Taxation in the Netherlands in 2007

**Tax rates for the year 2007**

**Corporate income tax**  20-25.5%

**Personal income tax**  33.65-52%  (with social security contribution)
  2.5-52%  (without social security contribution)

**Dividend tax**  0-15%

**Real estate transfer tax**  6%

**VAT high rate**  19%

**VAT low rate**  6%

**Corporate income tax**

Corporate income tax is levied on the taxable profit made by a limited company or made by the Dutch branch office of a foreign limited company. The tax rate is 20% over the first € 25,000, 23.5% from € 25,000 till € 60,000, 25.5% over the remaining profit. There are plans for further reduction of the rate to the level of 24.5%.

**Participation exemption**

The participation exemption applies in case of a participation of at least 5% in the capital of a subsidiary. Such 5% participation can be created by issuing shares with low nominal values and a high premium reserve. During the parliamentary discussions, it was indicated that the 5% criterion will not be applied on a "per category of shares" basis. The portfolio investment and the inventory test will be abolished. The subject-to-tax test will only apply to passive investment subsidiaries. Under the new rules, the participation exemption does not apply if the subsidiary holds more than 50% portfolio investments and is not taxed against a rate of at least 10%, determined in accordance with Dutch standards.

A portfolio investment exists if excess cash is invested and the investments are not necessary for the activities of the business (so-called free investments). The parliamentary discussions clarify that to determine whether more than 50% of the assets consists of portfolio investment, the fair market value must be taken into account. Contrary to the current regime, the investment character must only be determined at the level of the subsidiary and no longer at the level of the parent company. If the situation of the subsidiary changes within a year, a compartmentalization must take place. According to the Minister, it is likely that the compartmentalization doctrine also applies to dividends (and not only to capital gains). In case the participation exemption does not apply, a 5% credit will be granted.

For the calculation of the profit according to Dutch standards, the provisions regarding the patent and group interest boxes (see below) cannot be taken into account. The explanatory report provides for an example in which a normal taxed Belgium company does not meet the subject-to-tax test, because due to the notional interest deduction, the 10% criterion was not met by the Belgium company.
The participation exemption also applies to loans, which de facto function as equity (Art. 10(1)(d) CITA). The rule that the participation exemption will not apply if the interest is deductible in the foreign country will be abolished. Purchase and sales costs are not deductible, unless it concerns a low-taxed investment participation.

**Fiscal unity**

A parent company and a subsidiary can be taxed as a whole in a so-called fiscal unity. The two companies will each be liable for the taxation on their profits, but will be taxed as one. Losses and gains are therefore set off against each other. For instance losses of a start-up company can be set off against the profits of the parent company.

The mother company should own at least 95% of all shares. In general the fiscal unity applies to all companies seated in the Netherlands. Companies incorporated under foreign incorporation laws, but with the seat in the Netherlands can apply for the fiscal unity but in that case additional conditions should be met.

Through a fiscal unity, a reorganisation in the group can be realised without taxation. Furthermore, due to the combined taxation internal transactions will be neglected when calculating the taxable profit. In this way it is possible to transfer assets to other group companies without taxation.

Breaking up the fiscal unity could result into taxation of the transferred assets if they were transferred less than 6 years before the unity break up.

**Thin capitalisation rules**

Deduction of interest is limited when the average debt capital reaches more than three times the shareholders equity. The non-deductible interest in that case equals the excess of debt capital in proportion to the average debt capital.

The rules only apply to debt capital borrowed from group companies and when the loan is more than € 500,000. Interest deduction of debt capital from third parties or for loans under € 500,000 is not limited.

**Investment deduction**

Investments in company assets are stimulated with an extra deduction depending on the invested amount. Besides the normal depreciation costs the investment leads the first year to an extra deduction depending on the invested amount.

(total investments maximum € 34,000 resulting in 25% of the invested amount extra deduction, investments maximum € 258,000 resulting in 3% of the invested amount extra deduction).
**Investment deduction schedule**

<table>
<thead>
<tr>
<th>Invested amount between</th>
<th>deductible percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>€</td>
</tr>
<tr>
<td>-</td>
<td>2,100</td>
</tr>
<tr>
<td>2,100</td>
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<tr>
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<td>232,000</td>
</tr>
<tr>
<td>Over</td>
<td>232,000</td>
</tr>
</tbody>
</table>

**Random writing off**

For certain investments a random depreciation of the investments is possible. Instead of the generally accepted periods for writing off fixed assets, the entire investment amount can be brought at once at the costs of the annual turnover.

The random depreciation is possible with investments in for instance the Dutch movie industry and environmentally favourable investments.

**Re-investment reserve**

The re-investment reserve allows a delay in the taxation of profits arising from the sale of fixed assets. The profit, arising through the sale of the fixed asset, can be reserved in a so-called re-investment reserve. When a new (comparable) fixed asset is purchased, the book value of this newly purchased asset can be reduced with the profit of the sold asset.

This system therefore grants a delay in the taxation of the profit arising through the sale of assets.

**Non deductible costs**

Costs arising because of representation, food, and drinks, are deductible for 73,5%. Penalties and fines from the government are not tax deductible.

**Company mergers**

The profit arising by the transfer of shares of an independent part of the company or the company as a whole to another company in exchange for shares in the receiving company, will not be taxed.

In order to meet the conditions of this tax-free merger, the company should apply the same bookkeeping principles and further taxation of the profits in the future must be secured. (see the E.U. merger directive)
**Personal income tax**

**Schedule**

Personal income tax rate for people younger than 65, and social security contribution (SSC) rate if applicable

<table>
<thead>
<tr>
<th>bracket</th>
<th>amount</th>
<th>tax rate</th>
<th>SSC</th>
<th>total tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(^{st})</td>
<td>€17,319</td>
<td>2.5 %</td>
<td>31.15 %</td>
<td>33.65 %</td>
</tr>
<tr>
<td>2(^{nd})</td>
<td>€31,122</td>
<td>10.25 %</td>
<td>31.15 %</td>
<td>41.40 %</td>
</tr>
<tr>
<td>3(^{rd})</td>
<td>€31,122</td>
<td>42.00 %</td>
<td>--</td>
<td>42.00 %</td>
</tr>
<tr>
<td>4(^{th})</td>
<td>&gt; €53,064</td>
<td>52.00 %</td>
<td>--</td>
<td>52.00 %</td>
</tr>
</tbody>
</table>

The Personal Income Tax Law 2001 uses a box structure. The subsequent income components are taxed in their subsequent boxes.

The first box contains income from work and dwelling.

The second box contains all income and capital gains generated from a shareholding of 5% or more in a limited liability company. The taxation is 22% on first 250,000 euros and rest is taxed with 25% rate of this income and capital gains.

The third box taxes income generated from property. The income generated from this property is set on a 4% fixed return on investment. This return on investment is subsequently taxed with 30% tax (if exceeds €20,014); that is the formula will be: (taxable base minus €20,014) * 4% * 30%. Debts and loans can be deducted before calculation of the fixed 4% return.

**Foreign employees**

All residents in the Netherlands are taxed for their worldwide income. This implies that employees, residing in the Netherlands, are taxed for their property in and outside the Netherlands.

For (foreign) employees special deduction in the tax rates have been introduced and special arrangements have been made in order to prevent double tax burden.

**30% tax free allowance**

Foreign employees working for a Dutch company can apply for the 30% ruling. This ruling grants a tax free reimbursement of 30% of the salary for costs resulting from the expatriation. The wage tax is in this case calculated over 70% of the gross salary income (including the 30% allowance).
The foreign employee should possess specific expertise which is scarce among Dutch employees. The ruling is applicable for max. 10 years.

Investment income and property exempt

For this group of foreign employees a special arrangement has been made in order to prevent double taxation of their property and investment income. They can choose to be taxed in the Netherlands for their worldwide income and property, or only for their income from work and dwelling situated in the Netherlands. In that case investment income and property is not taxed in the Netherlands, but only in the home country (if applicable).

Mortgage interest deduction

All costs payable in relation to the mortgage on the house in which one lives is deductible. Mortgage interest is deductible during 30 years. Foreign employees who have chosen for the partial taxpayer status will also be allowed to deduct their interest and related costs from their gross salary income.

Life interest premiums

All life interest premium payable for the levelling of the pension benefits are deductible as long as the pension plan and the related pension benefits has not reached more than 70% of the last earned salary.

Health care deductions

All costs arising because of sickness, death, pregnancy or disabilities and not compensated by the insurance companies can be deducted if and so far it exceeds a non deductible amount.

Study costs

In principle, expenses for education for future income for employment are deductible with a maximum of € 15,000.

Childcare compensation

Employers compensation for childcare is non-taxable as long as it doesn’t exceed 1/3 of the total costs.

Company car

A car distributed by the employer will be taxed for the use of the car for private purposes.

The private part of the usage of the car is calculated through a kilometre registration. When the total amount of private usage kilometres reaches more than 500 kilometres an additional fixed income component is added to the gross income. This fixed income amounts to 22% of the catalogue new price of the car.
**VAT**

The VAT system is based on European council directives. The VAT system is similar in all EU countries, but the specific rules are not exactly the same, since the EU directives leave room for exceptions and interpretation in the implementation in the subsequent countries.

**Real Estate Transfer Tax**

The real estate transfer tax is levied upon any acquisition of immovable property or any right to the immovable property. The tax levied amounts to 6% of the fair value of the property. The tax is levied therefore at the moment of purchase.

Under the term acquisition, the law also implies the acquisition of shares in a limited company of which the assets consist for 70% of more in real estate. The acquisition of monuments or shares in a company who owns old monuments is free of transfer tax. The buyer must be a legal person (limited company of foundation).
**Incorporation of a limited company**

The Dutch private company with limited liability (besloten vennootschap, BV) is a legal person, that has its own independent rights and duties. For the owner this limits the risks of joint and several liabilities.

**Requirements**

A BV will be incorporated by a deed of incorporation executed by a civil law notary. The civil law notary assures and safeguards the correct legal incorporation of the company. Before the BV can be established, the founders have to obtain a certificate of no objection from the Ministry of Justice. The Ministry checks whether the person(s) establishing the company has/have been involved with bankruptcy or fraud cases.

At the moment that the BV is being established, it must have an issued share capital of at least € 18,000 to be paid upon the shares by the shareholders in money or goods. The payment of the share capital in money should be accompanied by a bank statement in which the receipt of the mandatory amount on the bank account is confirmed by the bank. The value of the payment of the share capital in goods must be confirmed by an auditor.

**Deed of incorporation**

The deed of incorporation contains the articles of association of the company that contain regulations about the amount of Statutory Share capital, appointment of directors, transfer of shares etc. Furthermore the articles of association should contain a clause restricting the free transferability of shares. If the articles of association need amendment afterwards, this could be realized by a notarial deed.

Immediately after incorporation, the company should be registered, with the Tax administration and the Chamber of Commerce.

**Liability**

Because the BV is a legal person, all persons involved, like the shareholders, the managing director(s) and supervisory directors, are in principle not personally liable for the debts of the company, except in case of fraud or mismanagement.

The shareholders are not further liable than the amount of share capital, and are therefore protected.

The directors however are liable for the debts of the company in case of mismanagement or fraud. The subscription with the Trade Register of the Chamber of Commerce is also a requirement to prevent accusation of mismanagement.

Furthermore the Dutch law can hold the director personally responsible for the payment of the Wage Tax, the V.A.T. and the social security contributions payable by the company.

For instance: In case the company is unable to pay the above mentioned amounts, a request for a postponement of payment should be filed immediately after recognition of the problem. When
the request for a postponement of payment will be filed too late, the director will be personally held responsible for the payment of the amounts due.

**Bodies of the company**

The bodies of a limited liability company are a general meeting of shareholders, a management board and sometimes a supervisory board.

The management board consists of one or more managing directors taking care of the general management of the company. The managing director(s) will be appointed and dismissed by the general meeting of shareholders.

**Obligation to publish annual accounts**

Every BV is obliged to draw up and publish the annual accounts and deposit it for inspection at the Trade Register of the Chamber of Commerce. Due to Dutch law the annual accounts have to comply with requirements that depend on the scope of the company.

**Shareholders agreement**

When entrepreneurs will cooperate in a BV, it is advisable to agree a shareholders agreement. This is because the articles of association of the company usually contain only a standard regulation, that often is experienced as a ready-to-wear suit, that does not fit very well. A shareholders agreement can be described as a made-to-measure suit, in which shareholders make several arrangements that will be more detailed than or deviating from the articles of association. The shareholders agreement contains arrangements that will only apply between the shareholders. The articles of association offer insufficient space for mutual agreements.
**Labour Law**

The employment agreement between employer and employee is subject to the strict Dutch Labour rules protecting the employee in his relation with the employer. These rules contain for instance the Minimum Wage Law, Dismissal Law and the law on Equal Treatment between males and females.

In some cases the employment agreement is subject to the arrangements as made between the employers organisation and employees organisation of the subsequent branch of trade. These arrangements include for instance minimum wages, social benefits and trial periods. All these arrangements are combined in a so-called CAO (collective bargaining agreement) which is closed between the representative institutions of the employees, the Trade union, and the employers. Individual employment agreements must be in accordance with this collective bargaining agreement.

**Duration of agreements**

An employment agreement may be concluded for a definite or indefinite period of time.

*Employment agreement for definite period of time*

The agreement for a definite period of time terminates by operation of law, without any notice being required.

This agreement for definite period of time may be renewed twice within a period of 3 years. These renewed agreements will also terminate by way of law, without any notice being necessary. When the agreement is continued tacitly (without notice of renewal), the agreement will be renewed for an equal period of time, not exceeding a year. If parties wish to renew the agreement for a different period of time, this should be agreed in writing.

When three definite time agreements have been concluded or when three years have passed, the agreement will automatically be transformed into an agreement for an indefinite period of time.

*Employment agreement for indefinite periods of time*

An employment agreement for an indefinite period of time does not terminate by operation of law. An employment agreement can be terminated in several ways. The possibilities for termination are described in chapter “Termination”.

**Trial period**

A trial period is optional and should be agreed upon in writing (in the employment agreement). During the trial period both employee and employer may terminate the employment immediately without any notice. There are no prohibitions of dismissal applicable (see chapter “Termination”).

The maximum period is one month in case of an employment agreement with a duration of a year or less and two months for an agreement with a duration longer than a year or for an agreement for an indefinite period of time. A trial period longer than two months is null and
void. Furthermore the duration of the trial period should be the same for both employer and employee.

**Liability**

Accidents during working hours will result in liabilities in case the employer has not fulfilled his duty to maintain security. This duty to maintain security contains the safety rules of the ARBO Law and the duty to educate and maintain these applicable rules.

Due to the new identification rules for all inhabitants in the Netherlands, employers should possess a copy of the identification papers of the employee. Employees should always carry identification papers on them during working hours.

**Salary**

Employees are entitled to a minimum wage based on their age. For employees above 23 years of age the minimum wage amounts to a gross monthly income of € 1,284.60 (amount 2006).

Absence due to sickness does not stop the obligation of payment of salary. When the employee is sick or unable to work, the payment (after two working days) of salary should continue amounting to 70% of the salary for the first 104 weeks of absence. This percentage may differ if a collective bargaining agreement is applicable. It is advised to take insurances for these risks.

**Holiday**

An employee is entitled to a yearly holiday payment of 8% of his gross yearly income to be paid in June every year. Payments in May are possible when agreed upon.

In addition the employer is obligated to grant a number of holidays with a minimum of 4 times the weekly working days.

**Termination of employment agreement**

There are several possibilities to terminate an employment agreement.

*By operation of law*

This is exclusively reserved for employment agreements for a definite period of time, ending at the end of the duration agreed upon in the employment agreement.

*By mutual consent*

Both parties agree to terminate the agreement. This mutual consent will block the possible entitlement to an unemployment benefit for employee.

*Unilateral by employee*

Employee may terminate the agreement by giving notice to the employer. The notice period should be included in the employment agreement. The statutory notice period is one month. It is possible to deviate from this, but only when the notice period for the employer is twice as long as the notice period for employee.
**Unilateral by employer**

In principle the employer has three ways to terminate the employment:

1. **By giving notice**
2. **By dissolution of the employment contract by court order**
3. **Dismissal with immediate effect**

**Re. 1. Giving notice**
The employer needs permission of the CWI (governmental organization) for termination by giving notice. On application the employer has to give good reasons to terminate the agreement. After permission the employer is able to terminate the contract by giving notice to the employee subject to the agreed or statutory notice period. In principle it is not necessary to pay the employee a severance payment.

**Re. 2. Dissolution of the employment contract by court order**
The employer may request the subdistrict court to dissolve the employment contract for serious reasons. The subdistrict court is entitled to grant the employee a severance payment on dissolution, to be paid by the employer. This payment will be based on the so called “subdistrict court formula”: \[ A \times B \times C \]

- \( A \) = weighted years of service (in relation to age)
- \( B \) = gross monthly salary
- \( C \) = correction factor, implying the culpability of the employee or employer concerning the dissolution. If none of the employer or employee is culpable, the C-factor will be 1.

**Re. 3. Dismissal with immediate effect**
When there are urgent reasons, the employer may terminate the agreement instantly. The urgent reasons need to be objectively and subjectively determinable. Furthermore the urgent reasons should be communicated to the employee. Because this kind of dismissal is not without risks, an employer should be very careful to use it.

Irrespective of the way of terminating the agreement, it is always sensible to consult a legal advisor if an employer intends to terminate a contract with an employee.

**Dismissal prohibitions**
In some circumstances, termination of the employment agreement by employer is not allowed. For instance, employees may not be dismissed during the first two years of illness, during pregnancy and maternity leave, because of membership of a trade union, because of refusal to work on Sundays.