

**DOING
BUSINESS
IN**

Netherlands



HLB Netherlands

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 The Netherlands 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.

The board of HLB Nederland Accountants & Consultants

J. Duurland RA
drs. E.W. van der Haar RA
P.J. Houweling RA
J. Nannen AA/Fb

© HLB Nederland Accountants & Consultants B.V.
Sixth edition, October 2006

***doing business
in the
Netherlands***

about HLB International

HLB International is a worldwide organisation of professional accounting firms and business advisers, each providing clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Formed in 1969, HLB can assist clients to do business in over 100 countries, with more than 1,880 partners and 11,600 staff in over 450 offices.

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

HLB International
Executive Office
21 Ebury Street
LONDON SW1W 0LD
Telephone: +44 (0)20 7881 1100
Fax: +44 (0)20 7881 1109
E-mail: mailbox@hlbi.com
Website: www.hlbi.com

HLB International is a world-wide organisation of professional accounting firms and business advisers, each of which is a separate and independent legal entity and as such has no liability for the acts and omissions of any other member. HLB International Limited is an English company limited by guarantee which co-ordinates the international activities of the HLB International organisation but provides no professional services to clients. Accordingly, HLB International Limited has no liability for the acts and omissions of any member of the HLB International organisation, and vice versa.

contents

Foreword	
About HLB International	2
General information	4
Country profile	4
Government	5
Economic structure	5
Trade and distribution	5
Industry	6
Agriculture	6
Business entities	7
Introduction	7
The public limited company (NV)	7
The private limited company (BV)	7
Formation of a NV or BV	7
Partnerships/joint ventures	7
Agencies and branches	8
Other types of business entities	8
5. Accounting requirements	9
5.1. General	9
5.2. Accounts	9
5.3. Publication	9
6. Employment	11
6.1. Contracts of employment	11
6.2. Workers councils	11
6.3. Financial aspects	11
6.4. Permits for employment	11
7. Taxation	12
7.1. General	12
7.2. Company taxation	12
7.2.1. Taxable income	12
7.2.2. Holding companies: the Dutch participation exemption	13
7.2.3. Deductions: specific rules	13
7.2.4. Thin capitalization	14
7.2.5. Transfer pricing	14
7.2.6. Group taxation (fiscal unity) regime	15
7.2.7. (Tax) losses	15
7.2.8. Branches of foreign companies	16
7.2.9. Advance Tax Rulings and Advance Pricing Agreements	16
7.2.10. Merges	16
7.3. Taxation of individuals	17
7.3.1. Income tax	17
7.3.2. Expatriate Tax Regime	18
7.3.3. Wage Tax	18
7.3.4. Net Wealth Tax	18
7.3.5. Taxation period	18
7.4. Other taxes	18
7.4.1. Value Added Tax (VAT)	18
7.4.2. Dividend Tax	19
7.4.3. Gift and inheritance taxes	19
7.4.4. Real property transfer Tax	19
7.4.5. Real estate Tax	20
8. Social Security Contributions	20
8. Tax treaties	21

general information

Country profile

With a population of over 16 million, bordering on the North Sea, Belgium and Germany, the Netherlands - generally known as "Holland" - encompasses about 35,000 square kilometers, 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 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. Rotterdam is the world's largest port. And in Maastricht, the most Southern city of the Netherlands, the euro was born.

The Netherlands is a member of the EU and strategically situated within this major international market at the centre of an excellent distribution network. Some 160 million consumers reside within a less than 500-kilometer 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 5,000 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 established their European headquarters in the Netherlands. Foreign companies provide work for about 48,000 people. For example: In the

industrial sector about 20% of the personnel are working for foreign employers. As result of the EU enlargement since May 1, 2004 this percentage will increase.

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 businesslike. 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.

Government

The Netherlands has been a constitutional monarchy since 1848, with the executive formed by the Queen and her council of Ministers. The Queen herself 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 more powerful 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: 2% to 3% per year.

The unit of currency is the euro, which is divided into 100 cents. The euro is the single currency of 12 EU countries. As result of the EU Enlargement since May 2004, the number of countries with the euro as currency will definitely 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.

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 largest and busiest harbour. 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 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.

3.5. 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 26% of GDP. The main industries are: agroindustries, metal and engineering products, electrical machinery and equipment, chemicals, petroleum, fishing, construction and microelectronics.

3.6. Agriculture

The highly mechanised agricultural sector employs only 4% 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).

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, specially 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)

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 entity 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. The minimum share capital is €18,000. The share capital consists of registered shares, and it is usual to include restrictions on their transferability.

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).

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 with the minimum share capital are €2,000, including the notary's fee, assistance by an accountant, a name search etc.

The formation period for a BV is about two weeks.

Formation regulations include:

- if the founder is an individual, his or her full name, address, date and place of birth, nationality and occupation must be stated;
- if the founder is a company, its full name, address and country of incorporation must be stated;
- the proposed name must not be misleading, or too general, or too similar to an existing business;
- at least 20% of the authorised capital must be issued and paid in, with a minimum issued capital of €18,000 for a BV and €45,000 for a NV;
- 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 partnership:

- *de vennootschap onder firma*.
This is a general partnership. All partners have unlimited liability. Name, location and purpose of the partnership must be filed with the Chamber of Commerce;
- *de 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 capitals in the partnership;
- *de 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. It is

expected that during 2006 a new law will be introduced. Based on this law all these partnerships will be transformed into an Openbare Vennootschap. Partners of this new entity will be fully liable for all debts of themselves, the partnership as well as of the other partners.

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 7.2, 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 a European NV, at least two legal entities (or subsidiaries), which are subject to the law of different members of the European Union are needed. A European NV can not be formed by individuals.

5. Accounting requirements

5.1. General

European Union legislation applies to the preparation and publication of annual reports for companies in the legal form of NV or BV and for some other legal entities. However, the legislation does not apply to privately owned businesses.

In addition Dutch tax and company law provides for specific requirements as to the form and content of the books of account of business enterprises. Books of account, together with all underlying documentation, must be retained for a minimum of seven years. They are liable to inspection by tax and social security officials. Accounts may be expressed in foreign currency; tax returns can also be filed in a foreign currency.

5.2. Accounts

The Dutch Civil code requires that the Board of Directors prepares and presents to the shareholders within five months after the balance sheet date:

the annual report

comprising the balance sheet and profit and loss account, with explanatory notes, and including consolidated financial statements of the group;

the directors' report

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, certain legal matters (such as statutory rules concerning result appropriation) and a statement of post-balance sheet events which materially affect the financial position.

The Code also requires that within six months after the balance sheet date the Board of Directors arranges a shareholders' meeting, as provided for in the articles of association.

5.3. Publication

The Board of Directors has to file a copy of the accounts in Dutch, English, French or German with the Trade register of the Chamber of

Commerce within eight days after the date of the shareholders' meeting. If a shareholders' meeting has not taken place, publication of the unapproved accounts must take place within thirteen months after the balance sheet date. If the Board of Directors does not fulfil these requirements in due time they may be liable in person for damages caused by lack of punctuality etc.

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

A company will be considered to be small or medium sized if it meets two of the three following criteria during two consecutive financial years and on a consolidated basis:

	Small	Medium	Large
Balance sheet total	maximum € 3.65 mln	maximum € 14.65 mln	more than € 14.6 mln
Turnover net of VAT	maximum € 7.3 mln	maximum € 29.2 mln	more than € 29.2 mln
Average number of employees	maximum 50	maximum 250	more than 250
Filing:	summary balance and limited notes	limited balance sheet, and profit and loss account and notes there on in full. Inclusive other information	balance sheet and profit and loss account in full inclu- sive notes thereon and directors report

Different rules apply to insurance companies and credit institutions.

6. Employment

6.1. Contracts of employment

The relationship between employer and employee is governed by an employment contract, which is usually in writing. There are two types: individual contracts and collective contracts (CAO).

Both types of contract contain agreements on salary, working conditions, probation periods (maximum of one, sometimes two months), and termination procedures. There are rules on minimum wages for young employees. Part-time and short-period work contracts are permitted. Discrimination on grounds of sex, race, nationality and religion is forbidden.

6.2. Workers councils

When a company employs more than 50 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 generally benefit from:

- holiday payment of at least 8% of the yearly salary;
- holidays (minimum 20 days a year), but in some collective contracts much more;
- social security, providing for sickness, disability and unemployment payments;
- pension plans, including pensions for widows and children; and
- sometimes share option schemes.

6.4. Permits for employment

Foreigners who are not EU nationals and who intend to stay for more than 3 months are required to report to the police department within 8 days of their arrival and apply for a residence permit. Foreign nationals who are not EU nationals and who wish to be employed in the Netherlands require a work permit. Foreign nationals of those Middle and East European countries that became EU members on 1 May 2004 also require a work permit. Work permits can be difficult to obtain. The work permit has to be applied for by the employer.

7. Taxation

7.1. General

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

The principal taxes in the Netherlands are:

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

Dutch fiscal jurisdiction is restricted to the European part of the Kingdom of the Netherlands. 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 7.3.2), the well-known 30% concession can substantially reduce the individual tax burden.

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

7.2. 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 rate of corporate income tax is 29.6% in 2006 and will decrease to 25.5% in 2007. The

rate of corporate income tax on the first €22,689 profit is 25.5% in 2006. In 2007, the rate of corporate income tax will decrease as follows: 20% on the first €25,000 profit and 23.5% for profits between €25,000 and €60,000.

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.

Under a special arrangement between the tax authorities and tax advisers an “ordinary extension” of nine months is normally granted.

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

7.2.1. 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 and 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.

Capital gains and losses on the sale of a qualifying participation are tax exempt (see par. 7.2.2).

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

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 tax deductible (see below).

7.2.2. 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 (or, if less, the shares are held in the course of the ordinary business activity of the taxpayer or the acquisition serves a general interest);
- the shares in the Dutch resident or nonresident company may not be held as inventory (this provision is mainly designed for certain empty shelf-companies, held by financial institutions);
- where the shares are those of a non-resident company, the company must be subject to a profits tax in the country in which it is located;

- shares in a non-resident company must not constitute a portfolio investment in the hands of the parent company. The latter requirement does – in principle - not apply in cases of a participation of 25% or more in qualifying companies, resident in other EC countries.

If these requirements have been met the participation exemption is applicable by virtue of Dutch tax law.

Expenses (such as interest) incurred in connection with the investment in qualifying subsidiaries were in previous years not tax deductible, unless such expenses were instrumental to derive, directly or indirectly, profits taxable in the Netherlands.

However, due to the decision of the European Court, known as the "Bosal case", all costs related to EC and EEA participations, were fully tax deductible, up to December 31, 2003.

As from 1 January 2004, the cost disallowance rule has been abolished on all non-Dutch participations.

Capital losses on the sale of qualifying participation are not tax deductible unless they arise on the formal liquidation of a company.

Nevertheless, various anti-avoidance rules apply.

We should like to point out the fact that the requirements for the participation exemption will change in 2007.

7.2.3. Deductions: specific rules

Interest expenses

Interest payable by a Dutch company to its shareholder or to its subsidiary is non-tax-deductible if a dividend has been distributed 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.

The tax deduction of interest can also be denied under the Dutch thin capitalisation rules (see par. 7.2.4.) 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 10 years after the date of the concluding of the loan.

A corresponding rule applies to Dutch corporate creditors as income from certain hybrid loans may under circumstances be tax exempt from Dutch corporate income tax under the participation exemption (see par. 7.2.2.).

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 with wage tax.

7.2.4. Thin capitalization

As from January 1, 2004 a specific debt-to-equity ratio applies in the Netherlands. As a consequence interest paid on intercompany loans -will not be tax deductible to the extent the average net fiscal debt exceeds more than three times the company's average fiscal equity. The 'excess debt' is only considered excessive when it exceeds € 500,000.

As an alternative to this 'fixed ratio test', the taxpayer can choose to apply the debt financing ratio of the group as a whole as the standard of comparison ('group test').

When applying these ratios, the following is of relevance. Debt and equity are determined by the average amounts at the start and at the end of the financial year.

7.2.5. 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 (up to 25%).

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.

7.2.6. 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 regime¹.

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.

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.

If the acquisition loan has been obtained from a related party, the deferral rules apply. The interest charges can then not be offset against the profits of the target company but are carried forward for a period of eight years.

Within the above-mentioned eight year period the interest may only be set-off against the acquiring company's profits.

7.2.7. (Tax) losses

A loss may be offset against the taxable income of the three preceding years (carry back) and against taxable income of all years to come (carry forward).

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 compensated with future profits arising from the original business activities.

As of January 1, 2004, 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.

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

7.2.8. 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.

7.2.9. 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 a Advanced Pricing Agreement (APA) or an Advance Tax Ruling (ATR).

The new tax ruling regime came into force on 1 April 2001 and was updated on August 2004.

The new 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.

7.2.10. 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 (see 7.2.2)). 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 of the 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 merger.

7.3. 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.

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).

7.3.1. 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 possibility 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 includes income from a non-incorporated company, income from present and past employment, other activities, pension and other periodical payments as well as owner-occupied dwellings.

The 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 (up to 0.60%) of the market value of the dwelling with a maximum of € 8,900.

The Box 1 (progressive) tax rates are divided in four brackets. The 2006 tax rates are:

<i>Taxable income:</i>	<i>Tax rate:</i>
€ 0 - € 17,046	34.15%
€ 17,046 - € 30,631	41.45%
€ 30,361 - € 52,228	42%
€ 52,228 - € higher	52%

The tax rates of 34.15% and 41.45% both include a national social security contribution rate of 31.70%.

For individuals of 65 years and older the first two brackets are taxed with 16.25% and 23.55% (this includes a national social security rate of 13.80%).

Box 2-Taxable income from substantial share-holdings

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 substantial interest are subject to tax at a flat rate of 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 average net value of the net assets of the taxpayer as at 1 January and 31 December 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 € 19,698 (double for married couples) is tax exempted from the taxable base.

7.3.2. Expatriate Tax Regime

"Expatriate Tax Regime" refers to the special regime applying to certain employees transferred to 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. 30% ruling), which is paid in addition to employees' pay and has to be seen as reimbursement of the extra costs of living outside the homeland. One of the requirements is that a foreign employee must have a certain expertise that cannot be found in the Netherlands.

The allowance is calculated based on 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 are reimbursed tax free.

Foreign employees have to be recruited by or seconded to a domestic employer in the Netherlands.

The employer and his employee must first agree, in writing, that the 30%-rule will be applied. Their joint request for the application of this rule must then be submitted to the Private Individuals Tax Unit (Non-resident Taxpayers) in Heerlen.

Once the application has been approved, the 30%-rule is applied from the outset.

The 30%-rule is applicable for a maximum period of 120 months. 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 ten years have elapsed since the end of such employment, or time spent in the Netherlands.

At the joint request of the domestic employer and the foreign employee, the foreign employee is regarded as a fictitious foreign taxpayer with regard to the levy of payroll tax and income tax (with a few exceptions).

7.3.3. Wage Tax

All employees are subject to wage tax. 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.

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 7.3.1).

Pensions and social security payments are also subject to wage tax.

7.3.4. Net Wealth Tax

The net wealth tax was abolished in 2001 with the introduction of the box-system in the income tax. The income of savings and investments is now being taxed in box 3 (see 7.3.1).

7.3.5. Taxation period

The income tax year is the calendar year. The income tax return must be filed before April 1st following every tax year.

This 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.

7.4 Other taxes

7.4.1. Value Added Tax (VAT)

VAT ("omzetbelasting") is charged on the consumption of goods and services in the Netherlands. The system of VAT is entirely based on EU directives.

Taxable are, in general, all entrepreneurs including foreign companies that supply goods or services in the Netherlands.

The standard rate is 19%. For basic goods and services a reduced rate of 6% is applicable.

Exports are zero rated. Zero-rated supplies includes the transport of goods and related transactions to another EU member state (i.e. intra-community export).

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.

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.

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.

7.4.2. Dividend Tax

Dividend tax (“dividendbelasting”) is another advance payment for individual income tax or corporate income tax. The company paying a dividend is obliged to withhold 25% dividend tax.

If the shareholder is an EU-resident company which qualifies for the EU Parent-subsidiary directive, it is subject to a profits tax in its country of residence and has, with retrospective effect from January 1, 2005, a participation of at least 20% (for certain countries 10%) of the paid-up share capital, in general no dividend tax must be withheld. The minimum participation of the paidup share capital will be reduced to 15% per January 1, 2007 and to 10% per January 1, 2009.

For this tax exemption, the shareholding must be held for at least one year (although part of this period may be after the dividend distribution) and certain other conditions and formalities must be fulfilled.

The 25% 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).

7.4.3. Gift and inheritance taxes

The Succession Tax Act (“*Successiewet*”) comprises three types of taxes in fact: inheritance tax (“*successierecht*”), gift tax (“*schenkingsrecht*”) and tax on inheritance or gifts from non-Dutch residents (“*recht van overgang*”).

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.

Rates vary between 5% and 27% for inheritance/gifts to a spouse and/or children, and between 41% and 68% for inheritance/gifts to unrelated parties.

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

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

An inheritance or gift from a non-Dutch-citizen who has died or made a gift within ten years of 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, the Netherlands Antilles, Sweden, Switzerland, the United Kingdom and the United States. Gift taxes are also covered by the tax treaties with Austria, the United Kingdom and the United States .

7.4.4. Real property transfer tax

Real property transfer tax is in principle levied at 6% on the fair market value of real property. 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.

7.4.5. Capital tax

The capital tax has been abolished as from 1 January 2006.

7.4.6. 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 and the owner is liable for the tax. Since January 1, 2006 the users are no longer taxable.

The real estate tax is deductible for the corporate income tax.

8 Social Security Contributions

The Netherlands has an extensive social security system and social security contributions are withheld (for employees) or paid (by the selfemployed) 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.

8. *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:

Argentina	Indonesia	Portugal
Armenia	Ireland	Romania
Aruba	Israel	Russia
Australia	Italy	Serbia and Montenegro
Austria	Japan	Singapore
Azerbaijan	Kazakhstan	Slovak Republic
Bangladesh	Korea (rep.)	Slovenia
Belarus	Kuwait	South Africa
Belgium	Kyrgyzstan	Spain
Bosnia-Herzegovina	Latvia	Sri Lanka
Brazil	Lithuania	Suriname
Bulgaria	Luxembourg	Sweden
Canada	Macedonia	Switzerland
China	Malawi	Taiwan
Croatia	Malaysia	Tajikistan
Czech Republic	Malta	Thailand
Denmark	Mexico	Tunisia
Egypt	Moldova	Turkey
Estonia	Mongolia	Turkmenistan
Finland	Morocco	Ukraine
France	Netherlands Antilles	United Kingdom
Georgia	New Zealand	United States
Germany	Nigeria	Uzbekistan
Greece	Norway	Venezuela
Hungary	Pakistan	Vietnam
Iceland	Philippines	Zambia
India	Poland	Zimbabwe

HLB Offices in the Netherlands

Alkmaar

James Wattstraat 19
1817 DC Alkmaar
Telephone +31-(0)72-5142070
Fax +31-(0)72-5123081/5153618
E-mail alkmaar@hlb-schippers.nl

Contact partner
Hans Aardenburg

Amsterdam

Buitenveldertselaan 106
1081 AB Amsterdam
Telephone +31-(0)20-6464011
Fax +31-(0)20-6463251
E-mail amsterdam@hlb-schippers.nl

Contact partner
Remco Dijkstra

Dongen

Lage Ham 10
5102 AC Dongen
Telephone +31-(0)162-322296
Fax +31-(0)162-317717
E-mail dongen@hlb-van-daal.nl

Contact partner
Erik Koot

Emmen

Waanderweg 16b
7812 HZ Emmen
Telephone +31-(0)591-612377
Fax +31-(0)591-643288
E-mail emmen@hlb-nannen.nl

Contact Partner
Chris Nannen

Groningen

Sylviuslaan 5
9728 NS Groningen
Telephone +31-(0)50-5266533
Fax +31-(0)50-5256374
E-mail groningen@hlb-nannen.nl

Contact partner
Bert Nannen / Henzo Hidding

Amersfoort

Henry Dunantstraat 36
3822 XE Amersfoort
Telephone +31-(0)33-4559400
Fax +31-(0)33-4559815
E-mail amersfoort@hlb-schippers.nl

Contact partner
Hans Barneveld

Den Helder

Drs. F. Bijlweg 7
1784 MC Den Helder
Telephone +31-(0)223-628284
Fax +31-(0)223-625334
E-mail denhelder@hlb-schippers.nl

Contact partner
Rens Ouwens

Drunen

James Wattlaan 15
5151 DP Drunen
Telephone +31-(0)416-376255
Fax +31-(0)416-378123
E-mail drunen@hlb-van-daal.nl

Contact partner
Ad van Korven

Gemert

Dommel 57
5422 VH Gemert
Telephone +31-(0)492-366531
Fax +31-(0)492-363855
E-mail gemert@hlb-van-daal.nl

Contact Partner
Jean Bloemers

's-Hertogenbosch

Pettelaarpark 100
5216 PR 's-Hertogenbosch
Telephone +31-(0)73-5494410
Fax +31-(0)73-5495717
E-mail: denbosch@hlb-van-daal.nl

Contact partner
Marianne Smits - Smits

Oss

Hertogin Johannasingel 40
5345 AJ Oss
Telephone +31-(0)412-632070
Fax +31-(0)412-624120
E-mail: m.wijdeleven@hlb-van-daal.nl

Contact Partner

Martin van de Wijdeven

Rotterdam

Grindweg 90-96
3055 VD Rotterdam
Telephone +31-(0)10-2781100
Fax +31-(0)10-2781199
E-mail rotterdam@hlb-denhartog.nl

Contact Partner

Joost Koedoot

Tilburg

Zuiderkruisweg 1
5015 TB Tilburg
Telephone +31-(0)13-4673876
Fax +31-(0)13-4683987
E-mail tilburg@hlb-van-daal.nl

Contact partner

John Kuijpers

Roden

Ceintuurbaan Noord 105a
9301 NT Roden
Telephone +31-(0)50-5014500
Fax +31-(0)50-5019894
E-mail roden@hlb-nannen.nl

Contact partner

Johan Bodde

Schijndel

Bunderstraat 22A
5481 KD Schijndel
Telephone +31-(0)73-5492572
Fax +31-(0)73-5378710
E-mail schijndel@hlb-van-daal.nl

Contact partner

Sjack Das

Waalwijk

Prof. Asserweg 8
5144 NC Waalwijk
Telephone +31-(0)416-340345
Fax +31-(0)416-338384
E-mail waalwijk@hlb-van-daal.nl

Contact partner

Erik van der Haar

Personal service and world-wide capabilities

Persoonlijke service, overal ter wereld
Service personnalisé à l'échelle mondiale
Servizio personalizzato in tutto il mondo
Servicio personalizado en todo el mundo
Verdensomspøendende individuell service
Serviço personalizado em todo o mundo
Individuell service verden rundt
Persönliche Geschäftsdienste Weltweit
Indywidualna sluzba na calym swiecie
Személyre szabott szolgáltatás a vilag
minden táján

Our client

We serve thousands of clients. Wholesale distributors... Construction... Real estate... Automation.. Travel agencies... Landscaping... Agriculture business... Fishery... Retail... Manufacturing... Physicians... Dentists... Lawyers... Notaries... Artists... Local government... Non profit organizations... Investors... Individual taxpayers... etc.

Our services

We provide broad and diversified services. Short and long range business plans... Advice for business buyers and sellers... Tax planning... Microcomputer systems... Financial projections... Loan request packages... Risk tolerance evaluations... Investment planning and portfolio monitoring... World-wide accounting services... Executive search... Financial statement and environmental audits, reviews and compilations... Tax return preparation... Representation with tax audits... Controllership... Company guidance.

For further information contact:

HLB Nederland
Accountants & Consultants bv

National Secretariat

Buitenveldertselaan 106
1081 AB AMSTERDAM
Telephone +31-(0)20-6460056
Fax +31-(0)20-6463251
E-mail e.haar@hnb-van-daal.nl

Contact Partner:

Erik van der Haar

