of a business are deductible from profits, including:

- Costs incurred in setting up a business.
- Reserves earmarked for certain types of future spending and book profits derived from the sale of fixed assets when set aside as reserves for future asset replacement.
- Interest on corporate debt, royalties and rent, although there are various limitations on the deduction of interest paid on intragroup loans.
- Remuneration paid to members of the managing and supervisory boards.
- Many types of taxes, including foreign taxes if the foreign profits do not already benefit from a tax treaty or similar arrangement.
- Bad debts and funds put aside as provisions for doubtful debts.
- Capital losses.
- Pension plan contributions.
- Bonuses paid to employees through an internal profit-sharing plan. The cost of remuneration via stock options and employee shares is nondeductible.
- Commissions.
- Gifts that are considered normal business expenses. Contributions to religious, social, charitable and other institutions are not deemed to be normal business expenses, but may be deductible as charitable gifts to the extent they exceed EUR 227; this deduction is limited to 10% of profits.
- Mixed expenses, such as food, entertainment and conference expenses, that have both a personal and corporate component, to the extent they exceed 0.4% of the total taxable wage bill of the enterprise, with a minimum nondeductible amount of EUR 4,300. Alternatively, companies can opt to deduct only 73.5% of the expenditure.

Certain expenses, including fines, some interest charges and some entertainment costs, are not deductible.

Depreciation

The straight-line method of depreciation is most commonly used, although companies may sometimes choose the declining balance method.

Both tangible and intangible assets owned or used by a company for the purpose of its trade may be depreciated if their values necessarily diminish over time. Depreciation is calculated on the

original cost less residual value. For tax purposes, depreciation begins on the first day an asset is used.

The depreciation of real estate portfolio investments is not allowed when the tax book value falls below the official fair market value of the property for tax purposes. The depreciation of buildings, other than portfolio investments, is limited to 50% of the property's value for tax purposes, with the value determined on an annual basis by the municipal tax authorities. Various anti-abuse and transitional rules apply.

The minimum tax amortization period for goodwill is 10 years and the minimum depreciation period for business assets (such as equipment and computers) is five years. However, it is still possible to value goodwill/business assets at fair market value if this is demonstrably lower than the current value.

Realization costs of intangible assets (except for goodwill) may be depreciated in the year they are incurred.

Profits derived from the resale of depreciated assets are normally taxable unless reserved for replacement; the amount of profit is then immediately deducted from the depreciable value of the replacement.

Losses

Tax losses may be carried forward for up to nine years. Losses may be carried back for one year for corporate tax purposes, although losses incurred in 2009, 2010 and 2011 may be carried back for three years. However, if a company chooses to carry back its losses for three years, its residual losses may be carried forward only for up to six years.

Loss compensation is unavailable where there has been a change in 30% or more in the ultimate interest in the entity. Loss compensation is limited for holding and finance activities; such losses generally may be offset only against profits of years in which similar activities were carried out.

Owing to the effect of the participation exemption, losses from the sale of a participation may not be deducted from the taxable profits of the parent company. A write-off for the declining value of a holding resulting from losses incurred is not deductible.

Despite the participation exemption, losses incurred on the liquidation of a subsidiary are deductible. Such losses are fixed at the difference between liquidation payments and the cost of acquiring the participation.

Reserves

If fixed assets are lost, damaged or sold at a price above book value, profits may be set aside in a tax-free replacement reserve. The tax reserve does not apply to intangible fixed assets that are kept as part of a portfolio investment. Although contributions to the replacement reserve are deductible from taxable profits, the reserve must be applied to the cost of replacing the assets and should be terminated within three years of its creation.

3.4 Capital gains taxation

Capital gains are included in taxable profits and subject to the normal corporate income tax rate. The basis for calculating a capital gain or loss is the difference between the book value of an asset (original cost minus depreciation) and the amount for which the asset is sold (although the fair market value may be used in certain circumstances).

Under the participation exemption, capital gains derived from the sale of shares in a company are, in principle, exempt from corporate income tax.

In the case of mergers or divisions, any gain that arises from a company acquiring all of the shares or assets of another company in return for shares is generally tax-exempt. In other types of mergers or takeovers, all of the following conditions must be satisfied to qualify for a tax exemption: (1) the transfer must take place as part of a merger; (2) the transfer must be made in return for the issuance of shares by the other corporation; (3) the shares acquired by the transferring corporation may not be sold for three years; and (4) subsequent taxation of the profits derived from the transfer must be guaranteed. The transferred operations must be included in the books of the acquiring company and the selling company at the same book value at the time of the

merger. Neither corporation may have tax-deductible losses, and the taxable profit of both corporations must be assessed in the same manner. However, even if the above conditions are not satisfied, the transfer profit may still be exempt from tax if prior approval has been obtained from the tax inspector and certain other requirements are met.

3.6 Double taxation relief

Unilateral relief

A foreign tax credit on dividend, interest and royalty income is limited to taxes withheld from income items originating either in a country that has concluded a tax treaty with the Netherlands or certain developing countries listed by the State Secretary of Finance. However, a Dutch company may not credit any foreign withholding tax levied on dividends received from foreign subsidiaries to which the participation exemption applies.

Tax treaties

The Netherlands has a broad tax treaty network in effect, with most treaties following the OECD model treaty. Dutch treaties also generally contain OECD-compliant exchange of information provisions.

To obtain a reduced rate under a tax treaty at the time a payment is made, the recipient must provide a residence certificate to the payer of the income.

Netherlands Tax Treaty Network			
Albania	France	Malta	Slovenia
Algeria	Georgia	Mexico	South Africa
Armenia	Germany	Moldova	Spain
Aruba	Ghana	Mongolia	Sri Lanka
Australia	Greece	Montenegro	Suriname
Austria	Hungary	Morocco	Sweden
Azerbaijan	Iceland	Netherlands Antilles	Switzerland
Bahrain	India	New Zealand	Taiwan
Bangladesh	Indonesia	Nigeria	Thailand
Barbados	Ireland	Norway	Tunisia
Belarus	Israel	Pakistan	Turkey
Belgium	Italy	Philippines	Uganda
Brazil	Japan	Poland	Ukraine
Bulgaria	Jordan	Portugal	United Arab Emirates
Canada	Kazakhstan	Qatar	United Kingdom
China	Kuwait	Romania	United States
Croatia	Latvia	Russia	Uzbekistan
Czech Republic	Lithuania	Saudi Arabia	Venezuela
Denmark	Luxembourg	Serbia	Vietnam
Egypt	Macedonia	Singapore	Zambia
Estonia	Malawi	Slovakia	Zimbabwe
Finland	Malaysia		

3.6 Anti-avoidance rules

Transfer pricing

Intercompany transactions should be carried out on arm's length terms. The tax authorities may scrutinize tax avoidance schemes and may ignore artificial transactions without economic substance or replace them with transactions reflecting real market values.

Under the CITA, acceptable transfer pricing methods include the comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin methods, with transaction-based methods preferred over profit-based methods. No specific transfer pricing penalties exist, but general penalties apply, up to a maximum of 100% in the case of malicious intent. Penalties may be reduced or waived if documentation reflects a justifiable position.

The transfer pricing rules impose an obligation to disclose intragroup transactions in the annual tax return. Documentation should be part of the taxpayer's general books and records, and is a statutory requirement for entities subject to the CITA. For those entities, documentation should be in place at the time the intercompany transaction takes place.

Thin capitalization

The thin capitalization rules prevent corporate groups from loading up certain units with excessive intracompany debt as a way to avoid generating taxable income. Under the rules, interest expense exceeding a 3:1 debt-to-equity ratio may not be deducted, although if the debt-to-equity ratio for the group as a whole exceeds 3:1, the Dutch company may be leveraged to the same extent. Although the thin capitalization rules take third-party debt into consideration when calculating ratios, only interest due on debt between related parties can be disallowed as a deduction. The deduction of interest is disallowed, but the interest is not recharacterized as a dividend.

Controlled foreign companies

The Netherlands does not have general CFC rules. For corporate income tax purposes, however, certain types of portfolio investment subsidiary companies, to which the participation exemption does not apply, must be valued at fair market value. As a result, profits made by such subsidiary companies are taxed in the hands of the Dutch parent company.

General anti-avoidance rule

While there is no statutory general anti-abuse rule, if specific statutory provisions are abused, the tax authorities still have methods to counter the abuse. The authorities can try to broaden or narrow the interpretation of the text of a provision in light of the purpose and intent of the law to exclude abuse or approach the facts differently by presuming a sham transaction. According to case law of the Dutch Supreme Court, that when applying tax law the key point is the true intention and not simply the representation provided in derogation of the facts. Another doctrine that can be invoked to counter abuse is "tax qualification," under which the designation given to a certain legal form under civil law is ignored for the application of the tax law.

If these options are unsuccessful, the authorities can invoke the *fraus legis* doctrine. In this case, a transaction may be deemed not to exist, be ignored or replaced by a similar action. Two conditions must be satisfied for *fraus legis* to apply: (1) the decisive motive for entering into the legal act is tax evasion; and (2) the method of tax evasion chosen is contrary to the purpose and intent of the law.

3.7 Administration

Tax year

The tax accounting period generally may not exceed 12 months.

Filing and payment

A provisional assessment, generally based on information from the previous two years, is usually issued in the first month of the taxpayer's financial year. This assessment is payable in monthly installments for the remaining months of the year. The taxpayer can indicate that the tax due will be lower than that of the provisional assessment and request an adjustment. A second provisional assessment can be issued within eight months of the start of the financial year, based on an estimate of taxable income for the current year. The tax inspector decides on the final assessment on the basis of the tax return. The final assessment may be issued no later than three years after

the tax year concerned. If the tax authorities have granted permission to extend the filing period for the return, the assessment period is extended by the same period.

Corporate income tax returns must be filed annually, within six months of the end of the financial year. Businesses are expected to file all returns electronically. The tax return should be accompanied by all information required to determine taxable profit, including the balance sheet and profit-and-loss account and any other information requested by the tax inspector. If a company does not meet these obligations or does not file a proper tax return, the inspector may issue an estimated assessment. Failure to fulfill compliance obligations may have implications on the burden of proof in an appeals procedure.

For assessments (preliminary and final) issued in course of or after the tax year, statutory interest will be either due or refunded. The charge is simple interest, pegged to market rates and adjusted on a quarterly basis. Statutory interest begins accruing halfway through the tax year.

Consolidated returns

Under certain conditions, a parent company may form a “fiscal unity,” such as a tax consolidated group with one or more of its subsidiaries. The main advantages of a fiscal unity are that the losses of one company may be offset against the profits of another and fixed assets of one company may be transferred to another without tax consequences.

To qualify for fiscal unity status, the parent company must own at least 95% of its subsidiary. A Dutch permanent establishment of a foreign group may be included in a tax consolidated group but it is not possible to include companies incorporated under Dutch law and resident outside of the Netherlands. The parent company and the subsidiaries must have the same financial year and must be subject to the same corporate tax rules. A request to form a fiscal unity must be submitted to the tax inspector on behalf of all of the companies involved. A fiscal unity can be terminated upon request, and it will be terminated automatically if any conditions are not satisfied.

Statute of limitations

The tax authorities may issue an assessment for three years after the end of the tax year (the period is extended by the extension period granted for filing the return). A reassessment may be issued within five years (12 years for foreign-source income) after the tax year ends (plus the extension period) if an unknown fact becomes available or the taxpayer has acted fraudulently. As from 1 January 2010, errors in tax assessments that are reasonably recognizable by the taxpayer may be adjusted by the authorities within two years after the original assessment is issued.

Tax authorities

The Dutch Tax and Customs Administration is responsible for levying and collecting taxes and national insurance contributions and ensuring compliance with tax laws and rules. The Administration, which is part of the Ministry of Finance, is geographically divided into 13 tax regions. One of the sections is the Fiscal Information and Investigation Service whose main task is tracking down tax fraud.

Rulings

The Dutch tax authorities recognize that taxation significantly affects an international company's choice of business location. Accordingly, the authorities take a client-oriented approach, providing potential international investors with advance information on the Dutch tax treatment of future investments in the Netherlands. The advance ruling process has been standardized through a series of ministerial decrees and reforms to the CITA to bring the process in line with best practice guidelines of the OECD. The tax inspector is bound by agreements made with the Information Office and the Rotterdam office's special ruling teams.

The procedure for requesting a ruling and the data to be provided are subject to fixed guidelines. The request should be filed with the local competent inspector, who will then submit the request with the APA /ATR-team for binding advice. The APA/ATR team examines requests for advance tax rulings and advance pricing agreements. For APA requests, the APA/ATR team and the taxpayer will draw up a joint case management plan in which the APA/ATR team records the process for issuing the APA and the intended processing time in consultation with the taxpayer/advisor.

3.8 Other taxes on business

None

4.0 Withholding taxes

4.1 Dividends

Dividends paid to residents or nonresidents are subject to a withholding tax of 15%. For residents, the withholding tax may be offset against the recipient's corporate or individual income tax liability; for nonresidents, in most cases the withholding tax is a final tax. The 15% rate may be reduced under a tax treaty, and no withholding tax will be imposed where the Dutch participation exemption applies or if the dividend is paid to a qualifying parent company under the EC Parent-Subsidiary Directive.

4.2 Interest

The Netherlands does not levy withholding tax on interest (except interest on profit-sharing bonds).

4.3 Royalties

The Netherlands does not levy withholding tax on royalties.

4.4 Branch remittance tax

The Netherlands does not levy a branch profits tax.

4.5 Wage tax/social security contributions

Wage tax is an advance levy on personal income tax. Wage tax and contributions for national (state) insurance are levied through withholding from the employee's gross wages. The employer generally acts as a wage tax withholding agent and transfers the amounts withheld to the tax authorities by means of a wage tax return. Foreign employers employing individuals whose wage is subject to Dutch income tax or having a permanent establishment in the Netherlands also are wage tax withholding agents and as such must register with the Dutch tax authorities. Foreign companies seconding employees to a Dutch company, whether or not in the same concern, may be considered tax withholding agents in certain circumstances.

The tax rates to be applied are equal to the income tax rates. For employees that have no additional income, own residence or personal deductions, the wage tax is final levy.

Contributions for employee insurance are fully paid by the employer and transferred to the tax authorities on the wage tax return.

The wage tax return must be filed and payment made on a monthly or four week basis. The return and the payment must be received by the end of the following month. Penalties and interest charges are imposed for late filing or payment. Wage tax returns must be submitted electronically.

5.0 Indirect taxes

5.1 Value added tax

Value added tax (VAT) is levied at each stage in the chain of production and distribution of goods and services in the Netherlands.

A general rate of 19% applies to the supply of goods, the provision of services, the acquisition of goods by businesses and the import of goods. A reduced VAT rate of 6% applies to the supply, import and acquisition of certain goods and services, including food and medicine; art; books, newspapers and magazines; certain goods and services for agricultural use; passenger transport; and hotel accommodation. Certain labor-intensive services are eligible for the lower rate. A zero rate is intended primarily for exported goods, seagoing vessels and aircraft used for international transport, gold destined for central banks and activities within bonded warehouses or their equivalents. There is also a zero rate for goods transported to another EU Member State on which VAT is levied. Exemptions from VAT include educational services, medical services, banking and insurance transactions, postal services, non-commercial broadcasting, and the services of journalists, composers and writers.

A business that is registered for VAT in the Netherlands must normally file a VAT return and make a payment to the tax administration on a monthly basis. The return and the payment must be received by the end of the following month. The filing usually can be made quarterly if the VAT due does not exceed EUR 15,000 per quarter or annually if the amount due is less than EUR 1,883 per year. Penalties and interest charges are imposed for late filing or payment. VAT returns must be submitted electronically, although companies based outside the Netherlands may still file paper returns.

5.2 Capital tax

The Netherlands has abolished capital tax.

5.3 Real estate tax

The municipalities levy an annual real estate tax, with the rate depending on the municipality. Real estate tax is deductible for corporate income tax purposes.

5.4 Transfer tax

Transfer tax is levied on the acquisition of property in the Netherlands at a rate of 6% of the market value of the property.

5.5 Stamp duty

There is no stamp duty.

5.6 Customs and excise duties

Import duty is levied as a percentage of the value of the goods imported. Various rates apply, which are determined by the EU. The rates are usually lower for minerals or raw materials and higher for finished products. Import duty applies on goods imported from countries outside the EU, with the revenue accrued by the EU.

Excise duty is levied on the ultimate use or consumption of alcoholic beverages; juices and mineral waters; cigars and cigarettes; tobacco; and unleaded petrol. Excise duties are included in end prices to consumers, and the manufacturers and importers of goods liable for the duty remit the tax. If the goods are exported, the tax is usually refunded.

5.7 Environmental taxes

Various environmental taxes are levied in the Netherlands:

- Groundwater tax for withdrawing groundwater from the soil;

- Tap water tax on the supply of water to third parties through a mains system or other distribution network;
- Waste tax on the supply of waste substances for removal to a waste treatment plant;
- Coal tax on the import of coal and its release from a “coal facility;”
- Energy tax on the supply of electricity and natural gas to consumers; and
- Packaging tax on packaging in which products are made available.

In addition to these environmental taxes, environmental effects determine the base of many other taxes (e.g. the private motor vehicle and motorcycle tax).

5.8 Other taxes

Insurance tax at a rate of 9.7% applies on insurance premiums, but life, accident, medical, invalidity, disability, unemployment and transport insurance are exempt.

Motor vehicle tax is paid on the ownership of all vehicles, with the amount depending on the type and weight (sometimes gross) of the vehicle and, for private cars, the type of fuel.

6.0 Taxes on individuals

6.1 Residence

The term “resident” is not defined in the Income Tax Act and whether an individual is regarded as resident or nonresident is determined on a case-by-case basis. Of overriding importance are the individual’s personal and economic ties with the Netherlands, including the existence of a family home and employment in the Netherlands or registration in a register of the local authorities. Nationality is not the decisive factor, but may be relevant.

6.2 Taxable income and rates

Residents are taxed on their worldwide income and nonresidents are taxed only on income from a limited number of sources in the Netherlands.

Taxable income

Residents are taxed on their total gross income, which is income from all domestic and foreign sources less associated expenses (and double taxation relief is often available). Nonresidents owning assets in the Netherlands are subject to tax only on income generated from property or a substantial holding in a Dutch company, although exemptions may apply under an income tax treaty.

Individuals are taxed only on their own personal income—they may not deduct a spouse’s items in addition to their own. A few joint items (such as childcare expenses) may be divided between spouses, but the separate deductions must total 100% of the costs.

Taxable income comprises three sources of income: (1) work and home; (2) enterprise (income from a substantial holding in a company); and (3) savings and investments. Under the “three-box system,” income from one box may not be offset against income from another box.

Box 1: Work and home income is taxed at progressive rates that range from 33% on the first EUR 18,628 to 52% on income exceeding EUR 55,694. Deductions are available for charitable donations, life annuity premiums and mortgage interest on an owner-occupied home. Deductions also may be available for expenses for childcare, education, alimony and medical treatment.

Box 2: Income from a substantial holding in a company is taxable only if the individual’s direct or indirect holding exceeds 5% of the company’s issued capital. The tax rate is 25% on dividends (as from 2007, the dividend withholding tax is 15%, but the personal income tax rate on dividends remains 25%) and capital gains from the transfer of shares. In the event of a capital loss, 25% of the loss may offset tax otherwise due.

Box 3: Savings and investment income is calculated as 4% of the capital that does not fall within an exemption, on which a 30% tax rate applies. Each person is entitled to a tax-free capital threshold of EUR 20,785, rising by EUR 2,779 for each child younger than the age of 18. The first EUR 2,900 in liabilities may not be deducted. The capital is determined once per year (1 January) and consists of the value of the assets minus the value of the liabilities of the relevant year. Relevant capital includes savings and bank accounts, a second home, equity and other shares, annuity insurance where the premiums are not deductible and endowment insurance that is not linked to an owner-occupied dwelling. Holdings from an employer-operated savings plan are exempt for the first EUR 17,025. Venture capital and socially responsible investments both worth up to EUR 55,476 are exempt.

The net income for the three boxes is added together, and general deductions are taken into account. A general personal allowance of EUR 1,987 is available for individuals under the age of 65. Employees younger than age 57 receive a “working” allowance of EUR 1,574 (at maximum); this increases to as much as EUR 1,838 for employees aged 57-59, to EUR 2,100 for employees aged 60-61 and to EUR 2,362 for employees 62 and older. Other allowances are available for the elderly, single parents and low-income employees.

In practice, most nonresidents are taxed only on returns from two types of assets: immovable property (or related rights) situated in the Netherlands and profit-sharing rights based on net profits of a company managed in the Netherlands (excluding employment bonuses and profit-sharing

bonds). Nonresidents owning assets in the Netherlands—other than real estate—that are not part of a company are not usually required to pay income tax on dividends and interest, unless they hold a substantial interest in a company residing in the Netherlands. Personal income tax of 25% is due, in principle, on returns from a holding of more than 5% in a company, unless a lower rate applies under a tax treaty.

Thirty percent ruling

An employee assigned to the Netherlands who has specific expertise that is not available or that is scarce in the Dutch labor market is eligible to apply for a tax-exempt allowance of 30% of his/her salary. The determination of whether an employee has specific expertise that is not available or is scarce in the Dutch labor market is based on, *inter alia*, the following: the level of education of the employee; the employee's relevant experience for the position; and the level of remuneration for the position in the Netherlands in relation to the level of remuneration in the employee's country of origin.

The status of "partial nonresident taxpayer" is open to resident expatriates. Resident expatriates opting for this status will be liable for tax on their Box 1 worldwide income (i.e. income from work and principal residence). For Box 2 and Box 3 income, partial nonresident taxpayers will be treated as real nonresident taxpayers. Thus, tax will apply only on Dutch sources of income of Boxes 2 and 3. Individuals that opt for partial nonresident taxpayer status enjoy the benefit of limited liability. Partial nonresident taxpayers may deduct certain personal obligations allocated to Box 1.

A request must be made to apply the 30% ruling within four months of starting employment. Once approved, the allowance applies for a maximum term of 10 years, with an interim test to determine whether the expatriate continues to satisfy the conditions to qualify for the ruling.

The eligible amount is calculated on the basis of "remuneration earned from the present employment in the Netherlands," which includes irregular amounts such as un-guaranteed bonuses and stock option income, but not pension benefits, "golden handshakes," among others. Also excluded are amounts that are not taxable in the Netherlands (e.g. because of a treaty provision). The 30% allowance is calculated as the sum of (a) current remuneration, plus (b) the 30% allowance itself. In other words, it is 30% of a notional gross amount; current (taxable) remuneration is multiplied by 100/70, and 30% of the result is the tax-exempt allowance. For example, if current (taxable) remuneration is EUR 80,000, the notional gross is EUR 114,286. The exempt portion is 30% of this or EUR 34,286. The taxable portion is EUR 80,000.

The 30% allowance is generally intended to cover a number of "extra-territorial expenses" that otherwise might be paid separately as allowances in respect of a temporary assignment to the Netherlands. Thus, in general, use of the 30% rule precludes the separate payment of such amounts.

School fees paid for children attending qualifying international schools are an exception and may be compensated free of tax in addition to the 30% allowance. School fees are expenditure on the primary or secondary education of an employee's children at an international school or an international section of a non-international school, up to the amount charged by the school in accordance with its education fees, with the exception of the cost of board and lodging but including travel expenses.

Moving expenses or business travel expenses may be reimbursed without regard to the 30% limit (i.e. they may be reimbursed on a tax-free basis in addition to the 30% tax-exempt amount), but only to the extent they do not represent extra-territorial expenses. It may be unclear whether an amount falls within this category. For instance, if an employee keeps his/her principal residence in the home country, the payment of housing costs in the Netherlands might not be regarded as an extra-territorial expense, and it might be possible to reimburse such costs on a tax-exempt basis in addition to the 30% allowance. Where it appears that the extra-territorial costs exceed the 30% amount, the taxpayer may be remunerated the real extra-territorial costs.

Employees who do not qualify for the 30% ruling still may receive a tax-free reimbursement of actual extra-territorial expenses.

Rates

The combined basic tax and social security contribution rates for personal income from work and home are 33% on the first EUR 18,628, 41.95% on EUR 18,628-33,436, 42% on EUR 33,436-

55,694 and 52% on higher amounts. The two lowest rates for persons older than 65 are 15.10% and 24.05% as they are not subject to certain social security contributions.

Personal income from work is taxed on a sliding scale up to a maximum rate of 52%. Skilled foreigners employed in the Dutch market may be eligible for a tax-exempt allowance on 30% of their earnings.

6.3 Inheritance and gift tax

There is an inheritance tax as well as a gift tax.

Dutch inheritance tax is levied on the total value of an inheritance received. Gift tax is levied on all gifts donated by Dutch residents. A common tax rate is applied to both the inheritance tax and the gift tax. This rate consists of three tax rate groups, each group with its own rates:

- 1) Spouses and direct descendants are taxed at a rate of 10% on the first EUR 118,708, and at a rate of 20% on inheritances or gifts exceeding EUR 118,708;
- 2) For direct descendants in the second degree or further removed, the rates are increased by 80%. Therefore, an 18% rate applies on the first EUR 118,708 and a 36% rate applies for grandchildren and great-grandchildren on inheritances or gifts exceeding EUR 118,708; and
- 3) All other beneficiaries are taxed at a rate of 30% on the first EUR 118,708 and a rate of 40% on inheritances or gifts exceeding EUR 118,708.

A number of exemptions apply for both taxes (e.g. inheritances received by spouses, children and charities). Some exemptions are subject to a specified maximum.

A special exemption applies to the transfer of business assets due to inheritance or donation. This exemption applies to the total value of the business assets up to EUR 1,006,000 and 83% of the value exceeding EUR 1,006,000. The exemption applies per business, not per beneficiary.

There are various very specific anti abuse regulations aiming to prevent avoidance of inheritance and gift tax.

6.4 Net wealth tax

The net wealth tax was abolished in 2001.

6.5 Real property tax

Municipal authorities levy personal property tax on all immovable property based on the council-rated value of property. The tax base for real estate tax is the fair market value as determined by the municipal tax authorities. The fair market value of immovable property must be determined every year, but with a reference date that is one year earlier. The council-rated value of an immovable property applies to certain elements of the personal income tax.

6.6 Social security contributions

See above under 4.5 and individual income tax rates.

6.7 Other taxes

No

6.8 Compliance

The tax year is the calendar year. The tax administration sends a tax return to taxpayers who must pay income tax. Taxpayers who receive a return must complete and file the return with the tax administration even if no tax is payable in that year. The tax return generally must be filed by 1 April of the year following the tax year and may be filed electronically. Social security premiums deducted from wages are considered an advance levy on income tax; annual tax filings also must assess tax due on income from investments, corporate holdings and other assets. If the taxpayer does not file a return, the tax authorities may estimate the taxpayer's income.

7.0 Labor environment

7.1 Employee rights and remuneration

A number of laws in the Netherlands govern employee rights and remuneration, including the following:

- The Labor Conditions Law covers the health, safety and well being of employees. The law requires employers to compile an inventory of all risks to which employees might be exposed to and make proposals to reduce these risks. It also makes employers responsible for monitoring sick workers and providing access to regular medical check-ups. Fines may be imposed for noncompliance.
- The Working Hours Law sets maximum working hours and applies to all companies not covered by a collective labor agreement.
- The Minimum Wage Law sets the minimum wages for workers aged 23-65. A lower minimum wage applies to workers younger than 23.
- The Works Councils Law requires companies with 50 or more employees in the Netherlands to form a works council. Likewise, a Works Council must be formed under a clause to that effect in a collective labor agreement. The employees choose the council members, with one person appointed as chairman. The council must have three to 25 members, depending on a company's size. Companies with 10-49 employees may install a voluntary works council and are required to hold personnel meetings. The majority of employees may vote to make it an obligatory council.

The works council plays an important role in communication between workers and management, and it exerts considerable influence on company policies. Employers are legally obliged to confer with councils on certain decisions. The council has the legal right to approve general labor conditions, including an appraisal and remuneration system and general rules for working hours and resignation. It also has the right to give advice on important investments, major borrowings, management appointments and mergers.

- The Law on Collective Labor Agreements governs negotiations between employers, employees and trade unions on working conditions and compensation.
- The Flexibility and Security Law outlines minimum requirements for determining an employment contract and sets a maximum probationary period of two months for new workers in case of employment contracts for an indefinite period of time. It also amended the rules on employee dismissal.
- The Equal Treatment of Men and Women in the Labor Market Act bans direct or indirect discrimination regarding sex, salary, working conditions, pregnancy or family responsibilities.

Working hours

The Working Hours Act of 1996 allows a maximum work day of nine hours and a maximum work week of 45 hours. The public sector introduced a 36-hour work week in 1997, and other industries have adopted a 36 or 38-hour work week under collective labor agreements. Sunday is not a work day unless the employee has expressly agreed to work. If work is conducted on Sundays, the employee must be given at least four Sundays off in any 13-week period.

Overtime in most industries receives a 25% premium for the first two hours, 50% for subsequent hours, 75% for Saturdays and 100% for Sundays and holidays. Night-shift workers are entitled to a 10%-15% premium.

Work performed between midnight and 6 am is defined as night work. After a minimum of three and a maximum of five consecutive nights worked, an employee is entitled to a rest period of 48 hours. A night shift may last no longer than eight hours, and the rest period following a night shift must be at least 14 hours. Overtime in night duty is allowed, but a shift may not last more than nine hours. The maximum number of nights worked may not exceed 10 over a four-week period.

The limits on working time and rest periods do not apply to persons in supervisory positions who, on an annual basis, earn more than double the minimum wage. The same rule applies to senior personnel who earn more than three times the minimum wage. Exceptions apply in sectors such as distribution and trans-shipment, dredging, newspapers, defense, hotels and catering.

Employers can structurally reduce working hours for a period if there is a significant decline in business activity as the result of unforeseen circumstances such as natural disaster, fire or outbreak of disease. There must be at least a 20% decline in business activity compared with previous years, and the employer must request a permit from the Ministry of Social Affairs and Employment.

7.2 Wages and benefits

The statutory minimum wage is adjusted regularly to reflect general wage changes. While the minimum wage is EUR 1,424.40 per month, the rate varies by age for those younger than 23.

The law provides for a minimum annual vacation allowance, which is 8% of the gross salary or minimum wage, usually payable mid-year.

Wages at most foreign companies in the Netherlands are at least 10% higher than at domestic firms.

All companies with more than 100 employees must inform the works council of annual salaries and benefits for senior managers and executive and non-executive directors.

Pensions

Retirement generally begins at age 65, when the state pension kicks in. Private pension schemes are supervised by the Dutch central bank. An employer is free to choose a pension plan unless the employees are covered by an industry-wide pension fund in which the Ministry of Social Affairs and Employment has made membership mandatory. There are three types of pension plans: (1) final pay plan; (2) average pay plan; and (3) defined contribution plan. Pension plan premiums are generally paid jointly by employers and employees, with contributions based on a variety of factors that are often included in collective labor agreements, such as a percentage of salary or a 50/50 split of the premium.

Employees may save up to 12% of their annual salary tax-free to be used for extended leave or early retirement. A maximum 2.1 years of salary can be saved.

Social insurance

Social insurance contributions are compulsory and payable by both the employer and the employee under the social security acts. The only exception is when an inbound employee has obtained a certificate of coverage showing that he/she is covered under a foreign social security scheme.

Other benefits

Obligatory annual holidays are New Year's Day, Queen's Day (30 April), Liberation Day (once every five years on 5 May), Easter Monday, Ascension Day, Whit Monday, Christmas and Boxing Day (26 December). All or part of Good Friday is a customary holiday in some parts of the country or sectors of industry.

All employees are entitled to paid vacation time provided at a minimum of four times the average number of days worked per week. A collective agreement can increase the minimum, normally to 25 days, depending on the sector. Legally mandated paid leave of one to four days is given for personal events (marriage, death in the family, family obligations or moving house). Extended leave is also possible for certain personal circumstances.

7.3 Termination of employment

Companies must notify local labor offices and trade unions before dismissing an employee. An employee may be dismissed only with the agreement of the labor office (via a permit).

The notice period is one month for workers employed fewer than five years, two months for workers employed for five to 10 years, three months for workers employed for 10-15 years and four months for workers employed for more than 15 years.

An aggrieved employer may appeal a negative ruling issued by a labor office directly to a civil court. The criteria used by the labor office (and by the civil court on appeal) are based on court rulings and the Dutch civil code. A dismissal is usually considered unjustified if the consequences for the employee outweigh those for the employer, if no reason for the dismissal is given, or if the dismissal runs counter to current practice or agreement in the industry or company.

While the law does not determine termination pay, compensation may be required upon a finding by the court of an unjustified dismissal. A common formula of one month of salary paid for every year of service is often applied in court settlements. Dismissal terms for major layoffs are normally settled in negotiations between the employer and representatives of the union. If the parties fail to agree, the proposed conditions must go to the district labor office for approval or improvement, with any appeal made within two months. All settlements should be registered with this office.

7.4 Labor-management relations

Collectively bargained wage and dismissal agreements, in which unions play a strong role, are often extended to non-union workers through individual contracts or ministry decree. Unions are organized primarily along industrial or religious lines; company unions are rare. Strikes are generally rare in the Netherlands.

Industry-wide collective agreements, drawn up after lengthy bargaining, govern wages and working conditions. The Labor Foundation sets the pattern of wages and working conditions. The foundation is a voluntary organization comprising representatives of trade unions and employers' associations in equal numbers. It negotiates a central accord each year, which makes general recommendations to guide the industry-level wage bargaining between unions and employers. The SEC, which includes union, employer and government appointees, advises the government on public-sector problems on wages, prices and social policies.

Most wage agreements last two years, although one-year deals are made when a two-year accord appears difficult to achieve.

7.5 Employment of foreigners

Under the Foreign Employment Law, an employer may not employ non-EEA employees in the Netherlands without a work permit. The employer for these purposes is the entity or person for which the foreign national will actually be working ("material employer"). In principle, the Foreign Employment Act applies to all work carried out in the Netherlands.

Employees from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia do not require a work permit, although the requirement still applies to employees who are nationals of Bulgaria and Romania (even though these are EU member states).

The employer is responsible for obtaining a work permit for non-EEA employees before the employee starts working in the Netherlands. The work permit is issued for a specific period and for a specific function. A permit will not be issued when "priority" enjoying employees (i.e. employees that are nationals of EEA countries) are available in the Dutch or EEA labor market. An exception can be made for certain categories of employees, such as foreign employees who fulfill a key position and are working within an international group of companies. In this case, the employees must earn at least EUR 50,000 gross per year and the international group must have worldwide annual turnover of at least EUR 50 million.

After three consecutive years of legal employment and legal residence, a foreign employee is eligible for an annotation on his/her residence permit that working is allowed without a work permit.

Most foreign employees who intend to reside and work in the Netherlands for more than three months must obtain a Dutch residence permit, the application for which must be filed within three days of arrival in the country. The application procedure differs by city. In most cities, the application must be filed at the local municipality office. The residence permit application itself is reviewed by the Dutch Immigration and Naturalization Service.

"Knowledge migrants" are employees from outside the EEA who come to the Netherlands to carry out paid employment based on an employment contract and have a minimum gross income of EUR 50,183 a year (for knowledge migrants under the age of 30, a minimum gross annual income of EUR 36,801 applies). This rule can shorten the application procedure to as little as two weeks

and result in a five-year residence permit for employees with a contract for an indefinite period. If the employee is in possession of a knowledge migrant residence permit, a work permit is not required to work in the Netherlands.

8.0 Deloitte International Tax Source

Professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax Source (DITS), an online resource that assists multinational companies in operating globally, placing up-to-date worldwide tax rates and other crucial tax material within easy reach 24/7.

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