BARBADOS PRIVATE SECTOR ASSOCIATION

BARBADOS PRIVATE SECTOR TRADE TEAM
A DIVISION OF THE BARBADOS PRIVATE SECTOR ASSOCIATION

DOING BUSINESS IN THE NETHERLANDS

A guide for businesses

Prepared for the Barbados Private Sector Association (BPSA) with the support of the IADB project "Building Capacity to increase exports"
JULY 2012
Lead Consultant: Ms. Lisa Callender
lisazilda@yahoo.co.uk

IDB

MIN
Multilateral Investment Fund
Member of the IDB Group

CONTENTS

National vs. EU Framework **3**

Size of the economy, potential consumer market size and disposable income **3**

Culture, Customs and Business Practices **4**

About the Business Environment **4**

Major trade agreements **5**

Legal framework for employment of labour **6**

Legal Framework for transfer of land and capital **7**

Legal framework for management of intellectual property **8**

Legal framework for distribution **10**

Taxation **11**

Business Visa Requirements **12**

Form of enterprise **13**

Import Requirements, Documentation and Tariffs **15**

Standards and Certification **16**

Important agencies and organizations **18**

REFERENCES **18**

National vs. EU Framework

The Netherlands, a constitutional monarchy, maintains one of the most stable political and social environments in the world. The reigning sovereign is HM Queen Beatrix, who is the Head of State. Political power is derived from a democratic parliamentary system based on a written constitution that safeguards individual liberties. The Parliament operates out of the seat of government in The Hague Executive power is exercised by the Prime Minister and his Cabinet, which consists of all Ministers. The Cabinet members are formally appointed by the Queen. Legislative power is exercised by Parliament. The Upper House consists of 75 members who are elected to four-year terms by the 12 provincial legislatures. The Lower House consists of 150 members who are also elected to four-year terms. Each province is administered by a directly elected Provincial Council, a Provincial Executive, and the Queen's Commissioner. The Provincial Councils are charged with the important task of implementing regional planning. At the city/town level, the administration of each municipality consists of a directly elected Municipal Council, a Municipal Executive (mayor and aldermen) and a mayor.

This document focuses mainly on the unique requirements for doing business in the Netherlands. The chapter should be read in conjunction with the chapter on *Doing Business in the EU*.

Size of the economy, potential consumer market size and disposable income

With a total GDP in 2011 of Euro 602 105 million[1] and a Gross National Income per capita of US$ 49,720[2] the Netherlands is considered a high income country. It is the most densely populated country in the EU, with a population of more than 16.67 million living within its territory of 41,500 km^2; which comprises twelve provinces and the overseas territories of Aruba, Curaçao and St. Maarten. The overseas islands of Bonaire, Saba and St. Eustatius, situated in the Caribbean, are 'special municipalities of the Netherlands' since the 10th of October 2010. Given the relatively small geographic area to be covered in relation to population numbers, the Netherlands is strategically attractive as a market for penetration. It is also an important gateway to the wider European Union.

The Organization for Economic Cooperation and Development (OECD) states that the Netherlands economy contracted in the last two quarters of 2011 due to a slowdown in domestic demand, caused by a decline in new business investments and private consumption and influenced by the deceleration of world trade in the context of the global financial turmoil. The economy is expected to emerge from these recent challenges in 2012 and growth is expected to resume slowly, although some further increases in unemployment predicted in the short term. Based on the positioning of the economy as a hub for international business, it is expected that continuing globalization will present ongoing new market opportunities for businesses.

[1] Source: http://stats.oecd.org/index.aspx?queryid=19802
[2] Source: World Bank/IFC (2012), Doing Business 2012, Economy Profile: Netherlands

Culture, Customs and Business Practices

The strategic location of the country on the North Sea and the Rhine has provided an important heritage in trade and distribution, which are ingrained into Dutch culture and economy. The Port of Rotterdam is the third largest sea port in the world. Amsterdam, the country's largest city and its capital, is the financial and cultural center, and home to the second largest port in Holland and to Schiphol International Airport. With unparalleled ease of access to London, Paris, Brussels and major cities in Germany, the geographic location of the Netherlands and its function as an international hub in Europe, confers a major advantage. The ports of Rotterdam and Amsterdam have outstanding infrastructure and logistics services. The population is highly educated, cosmopolitan and largely multilingual. The Benelux region, comprising the neighbouring states of Belgium, the Netherlands and Luxemburg, has more than 28 million inhabitants, who occupy an area of approximately 74,640 square kilometers with a population density of 380/km² (983/sq mi). About 85 percent of the population in this area speaks English.

About the Business Environment

The World Bank ranks the Netherlands 31 out of 183 global economies in the ease of doing business. Recognizing the critical importance of private sector development to the country's well-being, there is a strong commitment on the part of Dutch authorities to the facilitation of domestic and international firms involved in trade and business. Given its European gateway position, the Netherlands is particularly suited as a service provider for value-added logistics (VAL) activities. Many foreign companies utilize the distribution hub services, but there is also scope for the outsourcing of a range of other manufacturing and service operations within the value chain, such as final assembly, testing, packaging and after-sales services. This allows a firm to streamline its customizing of products to European demands as well as its customer-response protocol. The resulting combination of tailor-made products and an optimal level of service have, in many cases, boosted the attainment of European market share.

Eight two percent of exports from the Netherlands go to Europe. The most important destinations are Germany, Belgium, the UK and France. According to data collected by the World Bank *Doing Business*, exporting a standard container of goods from the Netherlands requires 4 documents, takes 6 days and costs US$895. Importing the same container of goods requires 5 documents, takes 6 days and costs US$975.

The highly developed research and development infrastructure is another strategic advantage of the Netherlands. An open flow and exchange of information among the scientific, social and industrial sectors is encouraged. The Dutch government has set up project-oriented 'Innovative Research Programs' that bring commercial enterprises and universities together. Companies also have direct access to TNO, the Netherlands' Organization of Applied Scientific Research, which is the largest European research institute of its kind.

The Amsterdam Internet Exchange (AMS-IX) is one of the largest internet exchanges in Europe and provides one component of a state-of-the-art digital telecommunications network within the Netherlands, which functions as an informational gateway to Europe. The Netherlands ranks among the countries with the largest number of broadband connections and the highest Internet penetration in the European Union. There are more than 15 million internet users, representing about 89.5 % of the population in December 2011, according to Internet World Stats. There were over 6 million mobile internet users in the age category 12-75 years old in the Netherlands in the spring of 2011. Despite the overall maturity of the internet market in the Netherlands, the social networking category continues to advance, growing 18% to 11.5 million visitors in March 2011 (representing 96% of the online population). A total of 53% of internet users in the Netherlands in 2011 reported they had been active on social networking sites like Hyves, Facebook or Twitter in the previous three months; 88% of them were under the age of 25, according to Statistics Netherlands. Additionally, one in five internet users are active on the business-related social networking site LinkedIn. Nearly 80% of internet users in the Netherlands purchased goods online in 2011, according to Statistics Netherlands. In 93% of cases, online shoppers buy goods from Dutch companies and individuals. Nearly one in five internet users occasionally order goods in other countries of the European Union and more than one in ten purchase products in other parts of the world. Travel tickets and holiday accommodation are the most popular items bought by the Dutch online, purchased by nearly 60% of online shoppers in 2011. Clothes and sports items, tickets for events and books are other popular items.

Television, radio, daily newspapers and direct marketing are also popular medium for getting a message across. However, the Government strictly enforces laws covering gaming and lotteries as well as restrictive trade practices. Firms advertising and selling goods should obtain local advice regarding provisions of the laws and consumer acceptance of the promotional or marketing approach. Local representation is a *de facto* requirement in order to sell to the Dutch Government.

Major trade agreements

Like Germany, the Netherlands was a founding member of the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) known today the European Union. It is therefore an influential country within the European Union. The The European Free Trade Association (EFTA), created in 1960 as an alternative to then European Communities, today comprises only four remaining states: Iceland, Norway, Switzerland and Liechtenstein. The Agreement on the European Economic Area, which entered into force on 1 January 1994, brings together the 27 EU Member States and the three EEA EFTA States of Iceland, Liechtenstein and Norway in a single market. The EEA Agreement provides for the inclusion of EU legislation covering the free movement of goods, services, persons and capital throughout the 30 EEA States.

The Netherlands has signed bilateral investment agreements with a large number of countries including: Albania, Algeria, Argentina, Armenia, Bahrain, Bangladesh, Belarus, Belize, Benin, Bolivia, Bosnia-Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea,

Estonia, Ethiopia, Gambia, Georgia, Ghana, Guatemala, Honduras, Hong Kong, Hungary, India, Indonesia, Ivory Coast, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Laos, Latvia, Lebanon, Lithuania, Macau, Macedonia (FYROM), Malawi, Mali, Malaysia, Malta, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nicaragua, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Russia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, South Korea, Sri Lanka, Sudan, Surinam, Tajikistan, Tanzania, Thailand, Tunisia, Turkey, Uganda, Ukraine, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia and Zimbabwe.,

Legal framework for employment of labour

In general, the Netherlands has a highly educated, diverse, well-motivated and multilingual workforce, whose productivity exceeds that in most other European countries. There is a high percentage of advanced educational degrees and familiarity with multi-cultural working styles and business environments. The official language of the Netherlands is Dutch, but in addition to English, many persons speak German and French.

The dynamics of labour relations in the Netherlands are generally positive and companies are free to operate flexible labour practices through labour contracts, flexible working hours, the use of shift work and the employment of temporary workers. Dutch workers are covered by a social security program, the costs of which are shared by workers, employers and the government. In principle, every employer planning to employ a citizen of a country from outside the European Economic Area (EEA) must apply for a permit for this purpose. The application for this work permit is made at the *UWV WERKbedrijf* (employment office) in the municipality where the company is or will be located, and this must be done before the applicant moves to the Netherlands. The non-EU national will only be able to work in the Netherlands if and when the Dutch authorities grant a work permit to the employer for that employee. Before an employer can apply for a Dutch work permit for a non-EU national, it must prove that attempts have been made to fill the position from the local and EU labor markets. These attempts should include: a vacancy report filed with the Dutch *UWV WERKbedrijf* and, usually, the European Employment Service (EURES), as well as advertising in national newspapers, websites, industry publications, among other recruitment strategies.

Before employing personnel and drafting the conditions of employment, employers have to verify whether a Collective Labor Agreement is applicable in the field of operation of the company. New employees have to be reported to the Dutch tax authority no later than the day before the work commences by means of the form *'Opgaaf eerstedagsmelding'*. This ‘first day registration' is intended to reduce black market work and illegal labor. First day registration forms can only be submitted electronically, this can be done in three ways: by means of the Dutch tax authority's internet site, using declaration or administration software, or by a tax consultant. Finally, the employer should register the employee with an applicable pension fund. An employee is free to choose his own pension plan, unless the company for which he works is covered by an industry-wide pension fund in which membership has been made obligatory by the Minister of Social Affairs and Employment. The Dutch Association of

Industry-wide Pension Funds (*Vereniging van Bedrijfstakpensioenfondsen, VB*) provides an overview of all industry-wide pension funds on its website www.vvb.nl

The hiring of employees in the Netherlands usually involves employment contracts, which may be formalized in writing or by verbal agreement. However, written contracts are preferable. The Dutch Civil Code prescribes that employers must lay down certain provisions (such as the name and residence of parties, hiring date, duration, position, salary, place of work, number of working hours and holiday rights) in writing, at any rate. The dismissal of employees must comply with the legal requirements laid down in the Dutch Civil Code. Freelance contracts with independent contractors, i.e. people other than 'employees' within the scope of Dutch labor law, are, in principle, not governed by the Dutch compulsory labor law provisions regarding employment contracts.

The law on statutory minimum wages and holiday allowances ("*Wet Minimumloon en Minimumvakantiebijslag*") provides for a legal minimum wage for all employees (with exception of employees who have a labor contract on the basis of civil law and who are working for a governmental organization). Effective 1 July 2011, the legal gross minimum wage for full-time employees of 23 years of age and over is EUR 1,435.20 per month or EUR 331.20 per 40 hour week. These minimum wages may be reduced proportionately, where employees work less than regular hours (varying from 36 to 40 hours). The statutory minimum wage is normally adjusted every six months (on January 1 and July 1) to reflect general wage changes in the preceding six months. The law also provides for a minimum annual holiday allowance of 8%, paid at least once a year, usually in June. In general, Sundays is not considered a working day, unless it is inherent in the nature of the work and the parties have so agreed, or business circumstances necessitate work on Sundays.

Legal Framework for transfer of land and capital

The Netherlands has a flexible and liberal legal framework for the organization of enterprises by non-resident companies or individuals. There are no special restrictions on foreign-owned companies that wish to start a business in the Netherlands and company law does not make a difference between Dutch nationals and foreigners. In addition, companies created under foreign law are free to operate in the Netherlands and become a party to a contract, participate in partnerships and establish a Dutch legal entity. Business operations can be set up as having legal personality or not. If a legal entity has legal personality, the entrepreneur cannot be held liable for more than the sum he contributed to the company's capital. A private limited liability company *'Besloten Vennootschap' (BV)* and a public limited liability company *'Naamloze Vennootschap' (NV)* are examples of limited liability companies with legal personality. Most foreign investors in the Netherlands conduct their business activities in the form of a private company with limited liability (BV). The BV is commonly used for all types of business ventures.
As of 8th October 2004, it is also possible to incorporate a European company (SE) within the European community.

Special permits are required for complex businesses that place extra demands on the entrepreneur. These include enterprises in the construction, automotive and food sectors. Dutch environmental law

calls for an environmental permit for all new (industrial) plants in the Netherlands. In order to obtain this permit, an application has to be filed with the competent authority, which is usually the local or provincial government.

The Dutch corporate governance code has been established effective January 1 2009, as a self regulatory mechanism that applies to all companies whose registered offices are in the Netherlands and whose shares or depositary receipts for shares have been admitted to listing on a stock exchange. The code reflects principles of good corporate governance and best practice provisions agreed through consultation. More information on the Code can be obtained from the website http://www.corpgov.nl/Dutch_Corporate_Governance_Code.

Legal framework for management of intellectual property

The Netherlands offers a flexible and reliable environment with regard to the management of intellectual property. A further feature of the Netherlands for international companies is the advantage a holding company offers in facilitating an effective flow of royalties for taxation purposes. The Netherlands is signatory to a number of international treaties in the field of intellectual property and operates a branch of the European Patent Office (headquartered in Munich), Rijswijk.

- **Patents** are granted for new and inventive industrial products and processes. It is possible to obtain protection for an invention through national filing, which is regulated by the Dutch Patent Act 1995. It is also possible to obtain a European patent by filing a claim with the European Patent Office. International protection may be obtained via the Patent Cooperation Treaty. For national filing, a patent application may be submitted electronically, by fax or post with the NL Patent Office. Additionally, a description of the invention must be provided, the description of which, may be filed in English. However, the claims of the patent application in relation to novelty in process must be submitted in Dutch. A six-year patent protection is being phased out in favour of patents granted for twenty years. A patent can be transferred or licensed. By issuing a license the patent holder assigns the right to make use of the patent to another party. For instance, a holding company may license its patent to a subsidiary. European patents can be granted for the contracting states to the European Patent Convention (EPC) through the European Patent Office (EPO). The grant procedure takes from three to five years from the date the application is filed. The standard term of protection is twenty years from the date of filing. Renewal fees must be paid to ensure that the patent remains in force for the maximum term.
- **Copyright** in the Netherlands is protected under the Copyright Act 1912, based on the Berne Convention. Furthermore, the Netherlands is party to the Universal Copyright Convention. In principle protection is provided against all unauthorized publications of all kinds of creative work. The act provides a non-exhaustive listing of such work. However, unauthorized use is permitted in certain cases such as quotations, private use and education, among others. No registration is required in order to vest a copyright. If the requirement of originality is met, the copyright is automatically created. However, it is advisable to explicitly mention in each form of publication of a creative work that the work is protected by copyright. The maximum period of protection for a copyright is 70 years after the death of the holder. The Copyright Act specifically includes software

within the scope of protected work. It explicitly attributes the following rights to the holder of a copyright in software: copying, editing, distribution and licensing. Infringement results in an obligation to compensate for inflicted damages, although these damages are often not easy to assess. Therefore, the infringing party is often obliged to pay the profit generated by the infringement to the holder of the copyright.

- **Trademark protection** through registration can be obtained on three levels. The Benelux Convention on Intellectual Property (trademarks and designs) regulates trademarks and designs in the Benelux area. Registration has to take place with the Benelux Office for Intellectual Property. A trademark is valid for a period of 10 years with subsequent options to renew. The Benelux Office for Intellectual Property will decline a registration if it lacks distinctiveness, is contrary to morality or public order of one of the Benelux countries, or can deceive the public. Registration of a Community trademark (CTM) provides protection in all member states of the European Union. It is not possible to limit the geographical scope of protection to certain member states. CTM applications may be filed directly at the Office for Harmonization of the Single Market (OHIM) office in Alicante. Applications for international trademarks are filed with the International Bureau for the Protection of International Property (WIPO) in accordance with the Madrid Protocol. Unlike an application for a Community trademark, an application for an international trademark consists of a number of national applications. Consequently, the WIPO forwards the application to the national approval authorities of the countries in which registration is sought. It is possible to obtain protection within the European Union via the WIPO. WIPO processes the application and then sends it to OHIM for examination. This has the same effect as applying directly for a CTM with the OHIM. A trademark can be transferred or licensed independent of the underlying company business.
- **Trade names** are protected in the Netherlands under the Trade Names Act. The act restricts the freedom to choose a trade name to some extent. For example, the use of a name identical to one already used, which may lead to confusion by the public is not allowed. Registration of a trade name is not necessary. Simply the use of the name is sufficient. This is also the case if the name is used abroad, but has created some reputation in the Netherlands. Trade names can only be transferred in conjunction with the business which the trade name identifies but it is possible to license a trade name independent of the business.
- **Design** protection is regulated by the Benelux Convention on Intellectual Property (trademarks and designs) and may be registered with the Benelux Office for Intellectual Property. A design registration is an exclusive right in the Benelux for a period of five years, which can be extended for four consecutive periods to a maximum of 25 years. The right to a design may be assigned, transferred, or licensed.
- **Franchising:** The European Franchise Federation data indicates that 679 franchise brands were operating in the Netherlands at September 2010. Eighty five percent of these concepts were domestic or 'home grown' brands. Employment by these enterprises in 2009 was estimated at 246 708, and they accounted for sales of Euro 29.23 billion in 2009.[3]

[3] Source: http://www.eff-franchise.com/IMG/pdf/Stats_Franchise_Europe_10092010-2.pdf

Legal framework for distribution

The Netherlands Foreign Investment Agency (NFIA) proposes that with the on-going globalization of the world economy and the creation of a single market in Europe, foreign multinationals have in recent years been looking for ways to increase their operational effectiveness, thereby increasing customer focus and satisfaction. One of the proven strategies adopted to achieve this has been the consolidation of cross-border flows of goods and products through the use of a pan-Europe commissionaire structure.
A commissionaire may be defined as an entity, which sells in its own name but for the account and risk of a principal. The commissionaire is a civil law concept and is not recognized as such in common law countries (such as the UK). The commissionaire is not required to disclose its principal and is responsible for typical sales functions such as identifying potential customers, calling on active and potential customers, introducing new products, maintaining customer relations, and providing limited technical assistance. The commissionaire undertakes fewer operational functions than a marketer/distributor or distributor and is typically not involved in any strategic or marketing activities, but negotiates with customers and enters into (sales) contracts on the basis of general instructions received from its principal. The principal handles the purchases of goods. In view of the fact that the business risk lies with its principal, the commissionaire receives only a limited remuneration for its activities, usually a commission based upon a percentage of sales.

The NFIA further proposes that the commissionaire structure may be an efficient tool to optimize the overall tax credit position of the parent company. This is because the use of a commissionaire arrangement for selling into various European countries can minimize the sales income subject to local income tax. A commissionaire, similar to an ordinary sales agent, only undertakes limited entrepreneurial and operational functions and has a substantially lower commercial risk exposure than its buy/sell counterpart. The commission payable to the commissionaire (under generally accepted transfer pricing concepts) can be set at a relatively low level. As a result, if the commissionaire is located in a higher tax rate jurisdiction than the (undisclosed) principal, the commissionaire arrangements produce a lower overall tax burden than the traditional buy/sell arrangement.

As an alternative to the commissionaire structure, an exporter may establish a logistics hub in the Netherlands. The ownership of the goods and the risks related to the good stay with the exporting entity. However the distribution of the goods as, the customization of the goods as well as making sure all goods are packaged in the right way for its local destination (language, etc.) can be done in the Netherlands. These activities can be undertaken in the Netherlands based upon a limited remuneration basis. On the one hand it is possible to use the flexible customs systems, whereby goods do not attract duties unless they have left a customs depot (can be electronically monitored and set up), on the other hand a relatively minimal tax charge may be due in the Netherlands. Several international Groups have set up such logistics operation in the Netherlands. In addition, call centers can be set up, to enhance business activities, remunerated on a moderate cost-plus basis.

Taxation

The entrepreneur should notify the Dutch tax authority (*Belastingdienst*) as soon as it is known when the company plans to start business. The relevant form, *'Opgaaf Gegevens Startende Onderneming'* (statement of information for starting up a new business), is available from the website of the Dutch tax authority: www.belastingdienst.nl. The Dutch tax department uses the information provided by means of the form as a basis to decide for which taxes the entrepreneur will be liable.

Corporate income tax is levied at the following rates (2012): 20% on the first EUR 200,000; 25% on taxable profits in excess of EUR 200,000. Corporate tax is levied on resident and non-resident companies. Resident companies are subject to tax on their worldwide income. However, double taxation of foreign-source income will normally be avoided by the participation exemption, the object exemption (as of 1 January 2012), tax treaties or the Decree for Avoidance of Double Taxation. Non-resident companies, mainly the branch offices of foreign companies doing business in the Netherlands, are taxable only on income derived from sources in the Netherlands. In the Netherlands, the standard rate of VAT is currently 19% which applies to most goods and services, including the import of products. There is also a lower rate of 6%, which applies principally to food, books and newspapers, newspaper advertisements, medicine, passenger transport and hotel accommodation. Exports of goods are zero rated, as is the export of certain services, although special procedures must be followed to be allowed to claim the VAT zero rate on exports. The intra community supply of products to a customer being a VAT entrepreneur, in another EU Member State is also zero rated.

The NFIA explains that upon the importation of goods into the Netherlands, customs duties and 19% import VAT are officially due. Unlike most other EU Member States, though, the Netherlands have set up a deferment system for VAT under which import VAT is declared on the periodic return but deducted on the same form. As a result, no VAT is actually paid. In principle, solely Dutch entrepreneurs or foreign entrepreneurs with a permanent establishment in the country for VAT purposes qualify for this benefit. However, foreign entrepreneurs not meeting the "permanent establishment" requirement can still benefit from the VAT deferment system if they appoint a fiscal representative for VAT purposes.

Companies resident in the Netherlands must withhold tax (*Dividendbelasting*) on payment of dividends and other distributions of profit at the statutory rate of 15%. The tax is due on the dividend payment date and must be remitted to the tax collector within one month. A lower rate may be provided for in an applicable double taxation agreement, while exemptions are also available. It is noted that a refund, reduction or exemption of Dutch dividend withholding tax will be granted only if the dividends are paid to the beneficial owner of the dividends. No tax is withheld on dividends paid to resident companies for which the shareholding falls under the participation exemption. A 100% exemption of dividend withholding tax is also applicable on dividend payments to qualifying parent companies within the EU, provided that the parent company holds at least 5% of the issued shares or voting power in the Dutch company. Based upon EU regulations (Parent-Subsidiary Directive), the dividends are exempt if the parent company is a corporate body that is (without exception) considered a resident of the other EU

member state or an EEA Country (Norway and Iceland). Condition to apply the exemption is furthermore that the recipient of the dividends is the beneficial owner to the dividends.

The Netherlands has a superior treaty network for the avoidance of double taxation created as part of an overall policy of removing obstacles to international flows of goods and capital as far as possible. It is believed that withholding taxes on dividends, interest, and royalties need to be as low as possible, preferably zero for international transactions. In line with this policy, there are generally no withholding taxes on ordinary interest and royalties. However, interest may be charged on certain categories of profit sharing loans, which is subject to dividend withholding tax. Most tax treaties lower the withholding tax on outgoing dividends. In addition, some treaties provide that foreign withholding taxes on dividends, interest and royalties are to be allowed as credits against the Dutch tax arising on such income. Following constitutional reform, the former Netherland Antilles ceased to exist with effect from the 10th of October 2010. From this date, a tax treaty with the Netherlands Antilles continues to apply to Bonaire, St. Eustatius, Saba, Curacao and St. Maarten. The Netherlands has signed treaties for the avoidance of double taxation on income and capital with more than 90 countries. In addition, dividends received by resident corporations that qualify for the participation exemption or affiliation privileges, conferred by the state are exempt from corporate income tax. A double taxation agreement is in effect between the Netherlands and Barbados. In general, the withholding tax rates agreed are as follows: 15% on dividends (companies, individuals), 0% (qualifying companies), 5% (interest) and 0% to 5 % (royalties). However the NFIA advises that certain conditions may be applicable for dividends, interest and/or royalties and therefore interested parties should check with local tax counsel/advisors whether certain conditions should be met in order to apply the rates mentioned.

The Netherlands is particularly attractive for royalty and IP (intellectual property) activities because its tax treaty network typically reduces or even eliminates the foreign withholding tax on royalties paid to a Dutch company. Moreover, the Netherlands does not impose any withholding tax at source on royalties paid to non-Dutch recipients. In addition, income derived from activities qualifying for a special Innovation Box regime may benefit from a beneficial treatment resulting in an effective tax rate of 5%.

Business Visa Requirements

A foreign national from outside the EU/EEA seeking to work for a period of more than three months in the Netherlands, can apply for a residence permit to enable working for one of the three following reasons: as a highly skilled migrant, a labour migrant, or a self-employed person. For a period of less than three months, the foreign national should apply for a business visa and/or work permit. A national of the EU/EEA does not need a visa, work permit or residence permit to stay in the Netherlands, but should register with the Dutch Immigration Authorities (IND) and obtain a registration certificate.
A work permit is only valid for a specific employer and for a specific employee. Work permits can be issued for a maximum period of 3 years. An application for a work permit is made by the intended employer of the foreign national to the *UWV WERKbedrijf*.

Form of enterprise

In the preliminary stages of forming a company, business owners must check that the proposed name is not identical to or too closely resembles that of an existing company. This is normally done by the civil law notary through the Chamber of Commerce, which maintains a Register of Trade Names. A general search will be carried out to determine if there is already a business with that name in that region. Beyond the region, the Chamber of Commerce may conduct a nationwide business name search on request. For a BV or NV, the name must begin or end with the initials B.V. or N.V., or the equivalent of the words spelled out.

The private limited liability company or BV is a legal person with an authorized capital divided into shares. At present, these shares are not freely transferable due to an obligatory blocking clause in the articles of association. The NFIA has advised however, that a pending bill in the Dutch parliament, if adopted, will change the position on blocking so that it is no longer obligatory but becomes optional. Once established, shareholders of a BV are not personally liable for losses of the company in excess of the amount which must be paid on their shares. However, under certain circumstances managing directors of the BV may face personal liability. The BV is a suitable vehicle for an individual or a small number of interested parties, who wish to operate with limited liability, to carry out a business. Also, this entity is often used when a company decides to establish a holding company in the Netherlands for tax purposes. Similar legal entities exist in the form of an Inc. in the US, the Sarl in France and the GmbH in Germany. It often concerns closely-held small or medium sized companies, including many foreign subsidiaries. An important feature of the BV is that it cannot raise public funding.

The BV may be incorporated by, or on behalf of, one or more natural persons or legal entities. This is done by executing a notarial deed, which must be in the Dutch language. The notarial deed of incorporation can only be executed by the notary if he has received a statement from a bank established in the Netherlands or elsewhere in the European Union stating that the share capital to be issued on incorporation has been paid into a bank account in the company's name or shall be available to the company after its incorporation. The deed of incorporation must in addition contain the articles of association of the company. Under current legislation, the authorized, issued and paid-up capital of a BV must amount to a minimum of EUR 18,000. There is also a bill pending in Dutch parliament concerning the flexibility of BV legislation. It is most likely that upon adoption of this bill there will no longer be a minimum capital requirement. Within eight days after incorporation, the company's data must be registered with the Chamber of Commerce in the district of the company's office address and certified copies of the deed of incorporation and the bank statement or description and accountant's certificate(s) must be deposited. Each of the managing directors is jointly and severally liable, in addition to the company, for all legal actions undertaken on behalf of the company during the period from incorporation until due registration with the Chamber of Commerce. Therefore, it is advisable to arrange for registration as soon as possible after incorporation has taken place. Companies are required to file details of all their managing directors, supervisory directors, and proxy holders. In the case of the latter, such details must include the extent of their powers. If all issued and outstanding shares in the company are held by one individual or legal entity, certain data regarding this sole shareholder have to be

registered as well. At least one shareholder's meeting should be held each year. This meeting must be scheduled within a period of six months after the end of the company's financial year, in order to adopt or approve the annual accounts.

A public limited liability company (NV) is the usual form of business enterprise adopted when capital is to be acquired through public offerings. The minimum amount required upon incorporation of an NV is EUR 45,000. As from 1 July 2011, a declaration of no objection from the Ministry of Justice is no longer needed for the incorporation or amendment to the articles of association of a BV or NV. This preventive supervision has been replaced by a system of continuous monitoring which is based on digital information already available to the government via the Trade Register and the Municipal Personal Records Database. This has made it easier to start a business in the Netherlands by reducing the time to start up a BV and reducing the administrative burden on companies with share capital. The articles of association of a BV and an NV may stipulate the formation of a supervisory board next to the board of directors. In case of a large NV the law requires the establishment of a supervisory board which consists of at least three members. A large company is a company of which the issued share capital and reserves amount to at least EUR 16 million, which has established a works council and which employs 100 or more employees in the Netherlands (including those employed through subsidiaries). If a small company decides to establish a supervisory board it may attribute to this board whatever powers and duties it may decide. In case of large companies, the law contains a list of management resolutions that require the approval of the supervisory board. Most of these resolutions may influence the continuity of the company. Both the BV and the NV must file all of their financial statements with the trade register; this must be done within thirteen months of the end of the company's financial year. Under certain circumstances it is possible to file only certain parts of the financial statements; depending on the size of the company, among other factors.

As part of the parent company, a branch subsidiary *("filiaal"* or "*nevenvestiging*") is not a separate legal entity. However, like other business entities, a branch of a foreign company must be entered in the trade register of the Chamber of Commerce. Information to be filed must include:

- Name and address of the foreign legal entity or partnership,
- its legal form, details about the registration in its home country (such as the name of the register and the registering body, city and country of registration, registration number);
- a proof of registration, not older than one month issued by the foreign registering body;
- a copy of the articles of incorporation and articles of association where the parent company is foreign;
- the identities and addresses of its directors and of the branch manager empowered to legally bind the company;
- the office address of the branch in the Netherlands which is to be considered its legal domicile;
- the trade name and a description of the business.

Generally speaking, all the information that the foreign company needs for registration in its own country should be filed with the trade register in the Netherlands. All these documents must be original or certified copies in Dutch, English, French or German or have been translated into any of these languages. As a rule, no financial accounts need be published for the branch subsidiary. For a foreign

company, a branch may be useful in the early stages of having a presence in the Netherlands. Also the speedy formation and the relative privacy of the branch can be advantageous. On the other hand, a disadvantage of the branch is the full liability of its parent for claims caused by actions carried out by the branch. Usually, foreign investors prefer to operate through a BV or NV. In principle, branches are subject to Dutch corporate income tax at the same rate as an NV or BV.

In contrast to a branch, which is a permanent establishment from which business operations are carried on, a liaison or representative office may not engage in actual business and cannot sign contracts or generate income. Its sole function is to gather market information or serve as a local communication channel. Legally, a representative office is not defined or regulated. As the representative office does not generate income, it is not subject to corporate tax. The representative(s), however, must register for personal income tax. A work permit and residence permit are, of course, also required. When hiring staff the representative office must observe the normal rules of labor law. If the activities of the liaison office change into those of a branch, the appropriate registration/amendment of registration in the trade register will have to be made. At the same time, the new entity must register for corporate tax, VAT etc.

Import Requirements, Documentation and Tariffs

The EU maintains an integrated database of tariffs and rules, including import licensing requirements applying to specific products being imported into the Customs territory. The Integrated Tariff of the Community, or TARIC (Tarif Intégré de la Communauté), can be searched by country of origin, Harmonized System (HS) Code, and product description on the interactive website of the Directorate-General for Taxation and the Customs Union. The online TARIC is updated daily and may be accessed at http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en. Further information on accessing TARIC may be obtained here at the following site:

http://ec.europa.eu/taxation_customs/resources/documents/common/dds2/material/faq_taric_low_resolution_en.pdf.

Dutch Customs involvement is required for the: import of goods into the free circulation of the EU (direct import); entrance of goods into the EU territory under a suspension regime; transport of goods under customs bond (transit); and export of goods outside of EU territory. In addition, the Customs Authorities play an increasingly important role in the protection of products against counterfeit and piracy, the protection of the environment, enforcement of health legislation and are actively involved in the (international) fight on terrorism and the enforcement of international sanctions imposed by for example the United Nations.

For any transaction drawing the attention of Customs, the goods should, be physically presented to the Authorities, and a customs import declaration should be submitted. This declaration can be conveyed by means of a prescribed document (Single Administrative Document, or SAD) or electronically. As part of the EU Customs strategy to come to a paperless customs environment, companies are encouraged to update and improve their electronic systems and to file the declarations electronically. In many cases it

is already obliged to file customs declarations electronically. For those companies unable to carry out the import formalities themselves (e.g., if there is no presence in the EU), a third party such as a logistics-service provider can be appointed to act on their behalf. In the Netherlands, the logistic gateway to Europe, many specialized companies are providing services in this respect. The declaration must, at a minimum, state who the owner of the goods is (or the person with a similar right), their identification, destination, origin, and whatever other information that will enable the Customs Authorities to determine the amount of duties due (if any). These include the CARICOM certificate of origin, bill of lading, cargo release order, commercial invoice and packing list. Upon import, customs duties, import VAT, excise duties, anti-dumping duties and/or agricultural levies may become due. Once all import formalities have been fulfilled, the goods are considered to be in "free circulation", meaning that the goods can in principle be moved throughout the EU without any additional customs interference. It is noted however that certain goods may remain subject to customs formalities due to the special nature or special destination of the goods in question.

Other than direct importation of the goods into the EU, it is also possible to apply a suspension regime, for example to manufacture or store goods in the EU. During the period of suspension, the Customs Authorities will maintain a certain level of control, either physically, administratively, or a combination of the two. The suspension regime can be ended by placing the goods under another suspension regime, importing the goods, or (re-exporting them. For goods that are placed under a suspension regime, the levy of customs duties, import VAT, excise duties, anti-dumping duties and/or agricultural levies (all if applicable) will be suspended and can in some cases even be avoided at all. Transport under customs bond, or Transit for short, is a regime allowing goods to be transported to their final destination without the obligation of paying customs duties, import VAT and other charges. Transit can be used for shipments entering the EU in one Member State but are destined for a customer in another Member State or for shipments to customers that are established outside the EU. The New Computerized Transit System (NCTS) is a European wide system, based upon electronic declaration and processing, that replaced the former paper-based Common Transit system providing better management and control of Community and Common Transit.

When free goods leave the EU territory, this is referred to as exportation. When exporting products, specific formalities also need to be complied with. Although the term "export" implies a permanent situation, temporary exports are also possible. This is the case when, for example, further processing is needed and will be performed outside the EU, after which the goods may be re-imported with partial or total customs-duty relief. Documentation required for export include the certificate of origin, bill of lading, customs export declaration, commercial invoice and packing list.

Standards and Certification

The Netherlands reputation in the field of testing and certification is excellent. Testing bodies such as DNV KEMA Energy & Sustainability and Netherlands Organization for Applied Science Research (TNO) have a worldwide reputation. The use of European standards simplifies the verification procedure. Therefore, a company is advised to apply the European harmonized standards. These are converted into

national standards by the national standardization institutes. The Netherlands Standardization Institute (NEN) is based in Delft.

TNO is a knowledge organization for companies, government bodies and public organizations which tests and certifies products and services, issuing an independent evaluation of quality. TNO also engages in contract research and specialist consultancy as well as granting of licences for patents and specialist software. The daily work of its 5,500 employees is to develop and apply knowledge.TNO can help set up new companies to market innovations and is involved intensively with domestic and foreign companies supporting their product and system compliance efforts. TNO's support helps assure that they satisfy national and international regulations. Conforming to national and international legislative guidelines is a major issue and is highly critical to ensure access to the European market. Presently, the legislative regulations are shifting away from a national level towards a European harmonized level. Recognizing the growing demand for CE certification several years ago TNO established an independent foundation under the title of TNO Certification. TNO is also authorized as a "Notified Body" to issue certificates of compliance of the CE regulations. A list of the participating TNO institutes can be obtained through the NFIA. As one example, the TNO Nutrition and Food Research Institute operates its toxicological research according to many regulatory agencies; national, EU, OECD, FDA (US) and METI (Japan). With its knowledge of the Commodities Act and the EU legislation, the TNO Institute is in an excellent position to advise companies concerning their composition, quality, and packaging requirements pertaining to food products. TNO is funded through a mix of government funding to support research and innovation, funding from contract assignments from the market and equity participation in ventures involving the commercialization of knowledge. Further information can be obtained from www.TNO.nl .

DNV KEMA Energy & Sustainability was originally established in 1927 as an independent laboratory by the Dutch electrical companies. Today the company is part of the larger group DNV KEMA (Det Norske Veritas), an independent foundation with the purpose of safeguarding life, property, and the environment, whose history goes back to 1864, when the foundation was established in Norway to inspect and evaluate the technical condition of Norwegian merchant vessels. DNV KEMA Energy & Sustainability, has more than 2,300 experts in over 30 countries around the world, and is committed to driving the global transition toward a safe, reliable, efficient, and clean energy future. The company specializes in providing world-class, innovative solutions in the fields of business & technical consultancy, testing, inspections & certification, risk management, and verification. The company has established strategic partnerships with facilities in the US, Australia, Latin America, Canada, the UK, Netherlands, Germany, Italy, France, Turkey, Bulgaria, Poland, the Czech Republic, Hong Kong, China, Taiwan, Indonesia, Russia, India, Libanon and Japan. KEMA is an official agent in the Netherlands for the Canadian Standards Association and the American Underwriters Laboratories. Consequently, a product approved by KEMA in the field of electrical safety can gain access to the Canadian and American markets. Therefore, the standards applied by the KEMA satisfy the American and Canadian requirements. Furthermore, KEMA has established collaboration with the METI in Japan with respect to the certification of electrical products. More information can be accessed at www.KEMA.com or through DNV Business Assurancehttp://www.dnvba.com/nl/Pages/default.aspx.

Important agencies and organizations

Benelux Office for Intellectual Property: www.boip.int/en/homepage.php

Dutch Employment/ Labour Office (*UWV WERKbedrijf*): www.werk.nl

European Patent Office: www.epo.org

European Trademark Register of the Office for Harmonization of the Single Market: http://oami.europa.eu

Netherlands Foreign Investment Agency (NFIA): http://www.nfia.com/

Netherlands Organization for Applied Science Research (TNO) www.TNO.nl

WIPO (International Bureau for the Protection of International Property): www.wipo.int

REFERENCES

European Franchise Federation (2011), Statistics, retrieved from http://www.eff-franchise.com/IMG/pdf/Stats_Franchise_Europe_10092010-2.pdf

European Travel Commission New Media Trendwatch, retrieved from

http://www.newmediatrendwatch.com/markets-by-country/10-europe/76-netherlands

Netherlands Foreign Investment Agency (NFIA) http://www.nfia.com/

OECD (2012), Economic Surveys NETHERLANDS, retrieved from www.oecd.org/dataoecd/25/55/50550641.pdf

OECD (2012), Statistics, retrieved from: http://stats.oecd.org/index.aspx?queryid=19802

World Bank/ IFC (2012), Doing Business 2012, Economy Profile: Netherlands, retrieved from http://www.doingbusiness.org/~/media/fpdkm/doing%20business/documents/profiles/country/NLD.pdf