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*Expat Services*

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lawyers  
civil-law notaries  
tax lawyers

## ***Total solutions***

### ***Setting up your business in the Netherlands***

**Immigration** permits relocation home finding settling-in  
**Tax** structuring remuneration payroll tax equalisation tax returns  
**Legal** choice of law secondment contracts employment law

## **Introduction**

This information is intended for international companies wishing to set up a business in the Netherlands. The information offers a general overview of the steps that need to be taken (including an estimated timeframe) before one can actually start doing business. Furthermore information is provided in relation to taxes and related recurring procedures to which companies in the Netherlands are liable.

To some of the steps and procedures strict regulations apply, which, if not applied correctly, could lead to an extensive delay in starting your business or worse.

Buren van Velzen Guelen N.V. (lawyers, civil law notaries and tax advisors) and EXTERUS B.V. (immigration, relocation and tax advisors) are 2 separate firms established in the same office and working closely together while assisting international companies. Together we can be your one-stop shop and coordinator for all your Dutch corporate, employment, IP, tax advise and compliance, accounting, visa and payroll matters. Dealing with business cases from all over the world and assisting international companies is our primary focus and daily business. As such, our team consists of experienced tax- and legal advisors able to set up the optimal tailor made approach for your needs.

## **Steps and services (at set-up, nonrecurring)**

### *Incorporation of entity*

The most common business entity in the Netherlands is a private company with limited liability (in Dutch *besloten vennootschap*, hereinafter: "BV"). A BV is a legal entity with its capital divided into shares. The shares can be held by one or more shareholders. The minimum capital at incorporation to be issued and paid-up in full shall amount to EUR 18,000. The shares issued at incorporation of the BV can be paid up in cash or in kind. A BV is incorporated by a Dutch notarial deed of incorporation. Prior to the execution of the deed of incorporation, a declaration of no objection should be applied for at the Dutch Ministry of Justice. The Ministry of Justice reviews the backgrounds of the individuals/legal entities who shall act as incorporator(s)/shareholder(s) and/or managing director(s) of the BV. Prior to incorporation, a bank account for the BV is to be opened with a qualifying bank (in the Netherlands or one of the countries in the European Union, hereinafter: "EU", or the European Economic Area). Our notarial department provides all necessary services from start to completion of the incorporation procedure. If all documents and information required are timely provided, the time to incorporate a new BV is approximately two to three weeks.

New company law is expected to enter into force shortly, which will lead to considerable changes. The description above does not yet reflect the proposed new legislation.

### *Registration with Dutch (tax) authorities*

Within 8 days of incorporation of the BV, the BV should be registered with the Dutch trade register (usually this registration is arranged for by the notary). Upon registration the Dutch tax authorities will automatically be informed of any newly incorporated company. The tax authorities will then, based on a questionnaire that is sent to the company, register the company for all applicable taxes. Our services include filing of the questionnaire to ensure proper registration.

### *Foreign employees: Work and/or residence permit services*

Employees, who do not have an EU/EER nationality, often need a work and/or residence

permit in order to be employed in the Netherlands. The most easy route to obtain working permission and residence permission in the Netherlands is the highly skilled immigrants (or 'knowledge migrants') procedure. Employees with a yearly gross salary of € 36,801 (age under 30) or € 50,183 (age 30 and above) are regarded as highly skilled migrants.

The permit application is initiated by the employer, who should register with the Immigration Office ("IND") first. After registration the employer is admitted (within 4-5 weeks) to enter a simplified procedure for a (in some cases required) temporary visa (so called "MVV") and/or residence permit and the employer can submit applications for its employees. Residence permits are normally granted within 2-3 weeks.

*Foreign employees: 30%-ruling application*

Foreign employees employed in the Netherlands on a temporary basis may in certain situations avail themselves of the 30% facility. This facility applies to employees coming from outside the Netherlands, who have been recruited by or seconded to a Dutch employer and who satisfy certain conditions. The facility allows the employer to grant a tax-free lump-sum allowance for the extra costs of the employee's stay in the Netherlands (extraterritorial costs).

In order to be able to apply the facility the employer and the employee must together submit an application to the tax office. The tax office will normally decide within 4-6 weeks. The 30% facility may be applied, for a maximum of 120 months. This period can be reduced by the length of earlier stays or periods of employment in the Netherlands.

An employee coming to the Netherlands may be deemed to be partially non-resident for income tax purposes at his request. This could have major tax benefits for the employee involved.

*Foreign employees: Social security related services*

Our services include social security planning in order to ensure continued coverage under the home country social security scheme, or in case this is more favorable and possible, ensure coverage under the host country's social security scheme. Also, we can assist with

development and advice on voluntary insurances, either based on continuation of past compulsory insurance or through private insurance.

*Employment agreement*

The DCC contains mandatory rules governing employment contracts. Under Dutch law, there are contracts of employment for an indefinite period or a definite period. The provisions of the DCC are generally applicable to employees working in the Netherlands. In theory the contract of employment may be informal however, in the case of certain stipulations, such as the probation period and covenants of non-competition, a written form is required. Furthermore, deviation from some sections of the DCC is permitted only by way of a written agreement.

Our lawyers specialize in drawing up employment agreements as well as renewal and termination of employment agreements.

## **Steps and services (recurring)**

### *Bookkeeping*

Under Dutch (tax) law all companies must keep proper books and records in such a manner that at all times their right and obligations as well as other relevant data for tax purposes can be shown. For small size companies with a limited number of employees as well as for companies whose business does not comprise of trading and similar activities (e.g. holding or financing entities) we offer bookkeeping services (exclusive of customer invoicing and collection of invoices).

### *Annual accounts*

The Dutch Civil Code ("DCC") prescribes that all legal entities draw up their annual accounts ultimately within a five months period after the end of their financial year. Under circumstances a six-month extension period is permitted. Within eight days after approval and adoption by the general meeting of shareholders a copy of the annual accounts must be made available to the Dutch Chamber of Commerce for publication. Legal entities that meet two out of the three following conditions are in principle exempted from consolidation obligations, do not have to include an auditors statement and may send simplified annual accounts to the Chamber of Commerce.

- Total assets at balance date < EUR 4,450,000
- Net turnover in book year < EUR 8,800,000
- Average number of employees in book year < 50

For companies that meet the 'two out of three requirement' our firm offers preparation of the annual accounts (regular as well as simplified version for publication purposes).

### *Payroll services (monthly recurring)*

Everyone who is in paid employment in the Netherlands is generally subject to payroll tax. The employer that pays the wages has to keep a payroll administration and has to withhold the payroll tax and transfer amounts periodically to the tax authorities.

Our services include the setting up of a payroll administration, calculation of the monthly gross and net remuneration package of the employees based on the monthly remuneration

package provided by the employer, calculation of obligatory social security and payroll tax contributions, if any, and related withholdings from the employees, all in accordance with Dutch regulations. Finally, attention is paid to the applicability of a foreign social security and/or pension schemes –if any- and fiscal treatment thereof under Dutch tax laws.

*Payroll tax filing (monthly recurring)*

In addition to the payroll services we will fulfill on your behalf the periodic obligatory (electronic) filing obligations towards the Dutch tax authorities and social security institutions on payroll tax and social security contributions.

*VAT-filing (monthly/quarterly recurring)*

Every taxable entrepreneur must pay turnover tax (also known as value added tax or “VAT”), on turnover. VAT is levied on the distribution of goods and services at each stage in the chain of production. Furthermore VAT is levied on imported goods that are brought into the European Union (“EU”) from abroad and services from outside the EU rendered to entrepreneurs within the EU. The tax base is the total amount charged for the transaction excluding VAT, with certain exceptions. As deductions are made at previous stages of the chain, VAT is not cumulative. The VAT that a taxable entrepreneur pays on expenses or investments (the input tax) may be deducted from the VAT charged (the output tax). The entrepreneur is obliged to electronically file tax returns with the tax authorities. If goods or services have been supplied to foreign taxable entrepreneurs within the European Union, the form for filing Intra Community Supply of Services (“ICSS”) must also be completed in the electronic tax return. We can assist in filing both VAT and ICSS returns as well as all other VAT related matters (e.g. apply for refund of foreign VAT)

*Foreign employees: Personal Income Tax Returns (annually recurring)*

We can assist in filing both Dutch and foreign personal income tax returns. Our services include the filing of extensions, preparation of the return and an elaborated explanatory covering letter explaining the topic involved.

We can prepare all kinds of hypothax- or tax equalization calculations based on your own personnel and foreign postings policy.

#### Corporate income tax filing (annually recurring)

Corporate income tax ("CIT") is levied on the taxable profits made by a company in a given year. CIT is currently levied at a rate of 20.0% on the first EUR 200,000 of the taxable profits and at 25.5% on taxable profits in excess of EUR 200,000. The CIT Act provides for several specific provisions of which the participation exemption, which is applicable to both domestic and foreign shareholdings, is without doubt best known. Under the participation exemption benefits obtained from qualifying shareholdings are generally tax-exempt. A legal entity is required to file an annual CIT return with the Tax Administration within five months (a period of deferment can be requested) of the end of its financial year. This return may only be filed electronically. Our services include the preparation and filing of the annual CIT return, the request for extension ruling and electronically filing the mandatory half yearly profit estimation.

#### Transfer pricing documentation

In their commercial and financial relations affiliated entities should make or impose conditions that do not differ from those which would be made between independent enterprises. This is commonly known as the 'at arms length principle'. Parties are affiliated if one entity participates, directly or indirectly, in the management, control or capital of the other entity, or when the same person participates, directly or indirectly, in the management, control or capital of two entities. Dutch tax law prescribes that companies must keep information in their books and records from which it can be demonstrated in which manner the transfer prices were formed as well as whether it can be said that conditions with respect to these transfer prices have been agreed which would have been agreed by independent parties. Our (tax) lawyers can assist in drawing up transfer pricing documentation that meets these legal requirements.

#### Other Legal documents

Depending on the type of business that is carried out it may be necessary or advisable to have legal agreements and documents tailor made in accordance with Dutch or European legislation (e.g. General terms and conditions, distribution and service agreements, warranty conditions etc.). Also, your company may be contemplating an acquisition of an

existing company or a merger. Our firm has specialized lawyers in all fields of corporate law that can assist on these matters.

*This memorandum provides general information in respect of setting up your business in the Netherlands only, and should not to be relied upon without further advice. For more information or advice please contact Leo Fasol or Dennis von Oven by e-mail: [fasol@bvvg.nl](mailto:fasol@bvvg.nl) or [vonoven@exterus.nl](mailto:vonoven@exterus.nl)*

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