

Setting up your Business in The Netherlands

Issues to consider



The Netherlands, with a historically strong economic financial climate, is traditionally an important gateway to Europe. Situated in the western part of the European continent with its world leading Rotterdam harbour and important airport facilities near Amsterdam the infrastructure to our neighbour countries Germany and Belgium as well as to the rest of the European continent and the UK is strong to use for international business.

However there are a number of issues which you must consider when you are looking to set up your business in The Netherlands. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Permanent Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Dutch operations
- If have a permanent establishment in The Netherlands then profits from this PE are liable to Dutch Corporate Income Tax
- Obligations for filing parent company accounts if the foreign company, with a Dutch PE, do have filing obligation in head of group's home country

Limited Company:

- Provides limited liability and ring-fencing to Dutch operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits
- Accounts require auditing if **its** (or in **its group as a whole**) Revenues > € 12 m p/a and/or Gross Assets > € 6m and/or number of staff exceeds 50 (meeting 2 of 3 criteria).
- Obligations for filing annual reports depending on size of the company (if it does not meet 2 of 3 criteria as mentioned before only a balance sheet with limited disclosure has to be filed).

Limited Liability Partnership:

- Members (partners) have limited liability
- Profits are allocated to members who then pay Income Tax on these profits personally
- The tax residence of the member, and where the profits in the LLP originated will determine in what jurisdiction and how these profits are taxed

How much Corporation Tax will the business pay?

Current Corporate Income Tax rates in The Netherlands are:

Tax rate (%)		Taxable profit (€)
Small co rate	20%	0 – 200.000
Full rate	25%	over 200.000

(NB: rates are for the year 2016)

Corporate income tax is charged to legal entities of which the capital is partially or fully divided into shares. Examples are the Dutch B.V. (private company) and N.V. (public company) but also Dutch permanent establishments (branches) of companies that are not based in the Netherlands.

Companies based in the Netherlands are taxed on the basis of unlimited tax liability as residents, however due to the extensive network of tax treaties usually the taxation is limited to the companies' local revenues. Corporate income tax is charged on the taxable profits less the deductible losses.

The companies' profits must be determined on the basis of sound commercial practice and on the basis of a consistent operational pattern. For losses a carry-back period of one year and a carry forward period of nine years apply.

In principle all business expenses are deductible. However there are a number of restrictions. For example:

- a. Special depreciation rules apply for buildings, goodwill and tangible assets other than buildings.
- b. Limitations on deduction of interest apply in some situations e.g. acquisition of companies, funding dividend distributions with loans.

Special tax facilities may apply for income from subsidiaries as well as R&D income/expenses. Furthermore the Netherlands levy no withholding taxes on royalties and interest.

What if we use the Netherlands to set up our holding company?

The Dutch B.V. is still one of the most popular entities to be used as a holding company in international structures. The main reason for using the Netherlands as location for a central holding company is the favorable tax regime and the excellent legal and financial infrastructure.

Due to the facility of the participation exemption disposal of group companies will in general not trigger taxation in the Netherlands. Due to the wide range of tax treaties the distributions of profits to a Dutch entity are taxed at a reduced rate or no dividend withholding tax at all. The same applies for dividend distributions by the Dutch entity.

Holding companies in the Netherlands have substance requirements.

What if we make cross-border transactions between group companies?

The Netherlands follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges
- Transfer of (in)tangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans

A business may need to prepare a Transfer Pricing Report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis. For tax consequences on the used TP advanced pricing agreements can be concluded with the Dutch tax authorities.

Companies may fall under the scrutiny of the international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in the Netherlands then they are subject to Dutch tax laws. A person will also be taxable in the Netherlands when this person is employed by a Dutch employer and works in the Netherlands. Also when a person works more than 183 days in the Netherlands in a year the related income may be liable to Dutch income tax and social security.

We would advise any new entrant to the Netherlands or person who spends time working in the Netherlands to take professional advice to determine whether they are tax resident in the Netherlands

Current Personal Income Tax rates in the Netherlands are:

Band of income (€)	Tax rate (%)
0 – 19,922	8,40%
19,922 – 33,715	12,25%
33,715 – 66,421	40,40%
Over 66,421	52,00%

(NB: rates for the year 2016)

Employers and employees also have to pay Dutch social security charges:

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Current Social Security rates are:

	Band of income (€)	Rate (%)
Employee	Up to 33,715	28,15% (included in payroll)
	Over 33,715	00,00%
Employer	Up to 52,763	19-25% (this may differ depending on ste collective agreements)
	Over 52,763 on excess	00,00%

NB: (rates are for the year 2016)

It is the employers' legal responsibility to pay employee's tax and social security deductions to the Dutch tax authorities. This is usually done through the payroll process.

The Netherlands have a Reciprocal Agreement with the USA, EU countries and many others whereby when an overseas national of those countries is seconded to the Netherlands for a defined period of time and continues to pay social security in their home country, then the employer and employee are exempt from paying Dutch social security.

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 21% (some specific products are charged with 6%). If a business makes taxable supplies that form a branch in the Netherlands or a request for a refund of Dutch VAT is made then it must be registered for VAT.

There are three types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – not in the Netherlands VAT system, mainly import/export

The supply of most types of goods and services in Netherlands would be classed as taxable supplies. However when these supplies are made to companies which are outside of the Netherlands advice needs to be sought as to what rate of VAT, if any, to use.

If a Dutch entity sells goods or provides services to its non EU parent then there is no VAT chargeable on this overseas supply, however on the basis that the supply would be VAT'able if made in the other country then the entity will be able to reclaim all its input VAT.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff. In the Netherlands Share option plans are for tax purposes a form of salary. The realized gain on option plans will be taxed as a salary component.

This is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in the Netherlands.

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How else can we compensate our employees?

The Netherlands have a very comprehensive range of compensation and benefit options available for companies to offer their employees. Pensions, commuting allowances, life and disability cover are now commonplace benefits provided by many Dutch businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to “spend” their benefits allowance.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.

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