Independent legal & accounting firms

Doing Business in the Netherlands

Edition No. 2 / July 2021

Doing business in the Netherlands

MSI's guide on Doing Business in the Netherlands provides current information about the financial, regulatory and legal considerations that could affect business dealings within the Netherlands. For further assistance please contact one of our MSI member firms in the Netherlands.

Country overview

Population
The Netherlands has a total population of 17.5 million (May 2021).

Government
The Netherlands is a Monarchy. Since 2013 Willem Alexander is the King of the Netherlands and his wife Maxima, from Argentinian origin, became the Queen. The King has limited political power; the council of Ministers are responsible for decision-making. Currently, Dutch council of Ministers consists of liberals and Christian democrats. The prime minister is Mark Rutte, a liberal.

The Netherlands has 12 provinces and 347 municipalities, each with its own local authorities. The biggest cities are Amsterdam, Rotterdam, The Hague and Utrecht.

Languages
The native language is Dutch. Most people also speak English.

Currency
The national currency is the Euro. For administration purposes companies can choose to apply a different currency.

Economic summary (2020)
GDP: €800 billion
Income per capita: €45,900
Inflation: 1.1%

Main sectors of the economy
The country's perfect location, well established infrastructure, highly skilled people and stable political climate have made that the Netherlands has grown into a well-respected place for international trade.

The Netherlands has an open and stable economy and a relatively low inflation. It plays an important role as transportation hub for Europe. Rotterdam has the biggest port in Europe and Amsterdam's Schiphol, located near the 4 main cities, is the fourth busiest in the world for international passengers. The country's most important business sectors include agriculture, transport and logistics, industry (oil, chemicals, food & beverages, and technology) and professional services.

Germany, Belgium, China, Great Britain, France, Italy and the United States are the country's main trading partners.

The Netherlands has one of the best known and biggest internet exchange points, the Amsterdam Internet Exchange (AMS-IX). The digital infrastructure creates the basis for the digital economy and society.

The WEF ranks (2019) the Netherlands highest in the world for macroeconomic stability and the sees the country performing particularly well in infrastructure and business dynamism. In 2016 and 2017, the Netherlands ranked as the most competitive economy in Europe.

Doing business and investing in the Netherlands
The Netherlands is a member state of the European Union and has a very central location on the continent. With a proven entrepreneurial mindset, modern facilities and infrastructure, highly skilled people plus open and kind residents, the Netherlands is an attractive base for doing business and investments in Europe.

The Dutch tax climate is considered business friendly and stable, whilst the Dutch government is trustworthy. International businesses can therefore make longer term commitments and investment in the Netherlands without considerable political risks.

Setting up a business

A foreign individual or company can do business in the Netherlands through a branch or entity. There are no specific restrictions for foreign entrepreneurs to do business in the Netherlands. Dutch corporate law provides for a flexible and liberal framework for the organization of your legal structure with various types of legal forms.

Legal forms without legal personality
1. Sole proprietor (eenmanszaak)
2. Partnership (vof or maatschap)
3. Limited partnership (CV)
4. Branch of a foreign entity

Legal forms with legal personality
5. Private limited liability company (BV)
6. Public limited liability company (NV)
7. Cooperative (Coöperatie)
8. Association (Vereniging)
9. Foundation (Stichting)

If an entity has legal personality, the liability of the shareholder / owner cannot exceed the contributed capital (except for imputable management).

For doing business in the Netherlands, the BV or branch are most commonly used. Foreign companies usually prefer to set-up a BV rather than a branch to limit the liability and because of its flexibility.

Process to set up a business
A limited liability company (BV) is set-up by one or more incorporators pursuant

to the execution of a deed of incorporation by a notary. The minimum share capital is €0.01. A branch is incorporated by registration with the Dutch Chamber of Commerce.

Financial year

The financial year is usually equal to the calendar year, but legal entities can choose for a different period.

Accounting standards

In principle all companies are required to file annual accounts with the Chamber of Commerce. The minimum reporting, auditing and publication requirements vary depending on the size of the company.

	Micro	Small	Medium	Large
Assets	0.35m	0.36m – 6m	6m – 20m	>20m
Turnover	0.7m	0.7m – 12m	12m – 40m	>40 m
Employees	<10	10 – 50	50 - 250	>250

To qualify 2 out of the 3 criteria need to be met for 2 subsequent years (on a consolidated basis).

Micro and small companies can elect to apply fiscal accounting principles and are exempt from consolidation and audit of their annual accounts.

Medium-sized and large companies must apply NL GAAP, IFRS-EU or similar standards. Also statutory audit and consolidation is in principle required for these companies. An exemption from publication is possible for EU-based consolidating group companies by means of the so-called 403 statement.

Incentives

The Dutch government offers a number of incentives to support companies in their business operations. Most incentives are tax related, like the innovation box described below.

Taxation

Consistent with the Dutch roots, the Dutch tax system has an entrepreneurial approach and the Dutch tax authorities are friendly and helpful. The view taken by the Dutch government is that the tax system may under no circumstances form a barrier for international business.

Not surprisingly, one of the pillars of the Dutch tax system is the possibility to obtain advance certainty / clearance about the tax treatment of investments, transactions, international corporate structures etc. These so-called Advance Tax Rulings and Advance Pricing Rulings can be concluded in relatively short time frame.

The main characteristics of the Dutch tax system for international businesses can be summarized as follows (subject to the conditions described in this guide):

1. Relatively low tax rates.
2. Outstanding tax treaty network.
3. Participation exemption for income derived from foreign subsidiaries.
4. No withholding tax on interest and royalties. (note: anti-abuse provision applies as from 2021).
5. Dividends paid to most corporate shareholders are exempt from withholding tax.
6. Innovation box with 9% effective tax rate.
7. Advance tax rulings are common practice.
8. Tax authorities have a helpful and pragmatic mind-set.
9. Tax free expense allowance of 30% for highly skilled expats.

Corporate income tax

Resident legal entities are subject to corporate income tax based on their worldwide income. Income from foreign permanent establishments and participations are generally tax exempt. Non-resident entities are subject to Dutch CIT for income derived through a Dutch permanent establishment and other Dutch sourced income.

The Dutch CIT rate is 15.0% for the first €245,000 and 25% on the remainder.

Participation exemption

The broad participation exemption is one of the main pillars of the Dutch corporate income tax act. It was introduced to prevent for double taxation.

The participation exemption applies to substantial interests of at least 5% of the nominal paid-in capital of a company. The subsidiary may be based in the Netherlands or abroad. The participation exemption does not apply to subsidiaries merely engaged in low-taxed portfolio investments, nor to hybrid income (i.e. the income received was effectively deductible in another country).

Under the participation exemption dividends and capital gains from qualifying participations are tax exempt. Costs for the acquisition or disposal of a participation are not deductible, whilst losses upon the liquidation of a participation can under certain conditions be deducted.

Innovation box

The "innovation box" is a special tax regime to stimulate R&D activities. Profits derived from qualifying intellectual property are taxed at a rate of 9%. Since 1 January 2017, the Netherlands applies the nexus approach, meaning that only self-developed (R&D) intangibles can qualify for the innovation box.

Transfer Pricing

Intercompany transactions must be priced at arm's length and documented. The OECD TP Guidelines directly apply in the Netherlands, with some further clarifications in the Dutch TP Decree. Master and local files are required for groups with a consolidated turnover of more than 50 million Euro, whilst CbCR is required for groups with a consolidated turnover from 750 million Euro.

Controlled Foreign Companies

CFC legislations was implemented in the Dutch Corporate Income Tax Act from January 1st, 2019. The CFC legislation is conform the European directive.

Interest deductibility

The Netherlands has various specific interest deductibility restrictions to avoid tax base erosion by excessive or artificial debt positions. ATAD I (earning stripping) and ATAD II have been implemented in the Dutch CIT Act per January 1st, 2019 and January 1st, 2020, respectively.

Withholding taxes

The Netherlands only levies withholding tax on dividends. The dividend withholding tax rate is 15%. Dividends are in principle tax exempt if paid to ≥5% corporate shareholders established in the European Union or in a country that concluded a treaty with the Netherlands with a dividend clause. The withholding exemption does not apply on abusive situations.

From 2021 ATAD II is implemented in the Dutch CIT Act. It means the introduction of a conditional withholding tax (25.0%) on interest and royalties. This withholding tax is due over payments to group entities in low tax jurisdictions (<9% statutory tax rate or non-cooperative countries) and in abusive situations.

Double tax treaties

The Netherlands has tax treaties with over 100 countries. Dutch in- and outbound investments from these countries benefit from reduced withholding tax rates and prevent or limit double taxation.

The Netherlands got multiple Tax Information Exchange Agreements. The DAC6-directive on the exchange of information on aggressive cross-border tax planning is in effect from July 1st, 2020. Since then, designated cross-border transactions must be reported to the Dutch tax authorities. The Directive has retroactive-effect from June 25th, 2018.

The Dutch government signed the MLI. The MLI came into force on January 1st, 2020. The Netherlands made reservations on several articles.

Personal income tax

The tax base for personal income tax purposes is divided into the following "boxes" (rates are for the year 2021):

<u>Box 1: Work and home ownership</u>

Employment income, pensions, business income and income and costs from owner occupied residency are taxed at progressive rates. The first € 68,507 at 37.10% and the remainder at 49.50%. Interest paid on loans for home ownership is tax deductible conditionally in box 1. Home ownership itself is taxed at a fixed rate.

<u>Box 2: Substantial interests</u>

Dividends and capital gains derived from ≥5% shareholdings are taxed at 26.9%.

<u>Box 3: Savings and investments</u>

Private wealth that is not included in box 1 & 2 is taxed effectively at 0.59% – 1.76% on the net asset value (i.e. assets minus debt). The value is set per January 1st of a tax year.

VAT

Dutch VAT regulations are consistent with the European VAT Directive. The general VAT rate is 21%. For primary goods and services (e.g. foods and medicines) the rate is 9%.

Tax compliance

All tax returns must be filed electronically, within a couple of months after the taxable period, whilst extension of the filing period is generally granted. Tax assessments are typically imposed within 3 months after filing the tax return. Preliminary tax assessments are common practice in the Netherlands.

HR aspects

Employment law

Dutch employment law is very specific and detailed, providing for solid protection of the employee. Dutch labour law is often mandatory and thus fully applicable for employees working in the Netherlands, even if the contract is governed by the law of another country.

Employment contracts can either be permanent (for an unlimited term) or for a fixed term. The number of consecutive fixed-term contracts is limited and can in total not exceed a duration of three years.

Wage tax

Employers are required to withhold wage tax on the salary and other awards paid to employees. The rates of wage tax are similar to the personal income tax rates for employment income (box 1). Wage tax is a pre-payment of the employee's personal income tax.

30% expat regime

Employers can reward a tax free expense allowance of 30% to highly skilled expats who move to the Netherlands to work here. The allowance is aimed to cover extraterritorial expenses (like travel costs for family visits, living expenses etc.). If all conditions are met, the Dutch tax authorities grant the 30% ruling upon request for 5 years. There are conditions for the application of the 30% ruling.

Social security

The Netherlands has an extensive system of social security. The State social security program is obligatory for all Dutch resident individuals and covers state old-age pension, widows' benefit, long-term healthcare and child benefit. Contributions are included in the personal income tax rates applicable for box 1.

Furthermore, employees are insured for long term illness, disability and unemployment through the mandatory social security for employees. The contributions are made by the employer and calculated based on the gross income paid to the employees. Rates differ depending on the business sector.

On top of the social security, it is compulsory for individuals (over 18 years old) to insure themselves for the costs of health care. This is a private insurance, prescribed and regulated by the government, which can be taken from a Dutch health insurer. The premium is approx. €1,500 per year, payable by the individual.

Pension

<u>Pillar 1:</u> State old-age pension
The age for state old-age pension is 67 and may further increase depending on the future mortality rates.
<u>Pillar 2:</u> Collective pension funds
Depending on the sector there may be a mandatory pension fund. If not, employers typically offer pension arrangements to employees, whereby employer and employee both contribute. The premiums are paid directly to the pension fund by the employer on behalf of the employee from its gross income.

Pillar 3: Individual pension schemes
Individuals can decide to supplement their retirement benefits by buying pension products independently. Contributions are, in general, deductible from box 1 income.

Payroll

When starting a business and employing staff, the company must register with the tax authorities. Wage tax and social security is paid monthly to the tax authorities. The process of registration takes several weeks. However, staff can be employed even if registration is not complete.

Visa and work permits

No work permit is required for EEA (European Economic Area) and Swiss citizens within the EU. People from outside the EEA must apply for a work permit before taking employment in the Netherlands. A simplified process is available for highly skilled immigrants.

Anyone becoming resident or working in the Netherlands must register and receives a personal tax identification number.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in the Netherlands should seek professional advice from our member firms before making any business or investment decision.

Contact our member firms in the Netherlands to discuss your requirements:

Multi-disciplinary member:
Rotterdam & The Hague

Ruitenburg adviseurs & accountants
www.ruitenburg.nu

Erik van der Kooi
e.vanderkooi@ruitenburg.nu
+31 88 650 07 69

Oude Middenweg 75
2491 AC The Hague
PO Box 700
2600 AS Delft
The Netherlands

Accounting member:
Amsterdam

Vanhier B.V. Accountants | Advisors
www.vanhier.nl

Paul Backes
pbackes@vanhier.nl
+31 20 426 43 60

Van Heuven Goedhartlaan 937
1181 LD Amstelveen
The Netherlands
PO Box 36078
1020 MB Amsterdam

Legal member:
Amsterdam

Van As Advocaten
www.vanasadvocaten.nl

Rene Halfens
rhalfens@vanasadvocaten.nl
+31 (30) 603 2922

Newtonbaan 16
3439 NK Nieuwegein
PO Box 237
3430 AE Nieuwegein
The Netherlands

MSI Global Alliance
10 Queen Street Place
London EC4R 1AG
United Kingdom
www.msiglobal.org