DOING BUSINESS IN THE NETHERLANDS

HLB Nederland

Accountants & Consultants

Doing business in the Netherlands

Contents

1. Foreword

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating doing business in The Netherlands and is not intended to be a comprehensive document. You should consult us, therefore, before taking further action. HLB Nederland and HLB International cannot be held liable for any action or business decision taken on the basis of information in this booklet.
HLB Nederland is a member of HLB International. We offer a wide range of services relating to auditing, environmental auditing, taxation, accounting, and general financial and management advice.
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2. About HLB International

Formed in 1969, HLB International is a world-wide network of independent professional accounting firms and business advisers. The network comprises member firms in 130 countries who, collectively, have 19.000 staff in 600 offices. Member firms provide clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Up-to-date information and general assistance on international matters can be obtained from any of the member firm partners of HLB Nederland listed in this booklet or from the Executive Office in London:

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3. General information

3.1. Country profile

Bordering on the North Sea, Belgium and Germany, the Netherlands - generally known as "Holland" - encompasses about 35,000 square kilometres, the equivalent size of Massachusetts, Connecticut, and Rhode Island in the United States or the island of Kyushu in Japan. With a population of approximately 16.9 million, the Netherlands is the second most densely populated country in Europe. The national language is Dutch, but most Dutch people speak English and German as well.

The climate is mild throughout the year and changeable.

The capital of the Netherlands is Amsterdam. The government is seated in The Hague. The Port of Rotterdam is the largest port in Europe. The Rotterdam harbour functions as an important transit point for transport of bulk and other goods between the European continent and other parts of the world. From Rotterdam goods are transported by ship, river barge, train or road to the interior of Europe. In Maastricht, the most Southern city of The Netherlands, the euro was born.

The Netherlands is a member of the EU and strategically situated in the middle of this major international market at the centre of an excellent distribution network. Some 170 million consumers reside within a less than 500-kilometre radius of Amsterdam. Every major economic centre in Western Europe, such as London, Paris, Brussels, Frankfurt, Hamburg and the Ruhr, can be reached from the Netherlands in two hours flying time or one day on the road. The rivers Rhine, Meuse and Schelde provide easy access for waterborne cargo to Europe's industrial centres. These factors have given the country its reputation of "Gateway to Europe".

More than 5,700 foreign companies, large and small, have established their European operations in the Netherlands including distribution, manufacturing, assembly, research and development, sales, marketing, and administration.

This is a significant number for a country which is only approximately 120 kilometres from East to West and approximately 300 kilometres from North to South. Many of these companies have established their European headquarters in the Netherlands. Foreign companies provide work for about 92,000 people. For example: In the industrial sector about 20% of the personnel are working for foreign employers. As a result of the EU enlargement since May 1, 2004 this percentage increased every year.

A few important considerations, which make the Netherlands attractive to foreign investors, are:

- the geographical position of the Netherlands together with its integrated transportation infrastructure, stream-lined customs procedures, and bonded warehousing facilities provide for a favourable location to set up a European Distribution Centre in the Netherlands;
- there is a high degree of labour stability in the Netherlands; industrial relations are rational and business like. In recent years, the Netherlands has had the fewest days lost to strikes in the European Union;
- there is ample supply of skilled staff, both operational and administrative,

with a high level of education, multilingual capabilities, outward orientation and hospitality. Labour costs are relatively low in the Netherlands, due to the high productivity of the work force;
- most Dutch banks have a network covering European countries and beyond, and many foreign banks have branches in the Netherlands. Arranging intra-European payments and collections is, therefore, a common Dutch banking process;
- in general, the business-oriented fiscal system produces higher after-tax corporate income than most other European countries.

There are a number of attractive tax facilities available for foreign investors. In order to attract more investment in innovation the government stimulates R&D. In particular the “Brainport” in the South-East region of the Netherlands with its hi-tec companies Philips and ASML and all its suppliers profit from the stimulation programme.

3.2. Government

The Netherlands has been a constitutional monarchy since 1848, with the executive formed by the King and his council of Ministers. The King himself enjoys political immunity and has only ceremonial functions as Head of State.

The legislature comprises a democratically elected parliament consisting of two chambers. The representation in these chambers is proportional.

The First Chamber (“Eerste Kamer”) has 75 members, who are elected indirectly for four year terms by the 12 provincial legislative bodies in the country. The Second Chamber (“Tweede Kamer”) is the most powerful political body and consists of 150 members, directly elected by the people for four years. Votes are cast for a particular political party rather than for an individual candidate. Generally, no single political party achieves a majority, and so one of the features of the Dutch parliamentary system is the formation of broadly-based coalitions of moderate political parties. The result of this is that government policies remain relatively consistent.

The Dutch government is regarded as being stable and is democratic at the provincial and municipal level.

3.3. Economic structure

The size of the Dutch economy is illustrated by its ranking among the twenty largest OECD member nations according to Gross Domestic Product (GDP).

The Netherlands has an extremely open economy. Both export and import of goods and services exceed 50% of GDP. The rate of inflation is usually low: about 2% per year.

The unit of currency is the euro, which is divided into 100 cents. The euro is the single currency of 18 EU countries. As result of the EU Enlargement since May 2004, the number of countries with the euro as currency will probably increase. Exchange controls in the Netherlands are liberal and, in general, there are no restrictions for cross-border payments. Cross-border payments in excess of certain limits must be reported to the Central Bank for statistical purposes.

Well-known leading Dutch banks are, ABN AMRO, ING Bank and Rabobank. Many foreign banks from other European countries, North America and Japan have established offices in the Netherlands and have access to the Dutch financial system.

Besides Schiphol Airport four smaller airports are available in the Netherlands, especially for short-range business and parcel flights. From these airports flights leave for many European industrial cities. The four airports are located:

In the north	- Groningen Airport (Eelde)
In the south	- Maastricht Airport (Beek)
	- Eindhoven Airport (Eindhoven)
In the west	- Rotterdam Airport (Rotterdam)

3.4. Trade and distribution

As early as 1602 the Dutch had the full benefit of the international division of labour by being heavily involved in international trade. In 1602 the VOC (United East India Company) was established to handle the trade in tropical commodities, thereby laying the foundations for the big Dutch international trading houses as they still exist today. This orientation towards the trade sector is a typical phenomenon of the Dutch economy.

The Netherlands has two important international gateways. Rotterdam is home to the world's busiest harbours. The Port of Rotterdam is also Europe's largest container seaport. Over 55% of all cargo handled in Rotterdam is transferred to other European countries. Other important seaports are located in Amsterdam, Delfzijl in the North East, Vlissingen and Terneuzen in the South West. All the industrial centres of Europe can be reached from the Dutch ports via an extensive network of rivers and canals.

The busy rivers, Rhine, Meuse and Schelde, carry waterborne cargo to the hinterland as far as north eastern France and Switzerland. Completion of the Rhine-Main-Danube canal extends these links to Budapest (Hungary).

Amsterdam Schiphol Airport is the third most active cargo centre in Europe, providing specialised distribution facilities on a free-port basis. Furthermore, The Netherlands is connected to the rest of Europe via an extensive train network called the HSL and the Betuwelijn.

3.5. Dutch Bilateral Investment Protection Treaties

It is a well-known fact that the Netherlands provides a favourable and politically stable onshore environment. Less well-known, but potentially even more important is that the Netherlands has established an extensive network of bilateral investment protection treaties (BITs) with almost 100 countries that protect investments that are made in politically challenging countries.

The recent political and economical turmoil has made foreign based investors holding assets and investments in certain political and economical unstable countries edgy fearing deprivation of investments or unfair tax treatment. The Dutch Bilateral Investment Treaties offer a cost-efficient and easy solution to insulate foreign investor assets in these countries from political risk, including inter alia nationalization and tax discrimination against foreign investors.

How BITs work?
BITs are international agreements entered into between two sovereign states to protect investments made by investors from one contracting state in the territory of the other contracting state. Dutch BITs are known to provide the "gold standard" for BITs in the world and are considered to offer the best protection for foreign investment. They generally include the following substantive obligations from each contracting state towards investors from the other contracting state:

- Fair and equitable treatment
- Protection from expropriation without compensation
- Protection from treatment less favourable that that offered to other foreigners or their own nationals
- Provision of full protection and security to investments

Which investments are covered by a BIT depends on the definition of investment in a particular BIT. Typically, Dutch BITs provide a wide definition of "investments" by covering all kinds of investments such as shares, bonds, movable and immovable properties are covered.

To avail protection investors must have the nationality of the state signatory to qualify. For example, subsidiaries of US investors locally incorporated in the Netherlands generally can invoke the applicable Dutch BIT. Consequently, protection from a Dutch BIT can usually be realized by interposing a Dutch intermediate holding company between the US parent and the investment or subsidiary. Dutch entities are easy to maintain and cost-efficient with limited financial disclosure obligations. Dutch BITs typically contain a clause whereby existing investments continue to be protected for a certain period of time even if one of the signatory states decides to terminate the BIT.

Enforcement through international arbitration
In the event of a breach of the BIT investors have direct access to international arbitration leading to a judgment that is directly enforceable against a sovereign state. To initiate arbitration proceedings the deprived investor is not dependent of the cooperation of the involved signatory state. Often, initiating proceedings will make the state in breach receptive to settling a dispute.

How does a Dutch BIT benefit you as an International investor?
Dutch BITs make investments in politically unstable jurisdictions less risky and therefore more attractive. In the event of a deprivation of your investment you have access to international arbitration and enforceable compensation, if you have directly or indirectly structured the investment through a Dutch entity. It is widely accepted that every board of directors must have regard and has a responsibility to determine the nature and extent of the strategic risk it is willing to take in achieving strategic objectives. To fulfil this responsibility every board of directors must maintain sound risk management. Seeking maximum investment protection is crucial for reducing the corporate risk of your company.

Dutch BITs provide an extensive network of almost 100 treaties including emerging economies. Interposing a Dutch intermediate holding company for your assets and investments in political unstable countries will safeguard your investment against political risk and will assist the board of directors in its obligation to maintain adequate risk controls.

3.6. Industry

Both small industrial firms and large multinationals, some of them among the largest in the world, are active in the Netherlands. Industrial activity provides about 20% of GDP. The main industries are: agro industries, metal and engineering products, electrical machinery and equipment, chemicals, petroleum, fishing, construction, financial services and microelectronics.

3.7. Agriculture

The highly mechanised agricultural sector employs only 3% of the labour force, but provides large surpluses for export and the domestic food-processing industry. The Netherlands ranks third worldwide in value of agricultural exports, behind the US and France.

Dutch agricultural policy is based on the rules and regulations embodied in the CAP (EU Common Agricultural Policy).

4. Business entities

4.1. Introduction

In the Netherlands an enterprise may operate in the form of a separate legal entity:

- Naamloze Vennootschap (NV) Public limited company
- Besloten Vennootschap (BV) Private limited company.

An enterprise may also operate in the form of a non-legal entity: a sole proprietorship or partnership. There are other forms of business entities but they are rarely used.

4.2. The public limited company (NV)

This form is generally used by larger companies, particularly quoted companies.

The minimum share capital is € 45,000. Share capital can be made up of bearer shares or registered shares. Limitations on the transfer of shares can be included in the articles of incorporation, for example to guard against unfriendly takeovers. The NV is required to publish financial statements annually. However, small and medium sized NV's are exempt from many disclosure requirements (see chapter 5.3, Publication).

4.3. The private limited company (BV)

This form is used by many businesses, including some larger companies. A BV can be incorporated by one person. There is no minimum share capital so that € 0.01 can be sufficient. The share capital consists of registered shares. Share transfer restrictions are no longer mandatory. The BV is required to publish financial statements annually. However, small and medium sized BV's are exempt from many disclosure requirements (see chapter 5.3, Publication).

The private limited company legislation has become more flexible from 1 October 2012. The most important changes are:

- a minimum capital of 18,000 euros is no longer required.
- shares can be issued without a right to vote as well as share can be issued without a right to profit;
- the rules on capital protection and protection of creditors became more flexible;
- the private character of the BV and the rules on decision making within the BV became less strict;
- the new rules offer a large degree of flexibility in the governance structure of a BV.

4.4. Formation of a NV or BV

Incorporation is carried out in conjunction with a public notary. The approximate formation costs for a BV are € 2,000, including the notary's fee, assistance by an advisor etc.

The formation period for a BV will take about two weeks.
Formation regulations include:

- if the founder is an individual, his or her full name, address, date and place of birth and nationality must be stated; Copies of passports must be forwarded;
- if the founder is a company, its full name, address and country of incorporation must be stated; An extract of the Chamber of Commerce must be forwarded;
- the proposed name must not be misleading, too general, or too similar to an existing business;

- for a N.V. at least 25% of the authorised capital must be issued and paid in, with a minimum issued capital of € 45,000, for a BV the entire authorised capital can be paid later;
- the company's financial year can end at any date, but usually the calendar year is chosen;
- for managing directors (directeuren) and supervisory directors (Raad van Commissarissen) there must be given the full name, address, date and place of birth, nationality and occupation. Copies of passports must be forwarded.

4.5. Partnerships/joint ventures

Partners can be individuals, corporations (joint ventures) or both. There are three forms of partnerships:

- "vennootschap onder firma": This is a general partnership. All partners have unlimited liability.
- "commanditaire vennootschap": This is a limited partnership. General partners have unlimited liability, but non-managing partners (limited partners) are liable only to the extent of their personal capital in the partnership.
- "maatschap": This is a partnership for professionals. Partners are liable for debts they incur themselves, as well as a part of debts for which the partnership is legally bound.

The name, location and purpose of the partnership must be filed with the Chamber of Commerce.

Non-resident partners in a partnership conducting a business in the Netherlands will be deemed to have a permanent establishment (branch) for tax purposes.

4.6. Agencies and branches

Many importers appoint commercial agents to facilitate their entry into the competitive Dutch market. It is advisable to have written contracts with agents.

A foreign company can set up place of business in the Netherlands without forming a Dutch subsidiary company. In that case the foreign company has a branch in the Netherlands, this being an extension of the foreign company. The foreign company is responsible for its liabilities. The tax differences between a branch and a subsidiary are discussed in chapter 8.3, Company taxation.

4.7. Other types of business entities

- No special tax or legal provisions apply to off-shore companies. An ordinary Dutch company can be used as an intermediate company to obtain foreign source interest or royalty income.
- The concept of a trust is unknown in Dutch civil law. However, a BV or a foundation can achieve a similar effect.
- A co-operative society (coöperatie) is often used in the production and marketing of agriculture and dairy products, vegetables and flowers, and sometimes in the case of a mutual insurance company. It is primarily formed to represent the interests of its members collectively, rather than to earn profits. Formation is carried out in conjunction with a public notary. Co-operative societies must be registered with the Chamber of Commerce and are required to publish financial statements annually.
- A supranational legal form is a European Economic Interest Grouping,

to encourage cross-border co-operation in the European Union. It is primarily formed to represent the interests of its members collectively, rather than to earn profits for itself. If the European Economic Interest Grouping is seated in the Netherlands, it is considered a legal entity and must be registered with the Chamber of Commerce. A European Economic Interest Grouping is quite similar to the "vennootschap onder firma" (see chapter 4.5).
- Another supranational legal form is a European NV (Societas Europaea), to encourage cross-border co-operation. The minimum share capital is € 120,000. European NV's must be registered with the Chamber of Commerce. To form an European NV, at least two legal entities (or subsidiaries), which are subject to the law of different members of the European Union are needed. An European NV cannot be formed by individuals.

4.8. Transfer of shares

The transfer of a share or the transfer of a limited right to a share require a deed. The deed must be passed before a civil-law notary practising in the Netherlands.

4.9. Corporate Governance Code

Some companies, for example a listed company, also have to comply with the Corporate Governance Code. In the code applies the principle "comply or explain".

The Code contains principles and best practice provisions that regulate relations between the management board, the supervisory board and the shareholders.

4.10. Directors' liability

The main rule is that the company itself is liable. However, if the board does not act in the interest of the company there may be directors' liability. The main criteria is good governance.

5. Accounting requirements

5.1. General

European Union legislation applies to the preparation and publication of annual accounts for companies in the legal form of NV or BV and for some other legal entities. However, this legislation does not apply to sole proprietorships and most types of partnerships..

In addition, Dutch company law provides for specific requirements as to the form and content of financial reporting of business enterprises The financial reports and all underlying documentation, must be retained for a minimum of seven years. They are liable to inspection by tax officials. Annual accounts may be expressed in foreign currency;.

5.2. Accounts

The Dutch Civil code requires that the Board of Directors of all companies prepares within five months after the end of the reporting period (this period can extended by a maximum of six months):

- the financial statements comprising the balance sheet and profit and loss account, a cash flow statement, explanatory notes, and including consolidated financial statements of the group;
- the annual report (only for mediumsized and large companies) dealing with the company's state of affairs, and providing information about the prospects of the company for the next year, and;
- other information comprising the auditors' report (only for mediumsized and large companies), certain legal matters (such as statutory rules concerning result appropriation) and a statement of events after the reporting period which materially affect the financial position.

The Dutch Civil Code also requires that the Board of Directors arranges a shareholders' meeting once a year. The articles of association of the company often require a shareholders meeting within six months after the end of the reporting period

5.3. Publication

The Board of Directors has to file a copy of the financial accounts in Dutch, English, French or German at the Trade register of the Chamber of
Commerce within eight days after the date of the shareholders' meeting. If the Board of Directors does not fulfil these requirements in due time they may be liable in person. The filed annual accounts are available to the public.

The legal obligations of small and medium size companies are reduced, especially in relation to the publication of the annual report.

A company is be considered to be small, medium or large sized if it meets two of the three following criteria during two consecutive financial years. This also applies when the criteria are met on consolidated basis.

	Small	**Medium**	**Large**
Balance sheet total	< € 4.4 m	> € 4.4 m < € 17.5 m	> € 17.5 m
Turnover net of VAT	< € 8.8 m	> € 8.8 m < € 35.0 m	> € 35.0 m
Average number of employees	50 or less	50 - 250	more than 250
Filing:	abbreviated balance sheet and limited explanatory notes.	limited balance sheet, and profit and loss account full explanatory and notes Consolidated accounts where applicable and a cash flow statement.	balance sheet and profit and loss account in full including explanatory notes and directors’ report. Also consolidated accounts and a cash flow statement
Auditors’ report	no	yes	yes
It is expected that the above mentioned amounts will be increased in the future years. Different rules and criteria apply to insurance companies and credit institutions.			

6. Employment

6.1. Employment contract

The relation between an employer and an employee is governed by an employment contract. It is obligatory for an employer that the contract is in writing. Generally, differentiation is made between two types: individual contracts and contracts based on collective contracts (CAO).
Both types of contract contain agreements on salary, working conditions, probation periods (maximum of two months), and procedures for termination of the contract. Rules on minimum wages apply. Part-time and short-period work contracts are permitted under specific circumstances. Discrimination on grounds of sex, race, nationality and religion is forbidden.

6.2. Workers councils

When a company employs more than fifty people a workers council must be formed. This council has an advisory say in the general aspects of the business, especially on working conditions, mergers, investments etc.

6.3. Financial aspects

In addition to salaries or wages employees are generally entitled to:

- holiday payment of at least 8% of the yearly salary;
- holidays (minimum of four times the weekly working hours per year), but in some collective agreements much more;
- social security, such as providing for illness, disability and unemployment payments;
- pension plans, including pensions for widows and children.

6.4. Employment permits

Foreigners from outside the European Economic Area (EEA) who intend to stay and work in The Netherlands require a work permit. Without this permit these employees are not allowed to work in The Netherlands. In addition to a work permit, foreigners must often apply for other documents such as a visa or a residence permit. They must also register themselves with the immigration service (Immigratie- en Naturatisatie Dienst).

6.5. Trade unions

There are three main trade unions in The Netherlands which all work very closely together with employers and the Government.

6.6. Secondment the Netherlands

6.6.1. Visa's

For citizens of non-EU/EEA/Switzerland a so called Schengen visa is needed when they come to The Netherlands for a stay of up to ninety days.

6.6.2. Residence Permit

For citizens of non-EU/EEA/Switzerland a residence permit is needed when they mean to stay in The Netherlands for more than ninety days.
Special rules apply to extension of the residence permit.

6.6.3. Work Permit

For citizens of non-EU/EEA/Switzerland a work permit is needed when they mean to work in The Netherlands. A work permit is only valid for the specific job and ceases when the employee quits the job. In The Netherlands, no general work permit exists.

6.6.4. Expatriate regime

"Expatriate Regime" refers to the special regime applying to certain employees who come to work in The Netherlands.

A special allowance is granted to certain foreign employees who are assigned to a post with a domestic employer (i.e. an employer established in the Netherlands, or an employer not established in the Netherlands who is obliged to withhold payroll tax on the pay the employee receives).

If certain requirements are met, the employer may grant a special tax-exempt allowance of 30% (i.e. the 30% facility), which is paid in addition to an employees' pay and which provides a taxfree reimbursement for extraterritorial costs. One of the requirements is that a foreign employee must have specific expertise that is not or only barely available in The Netherlands. As from 2012 the amount of salary is relevant for the determination of this expertise. In general, if the foreign employee earns a minimum (year)salary of € 36,705 (2015) or € 27,091 (2015) if the employee is under the age of 30 and has a Master's degree, The employee is deemed to possess this specific expertise.

The maximum taxfree reimbursement is calculated on the basis of the level of pay in accordance with the provisions of the Payroll Tax Act.

To obtain the basis for calculating the 30%- allowance the salary is multiplied by a factor of 100/70. Employer reimbursements of school fees for children attending international primary or secondary schools are also exempt from tax. In addition to the 30%-rule, expenses incurred in connection with employment can be reimbursed tax free.

Foreign employees have to be recruited by or seconded to a domestic employer in the Netherlands and in the 24 months prior to the first day of work in The Netherlands, the employee worked more than 150 kilometers from the Dutch border.

The employer and his employee must first agree, in writing, that the 30%-rule shall be applied. Their joint request for the application of this facility must then be submitted to the tax office in Heerlen. Once the application has been approved, the 30%-rule may be applied.
The 30%-rule is applicable for a maximum period of 8 years (unless the decision is issued before 2012). This period is reduced by any previous period of employment with a domestic employer in The Netherlands, or by any time previously spent by the employee in The Netherlands, unless more than 25 years have elapsed since the end of such employment, or time spent in The Netherlands.

The foreign employee eligible for the 30% facility can choose partial non-resident taxpayer status, which will often mean that less tax is levied in The Netherlands.

7. Legal Aspects

7.1. Introduction Dutch judicial system

The Netherlands is a constitutional monarchy with a civil law legal system majorly based on and developed from the French Civil Code dating from the early nineteenth century. The system has also been influenced by ancient Roman and German law. After several revisions, the most recent civil law gradually came to full effect between 1970 and 1992.

The Dutch Constitution was established in 1814, but since then has often been revised. The most recent full revision was conducted in 1983.

7.1.1. Civil Law

Dutch civil law can be divided in three sections:

- the law on persons, which includes corporate law and family law.
- property law which includes contract law, employment law, commercial law, and the law of real property rights;
- intellectual property law, which includes the law on patents, copyrights, trademarks and trade names.

7.1.2. Constitutional frame

In the Dutch Constitution the following topics are dealt with:

- Fundamental rights;
- Government (Head of State and Ministers);
- Parliament (The States General);
- Council of State, Court of Auditors, permanent advisory bodies;
- Legislation and administration;
- The administration of justice;
- Provinces, municipalities, dike boards and other public bodies;
- Revision of the Constitution.

7.1.3. Civil Courts

The Dutch court system consists of:

The Supreme Court
The Supreme Court (Hoge Raad) is the highest court in matters civil, criminal and relating to tax law and is responsible for hearing appeals in cassation.

Appellate Courts
The districts of the Netherlands are divided into four areas of Court of Appeal jurisdiction. These Appellate Courts hear appeals from civil, criminal and administrative law.

District Courts
The Netherlands is divided into eleven districts, each with its own court. A district court consists of five sectors, including the administrative law sector, the civil/family law sector, the criminal law sector, and the sub-district sector.

Administrative Law Tribunals
In addition there are three special tribunals, which are specialized in specific areas of administrative law.

7.2. Liquidation & Insolvency

7.2.1. Liquidation

Liquidation can be initiated by various legal causes. The standard procedure for liquidation is based on a resolution passed by the General Meeting of Shareholders. In that case there are three types of procedures, being a standard procedure, a turbo-liquidation and an accelerated-liquidation.

In the standard procedure, the resolution to dissolve and liquidate must be registered with the Chamber of Commerce and a notice of liquidation must be published in a newspaper. In the two months following the publication, any party could file objection to the final account or the distribution plan.

7.2.2. Liquidation following insolvency

Insolvency could be another important reason for liquidation. Insolvency is governed by The Bankruptcy Act. This Act reports two types of proceedings for businesses:

a. Bankruptcy: liquidation of the assets and distribution of the proceeds amongst the creditors and;
b. Legal moratorium or suspension of payments: temporary relief from creditors in order to secure continuation of the business

Not only the debtor can file for bankruptcy. The following parties may file a petition for the bankruptcy of a business:

- the debtor;
- creditors (including foreign creditors);
- public prosecutor.

In case of bankruptcy a bankruptcy trustee (curator) is appointed by the court to settle the bankruptcy. The bankruptcy trustee is supervised by a bankruptcy judge (rechter-commissaris).

The Dutch bankruptcy law believes in equality of creditors, regardless of place of residence. As such, Dutch law treats domestic creditors and foreign creditors as equals.

A bankruptcy can be terminated in the four following ways:

- Cancellation;
- Liquidation;
- Closing;
- Composition.

Most often bankruptcies are ended by closing, because there are little to no assets.

7.3. Intellectual Property

7.3.1. Patents

The statutory regulations with respect to the exclusive rights of inventors are described in The Patent Act of 1995. When an inventor applies for a patent, it will be regarded as an application for a regular patent. The application for a regular patent is followed by a mandatory search for novelty.

If the outcome of this novelty search is negative, it does not necessarily mean that the patent will be denied. On request the patent can still be granted. However, when a patent is disputed, courts will decide on the (in)validity of the patent.

7.3.2. Trademarks

Trademark protection for the Benelux (Belgium, The Netherlands and Luxembourg) is provided by The Benelux Treaty on Intellectual Property Rights. A Benelux right to a trademark can be registered at the Benelux Trademark Office.

7.3.3. Copyright

Copyright is governed by The Dutch Copyright Act. There are no formal requirements to establish or maintain a copyright in the Netherlands.

8. Taxation

8.1. General

Dutch resident companies and individuals are subject to taxes on their worldwide income.

The principal taxes in the Netherlands are:

- personal income tax (“inkomstenbelasting”);
- wage tax (“loonbelasting”);
- corporate income tax (“vennootschapsbelasting”);
- dividend withholding tax (“dividendbelasting”);
- value added tax (“omzetbelasting”).

Dutch fiscal jurisdiction is restricted to the European part of the Kingdom of the Netherlands (so not to The Netherlands Antilles Curacao, Aruba and St. Martin. From 2010 there is a separate system for Bonaire, St. Eustatius and Saba). For the purposes of corporate and personal income tax, wage tax and insurance tax the territory of the Netherlands includes the Dutch part of the Continental Shelf.

For multinational enterprises, the corporate tax system has a number of aspects which make the Netherlands attractive as a conduit for foreign investments.

For expatriates (see 6.6.4), the 30% ruling can substantially reduce the individual tax burden.

The Dutch tax system does not provide for a branch withholding tax. It does not include a withholding tax on royalties or on interest. And there are no local taxes levied on business income in the Netherlands.

8.2. Horizontal monitoring

Horizontal monitoring is the name of the new control approach of the Dutch tax authorities. This enforcement policy is based on understanding, transparency and mutual confidence between taxpayer and tax authorities, and includes more than just complying with laws and regulations. The taxpayer must show that the Organization’s fiscal processes and relevant tax risks are controlled, a so called “Tax Control Framework”. In return, the approach of the Tax Office shifts from reactive (with tax controls on old years) to proactive.
The advantage is that the relevant tax risks and positions in current events can be handled within acceptable commercial deadlines. This security prevents unpleasant surprises afterwards and helps to accurately identify the tax cash flow, acute and deferred tax positions and minimize the uncertain tax positions. This saves time and money.

8.3. Company taxation

Dutch resident companies are subject to tax on their worldwide profits, including capital gains.

Non-resident companies are subject to corporate income tax only for certain types of Dutch-source-income, such as the profits of a business carried on in the Netherlands through a permanent establishment or permanent representative and income derived from immovable property in the Netherlands.

The Dutch corporate income tax rate is determined based on taxable income brackets.

The tax rate in 2015 amounts to 20% if the taxable income does not exceed € 200,000. To the extent that the taxable amount exceeds € 200,000 the corporate tax rate amounts to 25%.

Companies (and branches) are liable to corporate income tax and must file an annual tax return reporting their taxable profits.

The return has to be filed with the tax inspector within five months after the end of the tax year. If the year-end is December 31, the return should be filed before June 1. Entrepreneurs are obliged to file annual corporate income tax returns and income tax returns electronically.

Under a special arrangement between the tax authorities and tax advisers an "ordinary extension" of eleven months is normally granted.

The tax inspector issues final assessments based on the tax return.

The final assessment must be issued no later than three years after the end of the relevant tax year. If a deferment has been granted for filing the return, the period will be extended by the period of the deferment. Before the return has been filed, preliminary assessments and withholding taxes on dividends may be issued, which are set off against the final assessment.

The right to issue revised assessments expires five years (or in some cases twelve years) after the end of the tax year concerned (extended by the filing period extension).

8.3.1. Taxable income

The profit shown by the accounts on the historical cost basis forms the basis of a company's taxable income. The method of determining taxable income should be consistent from year to year.

It can be changed only if justified by so-called "sound business practice" ("goed koopmans-gebruik"), having a basis in generally accepted accounting principles as developed by the Dutch courts.

However, certain adjustments to the commercial profits have to be made, for example for exempt income and non-deductible expenses.

Capital gains are generally taxed, but on the disposal of a business asset the capital gain can be carried forward and offset against the cost of a reinvestment asset. This is known as the reinvestment reserve ("herinvesteringsreserve").

The reinvestment asset must be purchased within three years after the year the reinvestment reserve was established. Capital losses are in principle tax deductible.

Business assets can be depreciated over their useful lives. Business assets include both tangible assets and intangible assets (e.g purchased goodwill not in shares). The depreciation method should be consistent and in line with sound business practice.

However, depreciation is limited. Immovable properties held by investors can only be depreciated until the so-called WOZ-value is reached. The WOZ-value, based on the assumption that the property is free of lease, is determined by the Dutch municipalities each year under the Valuation of Immovable Properties Act ("Wet Woz"). Properties used by companies and entrepreneurs for their business are allowed to be depreciated until 50% of the WOZ-value.

The write-off period with respect to acquired goodwill will be at least ten years. Other assets must be depreciated over a period of at least five years.
Capital gains and losses on the sale of a qualifying participation are tax exempt (see par. 8.3.2).

Stock should be included at the lower of cost or market value. Fifo, Lifo, base stock method and average cost method are permitted.

With respect to work in progress an interim profit must be taken into account.
Royalties paid are as a rule tax deductible, if they are at arm's-length rates. Dividends paid are not tax deductible. Interest paid is, with some exceptions, tax deductible (see below).
Under the so-called innovation box, income from patented and unpatented intangibles developed by the taxpayer is taxed at an effective tax rate of only 5%.

8.3.2. Holding companies; the Dutch "participation exemption"

Due to the fact that the Netherlands has created one of the world's largest tax treaty networks, the Netherlands is a favourite country for the location of an international holding company, especially in combination with the unique rule, which exempts dividends and capital gains from Dutch tax by virtue of the so-called "participation exemption" ("deelnemingsvrijstelling").

A qualifying participation is a shareholding to which the following conditions apply:

- the shareholding consists of at least 5% of the nominal paid-up share capital. If a shareholding does not meet the 5% requirement anymore, the participation exemption may apply for three more years;
- if the shareholding is in a passive company, the participation investment will only apply if domestic or foreign subsidiaries are not held as a passive investment.

The motive of the taxpayer for holding shares in a (foreign) subsidiary is of importance to determine whether or not the participation exemption applies. The participation exemption does not apply to domestic and foreign subsidiaries which are held as passive investments ("Motive Test"). However, if the taxpayer can demonstrate that either the "Subject-to-Tax Test" or the "Asset Test" is fulfilled, the participation exemption is applicable even if the Motive Test is failed.

The Motive Test
A subsidiary is considered to be held as a passive investment if the taxpayer's objective is to obtain a return that may be expected from normal active asset management. If the taxpayer has a mixed motive, the predominant motive is decisive. A subsidiary is not held as a passive investment if the subsidiary is engaged in the same line of business as the taxpayer. Subsidiaries of top holding companies with an active management function and subsidiaries (engaged in a business) of intermediate holding

companies are not considered to be held as passive investments.

The Motive Test is deemed not to be met if more than half of the subsidiary's consolidated assets consist of shareholding(s) of less than 5% or if the predominant function of the subsidiary – together with the function of lower tier subsidiaries – is to act as a group finance company. Whether a captive insurance company is held as a passive investment will depend on whether the captive deals under at arm's length conditions, whether it has qualified personnel and whether it is subject to local regulatory supervision.

The Subject-to-Tax Test
This test requires that the subsidiary is subject to a profits-based tax with a normal statutory rate of at least 10%. In principle, it is no longer necessary to calculate the effective tax rate according to Dutch Tax standards. Tax base deviations, such as deviations resulting from different depreciation rules, special investment deductions, loss compensation or tax consolidation rules do not cause a tax to fail to qualify as a realistic levy. However, base differences caused by, e.g., tax holidays or deductible dividends may cause a levy fail to qualify as a realistic levy. The same is true in cases where taxation is deferred until profits are distributed and in situations in which locally a participation exemption system applies that is significantly broader than the Dutch system.

The Asset Test
The Asset Test is met if the taxpayer demonstrates that less than 50% of its directly and indirectly held assets consist of passive assets. A number of categories of assets do not qualify as passive, such as real estate assets that are used in an active leasing business and assets the income of which is subject to a profits-based tax which results in a 'realistic levy' by Dutch Tax standards (same meaning as for purposes of the Subject-to-Tax Test). Intragroup receivables are in principle passive assets, unless they are used by an active group finance company or are financed (90% or more) by third party debt or are subject to a profits-based tax which results in a 'realistic levy' by Dutch Tax standards.

Expenses incurred in connection with the investment in qualifying subsidiaries (acquisition costs, such as lawyer costs, indemnity costs and notary costs) are not tax deductible. Selling costs are also non-deductible. Capital losses on the formal liquidation of a company are deductible, but the rules are being harmonised with EU law.

Nevertheless, various anti-avoidance rules apply.

As from 1 January 2013 a new measure is introduced in order to limit the excessive deduction of interest relating to the financing of participations (see 8.3.4).

Under the participation exemption income derived from a qualifying participation is exempt from corporate income tax. A corresponding rule applies if the income partly originates from a period in which the taxpayer qualifies and to the period in which the taxpayer does not qualify for the participation exemption. In the so called "partitioning doctrine" the benefits can only be exempt for the period in which the taxpayer qualifies for the participation exemption. The derived income should be partitioned and attributed between the taxable period and tax exempt period.

8.3.3. Deductions: specific rules

Interest expenses

Interest payable by a Dutch company to its shareholders or to its subsidiary is non-tax-deductible if a dividend or capital has been repaid in the form of a note or if a capital contribution has been made by a Dutch company in form of a note.
Additionally, interest is disallowed if it is paid on related-party loans with respect to:

- Dividend distributions or repayments of capital;
- Internal reorganisations in which a Dutch company purchases the shares in an affiliate; and
- Capital contributions by a Dutch group company into subsidiaries that are in turn loaned to a Dutch group company.

However, (interest) expenses remain tax deductible, if the taxpayer can demonstrate that both the transaction and the loan were entered into for sound business reasons or that the interest paid is effectively subject to a reasonable level of profits tax in the hands of the recipient in situations that the taxpayer makes a reasonable case that the interest is taxable at a tax rate of at least 10%, the tax inspector will nevertheless have the opportunity to substantiate that either the liability or the corresponding transaction is not based on sound business reasons).

The tax deduction of interest can also be denied under the new measure for excessive participation interest (see 8.3.4) or if the loan is deemed to be an equity interest in the borrower (hybrid loan).

Several types of loans are treated as hybrid loans. The most important of these is a loan that has the following features: the amount of interest due is based on the profits of the company (or a related company), and the date of repayment is more than 50 years after the date of the concluding of the loan. The question whether a loan is a 'hybrid' or not, will (again) be answered by rules developed in case law.

A corresponding rule applies to Dutch corporate creditors as income from certain hybrid loans may under certain circumstances be tax exempt from Dutch corporate income tax under the participation exemption (see par. 8.3.2 participation exemption).

Regarding the above, interest free loans and loans with an interest rate considerably at variance with the market rate are deemed to be profit contingent if made between related parties.

Other expenses

In general, all expenses which have been incurred in the ordinary course of the business activity are tax deductible. For certain types of expenses the deduction is restricted.

Costs of representation and compensation for car expenses of employees are tax deductible to a limited amount or are partly taxed by the wage tax.

8.3.4. Deduction limitation for excessive participation interest

Thin capitalization rules are abolished as from 1 January 2013. This has caused a negative budget impact on tax revenue, which had to be offset by other measures, such as a deduction limitation for excessive participation interest.

In general, interest expenses related to loans obtained to finance the acquisition of a participation are deductible (provided no other limitations exist), while at the same time, the taxpayer can benefit from the participation exemption because income from a qualifying participation is not considered taxable income.

To avoid "excessively" leveraged acquisitions of participations, a new measure was introduced. It applies as from 2013 and limits the deductibility of interest (and related costs) on "excessively" leveraged acquisitions of participations. The restriction applies to loans obtained from third parties as well as group members, and regardless of whether the loan is used to finance Dutch or foreign participations.

However, the new rules will not disallow all interest deductions related to the acquisition of a participation. There are several exceptions, for example when a group expands its operational activities within the twelve months preceding or following the acquisition of the participation ("qualifying expansion").

Besides that, the first EUR 750,000 of interest is always deductible (for example: if the interest rate is 5%, an amount of € 750,000 corresponds to a loan of € 15,000,000).

8.3.5. Transfer pricing

The internationally accepted "at arm's length" principle has been incorporated into the Dutch Corporate Income Tax Act. Dealing at arm's length means doing business on the terms and conditions that independent parties would adopt.

As a consequence, taxable profits from related party transactions may be adjusted to conform to profits that would have been realised between independent parties.

An adjustment of profits may also lead to secondary adjustments, such as deemed dividend tax characterization, with consequent liability to dividend withholding tax.

The taxpayer is also required to maintain and make available documentation which demonstrates how the transfer prices have been established, and from which it can be established whether the prices conform to the at arm's length principle. The choice of method for setting transfer prices is, in principle, with the taxpayer.

If there is not sufficient information on how the transfer prices are established, the burden of proof that the prices are at arm's length lies with the company (i.e. reversed burden of proof).

Therefore, it is recommended that the taxpayer has a defensible and well documented transfer pricing policy in this respect.

Advance Pricing Agreements (APA) can be obtained in order to ensure the at arm's length nature of intragroup pricing.

8.3.6. Group taxation (fiscal unity) regime

Filing a consolidated tax return in the Netherlands is possible under certain circumstances. For corporation tax

purposes this means that the subsidiaries are deemed to have been absorbed by the parent company.
The main conditions for a fiscal unity ("fiscale eenheid") are:

- Each subsidiary must be at least 95% owned (legal and beneficial ownership of the shares), although the holding may be indirect through another Dutch company, provided the intermediary company also forms a part of the fiscal unity;
- The accounting period for all companies forming part of the fiscal unity must coincide; and
- The companies involved must be subject to the same tax regime[1].

Within a fiscal unity, losses of one company can be offset against the profits of another company.

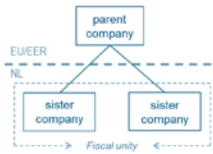
Furthermore, reorganizations within the fiscal unity can be done without any direct fiscal implications (within the fiscal unity fixed assets can be transferred at book value) as long as the fiscal unity is not broken up.

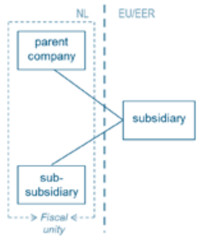
Intercompany profits within the fiscal unity may be deferred indefinitely.

In December 2014 the Deputy Minister of Finance published new policy statements for fiscal unities between a sister company of a European parent company and a fiscal unity between a domestic parent country and domestic sub-subsidiaries held through European intermediate holding companies.

1) *Under certain conditions foreign incorporated companies effectively managed in the Netherlands may be included in a Dutch fiscal unity.*

After meeting certain requirements two or more companies can be treated as one single taxpayer under the fiscal unity regime. As a consequence, the losses of one company can be set off against the profits of another group company in the same fiscal year. So the assets of the fiscal unity can be transferred within the group without corporate income tax being levied.





Due to the new policy statements, requests for a fiscal unity of domestic sister companies of EU/EEA resident parent companies or fiscal unity requests between domestic parent companies and domestic sub-subsidiaries which shares are held through one or more EU/EEA resident intermediate holding companies, will be granted under certain conditions.

The fiscal unity concept is frequently used in the Netherlands. It has particularly been used (by foreign investors) to facilitate the acquisition of a Dutch target company by setting up a separate holding company to purchase the target company.

If a Dutch holding company is used as an acquisition vehicle, it should be noted that interest deferral rules may apply as to the set-off of interest on acquisition loans against the profits of the acquired company within the fiscal unity.

The acquisition of the Dutch target company is usually effected through a Dutch intermediary holding company, which often borrows some or all of the necessary funds from a group company.

Subsequently, the Dutch holding company and the Dutch target company enter into a fiscal unity, intending to offset the interest expenses on the loan against the operating income of the target.

An important restriction for the tax deduction of interest expenses for so-called “acquisition holdings” entered into force on 1 January 2012.

This measure may limit the deduction of the interest expense on excessive loans obtained by a Dutch company that acquires a Dutch target company and subsequently will form a fiscal unity or legally merge (or apply a demerger) with the acquired Dutch company.

Under the new rules the interest expense on loans obtained to finance (e.g. group loans and third party loans) the acquisition will in principle be deductible against the stand-alone taxable income of the acquirer only, but no limitation will apply if (safe harbour):

- the interest expense is lower than €1 million (e.g. only the excess amount would be restricted and as such, the excess amount will not be deductible); or
- there is no “excess acquisition interest”. In short: acquisition loans are considered excess acquisition loans if in each separate year the total amount outstanding on acquisition loans exceeds a fixed percentage of the total amount of acquisition prices. This fixed percentage is 60% in the year the target is consolidated into the fiscal unity with the debtor of the acquisition loan and is reduced in annual steps of 5% until reaching 25% after seven years.

The measure generally applies as from 1 January 2012 with respect to structures established on or after 15 November 2011. Existing structures in which the target and acquiring entity entered into a fiscal unity before 15 November 2011 will in principle be respected.

The limitation for interest deduction only has an impact for acquisitions in The Netherlands which generate € 1 million interest expense per year; let us say any acquisition with a value of € 20 million or more (presuming a 5% interest rate applies). Whilst under the regime until 2012 it was generally possible to offset the interest expenses on funding loans obtained from non-related parties against the operational profits of the target company (through either the creation of a fiscal unity, a merger or demerger), as from 2012 this will only be possible within the parameters provided. For major acquisitions (say bigger than € 20 million) various alternatives exist to avoid the non-deductibility of interest expenses.
The first, and most logical, alternative may be to inject extra capital into the Dutch holding company and to allocate the excessive debt at other levels in the Group. But it may also be possible to agree with a form of equity funding by a financial institution thereby neutralizing the tax impact of interest expenses altogether and effectuate a lower rate of funding. And finally, a (partial) asset deal may become a preferred option as the new limitations do not apply to straightforward asset deals.

Which option is the best way forward will be dependent on the details of the acquisition.

8.3.7. (Tax) losses

The ability to set off corporate income tax losses has been limited. A loss may be offset against the taxable income of the preceding year (carry back) and against taxable income of nine years to come (carry forward).

A company can receive a provisional loss set-off in advance of the final determination of the loss in that year. In calculating this, a maximum of 80% of the probable loss is taken into consideration. In order to claim this, the return for the relevant year must have already been submitted. In addition, the final assessment for the year against which the loss is being set off must have been issued.

Losses incurred by an investment company or a company that wholly discontinues its business may only be compensated with future profits if at least 70% of its shares continue to be held, directly or indirectly, by the same persons.

If a company's business is reduced by more than 70%, and less than 70% of its shares continue to be held by the same person, losses that have not been offset may only be set off against future profits arising from the original business activities.
The carry forward and the carry back of losses from "pure" holding years to the profits from "other" activities from other years are restricted.

The intention of the rule is to avoid the losses incurred in years where the company merely had holding and financing activities being offset against profits of (newly started or acquired) other activities.

8.3.8. Branches of foreign companies

Non-resident companies may be subject to Dutch corporate tax if they carry on a business in the Netherlands through a branch which qualifies as a permanent establishment under Dutch tax law and/or the relevant tax treaty.

Case law has developed some guidance and criteria which more or less correspond with the definition in the OECD Model Convention.

The taxable income of a foreign company's Netherlands branch is determined in the same way as that of a Dutch resident company.

Therefore, transactions between head office and the branch might be examined by the authorities to ensure the application of the arm's-length principle.

8.3.9. Advance Tax Rulings and Advance Pricing Agreements

Certainty in advance as to the tax consequences of certain activities can be arranged for through the filing of an Advanced Pricing Agreement (APA) or an Advance Tax Ruling (ATR).

The tax ruling policy provides that a Dutch finance or royalty company which is primarily engaged in financial services activities only qualifies for a ruling if:

(a) the company meets certain substance requirements; and

(b) the functions, performed by the company, involve a certain risk. In the case of finance activities, this is considered to be the case if the activities are financed with equity of at least 1% of the amounts lent in and out.

Under the new tax ruling policy, tailor-made rulings can be issued. These apply to a person active in the Netherlands or planning on being active, through a Dutch corporate entity or a permanent establishment.

Issues that may be covered by ATRs include the applicability of the participation exemption, hybrid finance structures and for instance the existence of a permanent establishment in the Netherlands.

All tax rulings are issued by the APA/ATR-team of the tax administration for large companies in Rotterdam. Only members of this team can issue tax rulings.

If the taxpayer applying for a tax ruling is mainly acting as an internationally operating holding, royalty or finance company, the tax administration in Rotterdam will be the only competent authority for all the taxpayer's fiscal affairs.

In 2014, The Dutch minister of Finance announced a series of measures to prevent unintended use of tax treaties. The substance requirements have been codified for companies that wish to apply the Dutch treaty network or the EU Directives (including national rules for implementation of this Directives).

The substance requirements can be summarized as follows:

1. At least half of the statutory board members with decision-making authority live or are resident in the Netherlands;
2. Board members residing or established in the Netherlands have the required professional knowledge to properly perform their duties to properly perform their tasks;
3. The company employs qualified employees. The employees may be hired from third parties;
4. The Management decisions are taken in The Netherlands. This requirement obtains the physical presence of the directors of all important meetings in The Netherlands;
5. The main bank accounts of the company should be held in The Netherlands.
6. The financial records of the company are maintained in The Netherlands. This entails that the bookkeeping and administration must be physically present in The Netherlands. Even though all the transactions must be entirely accounted in The Netherlands it is not obligatory for the company to have the bookkeeping carried out in The Netherlands;
7. The registered office of the company is located in The Netherlands;
8. The company should not be considered a resident for tax purposes in another country than The Netherlands;
9. The amount of equity held by the taxpayer is at least appropriate for the required actual risk;
10. The company is compliant with all the tax obligations;
11. The company should have a sufficient level of risk with regard to the financing/ licensing/leasing/renting activities as further defined in Dutch tax law.

8.3.10. Mergers

For corporate income tax purposes three types of merger are recognised: the share merger, the business merger, and the legal merger.

In a normal situation tax will be due when a business activity is transferred from one company to another. The same applies to the transfer of shares (unless the participation exemption applies). The taxation can be circumvented when one of the merger facilities is used.

The share merger, or share-for-share exchange, is a facility in which shares in a company are transferred into another company in return for the issue of shares in that other company. In some cases this transfer is tax exempt based on the Dutch participation exemption. In other cases the share merger could be used. In that case the book value of the shares in the acquired company can be rolled over to the shares in the acquiring company that are received in exchange.

A business merger is a merger in which an independent part of the business activities (or all of the business activities) is transferred by one company to another company in exchange for shares in that other company. Under the facility for a business merger, the transfer may take place at book value, provided certain conditions are met, which means that capital gains and fiscal or hidden reserves will not be taxed. In certain situations, approval from the Ministry of Finance is required and standard conditions must be accepted.

A legal merger is a merger in which one company (the disappearing company) legally ceases to exist without formal dissolution and liquidation. All assets and liabilities are absorbed by another company (the absorbing company). In general, the shareholders of the disappearing company automatically become shareholders of the absorbing company. The tax treatment for corporate income tax purposes is similar to the asset and share merger.

8.3.11. Object exemption for foreign permanent establishments

Until 2012 a Dutch BV which has a permanent establishment ("PE") outside The Netherlands had to include the profits of the PE in its Dutch taxable profits (calculated on the basis of Dutch tax standards) and subsequently had to claim an exemption for the profits that could be allocated to the foreign PE.

This method had as an important side effect that losses of the foreign PE reduced the Dutch taxable base. There was a claw back provision if the PE became profitable in later years, but in any case the tax payer could enjoy an important cash flow advantage in the start up phase of the PE. If the PE stayed in a loss position, the advantage of tax deduction in The Netherlands would be final. Another side effect of the rules for calculation of the exemption for foreign PE results was that taxable mismatches could occur (like translation results) because the exemption was to be calculated on the basis of Dutch tax standards, whilst the PE is subject to tax in the other country on the basis of the tax laws of that country (and calculated in the currency of that country).

Because losses could be deducted immediately by the Dutch head office, this system was more beneficial than for instance the application of the participation exemption, because under the participation exemption the losses of a subsidiary are non-deductible (at least until liquidation). Therefore, there was a mismatch between the tax treatment of losses of a foreign PE in comparison to the tax treatment of losses of a foreign subsidiary. The idea behind the object exemption is that a PE and a subsidiary should to the extent possible be treated equally.

As from 2012, there is an "object exemption". The object exemption is applicable for an active foreign PE (branch). The object exemption means that profits and losses are exempted from the Dutch taxable base, similar to the participation exemption regime. This implies that foreign profits in The Netherlands will in essence no longer be subject to tax and that losses of a PE are no longer deductible (beware genuine "liquidation" losses).

The new regulations of the object exemption consist of three elements:

i. An object exemption for active foreign permanent establishments.
ii. A special regime for so-called "passive foreign portfolio investment enterprises".
iii. A special regime for the deduction of final losses ("liquidation losses").

There are transitional rules for example on how to deal with accumulated tax losses from an existing PE.

8.3.12 Investment incentives

Fiscal advantage can be achieved when in case of in environmentally friendly investments and energy-efficient technology.

VAMIL
The "VAMIL measure" is a tax facility offering companies the opportunity to apply accelerated depreciation on certain innovative environmentally-friendly operating assets. These assets appear on a special "Environment list".

The measure allows accelerated depreciation of 75% of the purchase price. This provides an attractive liquidity and interest gain for these companies. For the other 25% of the purchase price, normal depreciation-rules apply.

("MIA") Environmental Investment Rebate
The MIA (Environmental Investment Rebate) stimulates investments in environmentally friendly products or company resources with a tax advantage. Under the MIA rules up to 36% of the investment costs of an environmentally friendly investment can be deducted.

All Dutch entrepreneurs that pay income or corporate income tax apply the MIA and VAMIL to the assets on the Environment list. The arrangement is beneficial for, e.g. entrepreneurs in the agrarian sector, shipping and industry, but also for those who invest in sustainable transport, sustainable recreation and sustainable buildings.

The MIA can be combined with the VAMIL facility. The current Environment list includes about 370 investments eligible for the MIA or the VAMIL or the MIA and VAMIL. These investments are less damaging to the environment and go further than legal obligations.

("EIA") Energy Investment Allowance
Companies can apply the Energy

Investment Allowance (EIA) to invest in energy-efficient technology and durable energy under favourable fiscal conditions. An additional amount of 41.5% of the investment costs can be deducted from taxable income.
The Energy List provides about 160 energy efficient investments which can be taken advantage of with the EIA. Fiscal deductions are possible for clearly described investments (specific) but also for tailored investments (generic) which provide major savings on energy.

For application of the VAMIL, MIA and EIA facilities it is necessary to file a request within 3 months after ordering the asset.

Introducing innovative products
When a company has developed an innovative environmentally-friendly product or company resource that can be put on the market, then the product can be submitted for the Environment List. Energy-efficient technology and durable energy can be submitted for the Energy list. Periodically - in principle, once every year - the Environment List and Energy List is revised. Companies (suppliers and entrepreneurs) can propose a product or company resource for inclusion on the next Environment List or Energy List. Investments that comply less well with the aims of the MIA, VAMIL, EIA as a result of technological advances are removed from the list or adapted and new innovative investments are added.

Small scale Deduction (KIA)
For investments in assets with a total between € 2,300 and € 309,693 a deduction of up to 28% can be granted up to an amount of € 55,745. This rate is zero percent when the investments exceed € 309,693.

8.3.13. Innovation and financial incentives

The Netherlands provides various types of industry support, including financial incentives and subsidies to stimulate R&D activities.

Innovation box

The Dutch innovation box provides for a special tax regime under which R&D-income is to be allocated to qualifying intellectual property including self-developed patented intangible assets or qualifying R&D activities for which an R&D statement has been obtained.

- Companies can benefit from an effective corporate tax rate of only 5% for R&D income (royalties and capital gains) from self-developed patented intangible assets and also from self-developed unpatented intangible assets which qualify for the so-called WBSO.
- Intangible assets developed by another party for the risk and account of a Dutch taxpayer (contract R&D) also qualify for the Innovation Box if they concern patented assets.
- As to non-patented intangible R&D assets it is required that assets for more than 50% arise from activities of the Dutch taxpayer itself.

The main features of the Innovation Box are:

- The net proceeds derived form self-developed intangible assets for which one or more patents or WBSO statements have been acquired are taxed at an effective rate of 5%. The lower tax rate of 5% is claimed in the corporate income tax return filed by the taxpayer. The low tax rate is actually an exemption of 80% of the profits that can be allocated to the Innovation Box. By applying the general Dutch corporate income tax rate of 25% this gives an effective rate of 5%.

- Losses/expenses incurred in respect of intangible assets to which the Innovation Box applies are deductible at the normal tax rate of 25%, i.e. the Innovation Box will only apply after recovery of those losses and expenses at the normal rate.
- There is no cap on the amount of profits that can be allocated to the Innovation Box, however, a taxpayer should be able to substantiate that the profit is related to the qualifying intangible assets. It is generally advised to agree upon the allocation method used with the Dutch tax authorities in advance. In each province a specialist within the tax authorities has been appointed as first point of contact.
- The application of the Innovation Box is optional.
- From 2013 onwards, a taxpayer can choose to allocate a fixed percentage of profit to the innovation box. The lump sum is 25% of the annual profit (max. € 25,000). The facility of the fixed percentage can be applied in the initial year and the two following years.

WBSO

- The WBSO provides a fiscal incentive (hereafter R&D allowance) for companies that conduct R&D work (i.e. technical/scientific research, the development of technologically new physical products or physical production processes, and the development of technologically new software).
- The R&D allowance is a subsidy on labour costs that takes the form of reductions of wage tax and social-security contributions. As a rule, the R&D allowance amounts to 35% of the first € 250,000 of the total wages for R&D activities per calendar year, and 14% of the additional R&D wages . The maximum allowance per calendar year is € 14 million for each company (or corporate entity).
- The R&D allowance for start-ups (so-called techno starters) amounts to 50% of the first € 250,000 of the total wages for R&D-activities per calendar year, and 14% of the remaining R&D wage bill. The maximum allowance per calendar year is € 14 million for each company (or corporate entity).

The budgeted cost for 2015 is € 794 million.

Research & development deduction (“RDA”)

In 2012 a new tax incentive has been introduced to stimulate capital intensive research and development (R&D) activities in Netherlands. The new tax incentive is an addition to the already existing tax incentives on R&D costs.

The RDA incentive provides a deduction for costs and investments directly related to R&D (other than wage costs, which are covered by WBSO); and is an additional deduction, calculated over costs and investments.

The Ministry of Economic Affairs, Agriculture and Innovation (“R.V.O.”) determines what amount of relevant costs and investments qualify for the RDA. A percentage applies to this amount, the final amount will be stipulated in a formal RDA decision. The amount stated in the RDA

decision is deductible from the taxable profit. The RDA percentage is 60%. This means that a taxpayer who qualifies for the RDA, can have a maximum net reduction of its corporate tax rate of 15.0% (the general corporate tax rate being 20-25%).
The RDA only applies to costs incurred for and investments made in R&D incurred after 31 December 2011. In order to qualify for the RDA, a taxpayer has to submit a written request to the R.V.O. Thereafter the taxpayer is obliged to continuously provide correct information to the R.V.O. and keep records. In the event that a taxpayer fails to fulfil these obligations, and as a result thereof an incorrect RDA amount is being determined by the R.V.O., a penalty can be imposed on the taxpayer.

The budget for this tax incentive will be determined annually. The budget for 2015 is € 238 million.

8.4. Taxation of individuals

Residents in the Netherlands are subject to income tax on their worldwide income. The term 'residence' is not specifically defined in Dutch tax law but depends on the individual's personal circumstances, i.e. whether the individual is physically present in the Netherlands, whether he has his home and family there, and whether it is the centre of his economic interests.

Non-residents are subject to personal income tax only on certain Dutch-source-income such as income from employment and income from real estate situated in the Netherlands.

Non-residents can not apply for all the deductions, levy rebates and partner facilities as residents can, unless they opt to be regarded as residents which is under certain conditions possible.

Whether or not the Netherlands is allowed to levy tax depends on the provision of the relevant tax treaty, which allocates the right to tax between the two contracting states. If no tax treaty exists then the main rule applies (taxation in the Netherlands).

8.4.1. Income tax

Individuals are annually taxed on their taxable income in three separate income boxes.

Each box has a different tax rate. In principle, there is no ability to set off losses resulting from one box against positive income from another box.

Under certain circumstances, (fixed) personal tax credits directly decrease the income tax payable.

The three boxes are:
Box 1-Taxable income from employment and dwellings

This box of income includes:
- income from a non-incorporated company (on conditions, 14% of this income is exempt from income tax, due to the so-called "MKB-winstvrijstelling")
- income from present and past employment,
- income from other activities,
- other periodical payments,
- owner-occupied dwellings.

A taxpayer, who owns a dwelling which is at his disposal, must include (notional) imputed income in his taxable income. The income is calculated as a percentage of the market value of the dwelling.

The Box 1 (progressive) tax rates are divided in four brackets. The 2015 tax rates are:

Taxable income:	*Tax rate:*
€ 0 - € 19,882	36,5%
€ 19,822 - € 33,589	42%
€ 33,589 - € 57.585	42%
€ 57,585 - € higher	52%

The tax rates of the first two tax brackets (36.257% and 42%) both include a national social security contribution rate of 31.15%.

For individuals at the age they would be entitled to a Dutch government pension, the first two brackets are taxed at 18.6% and 24.10% (this includes a national social security rate of 13.25%).

Social security contributions are payable by all individuals (not only employees) and are limited to the first € 33,589of income (this is the end of the second tax bracket).

Box 2-Taxable income from substantial shareholdings

Broadly speaking a "substantial interest" *("aanmerkelijk belang")* in a Dutch or foreign limited company requires a minimum ownership (directly or indirectly), alone or together with a partner, of 5% of the issued share capital.
Dividends, interest and capital gains in connection with such a substantial interest are subject to tax at a flat rate of 25%. Related interest is deductible to 25%.

Box 3-Taxable income from savings and investments

This box replaces ordinary taxation of income from capital, other than income from a dwelling (Box 1) and from a substantial interest (Box 2).

The value of the net assets of the taxpayer at 1 January of the tax year is deemed to produce a fixed 4% return on investment.

This return on investment is taxed at a flat rate of 30%, resulting in a tax of 1.2% on the net assets.

An allowance of € 21,330 (double for partners) is tax exempted from the taxable base.

8.4.2. Lucrative investment

If an investment qualifies as "lucrative investment" the return realized will be treated as taxable income in box 1 at progressive tax rates.
The following share investments may qualify as "lucrative investments" if the returns are intended to provide for a reward for activities performed, and

- if it concerns an investment in:
    - a subordinate class of shares forming les than 10% of the total outstanding share capital, or
    - preference shares with an annual dividend of at least 15%;
- there are loans that have special conditions, to finance the share investment;
- there are special restrictions attached to the share investment;
- material leverage is created by, for example, the presence of different classes of shares, ratchet agreements, and/or high debt/equity ratio.

8.4.3. Wage Tax

All employees are subject to wage tax and national social insurance contributions. The employer must withhold the wage tax from the salary paid to the employee. The wage tax that has been withheld must be paid to the tax authorities by the employer.

Wages are generally paid in cash, such as salary, holiday allowance, overtime payment and anything else the employer pays to an employee which is deemed to be remuneration for his work. Other forms of wages are remuneration in kind, claims and (free) reimbursement and facilities.

Free reimbursements are any amounts an employer pays an employee to cover costs the employee incurs in order to perform his work properly. If allowances in kind may be issued tax free, they may usually be reimbursed tax free as well. Some reimbursements and facilities are not deemed to be part of the (taxed) income, some are exempt from tax up to a given limit and some are subject to tax for a fixed sum which will be part of the employee's wages. The part that is not tax-free is subject to tax.

The wage tax can be considered an advance payment of income tax and can therefore be credited against the income tax due. The wage tax also includes the national social security contributions (see 8.4.1).
Pensions and social security payments are also subject to wage tax.

As per 1 January 2011 a new scheme has been introduced: the work-related costs scheme ("werkkostenregeling"). As a result, the employer is able to spend up to a maximum of 1.2% of the total taxable pay (the exemption) on tax-free reimbursements and benefits for the employees. Payroll tax in the form of a final levy of 80% will be payable over any amount in excess of the exemption.

The work-related costs scheme makes it easier for employers to reimburse and/or provide a number of things tax-free to their employees, without having to register this at employee level.

The work-related costs scheme may turn out to be more expensive or much cheaper than the system of the past. Therefore, up to and including 2014 employers have the choice to use the previous system or the new work-related costs scheme with regard to compensation and supplies. As of 1 January 2015 the option to choose is annulled and only the work-related costs scheme will be in force.

8.4.4. Taxation period

The income tax year is the calendar year. The income tax return must be filed before April 1st following every tax year. Under a special arrangement between the tax authorities and tax advisers an "ordinary extension" of thirteen months is normally granted.

Entrepreneurs are obliged to file tax returns for income tax electronically.

Filing a return leads to the issuance of a tax assessment, in which credit is given for tax paid on preliminary assessments.

Fines can be imposed when a tax return has been filed too late.

8.5. Value Added Tax (VAT)

VAT short for Value Added Tax ("omzetbelasting" or "btw") is charged on the supply of goods and services in the Netherlands made by an entrepreneur with exception of zero rated transactions and specifically exempted transactions.

The VAT-system is based on the EU VAT-directive and is similar to the VAT-system in all other EU-countries but there are some significant Dutch elements. Each country in the EU can decide to implement certain regulations, so there are still differences between the VAT-systems in the various EU-countries. For instance on the topics of VAT rates and reverse charge-regulations.

VAT is essentially a tax paid by the end consumer. Entrepreneurs in each chain of the supply charge VAT on sales invoices (output VAT).

Entrepreneurs who have VAT-taxable transactions can deduct the VAT on purchase invoices (input VAT) with exception of certain costs. Private individuals can not deduct the VAT on purchase invoices.

Entrepreneurs report the output VAT and input VAT in the periodic VAT-return and the balance of both is paid to or reclaimed from the tax authorities.

Several types of transactions are exempt from VAT, which means that VAT may not be charged on the transactions and that VAT previously paid on these transactions may not be deducted.
Examples of exempted transactions are healthcare, education and real estate services.

Foreign companies that supply goods or services in the Netherlands do not neccesarily need to register for VAT-purposes in the Netherlands at all times This registration –when needed– has to be done with the tax office in Heerlen.

8.5.1. VAT-rates

The standard VAT-rate is 21%.
For certain "basic" goods and services a reduced rate of 6% is applicable. Examples of these goods and services are: foods and beverages, medicines and hotel-services.

A 0% rate is applicable on exports of goods. The 0% rate is also applicable on transport and related services with regard to the import and export of goods. Supplies of goods and services to entrepreneurs in other EU- countries are zero rated or VAT reverse charged. These transactions do need the VAT-number of the customer to be reported in a periodic listing.
The input-VAT incurred for transactions which are zero rated can be deducted, this in contrary to VAT incurred for exempted transactions.

8.5.2. Fiscal rep

When goods are imported into the EU, VAT on the value of the imported goods has to be paid to the tax authorities of that country at the moment that the goods are imported. The reclaim of the VAT can only be done in the periodic VAT-return (1 to 3 months later).

The Netherlands in contrast to most other EU Member states has a regulation that makes it possible to defer the due VAT on import to the periodic VAT-return. In the same VAT-return a refund of the due import

VAT can be claimed. This creates a cash flow advantage as no actual payment have to be made to the tax authorities for the VAT on import.

Foreign entrepreneurs can only use this regulation if a fiscal representative in the Netherlands is appointed. A fiscal representative works for the foreign entrepreneur and deals with all VAT-obligations of the foreign entrepreneur (preparing and filing of VAT-returns, EU Sales lists and Intrastat returns). The fiscal representative and the foreign entrepreneur are together liable for the correct filing of the VAT-returns.

Another requirement for using the deferment of import VAT for foreign entrepreneurs is that a bank guarantee is issued in favour of the tax authorities.

8.5.3. (Electronic) invoice requirements

If an entrepreneur supplies goods or services to other entrepreneurs an invoice has to be issued. In some situations an invoice for the supply of goods or services to private individuals is mandatory, but for most situations no invoice has to be issued to private individuals.

The invoices must contain some basic requirements such as name and address of supplier and customer, VAT-number of supplier, invoice number etc. The VAT-amount should always be stated in euro's, even if the invoice is issued in another currency. For situations where the VAT is reverse charged to the customer the VAT-number of the customer should be stated on the invoice.

There is no specific regulation on where the specific information should be mentioned on the invoice. The invoice is therefore form-free.

Invoices can be issued on paper or be electronic. Electronic invoices should contain the same basic elements as paper invoices. Electronic invoicing is only allowed if this is accepted by the recipient of the invoice. The electronic invoice is deemed to be accepted by the recipient of the invoice if the recipient processes and pays the invoice without comments.

The supplier is obliged to guarantee the origin, the content and the readability of the invoice. The supplier can choose his own method to guarantee this. An example mentioned in a decree is the sending of PDF-invoices via e-mail. In contrary to other EU countries an advanced electronic signature is not necessary.

The incoming and outgoing invoices should be kept in the administration of the entrepreneur for 7 years (10 years for real estate). The invoices can be stored electronically. The tax inspector should be able to receive the electronically stored invoices within a reasonable time. It is not necessary that the invoices are stored on a server which is based in the Netherlands.

8.5.4. Import duties ("invoerrechten")

Import duties ("invoerrechten") are levied on goods imported from outside the EU. The rates vary in accordance with EU requirements.

The rates for raw material and minerals are generally low but for manufactured goods, the rates are higher.

Paid import duties can't be reclaimed. When importing goods into The Netherlands if the goods will be distributed outside the EU a bonded warehouse can be considered to avoid import duties.

8.5.5. Excise duties ("accijnzen")

Excise duties ("accijnzen") are levied on certain consumer goods such as alcoholic beverages, tobacco, fuels, mineral oils etc. The tax is included in the retail price of the goods and is paid by the importers and manufacturers of the goods.

8.5.6. Tax on private cars and motorcycles ("belasting van personenauto's en motor-rijwielen")

Tax on private cars and motorcycles ("belasting van personenauto's en motorrijwielen") is a special tax which is paid by the buyer of a private car or motorcycle. It is levied at a fixed rate on the net list price of the car or motorcycle.

8.6. Other taxes

8.6.1. Dividend Tax

Dividend tax ("dividendbelasting") is an advance payment for individual income tax or corporate income tax. The company paying a dividend is obliged to withhold 15% dividend tax.

The maximum rate under many Dutch tax treaties is 15%. Tax payers to whom the 15% rate applies under a tax treaty, will no longer have to request a refund.

If the shareholder is an EU-resident company which qualifies for the EU Parent-subsidiary directive, is subject to a profits tax in its country of residence and is the beneficial owner of the dividends and has a minimum holding of 5%, the Dutch subsidiary is no longer obliged to withhold Dutch dividend tax.

The 15% tax rate may also be reduced if a tax treaty applies, depending in the recipient's status. Intercompany dividends are often subject to a reduced tax rate of 0% to 15% (depending on the relevant tax treaty).

8.6.2. Gift and inheritance taxes

The Inheritance Tax Act ("Successiewet") comprises two types of taxes in fact: inheritance tax *("erfbelasting")* and gift tax *("schenkbelasting").*

If property is acquired by inheritance or gift, and the deceased/donor was a resident of the Netherlands, inheritance or gift taxes are imposed. Both inheritance and gift taxes are levied at the same (progressive) rates.

The (progressive) tax rates are divided in two brackets, and depend on the relationship between the deceased/donor and the heir/donee. The 2014 tax rates are:

Inheritance or gift:	tax rate spouse/child	tax rate unrelated parties
< € 121,296	10%	30%
> € 121,296	20%	40%

In principle the donee/heir will be taxed. There are several tax exemptions and tax-free allowances, particularly for spouses and children and companies.

If property is acquired through inheritance or gifts from a non-Dutch resident only certain types of Dutch-source property are subject to tax.

8.6.3. Real property transfer tax

Real property transfer tax is in principle levied at 6% on the fair market value of real property. For dwellings designed for human habitation, the tax rate is decreased to 2%. The tax is payable by the purchaser of the property.

Shares which are part of a substantial interest in a real estate company are deemed to be real estate for purposes of the transfer tax. Therefore the transfer of such shares is taxed with real property transfer tax.

For purposes of transfer tax, a substantial interest is, in general, defined as a shareholding of at least 33 1/3 %.

The tax law has several exemptions in which case no taxation is due, for example in the case of a merger or reorganization.

An inheritance or gift from a non-Dutch-citizen, who has died or made a gift within ten years after his departure from the Netherlands, may be treated as inheritance or gift from a Dutch resident.

The Netherlands has concluded inheritance tax treaties with Austria, Finland, Israel, Aruba, Curacao, St. Martin, Sweden, Switzerland, the United Kingdom and the United States. Gift taxes are also covered by the tax treaties with Austria, Aruba, Curacao, St. Martin, the United Kingdom and the United States.

8.6.4. Real estate tax

Municipalities are entitled to levy a tax on the value of real estate (buildings and land). The tax rates vary for each municipality. Only the owner is liable for the tax.

8.7. Social Security Contributions

The Netherlands has an extensive social security system and social security contributions are withheld (for employees), paid by the employers and paid by the self employed together with wage tax or personal income tax respectively.

Broadly speaking, there are two types of social security, general social security (which covers all individuals) and social security for employees.

Contributions as at 1 January 2015	**National insurance schemes** (contribution paid to the Tax Department)		
Contribution %	**AOW**	**ANW**	**WLZ**
Employer	-	-	-
Employee	17.90	0.60	9.65

Contributions as at 1 January 2015	**National insurance schemes** (contribution paid to the Tax Department)					
Contribution %	**WAO/ WIA** Basic contribution	**Whv** Standard contribution	**WW** (Awf)	**WW** (Sfn average contribution)	**KO** Compulsory Childcare contribution	**ZVVW**
Employer	5.25	1.15	2.07	1.97	0.50	6.95
Employee	-	-	-	-	-	-

All persons in the Netherlands are obliged by law to be insured under the National Insurance Schemes. The maximum income assessable for employee insurance schemes and ZVW is € 51,976 per year (€ 199.90 per day).

9. *Tax treaties*

The Netherlands has concluded tax treaties, for the avoidance of double taxation with respect to taxes on income and wealth, with the following countries:

Albania
United Arab Emirates
Argentina
Armenia
Aruba, Curaçao and St. Martin
Australia
Austria
Azerbaijan
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Bermuda
BES islands*
Brazil
Bulgaria
Canada
China
Croatia
Czech Republic
Denmark
Egypt
Estonia
Ethiopia**
Finland
France
Georgia
Germany**
Ghana
Greece
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Japan
(former) Yugoslavia (applies to: Bosnia-Herzegovina, Kosovo, Montenegro and Serbia)
Jordan
Kazakhstan
Kuwait
Kyrgyzstan
Latvia
Lithuania
Luxembourg
Macedonia
Malawi**
Malaysia
Malta
Mexico
Moldova
Morocco
New Zealand
Nigeria
Norway
Oman
Pakistan
Panama
Philippines
Poland
Portugal
Quatar
Romania
Russia
Saudi Arabia
Singapore
Slovak Republic
Slovenia
South Africa
South Korea
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Taiwan
Tajikistan
Thailand
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Kingdom
United States
Uzbekistan
Venezuela
Vietnam
Zambia
Zimbabwe

* *the island territories of Bonaire, St. Eustatius and Saba (BES-Islands) are part of The Netherlands as extraordinary overseas municipalities.*
** *a new tax treaty will probably enter into force on January 1st, 2016*

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