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The Dutch Company

The answers to your  
questions



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**The Dutch company** can be established as either a B.V. ('besloten vennootschap'), governed by the Law of 18th June 2012 or an N.V. ('naamloze vennootschap'), governed by the Law of 27th April 1994 . Within the framework of a purpose limited to the holding and financing of participations, this type of company is commonly referred to as a "DutchCo".

The Dutch company presented in this document is a normal taxable company. Dividends and capital gains resulting from the sale of participations received by this company can be exempt from taxation under certain conditions, which makes it a very useful vehicle for holding and managing participations.

**The Dutch company** is a competitive structure compared to those in other jurisdictions

Here are 6 good reasons to consider the use of a Dutch company:

- Possible 100% tax exemption of dividends and capital gains
- Flexible corporate legal system ("Flex BV")
- Pragmatic approach of Dutch authorities
- Taxation stability of the Netherlands
- Geographic location with main ports Amsterdam and Rotterdam
- No WHT on interests and royalties (and wide exemptions for dividends)

To better define its special features and possible benefits, this company is presented below in the form of questions and answers. The following list of questions is not necessarily exhaustive. It only relates to the types of companies listed above. We remain at your disposal to answer any other questions or to discuss potential issues.

## A. IN WHICH CASES WOULD HOLDING A DUTCH COMPANY - Besloten Vennootschap (B.V.) or Naamloze Vennootschap (N.V.) - CONCERN YOU?

**A Dutch company may be of interest for you in the following situations:**

### CENTRALISED MANAGEMENT OF A PORTFOLIO OF PARTICIPATIONS

The centralised management of a portfolio of participations can be optimally carried out by means of a Dutch company, which serves as a holding company.

### CASH POOLING

The cash of several companies within the same group can be centralised within a Dutch company. The pragmatic approach of the Dutch tax administration makes the Netherlands an ideal place for centralising cash flows.

### SEPARATING INDUSTRIAL AND PROPERTY RISKS

Holding companies make it possible to isolate, within different structures, professional assets from private assets, such as to separate the risks.

### BUSINESS DEVELOPMENT

A Dutch company can be used to organise the development of business activities.

This list is not exhaustive, and a Dutch company can be particularly useful in many other situations.

## B. WHY CHOOSE THE NETHERLANDS?

The Netherlands are reputable for:

- ECONOMIC, POLITICAL AND SOCIAL STABILITY
- The liberal and pragmatic legislative framework and the close communications between the financial marketplace and the authorities provide for great responsiveness and a quick implementation of positive innovations.
- HIGHLY QUALIFIED AND MULTICULTURAL PERSONNEL
- Thanks to its many assets, both in professional terms and in relation to quality of life, the Netherlands attract excellent skills. The result is a working population that is dynamic, cosmopolitan, multilingual and very high-performing in its domain.
- A SPECIFIC TAXATION AND LEGAL FRAMEWORK
- A wide scope of the Dutch participation exemption, one of the best networks of Tax treaties, the absence of local withholding tax on outbound interest and royalties together with the possibility to get advance tax clearance on various topics make the Netherlands competitive relative to other financial centres. The legislation favours investment and rapid economic expansion.
- THE NETHERLANDS HAVE A LARGE AND INTERESTING TAX TREATY NETWORK
- HOME TO SEVERAL WELL KNOWN INDUSTRIAL COMPANIES

## C. WHAT ARE THE POTENTIAL BENEFITS OF A DUTCH COMPANY?

A Dutch company is subject to the normal tax system, which means that it is a normal taxable company. Subject to certain conditions, it can offer benefits that make it a truly interesting and competitive vehicle.

### APPLICATION OF DIRECTIVE 2003/123/EEC ON THE TAXATION OF PARENT COMPANIES AND SUBSIDIARIES

Since 1992, the Dutch company falls within the scope of Directive 2003/123/EEU concerning the taxation of parent companies and subsidiaries (parent–subsidiary directive). Under certain conditions, this Directive notably makes it possible for profits distributed to companies in one Member State by their subsidiaries located in other member States to benefit from tax exemptions.

### APPLICATION OF DOUBLE TAXATION TREATIES

As an ordinary commercial company, the Dutch company **enters into the scope of the treaties for preventing double taxation** agreed by the Netherlands. The purpose of these treaties is to eliminate the double taxation of income of a resident of one State that has already been subject to tax in another State.

The Netherlands has signed a **significant number of advantageous treaties**. Treaties are currently in force with 93 countries (see list page 23).

## FAVOURABLE TAXATION OF DIVIDENDS RECEIVED (UNDER CERTAIN CONDITIONS)

Dividends received are fully exempt from corporate income tax (“CIT”) under the participation exemption if the following requirements are met:

the holding company itself or with a related party holds a participation of at least 5% of the nominal paid-up share capital (or, in certain circumstances, 5% of the voting rights) of a company with a capital divided into shares (the **‘Minimum Threshold Test’**[\[1\]](#)); and

one of the following three tests is met:

- a. the holding company’s objective with respect to its participation is to obtain a return that is higher than a return that may be expected from regular asset management (the **‘Motive Test’**[\[2\]](#));
- b. the direct and indirect assets of the subsidiary generally consist for less than 50% of ‘low taxed free passive investments’ (the **‘Asset Test’**[\[3\]](#)); or
- c. the subsidiary is subject to an adequate levy according to Dutch tax standards, a rate of 10% or more, determined on the basis of Dutch tax principles (the **‘Subject-To-Tax Test’**[\[4\]](#)).

If the Minimum Threshold Test is met but at least one of the remaining conditions is not, a credit will be granted for the underlying tax paid by the participation at a maximum rate of 5% (except for qualifying EU participations, for which the actual tax can be credited).



### LOW TAXATION ON EARNINGS FROM INTELLECTUAL PROPERTY RIGHTS (UNDER CERTAIN CONDITIONS)

The innovation box has been set up in 2010 to encourage entrepreneurs to engage in innovative research. Any profits generated through innovative operations are eligible to application of the innovation box and taxed at an effective rate of 5%.

While the framework of the current Dutch innovation box will be maintained, on the back of the said international agreements several of its component rules have been made stricter since 2017.

- First of all a substance requirement incorporating a mathematical approach will be introduced. Only innovation developed in-house will still be eligible for a tax grant.
- Secondly, the innovation box access conditions will be adapted. The innovation box cannot be applied without an R&D statement. Under the current legislation this is still possible, e.g., if a taxpayer has a patent.
- A distinction between small and larger taxpayers will become applicable for access to the innovation box. In addition to an R&D statement, larger taxpayers (whose worldwide net group sales exceed EUR 50 million per year and whose gross benefits from intellectual property exceed EUR 7.5 million per year) should have an acknowledged legal access ticket

### EXEMPTION FROM THE WITHHOLDING TAX ON ROYALTIES / FEES PAID

There is no withholding tax on royalties.

## D. THE GENERAL TAX ASPECTS

### IS THERE A CAPITAL DUTY?

The Netherlands has abolished capital duty par 1<sup>st</sup> January 2016.

### WHAT ARE THE INCOME TAXES?

The Netherlands has a global nominal tax rate for companies of 20% on profits up to EUR 200,000 and 25% on the excess. There is no minimum corporate income tax.

In Fall 2017 the Dutch government has announced that these rates will be reduced to 16% on profits up to EUR 200,000 and 21% on the excess. These reduced rates will enter into force from 2021, in the period 2019 – 2020 these rates will be 19%-24% and 17,5%-22,5% respectively.

The corporate income tax is due on all profits derived from conducting a business, including trading income; foreign-source income, passive income and capital gains unless the participation exemption is applicable. In principle, all costs relating to the business are deductible.

#### IS THERE A NET WORTH TAX?

The Netherlands has no net worth tax.

#### IS THE DUTCH COMPANY SUBJECT TO VALUE ADDED TAX (VAT)?

**Yes, only for taxable activities.**

A company that is exclusively holding participations only is not subject to VAT but if it also performs other activities, i.e. providing loans, management services, it will be subject to VAT. The standard VAT rate is 21%.

#### WHAT EXPENSES ARE TAX DEDUCTIBLE?

**All expenses that have an economic relation with the operations are tax deductible.**

Expenditures for an acquisition or sale of a participation are not deductible. Several anti abuse legal measures regarding interest expenses are in place.

#### ARE THERE APPLICABLE “CFC (CONTROLLED FOREIGN COMPANY) RULES” IN THE NETHERLANDS?

There is no specific CFC legislation, but there is an obligation to annually revalue shareholdings of 25% or more in low-taxed companies whose assets consist of at least 90% “passive assets”.

## E. Substance

### TAX RESIDENCY

To ensure from a Dutch tax perspective that a company would be treated as a Dutch tax resident for tax treaty purposes – to ensure treaty benefits and to obtain a certificate of residency to claim this treaty protection – the company should have its "place of effective management" in the Netherlands. This criteria "overrules" the incorporation fiction. From a Dutch tax perspective, effective management has been described in case law as the location where the management and control of a company (i.e. place of day-to-day and strategic management) is in fact carried on. For these purposes, substance prevails over form. The "best practices" in this respect are mentioned below. Furthermore please note that, if a company intends to claim tax treaty benefits, on top of the Dutch tax considerations, specific requirements of the relevant treaty and the foreign tax authority should be considered as well.

In case the substance requirements are not met, the Dutch tax authorities may automatically apply the exchange of information with other countries.

## BEST PRACTICE

### ***Management***

1. At least half of the statutory and executive directors of the company empowered to legally bind the company are resident in the Netherlands (preferably all or if not the majority are resident in the Netherlands). The Dutch director(s) may be a trust office or employees thereof, on the condition that such director(s) is competent to decide on management issues independently from the foreign director(s), at least to a certain extent;
2. The directors are empowered to take independent decisions regarding important business transactions involving the entity, taking into account the overall group policy;
3. All meetings of the board of directors must take place in the Netherlands. At these meetings the matters should be actually decided upon and not be a mere rubberstamping of already agreed decisions. All directors should physically attend board meetings;
4. The principle place of business of the entity is in the Netherlands. The entity is effectively managed in the Netherlands and is not – according to the best knowledge of the entity – considered a resident for tax purposes in a third country as well;
5. Other major shareholder or director issues should be decided upon in the Netherlands;
6. The primary bank account of the company should be in the Netherlands.

### ***Presence***

7. Shareholders meetings should be held in the Netherlands and shareholder resolutions should be taken in the Netherlands;
8. The address of the company is in the Netherlands (telephone numbers, fax numbers in the Netherlands);
9. The books and records of the company and the annual accounts should be prepared and kept in the Netherlands;
10. The annual accounts should be prepared in Euros if the company's functional currency is a currency other than the Euro;
11. The address of the company should be registered at the Dutch chamber of commerce;
12. Preferably, the company should have its own office in the Netherlands with its own secretarial staff.

## WHY USE A TRUST COMPANY?

A fiduciary company, or trust company as they are called in the Netherlands, is engaged in the case the client does not have a staff in the Netherlands to maintain the company in good standard. All trust companies working in the Netherlands are required to obtain a licence of the Dutch central bank and supervising and auditing their activities.

A trust company can offer the following services to the client company:

- A.** Providing a seat and registered office address;
- B.** Providing directors of Dutch resident for day-to-day management of the company;
- C.** Execution of legal documentation;
- D.** Maintenance of files and correspondence (including books and records) in the Netherlands at its Dutch registered address;
- E.** Organizing of board and shareholder meetings ;
- F.** Board meetings must be properly documented (i.e. acquisitions /disposals, appointment directors, financing, dividends, strategic plans, planning and budget);
- G.** Maintenance of the bank account(s) of the company and its signatories are members of the board and have power to authorize payments;
- H.** Preparation of the financial accounts and the CIT returns.

## F. WHICH ACTIVITIES CAN BE CARRIED OUT BY THE DUTCH COMPANY?

A Dutch company can undertake all industrial and commercial activities and provide all kind of services. For certain activities regulatory approval is required.

For example, the company can directly or indirectly own and manage participations, patents or real estate and can act as a group finance company.

## G. SHAREHOLDING

### WHO CAN BE AN ASSOCIATE / SHAREHOLDER OF DUTCH COMPANIES?

In principal there are no legal restrictions on the ownership of a Dutch company.

### WHAT ARE THE CONDITIONS IN RELATION TO THE NUMBER OF ASSOCIATES / SHAREHOLDERS?

The minimum number of shareholders is one; there is no restriction on the maximum number.

### MUST THE ASSOCIATES / SHAREHOLDERS MEET ON A REGULAR BASIS?

The annual general meeting must be held in the Netherlands. The articles of association of a B.V. can provide that the shareholders' meeting may be held outside the Netherlands.

Decision making by the shareholders outside a meeting is possible in case the resolutions are taken in writing.

### FREELY TRANSFERABLE SHARES

The shares of a N.V. are freely transferable. The Law on the B.V. of 18 June 2012 has abolished the 'blocking agreement' on the transfer of the shares of a B.V.

## H. THE LEGAL ASPECTS

### WHICH LEGAL FORMS CAN IT ADOPT?

A Dutch company is either a B.V. ('besloten vennootschap') or an N.V. ('naamloze vennootschap').

### WHICH ARE THE CONDITIONS RELATIVE TO THE CAPITAL?

	B.V.	N.V.
Authorised capital	Not required	Required
Minimum subscribed capital	- 0	- 20% of the authorised capital with a minimum of EUR 45,000
Minimum paid up capital	- 0	- 25% of the issued capital with a minimum of EUR 45,000
What types of shares are authorised?	Registered	Registered and bearer
Can the shares be stripped?	Yes	Yes, but certain restrictions apply and certain conditions have to be met.
In what currency can the issued capital be expressed?	Any foreign currency if it is freely convertible.	Euro
Can the issued capital be variable?	Yes	No
Contributions	In cash and or in kind, which requires a description	In cash and or in kind, which requires a description and an auditor's report



#### IN WHICH FORM MUST THE DEED OF INCORPORATION BE DRAFTED ? (NOTARIAL INSTRUMENT, PRIVATE AGREEMENT...)?

A company is incorporated by a deed executed by a notary in the Netherlands. In the case of a B.V., the notarial deed is intended to be omitted by Law. The office of the notary will investigate the purpose of the company and the background of the incorporators and directors of the company. In case there will be no violations of Dutch law, the notary will execute the deed. It is not necessary to obtain a licence for establishing a company in the Netherlands.

#### AS OF WHEN IS THE COMPANY ESTABLISHED AND CONSIDERED TO EXIST?

The company exists from the moment the deed is executed by the notary. The directors are liable next to the company for all acts performed on behalf of the company and all obligations entered into on behalf of the company as long as the company is not registered at the Chamber of Commerce, and or the minimum capital has not been paid-up.

## CONTRIBUTIONS

Both contributions in cash and in kind are possible. Contributions can take place as share premium (in general no notary needed) or as share capital (notarial deed of issuance shares is needed). As from 2012 a auditor statement is no longer needed for a contribution in kind for a B.V.

## CREDITOR PROTECTION

In order to protect creditors more adequately, the new B.V. legislation extends the liability of the management board and the shareholders. The B.V. is not permitted to distribute profits (dividends) if it appears that the B.V. cannot continue paying its due and payable debts thereafter. In that respect, the management board has to take a twelve months period into account to fulfil all the payments. The general meeting of shareholders determines a possible profit distribution by means of a resolution. This resolution has no consequences as long as the management board grants no approval. The management board can only deny its approval if it knows or can reasonably foresee that the B.V. cannot continue paying its due and payable debts after the profit distribution.

Before the B.V. distributes any profits, a profit distribution test has to be carried out. The profit distribution test applies not only to new B.V.'s. Under the new B.V. legislation, also B.V.'s that already exist have to carry out a profit distribution test. This profit distribution test has two aspects.

In the first place it has to be tested whether the equity of the B.V. after the profit distribution still exceeds the legal and statutory reserves. On the basis of the last adopted annual accounts, the scope of the equity and the reserves can be determined. A separate statement of assets and liabilities is generally not required.

In the second place, it has to be determined whether the B.V. can continue paying its due and payable debts after the profit distribution. In this respect, the solvency of the B.V. can, *inter alia*, be of importance.

## WHAT ENTAILS THE REGISTRATION OF THE COMPANY AT THE CHAMBER OF COMMERCE?

At incorporation the following documents and information are filed with the Chamber of Commerce of the city where the registered offices of the company will be:

- The deed of incorporation including the articles of association;
- The authorised, issued and paid-up capital when applicable;
- The name of the sole shareholder, if there is one, including a copy of the identity card or passport or an extract of a companies' register, if the shareholder is a legal entity;
- The names of the directors, including copies of their identity cards or passports;
- The names of the proxy holders, their proxies and copies of their identity cards or passports;
- The office address.

All changes of the filed information have to be notified to the Chamber of Commerce.

Each year the annual accounts of the company have to be filed within eight days after the annual general meeting of shareholders has adopted the accounts.

## CAN A FOREIGN COMPANY BECOME A DUTCH COMPANY?

Pursuant to Dutch company law a foreign company cannot become a Dutch company.

The Netherlands have adopted the 'Incorporation theory'. According to this theory, when a company transfers its principal place of business, principal establishment, central administration and place of effective management, the transfer has no consequences for its legal form and the registered office is maintained in the country where the company has been incorporated.

To complement this 'Incorporation theory', the Netherlands have adopted the 'Wet op de formeel buitenlandse vennootschappen' (Law on the formal foreign companies), which states that certain legal aspects of Dutch companies that have been transferred abroad are regulated by Dutch company law.

Other countries that have adopted the 'Incorporation theory' among others Denmark, the United Kingdom, Italy, Sweden and Ireland. Contrarily, Belgium, Germany, France and Luxembourg have adopted the 'effective seat theory', which states that you can transfer the legal seat of a company from one country to another.

So when a foreign company wants to be transferred to the Netherlands and adopt the legal form of a B.V. or a N.V., the foreign company has to be liquidated and a new company has to be incorporated in the Netherlands by Dutch law.

**Please note that under conditions it is possible to convert a Dutch company into a foreign company.**

## I. THE COMPANY'S MANAGEMENT

### WHAT ARE THE MINIMUM REQUIREMENTS CONCERNING THE MANAGEMENT?

The law requires a minimum of one director, who can be a private person or a legal entity. There are no legal requirements concerning the nationality and the residence of the director(s).

### WHERE ARE THE MEETINGS OF THE BOARD OF DIRECTORS HELD?

To avoid that the tax authorities of another country will claim that the company has a branch in that country, it is advisable to hold the meetings of the board of directors regularly in the Netherlands, but it is no legal requirement.

### DO THE FINANCIAL STATEMENTS HAVE TO BE AUDITED?

The directors have the obligation to prepare the financial statements of the company within five months after the closing of the financial year, which term can be prolonged by six months by shareholders decision.

The annual general meeting of shareholders will adopt the financial statements.

An external auditor, who will audit the financial statements, must be appointed in case two of the following conditions will be met:

- balance sheet total of EUR 6 million or more;
- turnover of EUR 12 million or more;
- 50 employees or more.

### HOW ARE THE DIRECTORS' FEES TAXED?

Normal Dutch income tax will apply to directors' fees, if paid.

## J. TAXATION TREATIES THAT HAVE BEEN SIGNED BY THE NETHERLANDS

A	B	C	D	M	N	O	P	U	V
Albania	Bahrain	Canada	Denmark	Macedonia	New-Zealand	Oman	Pakistan	Uganda	Venezuela
Argentina	Bangladesh	China		Malawi	Nigeria		Panama	Ukraine	Vietnam
Armenia	Barbados	Croatia		Malaysia	Norway		Poland	United Arab Emirates	
Aruba	Belarus	Curaçao		Malta			Portugal	United Kingdom	
Australia	Belgium	Czech Republic		Mexico				Uzbekistan	
Austria	Bermuda			Moldova					
Azerbaijan	BES Islands			Mongolia				Y	Z
	Brazil			Morocco				the (former)	Zambia
	Bulgaria							Yuqoslavia	Zimbabwe
E	F	G	H	Q	R	S	T		
Egypt	Finland	Georgia	Hongkong	Qatar	Romania	Saudi Arabia	Taiwan		
Estonia	France	Germany	Hungary		Russian Federation	Singapore	Tajikistan		
		Ghana				Slovakia	Thailand		
		Greece				Slovenia	The Philippines		
						South Africa	Tunisia		
I	J	K	L			South Korea	Turkey		
Iceland	Japan	Kazakhstan	Latvia			Spain	Turkmenistan		
India	Japan	Korea	Lithuania			Sri Lanka			
Indonesia	Jordan	Kuwait	Luxembourg						
Ireland		Kyrgyzstan				Surinam			
Israel						Sweden			
Italy						Switzerland			

## About FIDUPAR

FIDUPAR was incorporated in the year 2000 by the contribution of the activity of the financial engineering departments of two major banks of the Luxembourg financial center.

FIDUPAR has over 50 years of experience in wealth structuring, financial investments as well as in financial transactions.

FIDUPAR is authorized by the Luxembourg authorities and supervised by the Commission de Surveillance du Secteur Financier (CSSF).

**Focusing on our clients' needs**, we have considerably developed with **deep commitment** to our historical values: reactivity, creativity, engagement and ambition, while maintaining **high level ethics**.

With a staff of **multilingual employees** specialized in different fields, we provide tailor made services for our international clients. Our multi-disciplinary teams work in close cooperation with our clients in the realization of their projects.

## About Omnia Management & Professional Services B.V.

Omnia Management & Professional Services B.V. is the strategic partner of FIDUPAR in the Netherlands. Omnia Management & Professional Services B.V. is based in Amsterdam near Schiphol Airport and has a dedicated team with a background of large international banks and BIG 4 audit/tax firms.

Omnia Management & Professional Services B.V. is acknowledged by the Dutch Central Bank as a trust office, and provides management and administrative services to Dutch companies and foundations owned by companies or private clients.

These services are :

- Providing general information about the local customs, laws and taxation;
- Guidance in the incorporation or the acquisition of a company;
- Providing directors and a registered office address for the company;
- Providing legal and administrative services for effective management of the company;
- Bookkeeping and drawing up financial reports;
- Drawing up the annual report and, when necessary, assisting the auditor;
- Guiding the tax advisor in the preparation of the tax returns.





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