What you need to know about doing business in the Netherlands
Foreword by the Netherlands Foreign Investment Agency

Throughout its 40-year history, the Netherlands Foreign Investment Agency (NFIA) has assisted more than 4,000 companies and organisations from around the globe to set-up, or expand, their operations in the Netherlands.

As an operational unit of the Ministry of Economic Affairs and Climate Policy, our task is to provide practical guidance and assistance throughout the entire trajectory – from first contact to first stone laid, through to commissioning and ribbon-cutting.

The NFIA is your first port of call, helping to facilitate your international expansion. Under the label ‘Invest in Holland’, we collaborate closely with an extensive network of regional economic development agencies, and several major cities.

Situated at the very heart of Europe, our world-class physical and digital infrastructure and robust, high-quality business services sector here in the Netherlands makes us an ideal base for the establishment of global or European headquarters. Consequently, for companies choosing to locate here, we can offer a strong and stable economy, access to a skilled and multi-lingual workforce, inspiring cities, and high quality of life.

The Dutch government, and of course the Invest in Holland network, in particular, is extremely motivated to support you on an ongoing basis, as our overriding desire is to see you settle here and succeed.

We look forward very much to welcoming you in the Netherlands.

Jeroen Nijland
Commissioner
Netherlands Foreign Investment Agency
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INTRODUCTION

The competitive advantages of doing business in the Netherlands
1. INTRODUCTION

Ever thought of doing business in the Netherlands? And what this country has to offer you? Next to the opportunities, you need to think about the challenges before setting up business activities. The Dutch fiscal climate can affect your business positively, but can also have a negative impact, when not taking the right steps. Your activities will be successful only if you and your company are familiar with the Netherlands and the principal rules and regulations. Mazars’ accountants and tax advisers will help you and act as your personal guide.

Why the Netherlands?
The Netherlands is potentially one of the best places in the world to conduct business over the next five years, according to the Economist Intelligence Unit’s latest business environment rankings. There are many reasons for you to do business in the Netherlands. For example, the favourable fiscal climate, the macroeconomic environment and the infrastructure. Additionally, the Netherlands is an important gateway to many other countries in Europe.

Information guide
For entrepreneurs like you, Mazars has created an information guide about the Netherlands. It gives you an overview of the competitive advantages of the country, based on ten categories:
- The macroeconomic environment
- Infrastructure
- The political environment
- Policy towards free enterprise and competition
- Foreign trade and exchange controls
- Policy towards foreign investment
- Market opportunities
- Financing
- The labour market
- Taxes

With this information at hand, you not only know what to expect when doing business in the Netherlands. You will also get an insight into the opportunities this country has to offer.

The next steps
Off course, with information alone you are just at the beginning of a potentially successful operation. Mazars gives you a helping hand by providing a wide range of audit, tax, corporate finance and legal services. We are specialized in assisting companies that are considering doing business in the Netherlands in setting up business in a tax-efficient manner. We don’t just keep you up to date, we offer fresh insights. Because yesterday’s solutions are not always appropriate for the business of tomorrow.
KNOWING THE NETHERLANDS

General information about the Netherlands
2. KNOWING THE NETHERLANDS

2.1. Key facts and figures

Constitutional form: Monarchy
Area: 41,500 sq km
Population: 17 million (CBS)
Capital: Amsterdam (pop. 825,080)
Other cities:
- Rotterdam (pop. 625,472)
- The Hague (seat of government, pop. 515,076)
- Utrecht (pop. 335,089)
- Eindhoven (pop. 223,876)

Official language: Dutch
National currency: Euro (EUR)

Membership in International Organizations: EU, IAEA, IMF, NATO, OECD, UN, WTO

<table>
<thead>
<tr>
<th>Macro economic indicators (CPB)</th>
<th>2017</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP growth (p.a.)</td>
<td>1.25%</td>
<td>0.75%</td>
<td>-0.7%</td>
</tr>
<tr>
<td>Inflation (p.a.)</td>
<td>1.6%</td>
<td>0.3%</td>
<td>1%</td>
</tr>
<tr>
<td>Unemployment</td>
<td>4.9%</td>
<td>6%</td>
<td>7.2%</td>
</tr>
</tbody>
</table>


Wages
Minimum wage 1-1-2017 (EUR) 1,564.40 Gross per month from age 23
Per capita GDP (IMF 2015) USD 43,603


<table>
<thead>
<tr>
<th>Exchange rates</th>
<th>1 January 2017</th>
<th>1 January 2016</th>
<th>1 January 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD/EUR</td>
<td>0.95</td>
<td>0.92</td>
<td>0.82</td>
</tr>
<tr>
<td>GBP/EUR</td>
<td>1.72</td>
<td>1.36</td>
<td>1.28</td>
</tr>
</tbody>
</table>

2.2. A strong macroeconomic environment

A recent study shows that the economy of the Netherlands grew strongly in 2014 and 2015, which indicates that the recovery of the Dutch economy finally gains ground. The relatively strong consumption growth and a recovery in investment activity contributed to this development. An improvement in housing and labour markets provided a boost in the economic sentiment. The study also suggests that domestic demand should strengthen further in 2016 and 2017.


2.3. Geography

The Netherlands is situated in northwest Europe bordering upon Germany, Belgium and the North Sea. The kingdom of the Netherlands also incorporates the Dutch Antilles in the Caribbean, which include Aruba, Curacao, and St. Maarten (which all have a home rule status), as well as Saba, St. Eustatius and Bonaire. The country is made up of 12 provinces. Holland is a popular term used by foreigners for the Netherlands, yet in reality it refers to the two combined provinces of Noord (North) and Zuid (South) Holland.

A large part of the Dutch land has been reclaimed from the sea and is actually situated below sea level (in the form of “polders”) and is protected by dykes. Much of this land was drained after a barrier dyke closed off the North Sea in 1932. The province Flevoland consists of two polders and is the youngest province (finalised in 1986). In total, 20% of the Netherlands is reclaimed land.

2.4. A competitive infrastructure

Many of the large European rivers (Rhine, Meuse, and Scheldt) run through the Netherlands to end up in the North Sea. This partly explains the logistical importance of the country as a gateway to Europe. Via the rivers it supplies much of the German and Belgian industrial areas through one of the biggest seaports in the world, Rotterdam. Additionally, Schiphol airport, Amsterdam, is an important international hub. The importance of the Netherlands as a distribution country is confirmed by the fact that more than 50% of European distribution centres is based in the Netherlands.

The IT infrastructure is also at a very high level. The Netherlands ranks 8th in the 2015 ICT Development Index (United Nation International Telecommunication Union).

2.5. Population

Approximately 17 million people populate the small country. As a consequence the Netherlands has one of the highest densities (people/square km) in the world. Nearly half of the country’s inhabitants live in the West of the country around Amsterdam, Utrecht, The Hague, and Rotterdam. The area between these cities is often seen as one big city called “Randstad”. The educational level is very high, with world-class universities, especially in the technical and agricultural areas. The good educational system has led to position 10th in the Global Talent Index.

The country is known for its tolerance; and over the centuries the Netherlands has welcomed many foreigners who have become part of Dutch society. The country can best be characterised as secular with Christian roots. The current population is a mixture of Catholics (24%), Protestants (16%), Muslims (5%) and other religions (6%). The largest group, however, is not religious (>40%).

2.6. History

Inhabited since prehistoric times, the territory had foreign domination for most of its existence. Romans, Franks, Vikings, Germans, French and Spanish have dominated the country. Dutch territorial history starts in the 16th century, when the Dutch, led by William the silent, Prince of Orange, revolted against Spanish rule. By 1579 the Northern provinces had formed the Union of Utrecht, which became the basis for the Netherlands as it is today.

Throughout the 15th and 16th centuries the merchant cities of Holland, especially Amsterdam, were booming, and became very prosperous. This period became known as the Golden Age. The Dutch East India Company became the largest company of the 17th century. The company monopolised key trading routes including west of the Strait of Magellan and east of Africa’s Cape of Good Hope. The country became a colonial power. Culturally the country flourished, with the new prosperity supporting famous painters such as Rembrandt and Vermeer. After a short period of French domination around 1800, the kingdom of the Netherlands was formed at the Vienna Congress of 1815. The kingdom included the Netherlands in the North and Belgium in the South. The Belgians revolted in 1830. The Netherlands, in more or less its current shape, was born.

In World War I the Netherlands remained neutral, but Nazi occupation of the country in World War II has left an everlasting scar on the Dutch. After the war the post-war reconstruction was supported by the discovery of natural gas reserves in the north of the country.

The overseas colonies of Indonesia and Surinam became independent, and some of the islands of the Antilles established home rule (Aruba, Curacao and St. Maarten).

2.7. Political system

The Kingdom of the Netherlands includes the Netherlands, and the Netherlands Antilles and Aruba in the Caribbean. The Netherlands has been a parliamentary democratic constitutional monarchy since 1848. The head of state is the monarch King Willem Alexander. The three main powers: executive power, legislative power and judicial power, are segregated as follows:

The Executive power is exercised by “de ministerraad” (the Dutch Cabinet), led by the Prime Minister, at present Mr. Mark Rutte. The cabinet consists of thirteen ministers.

The Legislative power is held by Parliament which consists of two chambers. The Second Chamber of Parliament with 150 members proposes and amends laws, whereas the First Chamber or Senate with 75 members, reviews, acts on amended legislation and has the power to reject laws. No single party has ever held an overall majority in Parliament since the 19th century.

Political power is generally shared between parties in coalitions, which has led to a moderate and stable political situation. The Judicial system consists of a Supreme Court, Courts of Justice for Appeals, and lower courts. The legal system is based mainly on codified law.
2.8. A stable political environment

The main political parties are the socialist-based parties, the Christian Democratic parties and the liberal parties. After the war the multiparty political and social system led to a constant coalition ruling of several parties. The political area, however, has been stable over time, as coalitions assured compromises between parties. The term of government is four years, after which elections are held. More often than not the coalition lasts out the period of four years. However, recently, government coalitions have ended prematurely, and early elections have been required.

2.9. International memberships

The Netherlands is a founding member of many important international organisations such as the European Union, the UN, NATO, the International Monetary Fund and the World Bank. Self-interest is one reason, but not the only reason, that the Netherlands actively promotes international law and order. The Dutch find human rights and democracy very important, and this has resulted in the fact that the country now hosts important international bodies such as the International Court of Justice and the Permanent Court of Arbitration in The Hague.

2.10. Culture

In general the Dutch are open, tolerant and liberal. Dutch people will speak their minds and expect to be looked in the eye. This manner may seem strange to foreigners, but the impulse comes from the desire to be direct and honest. Dutch society is characterised by a high level of equality and a relatively low level of authority. Furthermore, the Netherlands is well known as a society with a high level of health care. In general, the Dutch are outward-looking, friendly, open-minded towards other cultures, and known for their trading nature. The inflow of immigrants in the densely populated country over the last recent decades has sometimes led to friction; however, racial and religious tolerance remain at a high level.
An extraordinarily strong economy
3. ECONOMY

Relative to its size, the Netherlands has an extraordinarily strong economy. For many centuries the Netherlands has been a country of traders and farmers. As a consequence, many multinational companies are based in the Netherlands including, for example, Royal Dutch Shell, Philips, and Unilever. In addition to multinationals, the country has developed a very dynamic financial centre in Amsterdam, with many highly qualified legal and financial experts. According to the World Economic Forum, the Netherlands are ranked fourth in the world in the Global Competitiveness Index 2017–2018. With this strong position, The Netherlands confirm their the strong performance in areas such as education, infrastructure and institutions.

The horticultural industry and water management industry has also been traditionally strong, one result of which is that the Netherlands has the largest flower auction in the world.


3.1. A supportive policy towards free enterprise and competition

The trading history of the country and the stable political system have favoured an effective governmental structure. An effective government (in top rankings in most categories in the world in effectiveness according to the World Bank) contributes to a healthy business climate promoting free enterprise and competition.

3.2. Low barriers to foreign trade and low exchange controls

The Dutch economy is very open and business-friendly. The government constantly maintains and monitors a level playing field for all companies doing business in and with the Netherlands. Due to the importance of international business (e.g. 30% of the Dutch income is realised from the export of goods), barriers to foreign trade are low, and exchange controls are few.

Business activities in the Netherlands are actively promoted, for example, by facilitating the easy and quick setting up of new businesses (possible within 10 days). As a consequence, the Netherlands consistently scores high in the global competitiveness rankings. The supportive policy towards free enterprise has also resulted in a good fiscal climate for international holding companies, which has led to an extensive network of tax treaties to prevent double taxation.

3.3. Good market opportunities

Considered from the supply side, in addition to the traditional industries such as finance, the food and flower industry, logistical services, and the water engineering industry, the Netherlands has developed into an important Research and Development location, and it serves as a prime hub in the international IT infrastructure. Considered from the demand side a market with more than 170 million consumers is available within 500 kilometres of the Netherlands.

The economic performance in the 1990s exceeded that of other European countries. After 2000 the growth stabilised until 2008. Over the last years the economy grew.
3.4. **Policy towards foreign investment**

In 2014 the Netherlands was the second largest merchandise exporting country in the EU after Germany. Prime reason is the fact that the country plays a central logistical role in Europe as a hub in the distribution of goods mainly through the Port of Rotterdam and Schiphol Airport.


The Netherlands also attracts significant direct foreign investments. In 2015, the Netherlands ranked second in Europe in Foreign Direct Investment inflows. In particular, investments from emerging industrial countries such as India, Korea, and China find their way to the Netherlands.


3.5. **High level financial system**

The Netherlands has a high-level financial system with an easy-access world-class banking system. All major international banks are represented in the Netherlands.

The Amsterdam stock exchange is part of NYSE Euronext. The NYSE Euronext family of exchanges is located in six countries and includes the New York stock Exchange, the world’s largest cash equities market and Euronext, the Eurozone’s largest cash equities market. NYSE Euronext has nearly 4,000 listed companies.
LEGAL ENVIRONMENT

What you need to know about the legal environment of the Netherlands
4. LEGAL ENVIRONMENT

4.1. Corporation law; conducting business through legal persons or other entities

Over the centuries the Netherlands has developed into a modern open economy. Being a very small country with hardly any natural resources (only natural gas) it learned to focus on trading with other countries. The requirements of Dutch company law are codified in Book 2 of the Dutch Civil Code. Business in the Netherlands can be conducted through a legal entity. This can be a private limited liability company, a ‘besloten vennootschap’ (BV), or a public limited liability company, a ‘naamloze vennootschap’ (NV). It can also be a foreign entity that has relocated to the Netherlands, or that has a branch in the Netherlands.

Foreign investors and companies can consider using:

- A permanent establishment (a branch of a foreign company)
- An agent
- A joint venture
- A cooperative society (‘coöperatie’)
- A private, limited, or general partnership (‘personenvennootschap’)
- A Societas Europea (‘SE’)

The choice is strongly influenced by the tax treatment.

The SE is a European public limited liability company. The SE is a legal entity in which the capital stock is divided into shares and it has to have its registered office and its management board in a European Union member state. If the SE has its registration in the Netherlands, it falls under the NV-regulations of the Dutch Civil Code.

The BV is the most common entity for conducting business in the Netherlands. The rules in the Dutch Civil Code regarding the BV have radically changed as from 1 October 2012. As a consequence, there are major differences between the BV and the NV. Below, we provide some information about the BV.
4.1.1. Incorporation and obligations of the BV

The Civil Code has changed the rules for BVs from a capital protection system to a directors’ liability system. This is thought to improve the investment climate of the Netherlands. These changes aim to make the BV legislation more flexible. Most changes came into force at 1 October 2012. The main characteristics are:

- Minimum capital requirements at incorporation become almost nil;
- The shareholders’ rights improve as they can give instructions to the Board of Directors;
- The one share one vote system is changed so that the company is able to create variable voting rights;
- The one-tier system is incorporated in legislation as of 1 January 2013;
- A BV is a legal entity. This means that the BV has its own legal rights and obligations;
- The incorporation of a BV must be done by notarial deed containing the articles of association of the corporation;
- A BV should have at least one share that has a nominal value, usually of EUR 0.01 or more, though in theory smaller amounts than EUR 0.01 are also possible;
- There is no minimum paid-up capital for the BV. This is an important difference with the NV; for the NV there is a minimum paid-up capital of EUR 45,000;
- The contribution can be made in cash or in kind. The shares of a BV may be freely transferable, often they are not, depending on the articles of association;
- The BV has to be registered with the Dutch trade register. It also has to file its annual report yearly at the trade register;
- A BV can also be incorporated by means of a (cross-border) legal merger;
- A BV can issue non-voting shares and shares without profit rights if the articles of association allow that possibility (non-voting shares and shares without profit rights are not possible for the NV);
- The shares of a BV can be denominated in another currency than euro.

4.1.2. Shareholders’ and directors’ liability

As a rule, shareholders are liable for the maximum amount of their capital contribution to the BV. In principle the shareholders and managing directors ("statutair directeuren") cannot be held liable for the debts of the BV. However, there are certain conditions under which a managing director or shareholder can be held liable for certain debts. For directors this concerns, among other things, tax and social security contributions in cases of mismanagement and wilful non-payment of debts. In the new legislation all decisions by the general shareholders meeting regarding distribution of dividend, return of share premium and capital to the shareholder require approval of the management board. The board should withhold approval if the payment will ultimately lead to incapacity to pay its due and payable debts.

In practice this should lead to more flexibility and fewer obligations when incorporating a BV.
4.1.3. New rules in company law

The Netherlands allows a one-tier system for BVs and NVs. Other legislation restricts the number of managing director and supervisory board member functions to be held by one person. This legislation applies only to entities considered to be ‘large’ in the Dutch legislation regarding annual accounts. Further important changes concern the position of the managing directors of listed companies (they are no longer employees), and the participation of men and women in management boards and supervisory boards.

4.2. Financial reporting

The main regulatory sources for financial reporting are:

1. The Civil Code: Part 9 of Book 2 of the Netherlands Civil Code, which is based on the EU Accounting Directive.
2. International Financial Reporting Standards (IFRS)
3. Guidelines for Annual Reporting as issued by the Council for Annual Reporting (CAR, Dutch Accounting Standards Board).

As in all the EU countries since 2005, the preparation of consolidated financial statements in accordance with IFRS (international financing reporting standards) approved by the EU (EU IFRS) is mandatory for listed companies established in the Netherlands.

In Part 9 of Book 2 of the Netherlands Civil Code legal entities are classified into one of four categories based on (consolidated) size: micro, small, medium and large. A legal entity falls into a particular category if it satisfies at least two of the following criteria in two consecutive years:

<table>
<thead>
<tr>
<th>Amounts in EUR or fte</th>
<th>Micro entity</th>
<th>Small entity</th>
<th>Medium sized entity</th>
<th>Large entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of assets according to balance sheet</td>
<td>≤ 350,000</td>
<td>≤ 6 million</td>
<td>≤ 20 million</td>
<td>&gt; 20 million</td>
</tr>
<tr>
<td>Net turnover</td>
<td>≤ 700,000</td>
<td>≤ 12 million</td>
<td>≤ 40 million</td>
<td>&gt; 40 million</td>
</tr>
<tr>
<td>Average number of employees</td>
<td>&lt; 10</td>
<td>&lt; 50</td>
<td>&lt; 250</td>
<td>≥ 250</td>
</tr>
</tbody>
</table>

The new category of micro entities gives these types of entities the possibility to prepare a very simplified set of financial statements including a limited balance sheet and profit and loss account without explanatory notes.

The Civil Code defines the composition of financial statements. In this way Dutch law requires that these financial statements, together with the notes to the financial statements, are prepared in such a way that they enable a reader to get a true and fair view of a company’s financial position and results and, insofar as the financial statements allow, its liquidity and solvency.
4.3. **Management board report**

A management board report regarding non listed entities should be prepared together with the financial statements, and this should contain the following information about the company:

- Financial position;
- Developments and performance during the financial year;
- Activities in research and development;
- Risks and uncertainties;
- Expectations about future business;
- Events after the balance sheet;
- If necessary for the understanding of the financial information: financial and non-financial performance indicators including environmental and human resource issues.

When certain conditions are met (‘structuurregime’), large companies have to set up a separate executive board and a supervisory board.

Some consequences for each category:

<table>
<thead>
<tr>
<th>Small entity</th>
<th>Medium sized entity</th>
<th>Large entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>No consolidation required</td>
<td>Consolidation required</td>
<td>Consolidation required</td>
</tr>
<tr>
<td>No statutory audit required</td>
<td>Statutory audit required</td>
<td>Statutory audit required</td>
</tr>
<tr>
<td>Filing of abbreviated balance sheet only (no P&amp;L) and short notes</td>
<td>Filing of full set of financial statements with some exemptions</td>
<td>Filing of full set of financial statements</td>
</tr>
</tbody>
</table>

Dutch companies are allowed to prepare their financial statements according to either Dutch Generally Accepted Accounting Principles (“Dutch GAAP”), certain European Generally Accepted Accounting Principles or International Financial Reporting Standards (“IFRS”).

The financial statements can be prepared in Dutch, English, French or German. In general a works council is required if the company employs more than 50 people. The works council has mainly an advisory function.
4.4. Timeline for financial reporting

The timeline for financial reporting, assuming a December 31 year end, is as follows:

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 December</td>
<td>End of fiscal year</td>
<td>31 May</td>
<td>31 July</td>
<td>8 August</td>
<td>31 October</td>
<td>8 November</td>
<td>31 December</td>
</tr>
<tr>
<td></td>
<td>Preparation of financial statements by management within 5 months</td>
<td>Approval of financial statements by shareholders before July 31</td>
<td>Publication of financial statements within 8 days</td>
<td>If the company decides to use the extension, the financial statements should be prepared before 31 October</td>
<td>If all shareholders are also board members of a BV, then the financial statements should be published on or before 8 November</td>
<td>Deadline for publication of the financial statements. Overdue publication could be subject to a fine of EUR 16,000.</td>
<td></td>
</tr>
</tbody>
</table>

The management of a BV and NV should prepare the financial statements within a maximum period of five months, which may be extended by six months with the approval of the shareholders or in special circumstances. The shareholders have two months to approve the financial statements after preparation. Note that when the shareholders of a BV are also the directors, in general, preparation of the accounts includes approval by the shareholders meeting, thus advancing the date of adoption of the accounts. There is no need to inform the Chamber of Commerce about the shareholders decision on extension.

The aforementioned change in Dutch law (effective as from January 1, 2016) will reduce the term for extension of preparing the financial statements from six to five months. From 2009 onwards, following the European Transparency Directive, listed companies are required to prepare and publish financial statements within 4 months of the end of the year.

4.5. Exemptions in financial reporting

The main exemptions in financial reporting relate to:
1. Reduced contents of the financial statements, audit requirements and consolidation exemptions for small companies;
2. Reduced contents of the financial statements for medium sized companies;
3. Preparation of consolidation for guaranteed group companies section 2:403;
4. Preparation of consolidation for intermediate holding companies section 2:408.

For the situations described under 1 and 2 above please refer to the table with the summary per category.
4.6. **Group company exemption of section 403**

If the figures of subsidiary companies are included in the financial statements of the parent company and the parent issues a “joint and several liability statement” assuming responsibility for all debts of the subsidiary companies, then the intermediate company can refrain from consolidation. Furthermore an audit is not required. A declaration in writing with the shareholders’ resolution on the joint and several liability and the consolidated parent financial statements prepared in accordance with the 7th EU Directive are required to be filed with the Chamber of Commerce. Note that the 403-system also has disadvantages, that have to be taken into consideration when taking the decision to use this facility.

4.7. **Intermediate subconsolidation exemption of section 408**

A sub consolidation is not required if the parent company includes the figures of the Dutch intermediate company in their audited consolidated financial statements. The consolidated parent financial statements prepared in accordance with the 7th EU Directive are required to be filed with the Chamber of Commerce.

**The Dutch corporate governance code**

The Dutch Corporate Code requires listed companies to comply with its regulations or explain why the company is not in compliance (“comply or explain”). In other words, listed companies may depart from the Code, but they must explain this in the director’s report (“jaarverslag”). The Code is aimed at achieving visible responsibility of the management board in the control of the risks regarding the objectives of the company and the strategy.

4.8. **Mergers and acquisitions**

The Netherlands Civil Code specifies three types of merger:

- **A stock merger:**
  A merger in which the shareholders of the target company can exchange their shares for those of the acquiring company or sell them to the acquiring company. The transfer of title to registered shares is made by a deed of transfer executed before a Dutch civil-law notary.

- **A business merger:**
  A merger in which an enterprise is sold to the acquiring company against either cash or shares in the acquiring company. Such a transfer is subject to compliance with all of the rules relating to the conveyance of property.

- **A statutory/legal merger:**
  A merger in which shareholders generally exchange their shares in the target company for those of the other (acquiring) company (or a new company). In such a situation the target company will then disappear. Many variations of this basic form of statutory/legal merger may appear such as a merger between a parent and a subsidiary, or a triangular merger under which the consideration shares may be issued by a member of the acquiring company’s group.
4.9. OOB

In respect of Public Interest Entities (“PIE”), Dutch law uses the designation ‘OOB’ (‘Organisatie van Openbaar Belang’), which means entities with public exposure or Public Interest Entities. OOB-entities are:

- Dutch listed entities on a regulated market;
- banks and other credit institutions;
- insurance companies.

The audit of the financial statements of such an OOB qualifies as a statutory audit. Consequently the audit has to be performed by an audit firm which has an OOB-license issued by the Authority for the Financial Markets. As per January 1, 2013 audit firms are prohibited from rendering services other than assurance services to statutory audit clients. From that date the following services are allowed for an audit firm:

1. Statutory audits of (consolidated) financial statements;
2. Audits or reviews of (interim) financial reports;
3. The provision of assurance with respect to other elements of financial reports, such as the management report, corporate governance, risk management, or corporate social responsibility;
4. The provision of assurance and reporting on the results of fact-finding studies for the purpose of rendering account to supervisors and the tax authorities;
5. Any other statutory task relating to audit procedures assigned by law to external auditors or audit firms (e.g. subsidy statements);
6. The provision of assurance and reporting on the results of fact-finding studies commissioned by third parties (e.g. comfort letters);
7. The provision of assurance and reporting on the results of fact-finding studies for Supervisory Boards (e.g. in the areas of internal control, mergers and acquisitions, and fraud).

Furthermore since January 1, 2016 audit firm rotation is mandatory for OOB’s. Mandatory audit firm rotation is applicable after ten years of service. In addition to audit firm rotation, the key audit partner rotation is after five years.

4.10. The audit profession

For a number of legal entities, Dutch law requires an audit of the firm’s financial statements by a certified public accountant (Register Accountant, AA or RA). The Netherlands has a long tradition of a high-quality audit profession. Auditors for companies that are subject to a legal audit and auditors of Public Interest Entities require a permit from the Financial Markets Authority. Mazars follows the highest quality standards and has all required permits. The auditor gives an opinion on the financial statements and the annual report, and states whether they comply with the law and give a true and fair picture. For some companies, such as small companies, a mandatory audit is not required. The Dutch audit profession is regulated by Law and by regulations set by the Financial Markets Authority and the professional body (NBA).
LABOUR LAW

Labour Law in the Netherlands
5. LABOUR LAW

Employers who hire staff in the Netherlands soon become acquainted with the relatively complex system of Dutch Labour Law, in which workers’ protection forms the leading principle. The rules and regulations of the Dutch Labour Law are laid down in a variety of statutory regulations, such as the Dutch Civil Code, which are clarified in extensive case law.

Hiring of employees can be relatively easy. Dismissal may be complex and in certain cases impossible or expensive.

5.1. General employment matters

- **Minimum wage:** 1,565.40 EUR gross per month for employees of 23 years and older
- **Working hours:** 36 - 40 hours per week for a full time employment
- **Salary during illness:** A legal minimum of 70% of the salary entitlement during 2 years to be paid by employer
- **Holiday:** Minimum for full time employees is 20 days
- **Holiday allowance:** 8% of gross annual salary
- **Pension:** General Old Age pension Act (“AOW”) and voluntary supplementary schemes offered by employers. In certain branches mandatory Industry Pension Funds can be applicable.
- **Collective Labour Agreements:** In certain branches, collective labour agreements have been declared generally binding for all companies in that branch
- **Works Council:** A works council is mandatory if the company employs more than 50 people

The implementation of the Dutch Work and Security Act (WWZ) per July 1st 2015 has resulted in a drastic change in Dutch employment law, in particular in relation to termination. Case law shows that as a result of the WWZ, it has been significantly more difficult for employers to terminate employment contracts of employees. This because of the high demands placed on the substantiation of the so-called “reasonable grounds” for a request for termination.

For this reason, it is particularly important that employers with expats in their employ (and to whom Dutch law applies) pay close attention when composing and updating their (expat) policies and assignment contracts. The new situation has made it imperative to have clear agreements in place (such as a step-by-step plan) regarding what will happen in the event that an expat is not performing well. It is also important that non-competition clauses are critically examined. When a fixed-term employment contract is concluded with an employee, any non-competition clause will be required to state a substantiated, substantial business interest.

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1 Source: https://www.rijksoverheid.nl/onderwerpen/minimumloon/inhoud/bedragen-minimumloon-2017
5.2. Hiring

The regulations of Dutch Labour Law require the employer to provide a written contract of employment containing the key elements of the employment relationship, although a legitimate contract of employment can still be deemed to exist even without such a written contract. Please note that the absence of a written contract is usually advantageous for the employee. By not drawing up a written contract before hiring somebody, the employer misses his chance to stipulate several important clauses. For certain clauses, such as a non-competition clause or a probationary period, written consent from the employee is a formal requirement. Contracts of employment may be drawn up in Dutch or in another language. The use of contracts in other languages is allowed (if understandable to the employee), but, naturally, this does not mean that Dutch law is inapplicable.

It should be noted that Dutch Labour Law contains many particularities. In our daily practice we frequently encounter international companies using the same contract model in various countries. This would at first sight appear to be an easy and fair solution, however, in general, this is not recommended for the Netherlands. There is a high risk that some of the clauses may be limited or disregarded by the Dutch courts. It is very important to draw up a contract that is specifically designed for use within the Netherlands, respecting Dutch law and, if applicable, collective labour agreements. A suitable standard employment contract is inexpensive, but can prove to be of great value.

A lot of companies in the Netherlands have declared a collective labor agreement (“CLA”) (in Dutch: “cao”) applicable. Under Dutch law this CLA is binding on all Dutch employment agreements within the company, and governs basic employment conditions such as: payment of wages, holiday rights, overtime, termination of contracts etc. For the question whether a CLA is applicable to the company, the scope of the business activities of the respective company is relevant. The Ministry of Social Affairs and Employment could declare a cao binding on the whole sector, in which case every employer should apply the employment conditions of this cao.

Subject to certain restrictions, contracts of employment may be drawn up for a fixed or indefinite term. Fixed term contracts may be renewed under certain conditions. Such contracts may however not be renewed indefinitely. The law provides for a system whereby fixed-term contracts become open-ended agreements after a fixed number of renewals.

Notification of fixed-term employees
An employer is obliged to give at least one-months’ notice to employees who are on fixed-term employment contracts of six months or more of the intention to renew the contract or otherwise. Employers will need to inform employees in writing of contract continuation or termination, and of the terms and conditions of any continuation. An employer is required only to inform the employee, and no reasons need to be given. Employers who do not comply with this provision risk being liable for up to one-month’s salary.

Trial periods
Any trial period specified in a fixed-term employment contract of six months or less entered into will simply be invalid.

Non-competition clauses
As of 1 January 2015 fixed-term employment contracts may not include a non-competition clause without stating overriding business interests for its inclusion. A court may declare a non-competition clause invalid when the non-competition clause does not have this motivation or when this motivation is not sufficient. The criterion of overriding business interests will be examined at the start and end of an employment contract. The above
will limit the opportunities to include non-competition clauses in fixed-term employment contracts. Employers should carefully review their standard non-competition clauses to determine whether they will meet the new requirements and change them accordingly as necessary. Employment contracts commencing before 1 January 2015 will not be affected.

**Occupational disability of the employee**

In the event of illness, an employee is entitled to receive at least 70% of his salary for a maximum period of 104 weeks. It is also possible to supplement the wage up to 100% (for example for a period of the first 6 weeks of illness or for the first 52 weeks of the sickness), but this does not absolve the employer to pay at least 70% of the maximum standardized wage during the 104 weeks of illness. In the Netherlands it is quite common that the statutory sickness pay (70%) will be raised by the employer for some period. Still there are also other options than the 100% / 70%.

**5.3. Dismissal**

In the Netherlands it is not always easy to dismiss employees. The use of a mix of fixed-term and open-ended contracts, and the hiring of temporary staff, is often deemed to be a good way to manage a flexible workforce. This will enable the employer to upsize and downsize the company more easily and effectively. Dismissal of employees with open-ended contracts is possible, but will often involve time, effort and cost.

In general, unilateral termination of a contract is only allowed after prior permission of the government (UWV Werkbedrijf, in cases of restructuring or after 2 years of incapacity for work), or if the Court has dissolved the employment contract on request (in cases of personal issues with an employee, as, for example, underperformance or a disturbed working relationship). In both cases employee usually can, if the employee has been employed for 24 months or longer, claim a so-called transition payment, and possibly an additional payment, depending on the circumstances of the case. After permission has been obtained from the UWV Werkbedrijf, notice has to be given of the termination of the contract. If a Dutch Court dissolves a contract of employment, the otherwise applicable notice period will be taken into account.

Notwithstanding the aforementioned system, a contract can also be terminated without prior permission in the case of:

- Immediate dismissal for an urgent cause
- Mutual agreement
- Expiry of the limited term contract
- Notice given by employee
- In the case of termination on initiative of the employer by a Court or after permission of the UWV (on other grounds than culpable behaviour of employee), the employer can be required to pay a transition payment to employee if he has been employed for 24 months or longer. This also applies if a (string of) definite term contract(s) which have lasted 24 months or longer terminates by operation of law, or otherwise. In addition, the employee can attempt to claim additional financial compensation for termination at the court.
- In cases of unilateral termination of employment, the employee (and the employer) have the option of appeal and higher appeal.
- In the case of mutual agreement parties will (often) negotiate a financial compensation and other terms and conditions of the termination with mutual consent.
Please note that this summary is meant to give a general overview of dismissal under Dutch law. It is not suitable to address the many particularities, issues and challenges of dismissal under Dutch Labour Law in more detail here. Due to the complexity and changing nature of the Dutch system it would be advisable to seek legal guidance prior to any action.

5.4. **Popular in the international labour market and a good local labour market**

The Netherlands itself has remained a popular destination for international employees. The Netherlands offers an expat-friendly tax arrangement for expats who meet certain salary requirements, with the so-called 30% allowance ruling, which offers employers an opportunity to grant a tax free reimbursement to employees of approximately 30% of their salary.

The Dutch labour market in general is characterised by:

- A high level of employee facilities
- A high level of entrepreneurs
- A high level of education
- Good language skills (a large majority of the population has a good command of the English language)

5.5. **Open labour market**

The open labour market as regulated by EU regulations ensures that EU citizens can travel to the Netherlands with their passports without visa. EU Citizens can live in the Netherlands and are generally free to work, without a work permit.

In general, non-EU citizens need a visa to come to the Netherlands, and a work permit if they wish to work in the Netherlands. Furthermore non-EU citizens might have to register with the Immigration Services and need a work permit to be able to work in the Netherlands, even if they already have a work permit for another EU country.
The application for a work permit / visa for non-EU citizens can be a burdensome and time consuming process. However, in recent years the Netherlands has tried to encourage highly qualified immigrants ("kennismigranten") to come to work in the Netherlands as a consequence of the demands of the economy and business, the most important factor for qualification is that the highly skilled migrant earns a certain minimum salary (€ 3.170 excl. holiday allowance for highly skilled migrants younger than 30, and € 4.324 excl. holiday allowance for highly skilled migrants of 30 years old and older). Since 2013 the process for acquiring a (work) permit for the highly skilled migrant has been simplified, and the official aim of the immigration services is to decide on a permit application within weeks (instead of months). To apply for this simplified process it is first necessary to register the company as ´Recognised Sponsor´, after which the permits for the individual highly skilled migrants might be submitted. Please feel free to contact your local legal adviser for more detailed information.

It is advisable to seek professional assistance prior to any decisions regarding work and/or residence permit requirements for the Netherlands.
TAXATION

More information about the favourable taxation climate of the Netherlands
6. TAXATION

6.1. Introduction

The Netherlands is recognized globally as one of the premier locations for international business operations. A factor that contributes to this reputation is the Dutch tax system. The main features of the Dutch tax system include:

- Participation exemption to avoid double taxation;
- No statutory withholding tax on outgoing interest and royalty payments;
- Fiscal unity regime allowing to set off profits and losses among group members;
- Wide tax treaty network to avoid double taxation;
- Loss compensation with the possibility of carrying back losses for one year and carrying forward losses for nine years;
- Statutory corporate income tax rate of 25% (20% over the first EUR 200,000);
- Innovation box resulting in an effective corporate tax rate of 7% on qualifying profits;
- Special tax treatment for foreign employees if certain conditions are met (30% tax ruling);
- Possibility of obtaining advance tax rulings and advanced pricing agreements from the Dutch Tax Authorities, giving certainty on future tax position;
- VAT deferment upon import.

6.2. Corporate income tax

Corporate income tax is levied on the worldwide income of non-transparent entities resident in the Netherlands, as well as on the Dutch income of certain non-resident entities. Foreign income and foreign losses from a Dutch entity are not taxed or deductible in the Netherlands under the 'object exemption' which is applicable since 2012. Some mutual investment funds are treated as taxable entities, while foundations and some other societies are taxable only when they carry on an enterprise.

As of 2018 and further the following Dutch corporate income tax rates apply:

<table>
<thead>
<tr>
<th>Profit range</th>
<th>Tax rate 2018</th>
<th>Tax rate 2019</th>
<th>Tax rate 2020</th>
<th>Tax rate 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 200,000 EUR</td>
<td>20%</td>
<td>19%</td>
<td>17.5%</td>
<td>16%</td>
</tr>
<tr>
<td>&gt; 200,000 EUR</td>
<td>25%</td>
<td>24%</td>
<td>22.5%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Despite the relatively high tax rate of 25%, a non-transparent entity without a special tax status can still provide a tax-efficient vehicle for certain equity investments. This is because of the so-called 'participation exemption'.
6.3. Participation exemption

The Dutch participation exemption provides for an exemption from corporate income tax of any profit derived from a qualifying equity investment in another company, whether domestic or foreign. As a consequence, dividends and capital gains arising from such shareholdings are tax exempt, while capital losses, and acquisition and disposal costs, are not deductible.

In general, a Dutch entity can benefit from the participation exemption if it holds at least 5% of the nominal paid-up capital of another company and passes one of the three tests below (Motive test, Reasonable tax test, and Asset test):

- The participation is not held as a (deemed) portfolio investment (“Motive test”). This motive test should be passed if the participation is not merely held with the purpose of generating a return that can be expected from normal asset management, or
- The participation is considered a ‘qualifying portfolio investment’, meaning that:
  - the participation is subject to a profit tax resulting in taxation that is reasonable according to Dutch standards (“Reasonable tax test”) or
  - the aggregated assets of the participation consist, for more than 50%, of non-portfolio assets or of portfolio investment assets of which the proceeds are taxed at a reasonable tax rate according to Dutch standards (“Asset test”). For the purposes of the asset test, real estate assets are deemed to be non-portfolio assets.

For private equity funds, venture capital funds, leveraged buy-out funds, and real estate funds, a Dutch corporate entity can be a very attractive investment vehicle. Due to the participation exemption, all income and gains from the target investments can be collected tax-free in the hands of the Dutch entity.

Finally, it is important to realize that the Dutch participation exemption does not require a minimum holding period. Consequently, a capital gain realized upon a sale of a qualifying participation after, say, six months will still be exempt from Dutch corporate tax.

For further details with respect to the Dutch participation exemption rules we refer to the brochure Dutch Participation Exemption Rules, on our website: www.mazars.nl.

6.4. Branch versus subsidiary

A foreign company could operate their activities in the Netherlands through a branch or through a Dutch legal entity (subsidiary). Branches and subsidiaries are nearly taxed on the same basis in the Netherlands. However, the following main differences between a branch and a subsidiary should be taken into account when entering the Dutch market:

- Most of the tax treaties provide that certain activities, which are of an auxiliary or preparatory nature, do not constitute a branch in the Netherlands for CIT purposes. As a result, in principle, no Dutch CIT will be due on the profits of a branch providing auxiliary or preparatory activities. The aforementioned is not applicable on Dutch subsidiaries; and
Profits of a branch can be transferred to its headquarters, free from withholding taxes. Dividend distributions of a Dutch subsidiary to a foreign parent company, however, are subject to Dutch dividend withholding tax with a rate of 15%. However, in case of an applicable tax treaty or applicable EU-law, the taxation on the dividend distribution can be reduced to a lower percentage or even to zero percent.

6.5. **Fiscal unity**

The fiscal unity regime provides for the tax consolidation of companies within a group by the filing of one consolidated tax return. As a consequence, the losses of one company can be set off against the profits of another group company within the same fiscal year. Furthermore, transactions between group companies that are part of a fiscal unity are not recognized, because the group is treated as one taxpayer. Therefore, the assets of the fiscal unity can be transferred within the group without corporate income tax being levied. However, only Dutch resident entities of a group are allowed to form a fiscal unity.

6.6. **Functional currency**

It is possible for a Dutch resident entity to calculate its taxable profits on the basis of another currency than the Euro, provided that it also prepares its financial accounts in that other currency. Under Dutch GAAP, the functional currency used for financial reporting is not necessarily the Euro. The functional currency should be the currency that best reflects the economic reality of transactions, events, and situations that are relevant for the entity. For funds with investments, equity, and/or debt instruments in another currency, that currency might qualify as functional currency.

The filing of a corporate income tax return in a foreign currency is allowed only after a specific request has been granted by the Dutch tax authorities. The amount of corporate income tax due is denominated in Euros. For purposes of determining this amount, the functional currency taxable amount is converted into Euros using the average currency exchange rate of the financial year.

6.7. **Investment vehicles**

The Dutch Ministry of Finance is actively engaged in obtaining and maintaining a prominent international position in the field of investment funds for the Netherlands. This pursuit has resulted in a highly competitive mixture of both flexible entities and favourable tax regimes. Examples of the latter are the Dutch Fiscal Investment Institution ("FII") and the Exempt Investment Institution ("EII"). The FII is taxed at a 0% corporate income tax rate, while the EII is tax exempt. Examples of flexible entities are the fund for joint account ("FGR") and the Cooperative ("COOP"). The FGR is widely used as a transparent asset-pooling vehicle, and can be finely tuned to the specific needs of a fund. The COOP, on the other hand, is a non-transparent entity, usually exempt from dividend withholding tax obligations.

For the purposes of a preliminary outline, we restrict ourselves to a limited overview of possibilities. We refer to our brochure “Dutch Investment Vehicles” on our website (www.mazars.nl) for an extensive review of this subject.
<table>
<thead>
<tr>
<th>Entity</th>
<th>Subject to corporate income tax</th>
<th>Subject to dividend withholding tax</th>
<th>Eligible to tax treaty/EU directive</th>
<th>Shareholder requirements</th>
<th>Investment requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparent funds</td>
<td>No</td>
<td>No</td>
<td>No/No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>FIU</td>
<td>0%</td>
<td>15%*</td>
<td>Yes/No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>EII</td>
<td>Exempt</td>
<td>Exempt</td>
<td>No/No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Taxable corporation funds</td>
<td>25%</td>
<td>15%**</td>
<td>Yes/Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>COOP</td>
<td>25%</td>
<td>Exempt***</td>
<td>Yes/Yes****</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

*Might be reduced by a tax treaty or Dutch unilateral provisions

**Might be reduced by a tax treaty, an EU directive, or Dutch tax law (in the case of EU corporate entities and pension funds)

***Provided no specific anti-abuse regulations apply no Holding Cooperative and distributions to tax treaty countries.

****Provided no specific anti-abuse regulations apply

6.8. **Innovation Box**

Income from a self-developed intangible asset that qualify for the innovation box is taxed at an effective tax rate of 7% insofar as the income exceeds the production costs of the intangible assets. The regime represents a significant reduction of the tax rate, considering that the normal Dutch corporate income tax rate is 25%.

As from January 1, 2017 a new innovation box regime has entered into force. The new legislation is in line with the OECD’s so-called nexus approach. Under the modified nexus approach, qualifying profits that benefit from the new innovation box are calculated as follows (qualifying income = qualifying expenditures x 1,3 x benefits/ total expenditures). The new regime distinguishes small and large tax payers and is complex, but remains beneficial for taxpayers.

The new legislation has a grandfathering period until July 1, 2021 for qualifying intellectual property developed before July 1, 2016. All existing innovation box rulings with the Dutch tax authorities have, in principle, been cancelled as of January 1, 2017.

6.9. **Loss compensation**

In principle, losses can be carried back for one year and carried forward for nine years.

However, under certain circumstances, no loss compensation is available if there has been a shift of 30% or more in the ultimate interest in the entity and the activities have been reduced significantly (>70%).

Furthermore, if the losses are realized from holding or intercompany financing activities (>90% of the activities are performed as such), these losses can be compensated only in years in which the activities do not deviate from the activities in the loss making years.
We note that the losses of a holding or financing company can be compensated only from the profits of a holding or financing company if the balance of the group receivables minus the group payables (in the year of the loss) is not lower than this respective balance in the profit year. The condition does not apply if the company can demonstrate that this change was not intended mainly to increase the loss set-off possibilities.

In addition, the losses will not be considered to be holding or financing losses if at least 25 (fulltime) employees of the company are involved in other activities.

6.10. Transfer pricing

Arm’s length principle
The so-called arm’s length principle has traditionally been considered part of the Dutch concept of taxable profits. On January 1, 2002, the arm’s length principle was also incorporated in the Dutch Corporate Income Tax Act. This was preceded in March 2001 by detailed transfer pricing regulations, designed to supplement the OECD transfer pricing guidelines.

As a consequence, taxable profits from related-party transactions may be adjusted to conform to profits that would have been realised between independent parties. To this end, the term “related parties” needs to be interpreted broadly, and does not refer only to a direct shareholder link. For example, if a company performs board or supervisory activities for another company, both companies may be regarded as related in this respect.

In general, the following documentation should be maintained:

- Summary of the relevant intercompany transactions;
- Functional analysis: description of functions undertaken, risks assumed, and assets owned by each party to the transaction;
- Description and rationale of the transfer pricing methodology and margins;
- Evidence that the methodology has resulted in an arm’s length outcome;
- Industry analysis: review of industry, competitors, economic circumstances, etc.;
- Transfer pricing policy document;
- Intercompany agreements.

Please note that an adjustment of profits may not only have Dutch corporate income tax consequences, but may also lead to secondary adjustments, such as the recognition of a deemed dividend distribution. This deemed distribution could result in a consequent liability to dividend withholding tax.
**Country-by Country report, Masterfile and Local file**

As per January 1, 2016 new transfer pricing documentation requirements are in force. The Dutch-based multinational group with a consolidated income of above € 750 million has to prepare a Country-by-Country (CbC) report outlining in detail specific information (such as revenues, profit/losses, main business activities, taxes paid and etc.) for each jurisdiction where the group operates. The CbC report is to be submitted by the Dutch ultimate parent to the Dutch tax authorities, that will share it with other relevant tax jurisdictions. Foreign-based multinationals that reach the above-mentioned threshold need to ensure the CbC compliance in the Netherlands. To be noted that for such foreign-based multinationals, in certain circumstances (for example when the tax jurisdiction of the ultimate parent has not yet adopted CbC rules), the Dutch entity may be responsible for the submission of the CbC report.

A Dutch entity, part of the multinational group with a consolidated revenue of above € 50 million, is required to prepare TP documentation consisting of a Masterfile and a Local file. The Masterfile should contain an overview of the business of the multinational group, its general transfer pricing policy and the worldwide allocation of income and economic activities, in order to assist tax authorities to identify and assess substantial transfer pricing risks. The required information can be grouped into five main aspects:

- Organization structure;
- Business description;
- Intangibles;
- Intercompany financial activities; and
- Financial and tax positions.

The Local file should include information with respect to the specific cross-border transactions the Dutch entity is involved in, including an economic analysis supporting the arm's length nature of such transactions.

The Masterfile and Local File are to be prepared and must be included in the administration of the taxpayer before filing the tax return for the same financial year. The CbC report is to be submitted to the tax authorities within 12 months from the last day of the respective financial year.

**6.11. Non-deductible interest**

To discourage companies from financing their activities with excessive debt, certain interest deduction restrictions apply.

**Base erosion rules**

Base erosion rules restrict interest deduction on intercompany loans, if the loan is related to:

- a dividend distribution or repayment of capital,
- a capital contribution, or
- an acquisition of shares.
However, if the taxpayer can demonstrate that the transaction and the loan are based on sound business considerations or that the interest paid is taxable at an effective tax rate of at least 10%, calculated in accordance with Dutch tax law, the base erosion restriction does not apply.

Restriction deduction on excessive participation interest
As of 1 January 2013, restrictions on the deductibility of excessive interest on loans related to participations have come into force. Such excessive interest related to participations will not be deductible to the extent that the excessive part is greater than EUR 750,000. The interest deduction restriction will apply to loans obtained from third parties as well as from group members, and regardless of whether the loan is used to finance Dutch or non-Dutch participations. The amount of non-deductible interest is calculated as follows:

\[
\text{Non-deductible interest} = \text{total annual interest} \times \left(\frac{\text{average participation debt}}{\text{average total debt}}\right)
\]

The starting point for determining the amount of “participation debt” is that all participations are deemed to have been financed with equity. A company will only have “participation debt” if the total amount of the purchase price of the participations is higher than the equity of the company holding the participations. This excessive amount is the participation debt. Dutch tax payers that are actively involved in group financing activities are allowed to disregard debts - as well as the interest and costs relating to these debts - insofar as these debts are connected to group loans receivable.

The purchase price of a participation is not taken into account when calculating the participation debt and, therefore, does not restrict the deductibility of the interest, to the extent that an interest in a participation is purchased or extended, or equity has been contributed in relation to an expansion of the operational activities of the group of which the participation will form part. However, this exception does not apply in the case of a transfer of shares within the group of an existing subsidiary with operational activities or if certain other circumstances are present. In determining the participation debt, the tax payer may choose to disregard 90% of the fiscal cost price of subsidiaries that were acquired (or to which capital was contributed) in financial years that started on or before 1 January 2006.

Excessive acquisition debts
The latest addition to the interest deduction restrictions concerns interest payable by a take-over holding, joined in a fiscal unity, on acquisition debt. These interest deduction restrictions are of particular relevance to foreign investors and other parties involved in M&A and other investment activities in the Netherlands (private equity funds and foreign corporates).

The deductibility of interest on acquisition debt, including debt owed to third parties, attracted for the acquisition of a Dutch target company that will be included in a consolidated tax group (fiscal unity) with a Dutch holding company without any taxable activities, will be restricted if and to the extent that:

- the acquisition-debt to purchase-price ratio exceeds the ‘acceptable’ ratio, which is 60% in the year of consolidation, reduced by 5%-points annually over the course of 7 years, down to 25% in year 8; and
- the annual amount of interest exceeds EUR 1 M.
6.12. Horizontal monitoring

Another specific feature in the Netherlands is that the Dutch tax authorities allow businesses, under certain conditions, to apply for ‘horizontal monitoring’, a form of co-operative compliance by signing a Horizontal Monitoring covenant with the Dutch tax authorities. Horizontal monitoring encompasses more than just complying with laws and regulations, the organization must be able to demonstrate it is in-control of its tax processes and tax risks, the so called ‘Tax Control Framework’. The Dutch tax authorities will adjust the methods and intensity in which they perform their monitoring to the level of tax control of the taxpayer. As a result, audits performed by the tax authorities will shift from reactive (tax audits over past years) to proactive (providing ‘assurance’ upfront). Under horizontal monitoring, the company’s relationship with the Dutch tax authorities is based on a mutual trust, understanding and transparency. Horizontal monitoring can be applied to all taxes including corporate income tax, value added tax, wage tax and social security.

6.13. Non-resident companies

Non-resident companies could become liable for Dutch corporate income tax in two ways.

The first way is if a non-resident company carries on an enterprise in the Netherlands through a permanent establishment. Then, profits are calculated in accordance with Dutch corporate income tax regulations for the Dutch part of the enterprise.

The second way is if a non-resident company holds a substantial interest in a Dutch company, representing 5% or more of the shares. In general the Dutch substantial interest tax rules do not apply if the investors’ share of the Dutch company is part of an active trade or business of the investors, and the shares are not held with the main purpose of avoiding the levy of Dutch personal income tax or dividend withholding tax.

6.14. Withholding taxes

Interest and royalties
The Netherlands does not levy withholding tax on interest and royalty payments.

Dividends
In principle, dividend withholding tax is levied on dividend payments, liquidation proceeds, and other profit distributions, whether in cash or in kind, paid by a Dutch company to its shareholders. Furthermore, dividend withholding tax will also be levied on interest payments on qualifying hybrid loans, since such loans should be deemed to be equity of the debtor. The tax rate of the dividend withholding tax is 15%, unless a reduced rate applies under Dutch tax law, a tax treaty, or the EU Directive if certain conditions are met. In principle, Dutch cooperatives used to be exempt from dividend withholding tax. However, on the basis of new legislation effective as of January 1, 2018, qualified participations (a participation of at least 5%) in so-called Holding cooperatives will be subject to dividend withholding tax at the standard 15% rate. A holding cooperative is a cooperative whose activities mainly (for 70% or more) consist of holding participations and/or (in)direct financing of affiliated companies.

Furthermore, the incoming government of the Netherlands has announced to put an end to the Dutch dividend withholding tax, except for abuse situations and in the case of dividend distributions to low tax jurisdictions. It is envisaged that this will enter into force as per January 1, 2019.
6.15. **Individual income tax rates**

Individual income tax is levied by type of income, and is classified into three boxes:

- **Box 1**: income from labour is taxable at a progressive tax rate (including national social security premiums) of 36.55% to 52%
- **Box 2**: income from a substantial interest (≥ 5%) in a corporation is taxable at 25%
- **Box 3**: income from savings and portfolio investments is taxable at 30%. The taxable income from savings and portfolio investments, which is based on a weighted notional yield on net assets, is calculated as follows:

<table>
<thead>
<tr>
<th>Value of your net assets on 1 January of the year, after deduction of your tax-free allowance</th>
<th>Notional yield of 0.36% calculated on</th>
<th>Notional yield of 5.38% calculated on</th>
<th>Weighted notional yield</th>
</tr>
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<tbody>
<tr>
<td>From nil up to and including EUR 70.800</td>
<td>67%</td>
<td>33%</td>
<td>2.02%</td>
</tr>
<tr>
<td>From EUR 70.801 up to and including EUR 978.000</td>
<td>21%</td>
<td>79%</td>
<td>4.33%</td>
</tr>
<tr>
<td>From EUR 978.001</td>
<td>0%</td>
<td>100%</td>
<td>5.38%</td>
</tr>
</tbody>
</table>

6.16. **Value added tax**

In the Netherlands, the supply of goods and services by entrepreneurs is subject to value added tax (“VAT”). In general, VAT is payable by the supplier of the goods or services. Entrepreneurs may reclaim VAT paid on purchased goods and services. The reclaimable amount depends on a number of factors, of which the most important is whether the entrepreneur himself supplies goods or services subject to VAT and the extent to which he does so. Also, it is important that the entrepreneur qualifies as the actual recipient of the goods and services.

The VAT rates in the Netherlands are as follows:

- the standard VAT rate is 21%;
- a reduced rate of 6% applies to the supply of goods and services needed for the basic necessities of life and to certain other specific goods and services;
- for certain cross border supplies of goods a VAT zero-rate applies;
- additional note, a VAT exemption is applicable on specific types of supplies.

VAT facilities in the Netherlands of particular interest are tax representation and the VAT deferment option on the import of goods.
A tax representative (with a general license) can be appointed to act on behalf of his clients, who are not themselves based in the Netherlands. The representation covers all matters concerning VAT and the accompanying administrative obligations. The tax representative takes care of the application for a Dutch VAT registration number, maintains contact with the Dutch tax authorities, compiles and submits VAT returns, European Sales Lists (also known as recapitulative statements), and statistics declarations, and keeps records with regard to these services. Next to a tax representative with a general license, foreign companies can also use the services of one or more limited tax representative(s) for import of goods in the Netherlands and subsequent supply thereof. This option avoids a Dutch VAT registration of the foreign company, but please be aware that it is not in any case allowed to appoint a limited fiscal representative.

Although appointing a tax representative can be very efficient and beneficial from a practical point of view, foreign companies are in most situations not obliged to appoint a tax representative in the Netherlands if they want to trade in the Netherlands. One of the beneficial elements of appointing a tax representative in the Netherlands, is that the foreign entrepreneur is allowed to make use of the Dutch VAT facility to import goods into the European Union (via the Netherlands), without the immediate legal requirement to pay import VAT at the time of importation. This is made possible because a tax representative may, on behalf of his client, apply for a ‘deferment of VAT upon Import’ permit as defined in article 23 of the Dutch VAT Act. This permit is therefore also known as the article 23 code number. As a result of this permit, payment of the import VAT will be deferred to the periodical Dutch VAT return. Since this import VAT due may be deducted in the same VAT return, pre-financing of import VAT is effectively no longer required. This Dutch VAT facility cannot be applied by foreign companies, but only by companies with (at least) a permanent establishment in the Netherlands or via a tax representative. So for companies that have no immediate plans to move (parts of) their physical operations to the Netherlands, acting through a tax representative in the Netherlands, might be an attractive option.

Appointing a tax representative may also benefit companies trading in so-called excisable goods on Dutch territory. By appointing a tax representative a 0% Dutch VAT rate may be applied on the sale of those goods when certain conditions are met instead of 21% Dutch VAT.

For further details with respect to the Dutch and European VAT we refer to the brochure ‘European VAT Business and taxation guide’.

6.17. Dutch Tax Authorities

The Dutch tax authorities have a cooperative attitude towards taxpayers. Their approach can be described as practical rather than formal. The possibility of obtaining an Advance Tax Ruling (“ATR”) or an Advance Pricing Agreement (“APA”) is one of the most attractive features of Dutch tax law. The aim of the Dutch tax ruling policy is to provide international investors with certainty about their future tax position.

An APA provides certainty in advance on the fiscal acceptability of the price (transfer pricing) that the Dutch group company pays to or receives from a foreign group company for receiving or delivering services or goods.

An ATR is an agreement on the tax characterisation of international corporate structures, such as certainty in advance on the application of the participation exemption.
6.18. Working in the Netherlands

If you have international activities, you will have to deal with many complex international laws and regulations. A Dutch resident who receives income and/or holds assets abroad, for example, may be faced with foreign income tax in addition to Dutch income tax. A resident abroad who has income or holds assets in the Netherlands on the other hand has to deal with Dutch income tax.

Living in the Netherlands
As a resident of the Netherlands you have to pay Dutch income tax on your entire worldwide income. If you are considered to be a (fiscal) resident of the Netherlands depends on the actual facts and circumstances. Relevant circumstances, for instance, are if your partner and/or children have joined you living in the Netherlands and if the centre of your personal and economic life is the Netherlands.

If you have income from abroad, salary received from a foreign employer / a owned residence in your home country, this income will be part of your worldwide taxable income. However, in most cases the Netherlands will grant a relief for income from abroad. The Netherlands will grant a relief for double taxation if there is a tax treaty and according to this treaty the foreign income is allocated to the other country. Tax treaties will prevent that a resident of a state who has income from another state pays (income) tax on the same income in the state of residence and the source state.

Living abroad
Are you temporarily working in the Netherlands, as an employee or a self-employed person and are you fiscal resident of the state of secondment you probably will be liable (income) tax in the country of residence for your worldwide income. This will include your income earned in the Netherlands. Your home country will grant a relief for double taxation in case there is a tax treaty concluded between the two states and the income is allocated to the Netherlands.

- In the Netherlands you will be considered a non-resident taxpayer.
- You are liable to Dutch income tax if you receive a salary from a Dutch employer and/or
- you receive a profit from your Dutch company
- you receive certain benefits from the Netherlands
- you own property in the Netherlands and have income from qualifying shareholdings in companies established in the Netherlands.

Holding a Dutch bank account does not directly trigger Dutch income tax.

Resident taxpayer status for non-resident taxpayer
Until 1 January 2015, as a foreign taxpayer you could opt to be treated as a resident taxpayer under the same tax rules. However, as per January 2015 this option has expired. Since January 2015 a mandatory system is in place. If you want to be treated as a resident taxpayer, you must make 90% or more of your income in the Netherlands.

Social security insurance
In cross border situations the social security insurance legislation is also of significant importance. For individuals, employees or self-employed persons, who work simultaneously in two countries or work in one state and live in another it is possible that they are insured under both the social security system of the state of residence as well as the state they perform activities in. For residents of a EU member state the EU directive 883/04 is applicable. According to this Directive an individual, performing activities in more than one state, is insured under the social security system of one state. For not EU residents it is possible that under circumstances social insurance contributions have to be paid in more than one country.

### 30% Allowance ruling

Employees who are hired or seconded from abroad, and who have a specific expertise that is scarce on the Dutch labour market, are in principle eligible for the 30% allowance ruling. Someone has a specific expertise if he/she earns a taxable salary of at least € 37,000 (2017 amount) on an annual basis (excluding the 30% tax free part); Another condition which has to be met is that the employee should not have resided in a radius of 150 kilometers of the Dutch border for 16 months during a period of 24 months prior to starting to work in the Netherlands. On the basis of this ruling, these employees are eligible for a tax-exempt allowance amounting to 30/70 of their salary taxable in the Netherlands, for a maximum period of eight years. However, in cases where the employee has lived or worked in the Netherlands during the 25 years prior to his application for the 30% allowance ruling, the maximum period of eight years will be reduced. In order to qualify for the 30% allowance ruling, employer and employee must agree on a separate allowance, and this allowance must be paid to the employee together with his regular remuneration.

The application for the 30% allowance ruling must be made jointly by employer and employee within four months of the date of commencement of the employment. If the application is filed outside the four-month period, the ruling can be granted only from the first day of the month following the month in which the application was made. As a result, in this case the ruling can never be granted for the full eight-year period, since the ruling will not be granted retrospectively from the date of commencement of the employment.
ABOUT MAZARS

What can we do for you?
7. ABOUT MAZARS
Mazars is an international, integrated and independent professional services organisation, specialised in audit, accountancy, legal, tax and advisory services. We can rely on the skills of more than 20,000 professionals operating together in 86 countries, sharing the same values and sense of responsibility. Mazars is continuously expanding its worldwide presence by entering new markets, including Eastern Europe, Asia Pacific and the Middle East. Mazars is also a founding member of the International Praxity Alliance, servicing clients in 21 additional countries.

As the market challenger, Mazars is fully able to provide large corporate multinational firms with seamless tailored solutions. Its complete, acceptable and flexible range of services also makes Mazars perfectly able to serve smaller companies and owner-managed businesses as well as high net-worth individuals.

All Mazars staff are bonded with strong quality guidelines, determined to exceed technical and ethical standards and convinced that passion for accountancy, rigour in the way they perform their job on a daily basis and open-mindedness are the keys to success.

7.1. Mazars in the Netherlands
In the Netherlands, Mazars is in the top ten of the audit and advisory firms. Mazars has 12 offices throughout the country. We want to actively contribute to the development of our clients and therefore don’t just look at the history, which an accountant does conventionally; we also want to look ahead with our clients. We look at our task in a very broad sense. Where business, people or finance are concerned, we can cooperate and participate to help develop companies further. On the one hand, this is a question of expertise and on the other a question of mentality. At Mazars, we believe that – within the framework of rules and regulations – we have to look at opportunities rather than threats. Inventiveness and freedom of thought, combined with our technical expertise lead to solutions that go beyond the usual. Within that context, we challenge our employees to fully apply their knowledge and skills.

7.2. Passion for the business
All Mazars employees are required to work according to strict quality guidelines in order to excel when it comes to technical and ethical standards. However, at Mazars we believe that this is not enough. Passion for the business, an open mind and the ability to think freely and creatively within the rules are the keys to success.

Contact
Do you have questions regarding this brochure or do you want to create new business opportunities for your company in the Netherlands? Get inspired and talk to Ron Horsmans, Partner at Mazars in the Netherlands, by e-mail (ron.horsmans@mazars.nl) or by phone: +31 (0)88 277 23 14. He will be pleased to help you.
**Enclosure - Bilateral tax treaties of the Netherlands**

Avoiding double taxation on income and capital has always been an important issue for the Netherlands. A vast tax treaty network, which includes more than 90 countries, ensures that double taxation on income categories such as dividends, interest, and royalties, is avoided or limited to reduced rates. The Netherlands has concluded tax treaties with the following countries:

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<th>Albania</th>
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<th>Mexico</th>
<th>Suriname</th>
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<td>Argentina</td>
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<td>Armenia</td>
<td>Germany</td>
<td>Montenegro**</td>
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*The treaty concluded between the Netherlands and the former USSR

** The treaty concluded between the Netherlands and former Yugoslavia
Disclaimer
This document seeks to address general business and financial issues. We have taken care in its preparation using amongst others publicly available sources such as information published by The Dutch Central Bank, The Dutch Central Statistical Bureau, the Ministry of Economic Affairs.

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Publication Date
The Doing Business in the Netherlands brochure is published in January 2018. For the most recent information, the rules and regulations and developments of the Netherlands we would like to advise you to contact us. We will be pleased to keep you up-to-date.
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