



Starting your own business

as a self-employed entrepreneur



kamer van koophandel

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1. Introduction



When you have decided to start your own business a new world is opening up, with a wide variety of possibilities. You could open a shop or start your own consultancy firm; become a full-time or a part-time entrepreneur. Clients may wish to hire you for advice or construction work. Before plucking up which is planted, there is a time to plant. In other words: you will have to be prepared to tackle challenges as well - either as a provider of services or products, as a self-employed entrepreneur, a sole trader, an independent contractor, or as a freelancer or so-called “ZZP-er”.

The Dutch Chambers of Commerce are incorporated under public law and, as such, target their services at Dutch businesses across all sectors.



Being self-employed radiates a pleasant sense of freedom and independence, but it may carry certain risks as well. Whether you offer services or products: you will do so at your own risk, expense and with full responsibility towards third parties. Apart from that, being self-employed entails certain obligations, such as paying taxes and VAT and keeping records of your business activities. Preparing well is the best way to start. You are definitely not on your own; plenty of competent assistance is to be found in the Netherlands' business world.

Starting point

Before you visit the Chamber of Commerce to register your enterprise, do consider the following issues carefully:

- a permit to start a business in the Netherlands;
- a business plan;
- legal form and trade name of your enterprise;
- taxation and necessary insurance;
- business location, commercial lease;
- a 'VAR'-statement from the Tax Administration, declaring you a self-employed entrepreneur.

2. Starting your own business



If you do not have the Dutch nationality, and would like to start a business in the Netherlands, you will have to comply with particular IND (Immigratie en Naturalisatie Dienst, the Dutch immigration authorities) formalities. Even if you are not obliged to register with the IND (like most EU nationals) please do so all the same, as it may come in quite handy for other purposes.

Check how you can use your degree or diploma for your business in the Netherlands. Search for ‘international credential evaluation’ at www.idw.nl



There are four official Expatcenters in the Netherlands. Each one is a government organisation.

Expatcenter Amsterdam Area
+31(0)202547999 welcome@expatcenter.iamsterdam.com

Expatdesk Rotterdam WTC
www.rotterdam.nl/expatdesk
The Hague International Centre
ExpatService Den Haag
expatservice@dbz.denhaag.nl

Holland Expat Center South
Eindhoven location
+31(0)402386777
Maastricht location
+31(0)433505010
Tilburg location
+31(0)402386777
www.hollandexpatcenter.com

Dutch Immigration Authorities

The legal form of your enterprise makes no difference for the rules' applicability to the Dutch immigration authorities: whether it is a one-man business, a Dutch private limited (BV), or a branch-office of a foreign company. The rules do not differ either if you start an enterprise shortly after arriving in the Netherlands, or after having been employed in the Netherlands for some time. Rules and formalities do differ, however for – broadly speaking – EU nationals and non-EU nationals. Please check also the IND Residence Wizard.

EU, EEA and Swiss nationals

When a national of one of the EU Member States, the EEA (European Economic Area), or a Swiss citizen, you are free to live and work on a self-employed basis in the Netherlands and do not need an entry visa or a residence permit.

Even if you are not obliged to register with the IND, please do so all the same, as it may come in quite handy when asked for proof of registration on taking out Dutch public healthcare insurance, a healthcare-, housing- or childcare allowance, a mortgage, or a phone subscription. Registration is free of charge. If you intend to stay over three months, you are required to register at your local municipality. An expatcenter will help you out here.

Different rules apply for citizens of Bulgaria or Romania and Croatia as long as restrictions on the Dutch labour market remain in force. Nationals of these countries are advised to apply for a residence permit, which will be useful in a number of situations. The procedure is called “Application for assessment under the EU community law (proof of lawful residence)”.

Nationals of non-EU and non-EEA countries

If you are not a national of an EU or EEA country and not Swiss, you will need to apply for a residence permit in case you stay longer than three months in the Netherlands. A residence permit can be obtained from the IND.

If you are a national of a country subject to the Dutch visa requirement for a more than three months' stay, you will have to apply for a special visa: a provisional residence permit, an MVV (Machtiging Voorlopig Verblijf).

You cannot authorize somebody else to apply on your behalf; you will have to apply for a provisional residence permit in person at a Dutch embassy or consulate in any country, as long as you have lawful residence in that particular country. Lawful residence means that you have a residence permit for that country valid for at least another three months. With just a tourist visa, you do not qualify as a lawful resident.

Starting your own business



An expatriate transferred to the Netherlands will become subject to Dutch income tax either as a resident or nonresident taxpayer. The 30% tax facility* allows the employer to grant a tax-free lumpsum allowance for the extra costs of the expat's stay in the Netherlands (extraterritorial costs).

*Search for '30% tax ruling' at www.answersforbusiness.nl

Working on a self-employed basis as national of non-EU / non-EEA country and non-Swiss

In this case you will have to meet several economic criteria before starting an enterprise in the Netherlands:

- You are qualified to run the business in question.
- You have a business plan.
- Your business serves an essential Dutch interest, i.e. has “added value” to the Netherlands.

The IND does not weigh these criteria itself; the Ministry of Economic Affairs is requested to review your situation and to decide whether the business you intend to run will be economically interesting. If this turns out not to be the case, you cannot start your own business in the Netherlands.

Review of economic added value

The Ministry of Economic Affairs awards points for each criterion. You will need a minimum of 30 points for each criterion (total number for all criteria: 300).

The scoring system consists of three parts:

- a) Personal experience (education, experience as a self-employed person, working experience);
- b) Business plan (market analysis, product/service, price, organisation, financing);
- c) Material economic purpose for the Netherlands (innovative, job creation, investments).

Starting your own business



You should always contact the IND to find out about the procedure involved in testing the economic interest of the enterprise you intend to start. For nationals of some countries, for example Turkey, special rules apply on the basis of treaties between the EU and these countries. To citizens of the United States of America it is important to know about is the so called 'Nederland-Amerikaans vriendschapsverdrag'.

Taking your business from abroad

The Dutch comparative companies Act recognises all foreign legal entities except businesses owned by one person (female/male). If you run a one-man business in

your country of origin and you can prove this, for example by submitting a copy of registration in a commercial register in that country, you can bring this enterprise to the Netherlands and have it registered at the Chamber of Commerce as a Dutch one-man-business.

Other legal foreign entities or foreign business forms are simply registered as a foreign legal entity with commercial activities.

Please note that you will still have to comply with the IND rules on residence in the Netherlands.

Starting a branch office in The Netherlands is also a possibility

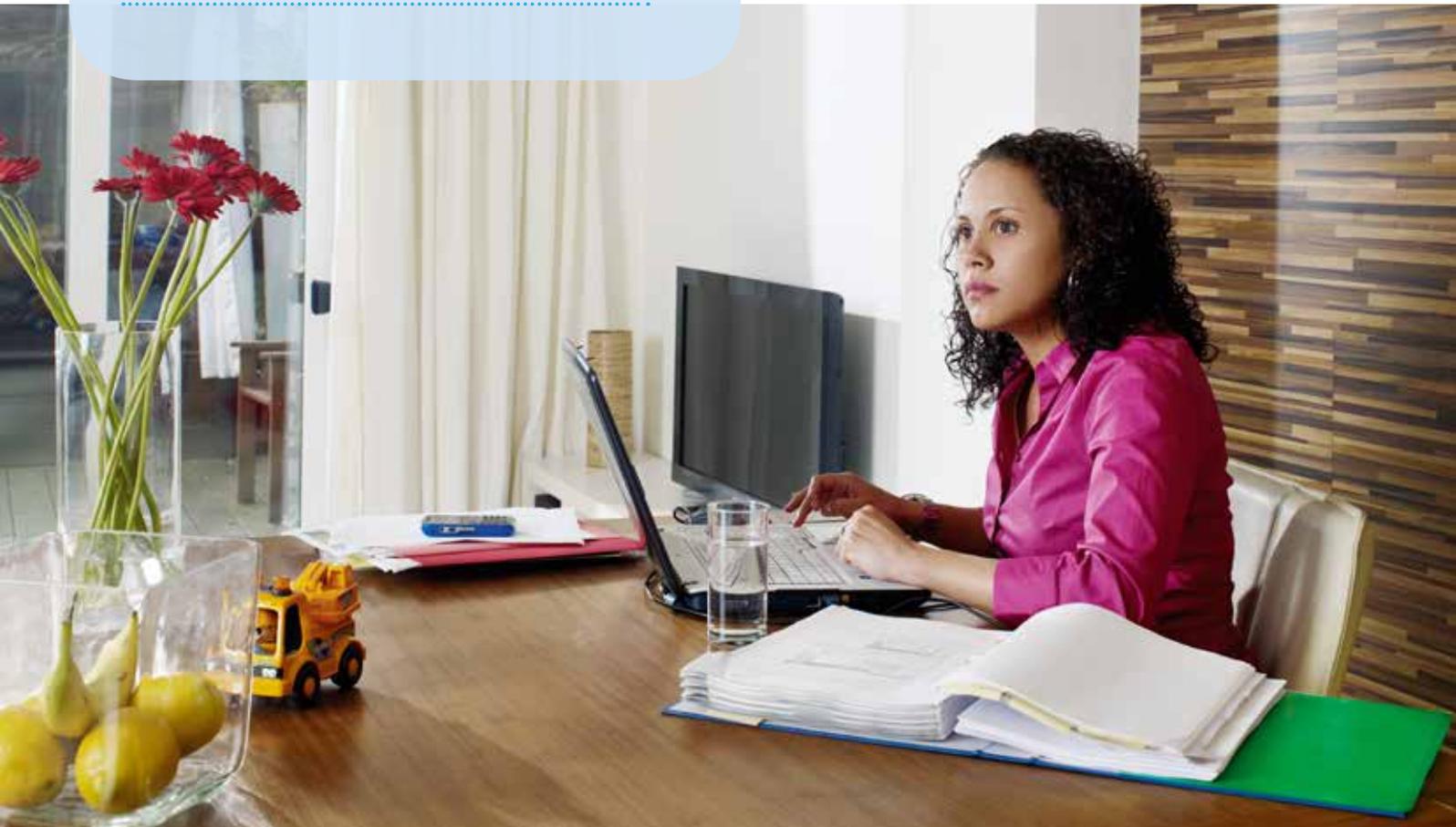
There is question of a branch when long-lasting business operations are conducted in the Netherlands, which form part of the foreign enterprise. A branch can be: a sales office or a production company, but also a representative office. It does not have an independent legal form, but is a part of the foreign enterprise.

Thanks to our traditionally open economy, attractive investment climate and international tax possibilities, the Netherlands is and always has been host to many foreign enterprises. Another pleasant aspect is the "incorporation principle", i.e. Dutch law recognises foreign legal entities. In other words: the foreign legal entity wishing to start activities in the Netherlands needs not be converted into a Dutch legal form. The organisation and structure of the legal entity is governed by the foreign law under which it was formed. National law of the state of origin applies, however European Regulations 68/151EEG and 89/666 EEG are specific rules how to register companies formed in the European Economic Region.

NOTE: additional information about opening a branch or representative office in the Netherlands can be obtained at the Chamber of Commerce Amsterdam.

NOTE: additional information about Hiring or provision of workers in the Netherlands is available at: www.kvk.nl/registrationlaw and www.answersforbusiness.nl

3. Businessplan



Starting a business requires a number of steps and key decisions. The process of creating a business plan enables you to look at your business in its entirety. No matter how small or big the business, it will help you identify areas of strengths and weaknesses.

Businessplan



Banks require a business plan when you take out a loan. Even if you do not need the latter, and financing your enterprise is not a problem, a business plan will definitely help you understand the impact of starting a business. It will significantly contribute to the professional and efficient start-up of your enterprise. Submitting a business plan is also one of the criteria set for non-EU and non-EEA nationals to be allowed to start their own enterprise in the Netherlands.

Get Started

It is advisable to write the plan yourself. In doing so, you will gain a better understanding of your objectives, targets and future customers or clients. Crucial question to be addressed are:

- Which legal form will best suit the enterprise?
- Which products or services will you offer - DO's and DON'Ts?

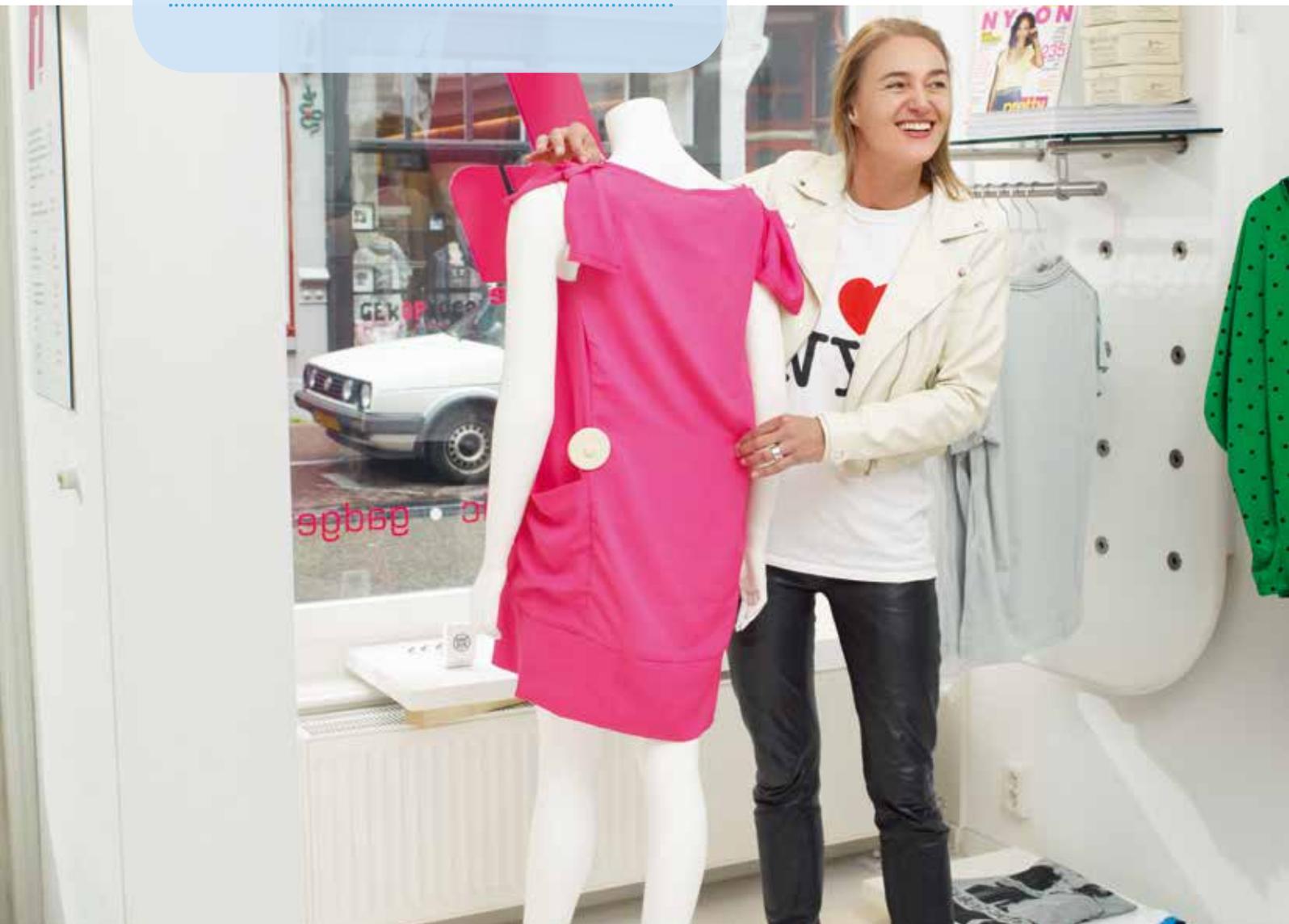
- Who will be your clients?
- Promotional activities to get contracts?
- How to optimize visibility to your target group?
- Which prices and fees?
- Financial plan (available budgets, expected turnover, investments)?
- Which insurances do you need?
- Permits and/or licences required?
- Administrative organisation, which form?
- What should be included in your General Terms and Conditions – if applicable?

Formats

Business plan formats can be obtained from various private parties that specialise in supporting starters. Just take a look at the internet.

Records show that enterprises started upon a thorough business plan are more likely to be successful.

4. Employment law issue



Your legal status as a self-employed entrepreneur is quite different from an employee's status. If you are hired on the basis of an employment contract, your employer is the one to deduct taxes from wage and pay national insurance and employee insurance contributions.

As part time entrepreneur you will probably be given a VAR-ROW. Professionalising your business independency helps to obtain a VAR-WUO; some principals prefer this.

As an independent entrepreneur you pay taxes and contributions yourself, and you are not entitled to the following employees rights: minimum wage, paid holidays, a holiday allowance, statutory safeguards against dismissal and a statutory notice period. In order to designate the employment relationship while starting your business, it is important to consider different contracts and apply for a Verklaring Arbeidsrelatie (VAR) at the Tax Administration.

Employment on the basis of a contract and implied employment

Regardless of the title chosen for the contract with your client, it is considered an employment contract if the following criteria are met:

- your remuneration for the work performed can be seen as wages;
- there is an obligation to do the work yourself: you cannot send someone else to do the job for you. Having to be available for specific work, e.g. on-call service, will also be considered as work performed in employment;
- a relationship of authority: the employer can determine where, when and how the work should be carried out. This relation also exists if the work you do is an essential element in the employer's business operations or if the employer's profitability is at risk without you.

If the working relation does not show all characteristics of a "proper" employment relation, it may still be seen as one. This is called a notional employment relationship: although the employment relation has not been established explicitly, there is an implicit employer-employee relation.

Consequently, the fee you charge is seen as wage, so, the employer/contractor will have to deduct taxes from your wages and pay national insurance and employee insurance contributions.

A notional employment relation exists if:

- you work for a client project at least two days a week;
- you earn more than 40% of the minimum wages for the project a week;
- the relation with the client lasts more than 30 days; a new contract within one month after the termination of the first contract is seen as continuation of the previous contract.

A notional employment does not exist if actual and practical independence can be proven, for which a VAR can be instrumental.

Commercial contracts

As a self-employed entrepreneur you or your client can initiate to formalise the contractor-client relation by entering into a commercial contract. Parties should always insist on putting down the arrangements agreed upon.

There are two types of commercial contracts:

1. Service agreement - Under this type of contract you are obliged to perform to the best of your ability, committing yourself to do your client's work without being employed by him. The work is usually classified as 'services'.
2. Contractor agreement - Under this type of contract you have a specific target obligation. You commit yourself to produce a concrete, tangible object at a certain price.



Criteria for legal independence: Actual circumstances are decisive here. An official statement signed by client and yourself that the contract is a commercial one is helpful proof. Criteria are:

- the degree of independence and absence of supervision/authority;
- permanence;
- pursuit of profit;
- clientele.

Not just these criteria, but their

Employment law issue



interconnection especially plays a decisive role. Many contracts can be considered both an employment contract and a commercial contract with a self-employed entrepreneur. Decisive will be to which degree you meet the different criteria.

De Verklaring Arbeidsrelatie (VAR)

In order to designate the employment relationship you can apply for a Verklaring Arbeidsrelatie (VAR) at the Tax Administration.

The VAR is an official statement. Based upon the applicant's information the Tax Administration will define income as:

- Income earned in employment: the freelancer will have a VAR income.
- Income earned from other proceedings: the freelancer will have a VAR-row.
- Profit from enterprise: the freelancer will have a VAR-wuo.
- Partnership's own risk and account: the freelancer will have a VAR-dga.

VAR-income and -row: employed or not?

With a view to the VAR-income and -row, the contractor will have to define and check whether he should pay income tax and employees insurance premiums, based upon the existence of an employment contract or otherwise. Explanatory assistance – but no definite answer! – can be found at the website of the Ministry of Finance. The Tax Administration may conclude differently.

VAR-wuo and -dga: certainty in advance

Only VAR-wuo or -dga supply the contractor beforehand with complete financial certainty provided he meets the following conditions:

- The freelancer's activities should be similar to the VAR's description. So, the freelancer is not entitled to carry out IT work if the VAR denotes carpentry.
- The freelancer is on the job during the validity of the VAR (1 calendar year).
- The VAR should be the authentic original.
- The contractor should determine the freelancer's identity on the basis of a valid proof of identity (no driver's licence). Copies of the VAR and proof of identity should be kept in the administration for 7 years.

Having acted this way, the contractor has a solid defence in case the Tax Administration or UWV may reach another verdict afterwards. So, it may be wise for both freelancers and contractors to object against a VAR-income or -row.

Employment law issue



Further information:

www.answerforbusiness.nl/regulation/var

VAR application

Bearing in mind the utmost importance of the VAR-outcome, it is obviously important to carefully fill out the VAR-form. Only the freelancer him/herself is allowed to apply for a Verklaring Arbeidsrelatie (VAR). A directeur-groot aandeelhouder (DGA) should apply for a VAR in case of external consultancy.

The Tax Administration provides a digital VAR application form; to which you will get a reply within 8 weeks. If additional information is needed, the Tax Administration will contact the applicant.

Please note the following when filling out the form: The Tax Administration considers request as a total, coherently, and takes the activities into account. If not all answers are favourable it does not necessarily mean that no VAR-wuo will be given. For example: an interim manager with two or more employers can still be entitled to a VAR-wuo.

The freelancer should write down reasonable expectations. If, however, the actual situation afterwards turns out to have been differently, this will not have any consequences as long as the deviation

is within normal risk of enterprise limits. For example, the freelancer expected to have 3 or more employers, but due to a recession this turned out differently. The freelancer has to fill out the form to the best of his knowledge and should not deliberately misrepresent the state of affairs. If this should afterwards be proven to have been the case, the Tax Administration will recover the indebted taxes and premiums from the freelancer. Some of the questions need a 'yes' or 'no' only; choose the nearest suitable.

Relation employer/former employer

As a part-time independent entrepreneur / part-time employee you could get involved in a conflict of interest with your (former) employer. If you intend to provide services, comparable to the ones he provides, you better ask his permission/advice to run your own business.

Starting a business as a full-time independent entrepreneur you should be aware of a possible conflict of interests as well. You probably signed a non-competition clause within your employment contract that remains valid after termination of employment. In any case it is wise to contact/consult your (former) employer about your intentions.

5. Legal forms



In order to accommodate the starting entrepreneur or professional, Dutch law recognizes various legal forms, such as a one-man business, a private limited company (BV), a partnership or a limited partnership. The main issues at stake are the matter of liability if your enterprise should run up debts, and which tax regime applies.

The majority of starting entrepreneurs either choose a one-man business or a general partnership as the legal form for their business, according to their preference for doing business by themselves or in cooperation with others.

A. One-man business

One-man business is also referred to as sole trader or sole proprietorship or independent contractor. If you start a one-man business you will be the fully independent founder and owner. More than one person may work in a one-man business, but there can only be one owner. A one-man business can also employ personnel.

Setting up

You can establish a one-man business without a notarial deed. Registration in the Trade Register is mandatory. As a private individual you can only register one one-man business. However, you can have more than one trade name and carry out various business activities under different trade names. These activities can be carried out at the same or at another address, as a branch office of the one-man business.

Liability

As the owner of a one-man business you are responsible for everything concerning your enterprise; for every legal act and all its assets and liabilities. No distinction is made between private and business property. Thus, business creditors can seek recovery from your private property and private creditors from your business property. If your one-man business goes bankrupt, you yourself go bankrupt as well. If the owner of a one-man business should be married in a community of property regime, the creditors may also lay claim to the partner's property. Partner liability can be avoided by a prenuptial or a postnuptial

agreement drafted by a civil-law notary. However, since partners are usually requested to co-sign when taking a loan, the agreement may not offer the protection expected. A civil-law notary can provide more information.

Taxes and Social security

The profit made in a one-man business is taxed in box 1 – income tax. If the Tax Administration fully considers you an entrepreneur, you are entitled to tax allowances such as the entrepreneur's allowance, investment allowance and the tax-deferred retirement allowance. The owner of a one-man business cannot claim social benefits under the Sickness Benefits Act, the Work and Income Act and the Unemployment Insurance Act. Therefore, it is advisable to take out insurances to cover these risks. You will qualify for the following national insurance schemes:

- General Old Age Pensions Act.
- Surviving Dependants Act.
- Exceptional Medical Expenses Act.
- General Child Benefit Act.

Continuation of the business activities and business succession

With a one-man business no distinction is made between private and business. If you die, both business and private property will fall into your heirs' estate. You will need to make provisions to guarantee your business' continuity. A tax consultant could provide more details.

B. General partnership, the “VOF”

A general partnership is a form of cooperation in which you run a business with one or more business partners. You and your partner(s) are the associates or members of the general partnership. One of the characteristics of this legal form is that each partner contributes something to the business: capital, goods, efforts (work) and/or goodwill.

Setting up

A partnership contract is not a statutory requirement for the formation of a general partnership, but it is, of course, advisable to put down in writing what you and your business partner(s) have agreed upon. A partnership contract could arrange the following matters:

- name of the general partnership;
- objective;
- contributions by partners in capital, know how, goodwill, assets and efforts (work);
- distribution of profits and offset of loss;
- allocation of powers;
- arrangements in case of illness;
- arrangements for a partner's days' holiday.

Liability

An important characteristic of the general partnership is the joint and separate liability of the partners. Each partner can be held fully liable – including private property – if the general partnership fails to meet its obligations, even if these obligations were entered into by another, authorised partner. Creditors of the partnership may

Legal forms



seek recovery from your business property and your private property and the property of the other partner(s). Restrictions agreed upon in the partners' authority have to be officially registered in order to gain legal effectiveness towards third parties. The general partnership usually has 'separate capital', i.e. the business capital contributed by the partners, which is kept apart from their private property and capital. This capital is to be solely used for business purposes. Should one or more creditors seek recovery from the partnership – for instance in the case of bankruptcy – they could do so from the separate capital. If this should be

inadequate to pay the partnership's debts, creditors may seek full recovery from the partners' private property. If so, you could hold the other partner(s) liable for having failed to meet their obligations, but only after the creditors have been paid. In private matters creditors of partners cannot seek recovery from the partnership's business assets or the private property of the other partner(s). Because of this partners' broad liability it is advisable to have a prenuptial or postnuptial agreement drafted if you are married under a community of property regime. A civil-law notary could provide you with more information.

Taxes and Social security

Each partner will pay his own income tax on his profit share. If the Tax Administration sees the individual partner as an entrepreneur, he is entitled to all kinds of tax allowances, such as the entrepreneur's allowance, investment allowance and the tax-deferred retirement allowance. As far as social security is concerned, the same rules apply to the entrepreneur – partner as to the owner of a one-man business.

Continuation of the business activities and business succession

Under Dutch law the general partnership ends when one of the partners resigns or dies. In order to secure the continuation of the general partnership, the partners can include a clause in the partnership contract arranging for the other partners to continue the general partnership – with or without a new partner – or to terminate it.

C. Limited partnership, the "CV"

A limited partnership, the "CV", is a special type of general partnership (VOF). The difference is that the CV has two types of business partners: general, and limited or sleeping partners. The latter are only financially involved; they cannot act on behalf of the partnership. Besides, the name of a limited partner cannot be used in the trade name of the limited partnership.

Setting up

A partnership contract is no statutory requirement for a limited partnership, but, again, partners better put down the agreements. Apart from the matters

mentioned in the VOF, the contract should arrange the distribution of profit between general and limited partners. When registering a limited partnership in the Trade Register, the personal details of the general partners are listed; the details concerning the limited partners are restricted to total number and their contributions in the partnership.

Liability

General partners can be held fully liable if the partnership fails to meet its obligations. Bankruptcy of the limited partnership will automatically lead to the general partners' bankruptcy (not applicable to limited partners). A limited partner can only be held liable for the maximum sum contributed to the partnership. However, should the limited partner act on behalf of the partnership, he will be seen as a general partner and fully liable, in which case creditors of the partnership can lay claim on his private property as well. Restrictions agreed upon in the partners' authority have to be officially registered in order to gain legal force towards third parties. The general partners' liability in a limited partnership is quite broad, so, if partners are married under a community of property regime they are advised to have

a prenuptial or postnuptial agreement drafted. A civil-law notary could provide more information.

Taxes and Social security

General partners pay income tax on their share in the profit. If the Tax Administration sees the individual partner as an entrepreneur, he is entitled to various tax allowances, such as the entrepreneur's allowance, investment allowance and the tax-deferred retirement allowance. As far as social security is concerned, the same rules apply to the entrepreneur – partner as to the owner of a one-man business [link to c – Social Security under one-man business]. Limited partners, who cannot be held personally liable for the enterprise's debts, are not seen as entrepreneurs by the Tax Administration.

Continuation of the business activities and business succession

Under Dutch law the limited partnership ends when one of the partners resigns or dies. In order to secure the continuation of the limited partnership, the partners can include a clause in the contract arranging for the other partners to continue the partnership – with or without a new partner – or to terminate it.



D. Professional partnership, the 'maatschap'

The partnership referred to as 'maatschap' under Dutch law differs from the general partnership and the limited partnership in that it is a form of cooperation established by professionals such as doctors, dentists, lawyers, accountants, physiotherapists etc., rather than a cooperation established for the purpose of doing business. The partners are referred to as 'maten' instead of 'partners'. Each 'maat' contributes personal efforts, capital and/or assets. The purpose is to share the income earned on the one hand and the expenses incurred on the other.

Setting up a professional partnership

A partnership contract is no statutory requirement for the formation of a professional partnership, but partners better lay down their agreements with the other professionals in a partnership contract. This partnership contract could arrange the following matters:

- contributions made by the partners;

The Chambers of Commerce can answer your questions about the legal environment of your business. Seminars and other regular services are available.

Legal forms

- distribution of profits, pro rata each partner's contribution – distributing all profit to one partner is not allowed;
- allocation of powers – each partner is entitled to perform management acts, unless agreed upon otherwise; as from 1 July 2008 the professional partnership has to be registered in the Trade Register. This does not apply to partnerships that act internally only, such as a partnership in which costs are pooled.

Liability

Each authorised partner can enter into a contract, thus binding the partnership: all partners. Each partner can be held liable for an equal part. If a partner should act beyond his authorization, the other partners will in principle not be held liable: the partner in question is the only partner that has bound himself. A professional partnership has no 'separate capital' from the private assets of the partners. Creditors having a claim on the partnership can only seek recovery for equal parts from the individual partners; these creditors do not rank above creditors who have a claim on the private assets of a partner. To a married partner the same reservations apply as to the general partners in general partnerships and limited partnerships. They are advised to have a prenuptial or postnuptial agreement drafted. A civil-law notary could provide more information.

Taxes and Social security

Each partner pays income tax on his profit share. If the Tax Administration sees the individual partner as an entrepreneur, he is entitled to various tax allowances, such as

the entrepreneur's allowance, investment allowance and the tax-deferred retirement allowance. Regarding social security the same rules apply to the entrepreneur – partner as to the owner of a one-man business.

Continuation of the business activities and business succession

Under Dutch law the professional partnership ends when one of the partners resigns or dies. In order to secure the continuation of the partnership, the partners can include a clause in the contract arranging for the other partners to continue the partnership – with or without a new partner – or to terminate it.

E. Private company with limited liability, 'BV'

In contrast to the legal forms described above – enterprises run by natural persons – the private limited is a legal person: a person having rights and obligations, just like a natural person. The natural person who has incorporated the private limited cannot be held liable, in principle, for the debts incurred by the private limited. The BV itself is seen as the entrepreneur, whereas the natural person who is appointed director merely acts on behalf of the BV and cannot be held personally liable for his acts. A private limited company can be incorporated by one person – a sole shareholder BV – or by more persons. The capital of a private limited is divided in shares.

Incorporating

This involves a number of statutory requirements, most important of which:

Incorporation takes place through a notarial deed. This should include the articles of association of the company. The civil-law notary will check the legal contents of the articles.

A certificate of no-objection from the Ministry of Justice must be submitted before the incorporation can be effected. The Ministry checks whether the person incorporating the company has ever been involved in bankruptcy proceedings or fraud cases.

Until October 1st, 2012 the incorporation of a BV requires a minimum capital of € 18,000 (cash or in kind) in the private limited.

Liability

The shareholder's liability is limited to the total sum of his participation. Since the BV is a legal person, having its own independent rights and obligations, the persons involved – directors and supervisors – cannot be held liable for the debt of the company. In other words: the company's creditors can never seek recovery from the private assets of these officers. However, a company director or officer may be held liable as a private person if he has acted negligently or culpably. If he is responsible for the company's bankruptcy because of wrongful or fraudulent behaviour in the company's policy, creditors of the company may file a claim against him.

In the formation phase of the company, a director may be liable for the company's acts. This liability ends as soon as the legal person is incorporated and the acts are confirmed by the company. As long as the company has not been registered in the Trade Register, directors' and officers'



liability continues. In practice, limited liability often does not apply because banks require the director and principal shareholder of the company to co-sign for loans taken out on behalf of the BV

Taxes and Social security

The private limited pays corporation tax – also referred to as company income tax – on the profits earned. The BV's director and shareholder is employed by the BV His eligibility for social security under the

Dutch social security laws depends on the relation of authority between himself and the private limited. A relation of authority is considered not to exist if:

- the director, possibly with his or her spouse, can cast more than 50% of the votes in the shareholders' meeting;
- two thirds or more of the shares are held by the director and/or close relatives up to the third degree;
- the director cannot be dismissed against his will.

Without a relation of authority, the director and shareholder cannot rely on the social security insurances. He will have to take out his own insurances; to him the same rules apply as to the owner of a one-man business.

Continuation of the business activities and business succession

Continuation of the company is secured by the fact that the BV is a legal person that exists independently from the persons having incorporated or managing the private limited. When the director dies, the continuation of the enterprise is not at risk, viz. the enterprise is run by the BV and a new director will have to be appointed. A private limited can be sold in two different ways:

- BV's shares are sold;
- BV's enterprise (machines, inventory, stocks, etc.) is sold.

If the shares are sold, the proceeds are subject to income tax (box 2) if the shareholder has a substantial interest (holder of a minimum of 5% of the shares). If the enterprise is sold, the BV will have to pay corporation tax on the profit or book profit on the sale. If the shareholder of the BV selling the enterprise is a BV itself, the structure is referred to as a holding – advantage of which: the holding will in principle have to pay taxes on the proceeds.

Legal forms

| Schematic representation of legal forms | | | | | | | |
|---|--|--|--|--|--|---|--|
| Legal forms | One-man business | Private Limited Company (BV) | Public Limited Company (NV) | Partnership (Maatschap) | Commercial Partnership (VOF) | Limited Partnership (CV) | Foundation (Stichting) |
| Establishment | Free | Notarial deed of incorporation | Notarial deed of incorporation | Free, preference in writing / (notarial) contract | Free, preference in writing / (notarial) contract | Free, preference in writing / (notarial) contract | Notarial deed of incorporation |
| Capital required | None | € 18.000 | € 45.000 | None | None | None | None |
| Governance | Owner | Executive board | Executive board | Partners | Partners | Managing partners | Board of directors |
| Other bodies | None | Shareholders (possibly board of directors) | Shareholders (possibly board of directors) | None | None | Limited partners | None |
| Liability | Private 100% | Board of directors (in case of negligence) | Board of directors (in case of negligence) | Private for equal amount if partnership does not fulfill obligations | All partners privately for 100% if Commercial partnership does not fulfill obligations | Managing partners privately for 100%, Limited partners have limited liability | Board of directors (in case of negligence) |
| Taxation | Income tax, SME profit dispensation, employer deduction (if hour quota is met) | Partnership tax, income tax over board member salaries and over dividend | Partnership tax, income tax over board member salaries and over dividend | Income tax, SME profit dispensation, employer deduction (if hour quota is met) | Income tax, SME profit dispensation, employer deduction (if hour quota is met) | Managing partners; Income tax, SME profit dispensation, employer deduction (if hour quota is met) | Possibly partnership tax |
| Social security | No employee insurance | No employee insurance, unless resignation against will of director-shareholder is possible | No employee insurance, unless resignation against will of director-shareholder is possible | No employee insurance | No employee insurance | No employee insurance | Board is not in paid employment |

Please note:

The Act on the simplification of law applicable to private companies with limited liability ("Wet vereenvoudiging en Flexibiliseren B.V.-recht") and its implementation Act will take effect on 1 October 2012. The new legislation will abandon a number of mandatory provisions, as a

consequence whereof the articles of association of a B.V. can be made much more tailor made in accordance with the wishes of the stakeholders of a B.V. Hereinafter the most important changes with regard to this amendment of Dutch law are being pointed out. Without being exhaustive on the background of the various amendments, at

least the following changes are being proposed.
http://www.eversheds.nl/en/newsletter/flex_b.v._implementation_of_a_more_flexible_corporate_law_for_dutch_bv/
http://www.cliffordchance.com/publicationviews/publications/2012/06/reform_private_companylawflexbv-quick.html

6. Registration



Before you are allowed to start your business operations, you will have to register your enterprise in the Dutch Trade Register, which is administered by the Chambers of Commerce. Registrations in the Trade Register are public; everyone can check whether a particular person is authorised to act on behalf of an enterprise and which legal form it has: a one-man business, a partnership or a private or public limited.

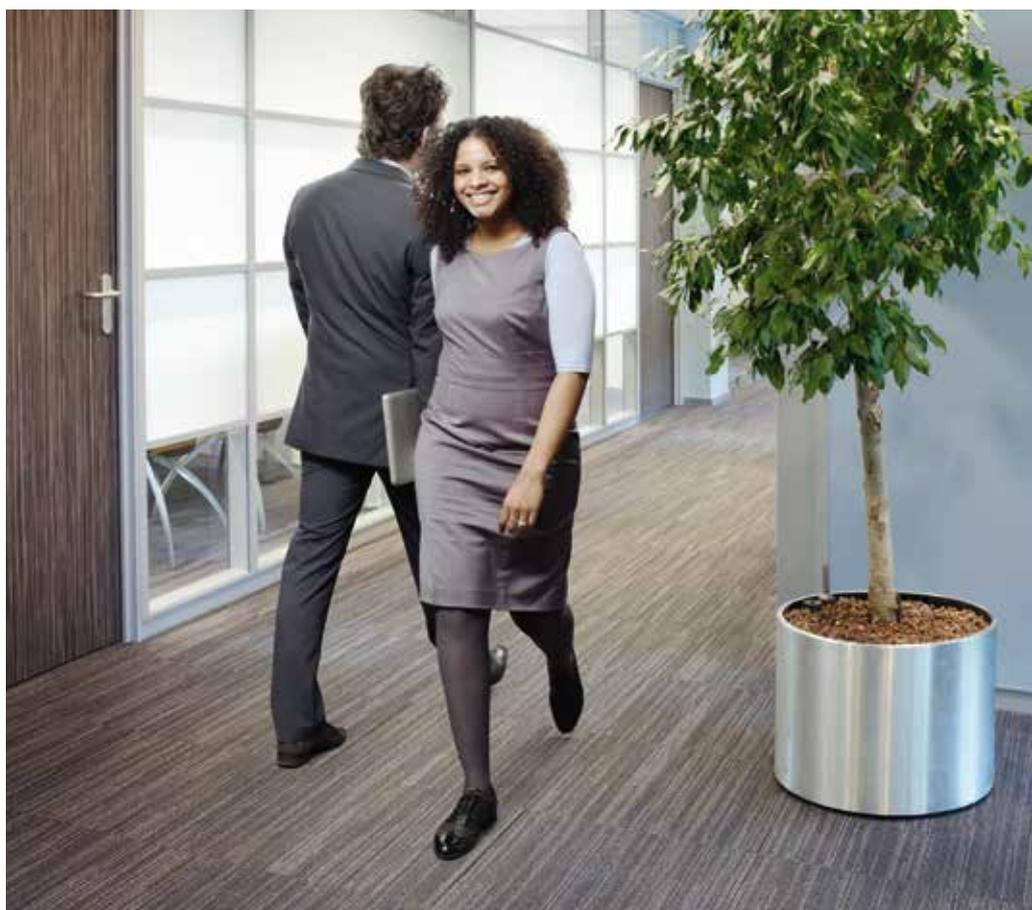
How to register your enterprise

Registration requirements

Once you have decided upon your business' legal form, you can have your enterprise registered at the local Chamber of Commerce. Registration should take place within a period of one week preceding, and one week following the actual commencement of business activities. Without registration in the Population Administration of the municipality, you will need to submit authenticated proof of your residential address abroad. The person registering the business has to submit a valid proof of identity, which document has to be personally submitted at the Chamber of Commerce. The following documents are accepted as valid IDs:

- a valid travel document (passport or European ID card);
- a valid Dutch driving licence (non-Dutch driving licence not accepted);
- a residence permit issued by the IND;
- a Dutch refugee passport;
- a Dutch aliens passport.

If you do not start your business at your home address but at a location you have e.g. rented, you will also be requested to show the lease to confirm the business address. Once the registration has been completed, you will be given a unique eight-figure registration number. This CoC number should be referred to on all your outgoing mail. Once a year each registered enterprise has the possibility to obtain free of charge an electronic business extract. To get this extract you need a code and a password. Because we do not have any English forms available please dial the following number for more information 0348-426276.



Who can register the enterprise

When an enterprise is registered at the Chamber of Commerce, it is of the utmost importance that the registration forms which are submitted have been signed by the right person. Depending on the legal form of the enterprise, the forms can be registered in the Trade Register by:

- the owner of the one-man business (registration of a one-man business);
- the partners (registration of a general partnership, VOF, and a professional partnership, 'maatschap');
- or the general partners (registration of a limited partnership, 'CV');

- If the enterprise is a legal person, a BV, the civil-law notary will usually see to the registration formalities.

The persons who should register the enterprise and sign the registration forms can also be held responsible in the event an enterprise is not registered.

In special circumstances other persons may be authorized and/or obliged to see to the registration of an enterprise. The Chamber of Commerce can advise you on these circumstances.

Registration forms

The registration forms can be downloaded from the Chamber of Commerce website. As a statutory requirement, all forms are in Dutch and have to be completed in Dutch. Translations in English of forms 6, 11 and 13 are available to assist you while filling out in the Dutch form to be handed in.

After registration

Once the enterprise has been registered, it is the owner's or partner's responsibility to keep the information up-to-date. With a BV the manager authorised to act on behalf of the BV is responsible.

Permits and Licences

Most business activities can be performed without any permits or licences, but for some activities, like catering business, transport or taxi firm, you do need a licence. And an environmental permit may be required if your products or business operations negatively affect the environment. Permits and licences can be applied for at the municipality or at the provincial authorities.

Some sectors require registration with an industry board or a product board. Registration is a statutory requirement, based on the Act on Business Organisations. An industry board is a kind of interest group for a specific sector. The same applies to a product board, which includes all enterprises in a production chain, from producers of raw material to manufacturers of end products.

Termination / dissolution of the enterprise

When transferring or selling your company, you will have to comply with a number of rules and regulations. You should also enter information about the sale into the Trade Register and reach a settlement with the Tax and Customs Administration. A business transfer within family involves several other tax aspects.



Registration in the Dutch trade register is compulsory for every company and every legal entity, including 'freelance' and 'zzp' ('zelfstandige zonder personeel' self-employed without staff).

7. Taxes



A self-employed entrepreneur is responsible for his own tax affairs. It is important to know all about the taxes that will have to be paid and which deductions and exemptions may apply. Another aspect of this responsibility is the obligation to keep records of your business administration for the Tax Administration to inspect – if this should come up.

The Trade Register will provide you with a BTW (VAT)-number. You'll need this to offset VAT with the Tax Office periodically (usually every 3 months). Take care of charging your clients VAT.

The Tax Administration

The Tax Administration should be notified as soon as it is known when the enterprise starts doing business. If you start a one-man business, a professional partnership, a limited partnership or a general partnership, you can register your enterprise for the Tax Administration and for the Trade Register at the same time. Both registrations take place at the Chamber of Commerce. A “joint registration form” is available on the website of the Tax Office. You can complete this form and take it and the Registration forms of your company to the Chamber of Commerce. You will have to submit the form personally.

If you start a legal person, for example a private limited (a BV), you will also have to notify the Tax Administration. The relevant form, the “Statement of information for starting up a business” is available on the website of the Tax Administration. Since incorporation of a BV can only be effected by means of a notarial deed, you will have to go to a civil-law notary before you can register the company.

You should register for the Tax Administration at an early stage, because of certain tax facilities. New businesses can often claim a VAT refund on investments, because in the beginning usually more VAT is paid than actually charged.

New businesses are likely to be visited by a tax inspector, who checks whether the business records and administration meet the standards required. You can also make an appointment yourself for an ‘introductory visit’.

Taxes to be paid

The different taxes described below – apart from the corporation tax – are payable if your business is a one-man business, a professional partnership, a general partnership or a limited partnership. The taxation rules applying for an incorporated business, a BV, will not be described in detail.

A. Value added tax (VAT)/ Turnover tax

It is compulsory for businesses to charge VAT (in Dutch: BTW) when invoicing their clients. There are exceptions, however. If you teach educational courses or provide educational training, you may be VAT-exempted for these activities. Services rendered by journalists, composers and authors can also be VAT-exempted, just like medical services and products.

The VAT rate is 6% or 21%, depending on the type of product or service. The rate may be 0% if you trade internationally outside the EU.

The VAT you charge to your client must be returned to the Tax Administration. The VAT which your suppliers charge can be offset against this.

If you do not charge VAT, you cannot offset VAT. You should check with the Tax Administration if you are not sure whether you should charge VAT or not.

VAT is paid either on a monthly or on a quarterly basis, depending on the type of business you have and the level of turnover. A more specific indication will be provided.

‘Kleineondernemersregeling’

For entrepreneurs who do not have to return large sums of VAT, the regulation

“small-sized entrepreneurs” applies. If this regulation is applicable in your situation, you will pay less VAT or no VAT at all. You could also request an exemption for VAT declaration. The regulation will apply to your business if:

- The VAT to be returned to the Tax Administration on an annual basis – after deduction of input tax – is less than € 1,883.
- The business you run is a one-man business, a professional partnership, a general partnership or a limited partnership.

You meet the administrative requirements for VAT, such as maintaining invoicing records.

If this regulation should apply to your business, you will have to add this advantage to your income tax declaration.

B. Income tax Profitsystem

The Tax Administration applies the following criteria to determine whether you are to be seen as an entrepreneur when paying income tax:

- the number of clients your business has;
- the degree of independence of your business;
- the activities performed as expressed in time and in money;
- who bears the entrepreneurial risks;
- the business’s position in the market;
- liability for debts incurred by the enterprise;
- whether profit is made and the amount of profit made.

If you meet these standards, you will be entitled to the “entrepreneur facilities”.



These are allowable deductions before taxes, such as investment allowance, tax-deferred retirement reserve and entrepreneur's allowance. The entrepreneur's allowance consists of:

- self-employed persons' allowance and starters' allowance;
- allowance for research and development work;
- co-working partner's relief;
- SME profit exemption – exemption for small and medium sized enterprises;
- discontinuation relief.

To be eligible for the first three allowances you will also have to meet the “hour criterion”: you must be active in your business for at least 1,225 hours per year. This means, for example, 50 weeks of 24.5 hours per week. For persons unfit to do other work, the number of hours is 800. If you happen to have run a business once before in the last five years, the rule is that you will have to work for more than 50% of your working hours in your own business. An exception is made in case of pregnancy. For the statutory period for pregnancy and maternity leave – a minimum of 16 weeks –

the Tax Administration will apply the average number of hours you worked in the period preceding the pregnancy leave.

Income earned from other proceedings (Resultaat uit overige werkzaamheden ROW):

You worked and earned income which does not fully qualify as profits from business activities or income as wage. The income can be taxed in two ways: according to the profit system or the payroll system.

The profit system is most common. So you should keep up-to-date administration. Business costs are deductible according to the entrepreneurs' ruling. You are, however, not entitled to all entrepreneurs' fiscal facilities. (such as self-employed deductions and starters' deduction).

In the payroll tax system or opting-in ruling principal and freelancer can agree that the first will submit payroll tax on behalf of the latter: this is the so-called 'opting-in'. In this regime, the freelancer will not be able to deduct any costs, but the principal could provide the freelancer with certain allowances without fiscal consequences. Beware however: this system does not make the 'freelancer' an 'employee' in the common, daily practice sense. The principal will not deduct any employed persons' insurance scheme contribution. This opting-in ruling has to be announced beforehand with the Tax Administration.

C. Payroll tax

If you have employees in your enterprise, you, as the employer, will have to deduct payroll tax at the source and pay this to

the Tax Administration. The payroll taxes are composed of the following elements: wage tax, national insurance contributions, employed persons' insurance scheme contribution and income-dependent Care Insurance Act contribution.

The administration of the business – keeping records

Your enterprise is by law obliged to keep a good and proper administration. Besides, you have to keep the records for a period of 7 years: all information recorded either on paper or electronically, such as cashbook administration and receipts, sales and purchases ledgers, invoices received and copies of invoices sent, bank statements, contracts, agreements and other such documents, software and databases. Your administration must also show how much VAT you have to pay or have paid to the Tax Administration. So, you also need to keep records of:

- invoices sent;
- invoices to pay;
- expenses connected with business activities;
- income;
- private use of goods and services.

Your invoices should be numbered in consecutive numbers. The invoices should state:

- date and number;
- name and address of the supplier or customer (and the VAT identification number when trading with another EU country);
- description of the goods delivered or service provided;
- prices exclusive of VAT;
- the VAT amounts, split into VAT rates.

8. Insurances



An independent entrepreneur runs risks unknown to employees, like not having any income when unable to work because of illness or accident. An employee's income is guaranteed in case of illness and disability. Besides, an entrepreneur may be held responsible for mistakes or damage caused, or his business premises may get burglarized or damaged by fire.

Before starting up an enterprise, you should evaluate the possible risks in your particular line of business and insure these. An insurance consultant will be glad to provide more detailed information.

A. Personal insurances

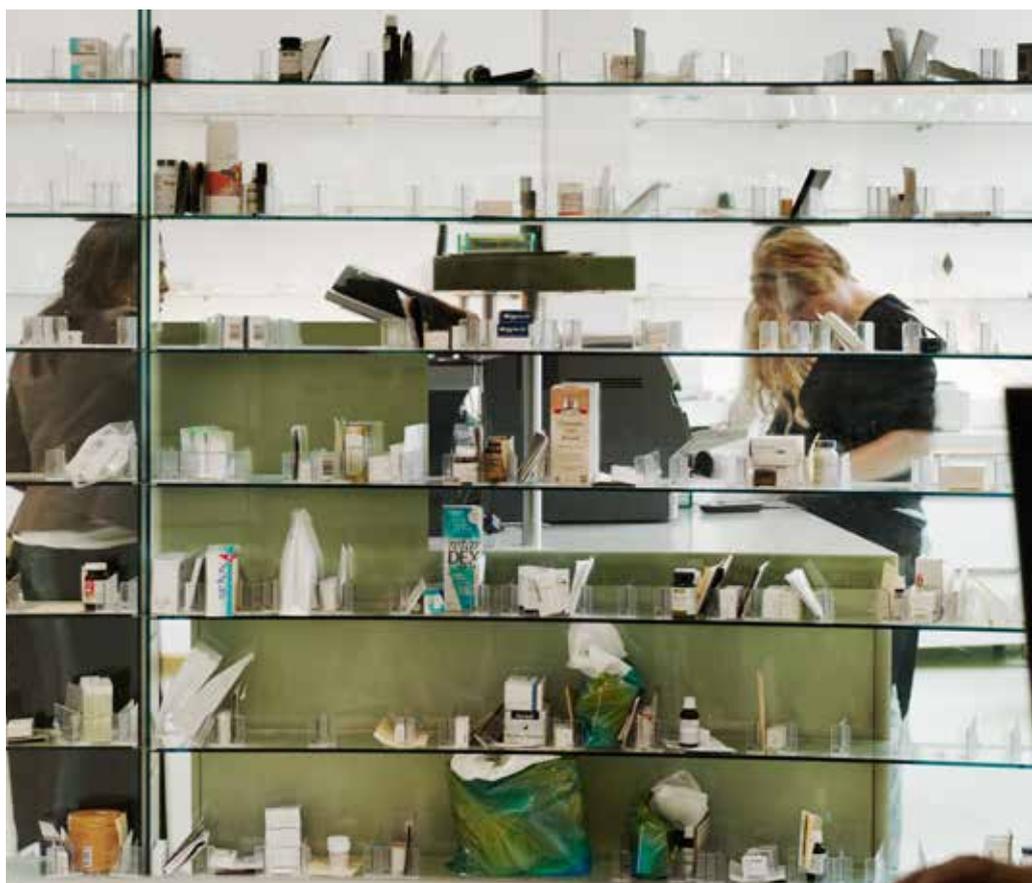
Healthcare

Every resident of the Netherlands pays a nominal premium of approximately € 1,500 per year on a basic health insurance. This premium is paid directly to the health insurance company of your choice. Extra insurance is needed to cover various risks. Apart from the nominal premium to be paid to the insurance company, the Tax Administration collects an income-dependent Insurance Act. If you are a part-time entrepreneur and part-time employee, your salary as an employee will firstly be taxed in accordance with the rules that apply to employees. This contribution is paid by the employer, after which the income-related contribution you have earned as an entrepreneur is calculated and separately collected by the Tax Administration.

If your income is below a certain standard, you will receive a 'care allowance' from the government, which can be applied for at the Tax Administration.

Incapacity for work and invalidity

An independent entrepreneur is not covered by compulsory invalidity insurance in the context of the Work and Income Act (the WIA). He is not entitled to a benefit if unable to work as a result of illness or disability. A part-time entrepreneur combined with employment will be



covered partially, so, he will receive a pro rata benefit.

To cover this financial gap risk, an entrepreneur could take out invalidity insurance, either a private invalidity insurance or a voluntary invalidity insurance.

Private invalidity insurance

First of all, before taking out private invalidity insurance, the allowance needed on an annual basis should be determined, for which 80% of income is the rule of thumb. The amount can be changed during the insurance term, or you could stipulate for payment to be increased by

a certain percentage every year. It has to be decided when the insurance starts making payments and when payments should end. You could choose to have the payments start within a couple of weeks after you have fallen ill, but you may also have certain resources of your own that will keep you going for some time without relying on your insurance right away. Any time between fourteen days and three years is possible; the payments could end any time between your 50th and 67th birthday. The sooner the insurance starts making payments, the higher the premium, of course. First of all: if and at what price you qualify for an invalidity insurance depends

among other things on the branch you work in, your age and your health.

Voluntary invalidity insurance

If you meet the requirements posed by the Employee Insurance Agency (UWV) you could take out voluntary invalidity insurance at the UWV to cover illness and invalidity. These insurances are similar to the employee insurances for illness and disability, the Sickness Benefits Act (ZW) and the Works and Income Act (WIA). The voluntary ZW insurance pays up to a maximum of 104 weeks (2 years); after this period you can take out WIA insurance. The (maximized!) payments under both insurances are based on the daily income you earn as an independent entrepreneur. A voluntary insurance can only be taken out if you previously had a compulsory insurance against the financial consequences of illness – for at least one year, for example as an employee. For taking out a voluntary insurance, you have to report to the UWV within 13 weeks after the compulsory insurance has ended. After this the UWV will no longer be obliged to insure you.

Accident insurance

An accident insurance pays out a lump sum if you become partially or completely disabled as a result of an accident.

Pension insurance and annuity policies

Every inhabitant of the Netherlands aged 65+ receives AOW, national old age pension. This is a basic pension, which may not be sufficient to live on. Therefore, be advised to build up a supplementary pension through a pension insurance

scheme. You could take out an annuity policy or another type of savings scheme.

Entrepreneurs and pregnancy

Female entrepreneurs are entitled to a pregnancy and maternity benefit for a minimum of 16 weeks. This is the Maternity Benefit Scheme for the Self-employed (ZEZ) and the female entrepreneur is entitled to the statutory minimum wages. Independent female entrepreneurs, who worked at least 1,225 hours in the year preceding their application for a ZEZ benefit, will receive a full benefit. For entrepreneurs who worked fewer than 1,225 hours, the ZEZ benefit will depend on their income during the year preceding their application for the ZEZ benefit. The benefit is paid under the Work and Care Act (Wazo) and administered by the UWV.

B. Professional insurances

Business and Professional liability insurance

An entrepreneur runs specific risks when doing business. A client may hold you responsible for the delivery of defective goods or for not having performed the services correctly. If actually liable for the damage caused by defective goods and services, you will have to pay compensation.

Liability for damages is not restricted to purely material damages; you may also have to compensate for damage caused to your client's property while working for him. Or anyone working for you might claim loss of income when he or she can no longer provide in its own income as a result of an accident happened while working for you. Or you may be held responsible for



environmental damage. 'The polluter pays', has taken root in Dutch jurisdiction.

It truly is expedient to take out a business or professional liability insurance to cover all possible risks. The insurance company only pays out if you are insured at the very moment the damage occurs; there is no way of insuring retroactively.

The premium due depends on the size of enterprise and the sector or industry.

Business liability insurance

Business liability insurance covers the damage occurred while running a business. If you, so to say a building constructor, drop a brick on a parked car, you are responsible for the car's damage. The insurance will pay for the damage you caused. The insurance, however, does not cover all damages you are responsible for. If the construction you have built turns out to be of bad quality and the client claims compensation, you cannot recover this from your insurance company. Claims arising from breach of contract will not be compensated by the insurance company either. These claims

are considered to be entrepreneurial risk. If you have to pay a fine because of late delivery, for example, this will be for your own expense.

Professional liability insurance

If you are a professional – consultant, lawyer, civil-law notary, physiotherapist, etc. – your client may suffer (immaterial) damages as a result of inaccurate acting or incorrect information on your part. If you, being a consultant, should advise a client to undertake specific action, which has adverse effects, your client may suffer considerable damages. If the client holds you responsible for these damages and you are actually liable, your insurance will pay the compensation, because it is a professional risk. The premium depends on your profession and the size of your enterprise. Some professions insurance companies may not be eager to cover, because of the high risks at stake. E.g. a flaw in a software program could bring about enormous damage. In case of gross negligence or intent on your part the insurance company is unlikely to pay.

Legal Expenses Insurance

Conflicts and disputes easily arise in business. This may lead to unexpected expenses, especially if the dispute ends up in court. If you have a legal expenses insurance, your insurer will see to it that you will be assisted by a lawyer. The expenses incurred will usually be paid or reimbursed by the insurance company. Not all legal assistance is covered by legal expenses insurance; do check with the insurer which type of disputes are included and which costs will not be reimbursed.

Insurance for goods, machinery and equipment; buildings insurance

At your own risk are all goods and products you have in store, all machinery, equipment, office inventory and computers at your premises. Things like a fire breaking out or your business premises getting burglarized could bring about a considerable loss. Analyse the existing risks, take out proper insurance and check the conditions of the insurance company carefully. Security or fire prevention measures, like sprinklers, are usually required.

If you are the owner of the building, you probably wish to insure the premises with a building insurance that covers damages caused by, for example, fire, lightning or explosions. Damage to windows is not covered by a building insurance; you will have to take out separate glass insurance. Not only the insurance company, but banks as well may pose certain conditions before granting you a loan for investing in your business. If you have a bank loan to finance the business premises or machinery, equipment, etc., the bank often stipulates that you take out buildings insurance.

Loss of profits insurance

This insurance will cover the losses you suffer as a result of temporarily having to shut down your business, for example after a fire.

Partner or associate insurance

This insurance will cover the risk you run if your business partner or associate can no longer work in the business in case of, for example, illness.

Machinery breakdown insurance

This insurance will cover the repairs of machinery. Machinery breakdown as a result of wear and tear or bad maintenance is not covered.

Computer insurance

This insurance covers any damage that may result from improper use, viruses or power cuts. Both hardware and software are covered, which means that loss of data is covered as well.

Insurance for goods transport

During transportation goods may be damaged. You need a transport insurance if you are responsible for the transportation of the goods until they arrive at their destination. If your business transports the goods itself, insurance should also be taken out to cover the risks during transportation.

Credit insurance

Not all debtors will pay the invoices you send them; they may be involved in bankruptcy proceedings, or suspension of payments has been granted. A debtor could also dispute an invoice and refuse to pay. Credit insurance will pay the invoiced amount, but the insurance company will probably check your accounts receivable portfolio before insuring you. The insurance company will not accept invoices sent to clients with bad creditworthiness.

General Terms and Conditions

Applying General Terms and Conditions (GTC) to all the contracts with your clients or customers makes clear to them what terms and conditions you apply for

Make general terms and conditions known to your clients before closing the deal. Be sure to have them fit to your liability insurances.



services, payments, purchase or sales orders, etc. GTC may help to avoid awkward discussions or conflicts, because each party's rights and obligations are defined. Please realise that especially larger companies and organisations usually apply their own GTC and may, therefore, be unwilling to accept yours.

The following terms and conditions are usually included in the GTC:

- offer – free of obligation or not, term for acceptance;
- transportation – responsibility for transportation costs, insurance and import duties;
- delivery term – definition of circumstances beyond a party's control;

- retention of title – when will the other party become the goods' owner (e.g. after payment);
- guarantee – if a guarantee is provided, terms and conditions;
- dispute resolution – competent court or arbitration;
- liability – limitation of liability, total amount of damages to be paid.

Under Dutch law GTC may not be unreasonably onerous – i.e. you may not impose terms and conditions that would not be fair on the other party. Just like your customers and clients will not be allowed to apply unreasonably onerous terms and conditions to the contract you enter into with them.

If you apply GTC, make sure that your customer or client has been informed about your GTC before closing the contract, because only then they will become valid. If your customer or client also applies GTC, do negotiate whose GTC will apply to the contract involved. If you are in a position to do so, be the first to reject the applicability of the other party's GTC!

Long-distance sales and purchases

If you are involved in the long-distance selling of products or services in the Netherlands (e.g. selling via the Internet, via a web shop, by telephone, by fax or by post) you must comply with rules such as the business' obligation to provide information and the customer's right to return what he or she purchased.

<http://www.answersforbusiness.nl/regulation/long-distance-sales-and-purchases>

9. Business premises



A considerable number of part-time and full-time entrepreneurs run their enterprises from their home address. Others lease commercially exploited office space, a shop or other premises where they have their registered business. Whichever you choose, please bear a few things in mind.

Business Premises



Zoning plan

Do check the local zoning plan in which the municipality determines what the designated use of premises or locations is. The designated use of most houses – including terraced houses and semi-detached houses – is ‘residentially’. Strictly speaking, you cannot start a business at that address. In practice, setting up an enterprise at an residential designated address is permitted provided that:

- the type of business you run can be classified as an office;
- your clients do not visit the house;
- you do not cause any nuisance to your neighbours;
- only a small part of the house is used for business activities.

A shop, a hairdresser’s salon, beauty parlour or a mechanic’s workshop, are not very likely to be seen as businesses which can be run at your home address.

If you rent business premises, you should also check with the municipality whether you are allowed to run the intended business at those premises. In case you intend to run a café at those premises, the zoning plan should list the designated use of this location as ‘catering industry’. If the zoning plan has another designated use, you will not be allowed to open a café at that address. Requesting a change in designated use may be a lengthy procedure.

Tax-deductibility of accommodation costs

The costs incurred for renting business premises are fully tax-deductible. If your enterprise is at your home address, tax-deductibility of the costs is not always possible. The Tax Administration only allows you to deduct costs if:

- the office space is an independent part of the house, with its own entrance, for example.
- at least 70% of your income must be earned in the home office space if you also have office space somewhere else.

Without a working space elsewhere, at least 30% of your income must be earned in the home office.

If you meet these conditions, a maximum of 4% of the value of the office space and a pro rata part of the costs of the office space are tax-deductible. The Tax Administration will inform you on the tax-deductibility of accommodation costs in your situation.

Professional accessibility

Renting or buying business premises only makes sense if you are a full-time entrepreneur. Running a business at your home address will be a lot less expensive than renting business premises, but do realise that a business run from your home may look less professional to your clients. It will be efficient to have a business telephone number attached to your trade name, next to a private (family) telephone number. Another way of smoothing the clients' way to contact you is to engage a bureau providing secretarial services. Answering your phone, taking messages or putting calls through will then be taken over in your absence.

For business meetings and appointments you might consider to temporarily rent space at a business unit or park, instead of receiving at your home address.

Renting business premises

Depending on the type of business premises you rent, your rights and obligations may differ. Renting a shop, you have more protection if the owner wants to terminate the contract than when renting an office. Renting an office space in a large office building where temporary offices can be rented is different again.

Premises for retail and catering business

Retail businesses (e.g. shops) and catering businesses (e.g. cafés and restaurants) operate differently. Retail and catering business are accessible to the public, whereas offices can usually only be visited upon invitation. The rules that apply to these business premises differ as well. The law concerning premises for retail and catering business provides the entrepreneurs with a right to security of tenure, i.e. protection against termination of the contract by the lessor. In commercial rental law the party that rents the premises is referred to as the lessee and the owner of the premises or the party that is entitled to let the premises is referred to as the lessor.

Business premises

Publicly accessible locations where goods or services are delivered directly to the public are referred to as business premises. In Dutch: 'middenstandsbedrijfsruimte'. Examples are shops, cafés, restaurants, traditional enterprises such as greengrocers', butchers' and bakers', garages, dry-cleaners' and collection and delivery services.

The rental law that applies to renting business premises stipulates that the entrepreneur who rents the premises will be entitled to security of tenure for an initial period of 5 + 5 years or a initial period between 5 and 10 years. If you should not wish to take on long-term obligations, you could opt for a short-term contract with a maximum of 2 years.

Business Premises

Termination

The lessor can only terminate a rental contract when he has good reasons to do so, and termination can only take place if the statutory notice period and other statutory rules are observed.

It would be getting too far off the subject – start doing business – to confront you with all caveats. Summarizing: mutual agreement and understanding are essential aspects in renting and letting premises and especially the termination of a contract should be handled precisely. In case of indistinctness or doubt, do not hesitate to consult either your local Chamber of Commerce or a real estate professional or lawyer.

5 + 5-year contract. You rent the business premises for an initial 5-year period, to be extended with a subsequent 5-year period. If you or the lessor does not give notice of termination before the expiry of the initial 5-year period, the contract will automatically be extended for another 5-year period. If notice of termination is not given at the end of this second 5-year term, the contract will automatically be renewed for an indefinite period of time. There are legal restrictions for the lessor to terminate the contract.

Contract for a period of 5 - 10 years. If you rent the business premises for an initial period of 5 to 10 years, notice of termination may be given, either by the lessor and the lessee, taking effect by the end of each year, i.e. at the end of year 5, the end of year 6, etc. If notice of termination is not given in any year, the contract will be automatically extended by a number of years to the total period of 10 years. So, an initial contract of 7 years will be extended by 3 years.

Long-term contract. If you rent the business for an initial term of 10 years or more, the 5 + 5 term does not apply. If notice of termination is not given before the end of this period, the rental contract will remain in force for an indefinite period of time.

Short-term contracts. You can enter into a rental contract for a maximum of 2 years if unsure whether your business will be successful at a specific location. The contract term rules do not apply, neither does security of tenure. The contract automatically ends – no notice has to be given – when the contractual term expires. But, if the contract is continued after the initial 2-year period, it will be automatically extended to a total of 5 + 5-year period.

.....

Other business premises

Premises used by entrepreneurs to run a business which cannot be classified as retail and catering business, ‘bedrijfsruimte’ (as described above), are referred to as other business premises, ‘overige bedrijfsruimte’. For instance: factories, offices, banks, travel agencies, bicycle lock-ups, car rental firms, workshops not freely accessible to the public, casinos, law firm offices, advisor bureaus, doctor’s surgeries, funeral undertakers; sports centres, gyms and garage boxes as well.

If you rent premises like these, the contract does not have to comply with any statutory

rules on the term of the lease. Lessor and lessee are free to enter into any form of contract they like. The rent to be paid cannot be changed during the term of the contract, not even by requesting the court to permit this, but parties can include a clause on interim rent review. If lessor and lessee have not agreed otherwise, the lease is supposed to be for an indefinite period of time.

Termination of the contract must take place by giving notice. If a notice period has not contractually been agreed on, the notice period will be the same as the payment term for the rent. So, if the rent is paid on a monthly basis, the notice period will be one month. If the rent is paid twice a year, the notice period is six months, unless parties have agreed on another notice term.

When the lessor has given notice of termination, the lessee does not have to vacate the premises immediately, but is given two months to request the court to extend the vacation period (period after which he has to leave). The court can extend this to one year maximum. After the first request for suspending the vacation period, the court can grant another two extensions, to maximum one year each. If a lessee fails to meet his contractual obligations, e.g. if he does not pay the rent, the court may not grant any extensions.

Renting office space in a large office building

An alternative to renting office premises or working from home is to rent office space in an office building with office units for small enterprises. The advantages are the relatively low rent and flexible conditions.



The notice term is usually short, which enables an expeditious exit if you do not need the space anymore. These office buildings offer all kinds of facilities, such as a reception, telephone and facsimile service. Another important advantage is the available network: ample opportunity to exchange ideas and experiences with the other renting entrepreneurs. Some office buildings, such as The Hub Amsterdam – also referred to as ‘incubators’ – stimulate innovative business and support starters setting up their businesses there.

Networking

When you run a small business you should try and avoid situations where you are no longer available for particular clients

because you work for one client exclusively for a period of time. Clients and potential clients are likely to turn to larger, more flexible firms and business opportunities run to waste. Working together with other small businesses in similar circumstances could mean a way out of this dilemma. Passing on or taking over contracts makes you more flexible and you will never have to sell ‘no’. Cooperation agreements with fellow self-employed entrepreneurs are well worth considering. It goes without saying that you should inform your client about the partners with whom you will be doing (his) business.

Building up a network is obviously important to every entrepreneur. Especially one-man business entrepreneurs are

eager to exchange information and share experiences. You could become a member of a network organisation or an association of entrepreneurs. There are associations for specific branches and special interest groups for young entrepreneurs, female entrepreneurs or entrepreneurs with a non-Dutch background. The local shopkeepers’ association and an interest group for business park enterprises are other examples. The Chamber of Commerce gladly provides information on such organisations and associations in your area.

Publication in English

Legal aspects of doing business in the Netherlands

bilingual edition, 2007 (English & Chinese)

This booklet aims to provide a basic understanding of Dutch business law to foreign entrepreneurs and their legal service providers, who are about to start, or are engaged in business operations in the Netherlands. Areas covered are the legal framework, regulatory and antitrust matters, tax aspects, labour law, intellectual property, spatial planning and environmental issues and insolvency.

Search at www.loyensloeff.com/ news, publications for book title.

‘Doing business in the Netherlands’ is a practical guide providing relevant information to start up a business in the Netherlands. It will help to decide upon the most optimal legal form for your business; how to make smart use of the available subsidies; whether to lease or buy a business property; whether to hire local personnel or bring your own staff from abroad. The guide also provides useful insight into the Dutch tax system.

Search for ‘doing business in the Netherlands’ at <http://eng.mazars.nl/> search at doing business in the Netherlands www.sra.nl/MKB-Info or at a search machine.

Memorandum on the 30% tax ruling

An expatriate transferred to the Netherlands will become subject to Dutch income tax either as a resident or non-resident taxpayer. Such transfers will often incur significant additional costs (like double housing costs, relocation costs, losses on the sale of assets, etc.) due to a temporary stay outside the home country. Since it may be difficult for an expatriate to prove the deductibility of said costs according to the Dutch tax law, the Dutch tax authorities have issued the 30% ruling the latest revision of which is effective from January 1, 2001 (article 15 letter k Wage tax act 1964).

Search for english-brochures at www.horlings.nl/

Dutch government websites

Answers for business

Answers for Business is the starting point of the Dutch government for entrepreneurs. See at a glance which rules, permits, taxes and subsidies apply when you do business in The Netherlands.

<http://www.answersforbusiness.nl/guides>

Government.nl

Government.nl is the central access to all information about governmental organisations in the Netherlands.

<http://government.nl>

Dutch Immigration authorities

The IND (Immigratie- en Naturalisatiedienst) has the governmental task to carry out the immigration policy.

<http://english.ind.nl/residencewizard/>

Dutch Ministry of Foreign Affairs (BuZa)

The official website of the Dutch Ministry of Foreign Affairs offers specific information for newcomers in the section 'coming to the Netherlands. It also offers a selection of expat websites.

www.minbuza.nl/en/you-and-netherlands

Taxes

A brief outline of all taxes in the Netherlands is to be found at:

<http://english.minfin.nl>

www.belastingdienst.nl/, [English](#), [business](#)

Insurances

The Ministry of Social Affairs and Employment has made available brochures in different languages with information on working in the Netherlands, the minimum wage, and rights and obligations of employees from EU countries.

<http://english.szw.nl/>

<http://www.svb.nl/int/en>

www.verzekeraars.nl/, [English](#)

Dutch Central Bank

Search at www.dnb.nl/ view Register of supervised/regulated Banks.

Dutch Bankers Association

www.nvb.nl/ look at the English publications, general banking conditions, Association of Banks.



Chambers of Commerce

The Dutch Chambers of Commerce provide information on starting a business, legal forms, registration in the trade register, international trade etc. We accumulate knowledge, contacts and partnership. Partnership, making us the essential reference point for every firm doing or seeking to do business.

Would you like to contract the Chamber of Commerce?

Find contact information or an office nearby at www.kvk.nl/contact

