

Setting up a limited company in the Netherlands



www.expatax.nl

Table of contents

1. How to set up a limited company in the Netherlands?	4
2. Legal Forms of Doing Business	5
2.1 Branch	5
2.2 Subsidiary	6
2.3 Branch versus Subsidiary	6
2.4 Partnership	7
2.5 Agents	7
2.6 Distributors	7
3. Private limited company: in Dutch called “Besloten vennootschap”	8
3.1 Incorporators	8
3.2 Ministry of Justice	8
3.3 Company name	9
3.4 Minimum capital	9
3.5 Capital tax	9
3.6 Management Board	9
3.7 Annual audit	9
4. Using the B.V. that is being formed in the start up phase to do business	10
4.1 Risks	10
4.2 Recommendations	10
5. Liabilities for directors and board members of a B.V.	10
5.1 Code of conduct	10
5.2 Negligence	11
5.3 Fiscal liability	11
6. Insurances that you can use to minimize risk	11
6.1 Company liability insurance	11
6.2 Profession liability insurance	12
6.5 Company damages insurance	12
6.6 Business partner insurance	12
6.7 Legal assistance insurance	12
7. Tax obligations	12
7.1 Corporate income tax	13
8. Arranging a work permit in the Netherlands for your private limited company	13
9. Payroll administration	15
10. Rules concerning working in the Netherlands	16
10.1 What you need to know about the employment contract	16
10.2 Temporary employment contract	16
10.3 Trial period	16
10.4 Term of notice	17
10.5 Permanent employment contract	17
10.6 Termination of a permanent employment contract	17
10.7 Contract with an agency	17
11. Working conditions	18
12. 30% ruling	19
12.1 Requirements	19
13. Procedure setting up a private limited company	20
13.1 The different phases that you need to follow	20
13.2 Costs	21
14. Opening a bank account in the Netherlands	20
14.1 Opening a bank account in the Netherlands	20
14.2 Is it possible to use a bank inside the EU?	21

15. Information required for establishing a limited company	23
15.1 Details of the company which will be set up in the Netherlands	24
15.2 Activities.....	24
15.3 Details of the individual shareholder.....	25
15.4 Details of the partner of the individual shareholder	26
15.5 Details of the company shareholder.....	27
15.6 Details of every ultimate beneficial owner or policy maker	28
15.7 Details of every authorized person.....	29
15.8 Authorization	30
16. About Expatax	31

1. How to set up a limited company in the Netherlands?

A lot of foreign companies or individuals would like to start a business in the Netherlands. Reason for this could be the available infrastructure resulting in a good connection with the rest of Europe, the available workforce, the tax laws, and the ability to communicate in English.

Although the system in the Netherlands seems flexible specific procedures must be followed. These procedures may require some time, so it is important that the right solution is chosen and that all required information is available on request.

In this brochure we will explain some of the rules involved and our fees if you would like us to assist you. Part of the text is copied from our website where you can find a lot more information.

If you have any questions just let us know.

Expatax B.V.

Plompstorengracht 6
3512 CC Utrecht
Tel. 030-246 85 36

Correspondence address:
PO Box 9310
3506 GH Utrecht

2. Legal Forms of Doing Business

A company can be engaged in business in the Netherlands via a subsidiary or branch. Compared with other EU countries, in the Netherlands corporate law provides a very flexible and liberal corporate framework for the organization of branches and subsidiaries by non-resident companies or individuals. There are no special restrictions on foreign-owned companies starting a business in the Netherlands, nor are there restrictions on foreign ownership of land or on repatriation of capital and profits.

2.1 Branch

The organization of a branch of a foreign company in the Netherlands does not require prior governmental approval. The foreign head office need only file certain documents and data with the Trade Register of the Chamber of Commerce in the district where the branch will be located. The following particulars have to be disclosed:

For the branch:

- The trade name of the branch, a brief description of its activities, the number of people working at the branch, the amount of invested funds and the full address of the branch;

For the branch manager (who need not be a Dutch national):

- Surname, first name, full address, date and place of birth, nationality, and the extent of his/her power and authority to represent the branch; the branch manager's signature and a copy of an identity document must be deposited.

For the foreign company:

- The name and legal form of the company, the (foreign) Trade Register with which it is registered, the number associated with that registration and the particulars of its managing directors and supervisory directors;
- The Deed of Incorporation, Articles of Incorporation and bylaws (if any) of the company (may be submitted in Dutch, English, German or French);
- The annual accounts of the company as drawn up, audited and disclosed pursuant to the law of the country of origin (may be submitted in Dutch, English, German or French);
- An extract from the foreign trade register or document of registration, issued no longer than one month earlier.

The following additional information must be disclosed if the company is established outside the European Union:

- The law by which the company is governed, its registered office and objects and, at least once a year, the amount of the company's issued share capital.

2.2 *Subsidiary*

Dutch law distinguishes two types of limited liability companies: the public limited liability company (Naamloze Vennootschap or NV) and the private limited liability company (Besloten Vennootschap or B.V.). The main differences between these two entities are that:

- (a) BV's (as opposed to NV's) cannot issue share certificates evidencing the shares and cannot issue bearer shares;
- (b) the transfer of shares in BV's (as opposed to NV's) is always subject to the blocking provisions of the Articles, which blocking provisions may contain a prior approval of the general meeting of shareholders or another corporate body as designated under the company's Articles of Incorporation, or a right of first offer to the other shareholders; and
- (c) BV's can be formed with a minimum issued and paid-in capital of € 18,000, while NV's must have a minimum issued and paid-in capital of € 45,000.

A Dutch subsidiary may be established and owned by one or more shareholders. The shareholders may be either individuals or legal entities; their nationality is irrelevant. If the shares in the company are owned by only one shareholder, any agreement between that shareholder and the company must be in writing. Shareholder resolutions must also be in writing. In addition, such a company is obliged to file the name and domicile of the sole shareholder with the Trade Register of the Chamber of Commerce in the district where the company is situated. BV's are, in most cases, the best vehicle for a foreign company to establish a wholly owned Dutch subsidiary. For more information see further in this brochure.

The issuance and transfer of registered shares or the transfer of a restricted right to the shares (for instance, a pledge) must take place by means of a notarial deed drawn up before a civil-law notary authorized to practice in the Netherlands. This obligation does not apply to NV's whose shares or share certificates are listed.

For more information about the Dutch private limited liability company go to www.expatax.nl/limitedcompany.

2.3 *Branch versus Subsidiary*

The most important legal difference between a branch and a subsidiary is the difference in exposure to liability. A subsidiary has limited liability, as a result of which a shareholder is liable only to the extent of its capital contribution. A branch is not a separate legal entity, so the (foreign) company of which the branch forms a part is fully liable for all the obligations of the branch. A branch is easier to establish than a subsidiary.

Manufacturing, warehousing and rendering of services may be carried out by both types of operations. Holding, finance and licensing operations, on the other hand, are better conducted by a subsidiary, since subsidiaries are able to benefit from tax treaties.

In either case, however, all the relevant factors must be considered before the final decision is made.

2.4 Partnership

A partnership, whether a general partnership (Vennootschap Onder Firma or VOF) or a limited partnership (Commanditaire Vennootschap or CV), can be formed by at least two partners, who may be either individuals or legal entities. The parties must conclude a partnership agreement and the partnership (not the contract) must be registered with the Trade Register of the Chamber of Commerce in the district where the partnership maintains its office. The partners in a general partnership (VOF) are jointly and severally liable for all obligations of the partnership. In a limited partnership (CV), however, the limited or “silent” partner is liable only up to the amount of his capital contribution, provided that he does not in any way take part in the management of the partnership vis-à-vis third parties. His identity is not registered with the Trade Register.

There are no restrictions on foreign nationals entering into a partnership with Dutch residents.

2.5 Agents

Dutch law draws a clear distinction between distribution and agency agreements. A commercial agent is a person or company that, as a self-employed intermediary, negotiates agreements and/or concludes them on a commission basis in the name and for the account of the principal. The commercial agent does not acquire title to the goods.

A distributor, on the other hand purchases goods in his own name and at his own risk and sell them to third parties.

Agency law is covered in the Dutch Civil Code. Since the commercial agent negotiates or concludes agreements in the name of the principal and generates goodwill on the principal's behalf, it is of great importance to the commercial agent that an appropriate and satisfactory remuneration for services rendered is arranged.

An agent is generally entitled to compensation for goodwill upon termination of the agency agreement.

2.6 Distributors

Under Dutch law, distribution agreements are not defined as such, and no specific statutory rules apply. The interpretation of distribution agreements and the settlement of disputes arising from them are subject to the general principles of Dutch contract law. Distribution agreements are often laid down in writing, although the law does not require a written contract. Consequently, oral agreements and even agreements by tacit consent are binding upon the parties; the claimant has the burden of proving the existence of a distribution agreement.

EU and Dutch competition rules have a significant effect on distribution agreements.

The supplier usually claims retention of title until the distributor has paid for the goods, and requests specific guarantees on the use of trade names, brands and logos. Contracts may also contain minimum turnover requirements that the distributor must meet.

For more information on which type entity serves your goal the best, go to www.expatax.nl/legalforms.

3. Private limited company: in Dutch called “Besloten vennootschap”

A “besloten vennootschap” (B.V.) is a company limited by shares, whose shares are privately registered and not freely transferable.

Reasons to set up a separate Dutch limited company:

- The liability can be kept within the Dutch limited company. This way the foreign mother company or the individual will be safe in case something happens. Liability is often the reason to set up a limited company.
- Benefit of a Dutch limited company is also that towards clients in the Netherlands you show that your company is officially registered in the Netherlands. You can use a foreign company to do business in the Netherlands, which is no problem, but this may lead to distrust from the clients.
- Tax benefits can be used and for an individual shareholder it will be easier to determine income.
- It is easier to transfer part of the shares to another company or individual in case of a joint venture or sale of the whole company.
- If a holding company is set up it can receive amounts from daughter companies' tax free.

3.1 Incorporators

A B.V. may be incorporated by one or more 'incorporators', being either individuals and/or legal entities. One single individual or entity alone, whether Dutch or foreign, may be the only incorporator and full Board of Management at the same time; no Secretary is needed. If there is only one shareholder, this fact will not entail personal liability, but his name will be registered as such in the Certificates of Registration of the B.V. issued by the Trade Register. Each Incorporator shall contribute to the initial capital for a certain number of shares; at least 25% of each contribution must be paid upon incorporation. No share certificates may be issued; shareholdings are registered in the shareholders register that must be kept in the office of the company.

So to summarize the above, if the Dutch limited company can be set up as a branch of a foreign company whereby the mother company will be the shareholder, that is one possibility. Or you can choose to set up the company with individuals as the shareholders.

In the second situation, please look into the rules concerning residence and work permits. If you are not living in the EU or in the US, the Dutch government may not grant a permit to an individual who is the main shareholder (more than 25%).

3.2 Ministry of Justice

To reduce the administrative burden a certificate of no objection must no longer be obtained from the Ministry of Justice. Instead a different procedure is introduced, but this doesn't mean that the establishment of the BV is no longer monitored. There is now a more informal procedure in cooperation with the public notary. After this the deed of incorporation will be executed before a public notary and filed at the Trade Register. The official deed of incorporation shall be in Dutch; it contains firstly (personal) details of the Incorporator(s) and the initial Member(s) of the Board, as well as the amounts of their participation(s) and payment(s) to the initial capital. Furthermore, the deed contains the Articles of Association, consisting of at least the Company name, the city where the company shall have its registered seat, the object of the company, the authorized capital in Euro and its division in shares, as well as the conditions for share transfer.

The authorized capital is the maximum capital that may subsequently be issued without altering the Articles of Association; it may amount to a maximum of five times the initial capital.

3.3 Company name

It is advisable to check whether the company name or a similar name has already been registered as a trade name or trademark, as in that case the holders of such prior registrations may force the company to change its name afterwards. This is however not an obligation. The company name must begin or end with the letters 'B.V.'. Apart from its company name however, the B.V. may freely choose and register one or more different trade names, for labelling the whole or one or more parts of its business.

3.4 Minimum capital

The minimum capital to be paid up initially is € 18,000. Except in case of contributions in kind, the initial capital must be deposited with a bank in Western Europe prior to incorporation (preferably a bank registered in The Netherlands). This capital is an “investment” in the company. You can use it to do business or lend it out to another company. This means it will not be a “cost” to set up the business. In the near future the minimum capital will become flexible, which means it will be possible to choose a share capital of € 1. This change has however been delayed several times.

3.5 Capital tax

Till 1 January 2006 capital tax was due from the company on incorporation and on any subsequent issuance of shares, at a rate of 5.5 per mil of the issued capital or of the paid up capital, whichever is greater. After the 1 January 2006 the capital tax has been reduced to zero.

3.6 Management Board

The management board has unlimited powers to act for the company, as do the individual board members unless restricted by the articles in the notarial deed of incorporation (articles of association). The only restriction allowed, however, is to require joint signatures. Therefore, if one wishes to grant limited powers to a director, he or she should either not sit on the board, or only be granted joint powers; after which the board if desired can supplement these powers with any type of standing or specific power of attorney granted to the same director, in addition to his statutory powers. The only case where a board member will be precluded from validly representing the B.V., is when he has a personal interest in a specific transaction, unless the articles in the deed of incorporation overrule this restriction. Usually, the board is appointed for an indefinite period. After incorporation, the authority to appoint and discharge members of the management board rests with the general meeting of shareholders, unless such authority has been vested in a supervisory board in which a works council is represented. A B.V. however can do without a supervisory board, as long as it employs less than 50 workers in the Netherlands.

3.7 Annual audit

Audit must be performed by external auditors and annual accounts have to be published when the company's turnover exceeds EUR 7 million and balance sheet totals over EUR 3.5 million. So if turnover and balance sheet are below these amounts you don't need the signature of a certified Dutch accountant. The procedure of incorporation usually takes one to three months. This depends on whether the shareholder will be an individual who is living in the Netherlands or a foreign company which has its own legal entity abroad. The public accountants of Expatax can assist you.

4. Using the B.V. that is being formed in the start up phase to do business

Let's say you want to start doing business in the Netherlands almost immediately, but you do not want to wait till the procedure of establishing the B.V. is finalized. In that case there is a possibility to start doing business in the formation phase of the B.V. You can start making use of the so called "B.V. i.o". The "B.V. i.o" means: limited company which is in the formation phase. This means that there is already a draft version of the articles of association available which is prepared by a public notary and that the "B.V. i.o" is registered in the trade register of the chamber of commerce. Parties which are doing business with you can see that the formation is not finalized yet.

4.1 Risks

But there is a risk related to doing business in the "B.V. i.o" form. Working this way makes you personally liable as a board member with all of your assets for the time you are doing business in the entity of a "B.V. i.o". This means that if you do not fulfil your contractual agreement, the other party who suffered the damages can go through the court system to try to get a compensation from all the board members for the damages suffered (sometimes the compensation fee will also include the lawyers costs of the defending party).

4.2 Recommendations

When using the "B.V. i.o" it is advisable to be careful when entering in a contractual agreement, because when the contractual party does not perform its part of the contract there is no possibility to place a claim.

So if the risks are high, wait till the formation of the limited company is finalized.

5. Liabilities for directors and board members of a B.V.

As a starting board member you will have to be aware of what you can and cannot do when starting your B.V. The Dutch government has certain provisions when it comes to starting a Limited company (B.V.) and it is really important to uphold those provisions when it comes to running the company to prevent future risks of liability when dealing with the following situations: Bankruptcy, contractual disagreements or fiscal problems.

5.1 Code of conduct

All the liabilities are to the limited B.V. when it can be shown that the limited company was directed correctly, the administration kept accordingly and law provision are met. The board of directors should have handled in accordance with the good governance code. Article 2:9, of the Dutch Civil Code, requires directors to fulfill their duties towards the legal entity with due care and attention. Should they fail this duty of care, the directors are personally liable for any damage caused to the company as a result thereof. The Dutch Supreme Court has ruled that such is the case if the directors have acted in a manner that constitutes serious misconduct. The Supreme Court stated that if the actions of the directors held liable would not have been taken by any other reasonably acting and experienced director in their stead, this constitutes serious misconduct. Examples of circumstances wherein directors have been held liable by their company are:

- Diverting the company's funds for personal use;
- Fraudulent or illegal practices;
- Taking large and unsecured financial risks.

5.2 Negligence

In some cases if it can be proven that the board of directors has been negligent, it is possible for a supplier (or any 3rd party) to sue an individual board member for not anticipating the possible financial state of the company which means that the board member may have to pay the bill that is still outstanding and the lawyer fees of the opposing party. This is in accordance with the Dutch civil code book 2, article 203, of paragraph 4.

In the situation of a bankruptcy the law states that on the bankruptcy of a company limited by shares (B.V.), each director shall be jointly and severally liable to the bankruptcy estate for the amount of the company's debts that can't be satisfied out of the liquidation of its assets if the management has manifestly performed its duties improperly and it may be assumed that these actions constituted an important cause of the bankruptcy. The law automatically holds that the directors have performed their duties improperly in the following circumstances:

- The management has not filed the company's accounts within 13 months of the end of the financial year;
- The books and accounts of the company have not been kept in accordance with good accounting practices and do not provide a true insight into the financial position of the company.

5.3 Fiscal liability

Directors of a Dutch company, such as a B.V. or an N.V., can also be held personally liable for unpaid tax debts of the company, in such cases where the directors have not reported the inability of the company to pay to the tax authorities. This form of liability regards taxes such as wage withholding tax and VAT ("BTW"), owed by the company to the Dutch Treasury. Once the tax authorities have made a director liable for overdue taxes imposed on company, it is up to the director to prove that the tax debt was left unpaid for reasons not attributable to him. Fiscal liability often occurs after bankruptcy, as the company is then no longer able to pay its own tax debts.

6. Insurances that you can use to minimize risk

When doing any type of business there is a chance for you to run many types of company business related risks, the most common being: Damaged inventory, debtors who cannot pay back, or in the case of an office fire, etc. Those types of risks can be limited to a certain extent by having the right insurances to cover the financial risks you are exposed to when having to do business in the Netherlands.

6.1 Company liability insurance

This insurance covers the liabilities that might arise due to accidents. For example: if an employee drops a brick stone on a random car, than it is possible to get the damages paid through the insurance company. In the case of delivering under the requirement work to the customer and the customer decides to submit a damages claim, the insurance will not be liable for the damages, but your company will be liable for the damages costs. That is your business risk when undertaking projects.

6.2 Profession liability insurance

Profession liability insurance insures the damages you have caused to third parties when providing your services in accordance to your profession. Profession liability insurance concerns jobs where your role is the advisory role, for example: lawyers or consultancy offices. In the case of a claim the insurance will cover the claim. In this case the insurance covers part of the business risks associated with the job that is undertaken.

6.3 Debtors insurance

Debtors insurance is for clients that did not pay their debts back. The insurance covers the open fee to a certain extent.

6.4 Office building insurance

Office building insurance covers damages to your company as result of: fire, lightning or explosion.

6.5 Company damages insurance.

In the case of burglary it is often so that you will only suffer material damages. There is a chance that your company will also come to a standstill. In the case of a standstill you will not be able to have an income and the costs will continue to sum up. In those cases it is possible to get a company damages insurance to cover the suffered costs.

6.6 Business partner insurance

It is often the case when the business partner passes away or is seriously ill, that the family members have the right to take part of the company over. In some cases the existence of the company can run some risk. To prevent the risk of the company being split up, there is insurance, it is called Business partner insurance that insures that when the business partner passes away the insurance will give the surviving business partner a money amount to buy the remaining share of the company.

6.7 Legal assistance insurance

With a legal assistance insurance, you get insured for legal assistance when you in disputes with employees, suppliers, government or business partners.

7. Tax obligations

Once the B.V. is set up there are certain obligations and tax returns which need to be filed.

- An administration must be set up and kept up to date. VAT returns must be filed (normally every quarter). Annual accounts must be prepared including a publication report for the Chamber of Commerce. The accountants of Expatax can take care of this for you.
- A corporate income tax return must be filed every year. Tax year is (in principle) the calendar year. The tax advisors of Expatax can prepare the tax return for you.
- Wage tax returns must be filed when employees are hired. The payroll managers of Expatax can arrange this for you.

7.1 Corporate income tax

Corporate income tax is levied on companies established in the Netherlands (resident taxpayers) and on certain companies not established in the Netherlands, which receive income from the Netherlands (non-resident taxpayer).

Basis of the assessment are profits in the widest sense, with a number of additions or deductions. The determination of the taxable profits corresponds largely with the determination of profits taxable under personal income tax, including the deductibility of losses from other years.

Legal persons whose activities are of a social or charitable nature or otherwise in the public interest are exempted from corporate tax. Exempted categories of profit are those corresponding to the relevant exemptions under personal income tax. Furthermore the participation exemption applies to all dividends, gains and losses related to the holding of at least 5% of the shares in a subsidiary. This rule, preventing economic double taxation, is in general equally applicable to dividend deriving from domestic and foreign subsidiaries.

A company which holds 100% of the shares in a Dutch subsidiary may request to be qualified as a fiscal unity. However, certain conditions apply. It is possible for a fiscal unity to be consisted of more than two companies. The subsidiaries are considered to be absorbed by the parent. As a result, negative results of companies belonging to the unity can be compensated horizontally with positive results of the others. Interest paid to a group company in respect of the acquisition of shares in Dutch operating companies cannot be set off against the profit of these operating companies.

The tax amount is assessed annually by the tax authorities on the basis of the taxpayer's tax return. If no such tax return is submitted, the amount due is assessed directly by the tax department.

Tax rate for 2012: 20% over the first € 200,000, 25% over the rest

8. Arranging a work permit in the Netherlands for your private limited company

As a shareholder or executive of your private limited company you might want to consider moving to the Netherlands. If you are not a resident of the EU, the best thing to do is to first go to the IND (their website is: <http://www.ind.nl/EN/index.asp>). On the website you will find everything you need know to be able to apply for your stay in the Netherlands. Things you will find on the website are: needed fees for the different procedures, requirements your business needs to fulfil in order to be able to apply and if your type of business is of added value to the Netherlands.

When you want to stay in the Netherlands for more than 3 months, for what is considered "long stay" as an independent entrepreneur, you should apply under this category: MVV (provisional residence permit).

8.1 What IND will require of you for your stay

The IND will see if you meet these conditions:

- Applicant must not constitute a risk to the public.
- Applicant should not be suffering from tuberculosis.
- Applicant should have sufficient funds to establish a business in the Netherlands and maintain living.
- Applicant must be below the age of 60 years.
- Applicant must meet the specified requirements for practicing his/her profession in the Netherlands.
- Applicant must start a new company in the Netherlands.
- Applicant's business activities should be which can support Dutch economic purpose.
- Applicant must live in the Netherlands to control and run his/her proposed business activities.

Document that you will be asked to bring to the consulate/embassy/IND:

- Valid passport.
- Legalised birth certificate of the applicant.
- Declaration of background duly signed.
- Proof of the applicant's International Health Insurance with coverage in the Netherlands.
- Two passport sized photographs.
- Documentary evidence that the applicant will be working in the Netherlands as an independent entrepreneur.
- Copy of the documents showing that the entrepreneur is authorised to run a business in the Netherlands (where applicable).
- If registration is compulsory: Documentary evidence from the chamber of commerce not older than 3 months.
- Copy of the business plan of the applicant, containing:
- Information on the applicant's personal details, his/her family and income situation, financial commitments, his/ her education/ training and professional experiences.

Other business related information which you will have to have to explain:

- Business Information: Sector in which the applicant will be operating, starting date of the business location of the business and other such related details.
- Commercial aspect of the applicants business: Description of the type of company and products, the innovative ideas thereof and the marketability (including target groups and competitors).
- Legal aspects of the business: Legal form of the company, trade name, liability, licences required to start the business, insurance and delivery terms & conditions.
- Financial aspects of business: Financial plans, investment budget, repayment plan, operational budget and liquidity forecast.
- Management aspects: Description of the organisation including the size of the staff complement.
- Proof as to what makes the applicant to go to the Netherlands in order to run the business.
- Proof that the applicants company is a new company.

Other requirements:

- If the applicants company is a public limited company, private limited company or partnership firm, copy of the deed of incorporation showing the authorities and responsibilities of the partners and their profit sharing arrangements.
- If the applicant is an independent freelancer: Copies of the contracts with Dutch clients for the preceding year.
- Proof of registration with collective industrial or professional organisations (if applicable).
- Proof from the concerned department showing that the entrepreneur has a VAT obligation (if applicable).
- Copies of purchase or lease contracts of the business premise (if applicable).
- Financial forecasts duly drafted by a chartered accountant (if applicable).

This can be done from your home country or depending if your country needs visa for your stay or not you can do it from the Netherlands. It is advisable to have legal support when going through these proceedings, in order to help you go through the different processes.

8.2 The Dutch American Friendship Treaty: DAFT

The Dutch American friendship treaty has helped American entrepreneurs start their businesses in the Netherlands since it had been signed over 60 years ago. The friendship treaty gives U.S. citizens preferential treatment when it comes to certain activities of trade. Part of the preferential treatment gives you an easier procedure for arranging your residence permit in the Netherlands. To be able to apply for the conditions of the treaty you will need to follow the following procedures in order to get a residence permit to operate your business under the Dutch American Friendship Treaty; the applicant must have the following:

1. Registration of the business with the Chamber of Commerce;
2. A business plan demonstrating commercial activities in the Netherlands;
3. A financial report, prepared by a qualified accountant or tax advisor;
4. A valid passport valid for at least one year from the application date;
5. Health Insurance;
6. Substantial personal capital invested in the business. Borrowed funds are not considered.

The amount of capital required is determined on a case-by-case basis. The minimum amounts are determined by the legal form of the business:

1. For an 'eenmanszaak' (a sole entrepreneur), the minimum amount of capital is € 4,500.
2. For incorporated businesses, the amount is at least 25% of the minimum capital stock required by law for a public company (€ 45,000), or € 11,250.

9. Payroll Administration

All foreign companies which are sending people to work on assignment in the Netherlands or hire employees in the Netherlands are deemed to have 'fictitious residence' in the Netherlands for tax purposes. This means that all employees on assignment in the Netherlands are subject to Dutch income tax liability from day one of such an assignment. The foreign company is obligated to set up a payroll administration and must make sure that every month the right amount of wage tax and premiums for the social security are withheld and paid. This is also applicable to individual contractors. They may be able to work under their foreign Ltd but that is something which must be approved by the tax authorities and can lead to high risks for the company which is hiring the contractor.

If a foreign company doesn't follow the Dutch rules the client for whom the employees are working in the Netherlands can be held liable for the wage tax debt, premiums social security and possible fines. This can lead to serious consequences.

We can assist you with the whole procedure and take care of your payroll:

- Registration with the tax authorities
- Creating contracts
- Application of the 30% ruling (if applicable)
- Calculation of monthly salary and creation of pay slips
- Advice about the available tax free allowances
- Submitting wage tax returns and forms for the national insurance
- Correspondence with involved parties
- Annual accounts, administration and year end statements
- Creating payment schedule for wage tax, national insurances and net wages.

10. Rules concerning working in the Netherlands

10.1 What you need to know about the employment contract

Because the legal rights and obligations differ per type of contract, you have to consider what option suites you most. To help you make this decision, the basic principles of the different contract options are explained below.

There are three rather common employment contract options. These are:

- Temporary employment contract
- Permanent employment contract
- Contract with an agency

10.2 Temporary employment contract

An employment contract between the employer and employee is nothing more or less than an agreement between both parties. The employee obliges him or herself to work for the employer and the employer obliges him or herself to pay a salary for the work delivered by the employee. A temporary contract has a starting date and an ending date. The contract will end on the agreed date without a dismissal procedure.

We strongly advice that you make sure that you get a contract in writing, although a verbal agreement is also valid. The employer has the obligation to inform the employee about the main issues covered in the employment contract. Within the legal limits, employers and employees are free to decide what will be covered in the employment contract.

10.3 Trial period

The trial period is a very common part of a (temporary) contract with the employer. A trial period will apply for both parties and needs to be agreed in writing. If the duration of the temporary contract is less than 2 years, the maximum trial period is 1 month. Exceptions can only be made in case this is agreed by a Collective Labour Agreement. In any way the legal maximum trial period is never any longer than 2 months. An extension of this period is not possible.

10.4 Term of notice

A temporary employment contract will end automatically and legally on the date agreed. This means that there is no dismissal procedure involved. A different situation occurs if either parties or one of them want to end the contract before the agreed date. In this case the option for termination of the contract before the final date, need to be part of the contract. If the employer wants to end the contract before the date agreed, he or she needs to follow a legal dismissal procedure. In this case it is advisable to contact the local Employment Office to get further information.

If you will work on repeating temporary contracts for the same employers, the rules for a permanent contract will apply (if four temporary contracts with the same employer have been agreed within less than a three-month break between each contract). If this is the case, please contact the Employment Office for more information.

10.5 Permanent employment contract

The most important difference between a temporary employment contract and a permanent employment contract is the fact that a permanent employment contract has no ending date (including no indication of any other intention to limit the duration of the contract - such as 'for the duration of the project'). This means that the item 'the day the contract will end' included in the temporary employment contract will not be part of a permanent contract. Also the 'term of notice' will be different for a permanent contract, since your legal position is different. The differences are explained below.

10.6 Termination of a permanent employment contract

A permanent employment contract can be ended by one of the parties. The legal terms of "notice time" needs to be respected. The rules are different for employers and employees. The employee has the legal right to end the contract without a procedure, but he or she has to respect the legal and agreed determination period, which usually is a one-month notice minimum. The employer needs to apply for a dismissal permit. The term of notice depends on the duration of the contract on the day the employer applies for the dismissal permit. We would like to advise you to contact the local Employment Office for more information if a situation like this does occur. Or read more in the section about the termination of contracts (available in Dutch).

10.7 Contract with an agency

The contract with a temp agency or commercial employment agency ('uitzendbureaus') differs fundamentally from a contract with the employer as described above. In the temp construction the temp agency is your legal employer while you will work in a company which hires you from the temp agency. In particular your protection against dismissal during a certain temp period will not be arranged. This on the other hand means that you are also free to leave during the same period of time. Temp agencies have their own Collective Labour Agreement. There is an 'Allocation of Workers by Intermediaries Act' which regulates certain issues related to temp agencies, for instance:

Temp agency employers are prohibited from charging temp workers money (or any other consideration) for being given temp work. Temp agencies must inform temps in writing about the working conditions at the place of work in advance.

11. Working conditions

11.1 Working time

The law lays down a maximum working time of 12 hours per shift and 60 hours per week (over a period of 4 weeks maximum 55 hours on average per week and over a period of 16 weeks maximum 48 hours on average per week). The average working week is 40 hours. The working week is usually organised over five days, with a mandatory legal minimum of one day of rest, normally Sunday. Persons, whose religion observes a day of rest on another day than Sunday, may opt for Friday or Saturday.

Note: The maximum duration of work may be exceeded for certain activities or under certain exceptional circumstances.

11.2 The four-day week

In all sectors it is more and more common that people make longer working days, which allows them to work only four days a week. Because this is not the regular agreement, an agreement has to be made with the employer.

11.3 Annual holiday

The number of days of paid statutory annual leave is equivalent to the number of working days a week multiplied by four, i.e. in most cases 20. Employers often allow five extra days. Workers receive normal pay from their employer, plus a bonus equivalent to 8% of annual earnings. If there is a possibility of a 13th month, it will be paid by your employer at the end of the year. Accumulation of leave entitlement is possible; employees can "save up" their days of paid leave. Collective agreements often provide for more days of statutory leave in the main sectors of industry: 22-25 days or more depending on length of service or age. There are also more favourable arrangements for holiday pay.

11.4 Cultural behaviour regarding to work

People from other countries often find manners in the Netherlands very 'easy', less formal than they are used to. There seems to be no strict hierarchy. Even on the work floor, there are no large distances between boss and employee, so it seems. Still there is respect for one another, but it hardly shows in the way they address each other.

Employees have their own responsibilities. In many kinds of work employees are expected to show a large amount of own initiative.

11.5 Sickness and illness

In case of illness the employer has to continue to pay the salary for at least 2 years. The first year the salary will be 100% of the 'old' salary, the second year the salary will be 70% of the 'old' salary. After these two years the government will take over payment. This is done to push employers to get employees back to work as soon as possible. The employer therefore has to take certain actions. Otherwise the term of 2 years may even get longer.

This rule can cost the employer a lot of money. Not only must the employee who is ill be paid, but also the employee must find somebody else to do the work instead. If the ill person takes a lot of time to recover, it will lead to double costs for the employer.

To reduce this risk insurance companies have created several policies to cover this risk. In case of illness the insurance company will then take over the payment of the salary. The height of the premium depends on what will be insured. Relevant is the salary, the period the employer will continue the salary himself (one month, two months), the number of employees etc.

Besides the risk of having to pay the salary during illness the employer will also have to pay the premiums for the state disability insurance (plus for the state health insurance if applicable).

Roughly said, the extra costs for the employer will be 110% of the agreed gross salary. On top of this the employer can pay a premium for a private illness insurance, pension premium etc.

12. 30% ruling

For expats who come to the Netherlands the government has created the so called 30% ruling. This is very beneficial tax wise for the expat.

12.1 Requirements

The expatriate must be an employee who is hired in another country by an employer or sent to an employer within the same group of companies at management level, with a specific expertise that is scarce or absent on the job market in the Netherlands.

Remuneration and provisions to extraterritorial employees to compensate or prevent expenses outside the country of origin shall, with respect to employees arriving at the joint request of the employee and the employer, in any case be considered remuneration for extraterritorial expenses up to (proof scheme):

- a. 30% of the basis, this being the sum of the wage (including bonus etc.) received associated with the stay outside the country of origin to the extent they entered or transferred employee has no right in this regard to prevent double taxation, and remuneration for extraterritorial expenses;
- b. the amount of the tuition fees. Tuition fees are payments for children of the extraterritorial employee to participate in primary or secondary education at international schools and international departments of non-international schools, up to the amounts charged by the school according to its rates for education, with the exception of costs and accommodation expenses but including travelling expenses.

Expatax can assist with the application procedure. For more information about the 30% ruling see: www.expatax.nl/30ruling.

13. Procedure setting up a private limited company

Expatax arranges everything for their clients who want to start a private limited company. This includes: having the notary create the articles of association, the letter of accordance of the ministry of justice, the correspondence with the tax authorities, the registration needed at the trade register of the Chamber of Commerce. All communication will go through Expatax. The only thing you will have to arrange by yourself is the company bank account.

13.1 The different phases that you need to follow

Phase 1: formation phase

- Contact Expatax and arrange a meeting (telephone, email or personal meeting)
- Think about a name for your company
- Preparation of the formation documents (*Expatax*)
- Preparation of paperwork for identity checks (*Expatax*)
- Preparation of the draft version of the articles of association (*public notary*)
- Preparation of documents for provisional registration in the trade register (*Expatax*)
- Preparation of documents for the registration with the tax authorities (*Expatax*)
- Define the share capital
 - € 18.000 (minimum) in cash (with statement from the bank)
 - € 18.000 (minimum) in goods (with statement of value from certified accountant)
- Open a bank account in the name of the BV
- Transfer the share capital to the bank account, bank issues a bank guarantee for the notary

Phase 2: finishing phase

- Finalization of the articles of association (*public notary*)
- Finalization of the registration in the trade register of the Chamber of Commerce (*Expatax*)
- Finalization of the registration with the tax authorities (*Expatax*)
- Preparation of notes from the first shareholders' meeting (*Expatax*)
- Preparation of the required contracts: (*Expatax*)
 - employment contract
 - lease regarding property
 - current-account shareholder with company
- Additional correspondence with the tax authorities (*Expatax*)
 - arrange an article 23 declaration in case of import
 - opt for taxed lease

Phase 3: post formation phase

- Get the right insurances
- Arrange the necessary permits
- Contact existing creditors
- Make terms of delivery and payment
- Make new note-paper
- Judge any provisional tax assessment which have been received
- Set up a business administration

13.2 Costs

- Total formation fee: € 1,750 plus VAT (invoiced by Expatax)
- Registration cost trade register about € 150 per year (tax deductible)
- Bank costs: around € 125 for the bank guarantee plus ongoing banking fees

The whole procedure will take between 1 to 3 months. The B.V. can be set up provisionally within one month, so that at least business can be done.

14. Opening a bank account for a private limited “B.V”.

If you want to do business in the Netherlands you will need a bank account for your B.V., because it is necessary for the notary to know if the company has the € 18,000 mandated by law to finalize the proceedings of establishing the B.V. If you have deposited the € 18,000 on the companies bank account into a European bank, then the bank will have to send a bank statement stating that the private limited has deposited the € 18,000 on the companies bank account. Therefore, opening a bank account is establishing your private limited in the Netherlands. There are different ways for you to procure a bank account. This section will explain the different ways to open a bank account.

14.1 Opening a bank account in the Netherlands

As a starting business there are different banks that you can contact to open a bank Account. Here is a list of the requirements of ABN AMRO, which we are going to use as an example how to open the private limited’s bank account. Those requirements generally also apply to other banks.

First of all make the appointment as soon as you get a draft of the articles of association and the company has been registered (as B.V. i.o.) at the trade register of the Chamber of Commerce. Bring those documents to your appointment and then the proceedings can start to open the bank account.

Here is a list of ABN-AMRO requirements needed to open a private limited bank account.

Who should be identified and verified?

1. The legal entity (Ltd)
2. The board member(s) and/or Ultimate Beneficial Owners

1. The legal entity (private limited)

To be able to identify a private limited you will need the following documents:

- An original, recent (not older than 3 months) certified extract from the Chamber of Commerce that your company is registered at the trade register of the Chamber of Commerce;
- The articles of association (notarial deed)

2. The board member(s)

To be able to identify the identity of the board members they need meet certain criteria’s. They need to state what type responsibility is there when it comes to decision making, here are the two options:

- Separate responsibility of the board members, showing in the extract from the Chamber of Commerce, boards can decide to let only one board member identify himself in order to open the bank account.
- Joint responsibility of the board members, showing in the extract from the Chamber of Commerce, the boards that choose this structure need all of the members to show up and identify themselves to open the account.

The identities of the directors must be identified and verified.

Identification and verification can be done in the following ways:

- Providing a valid ID to an employee of ABN AMRO who can then identify who you are.
- Or a copy of identity that is authenticated by a notary located in the Netherlands and the notary will send a legalized copy to the bank.

For the other Board member(s):

These board members must be identified through the delivery of:

- The name, address and date of birth + residence data.
- You can identify the remaining directors by making use of a UBO statement (UBO = Power of attorney) and other director(s) complete and signed. This UBO statement can be found at the ABN AMRO site.
-

For more information go to: <http://www.abnamro.nl/en/index.html>.

14.2 Is it possible to use a bank inside the EU?

It is possible to use the financial services of a bank inside the EU when it comes to getting the bank statements to provide information about the funds needed for the finalization of the private limited (B.V.), as long as the bank meets the requirements stated by the notary, such as: financial permits and having a good reputation.

15. Information required for establishing a limited company

To be able to set up a B.V. we need several official documents. Please provide us with as many documents as possible to prevent delay with the establishment.

At the end of this brochure you will find a list with questions. This list will also tell you which documents we need to arrange the set up of the limited company.

Sometimes to establish a company you will need to find out what the requirements are for your business and if you need permits to be able to start your business. If you need an overview of which companies need a permit, see www.expatax.nl/permitsanddiplomas.

Next you will find a list of questions which are related to the procedure of setting up the company but also to the registration at the Trade Register of the Chamber of Commerce and the tax office.

Please provide all the requested information, preferably in one package. Since a part of the costs has to be paid upfront by us we will send you an invoice for 50% of the costs when the procedure starts. Once the deed of incorporation is prepared you will receive an invoice for the other 50% of the costs. Only if the remainder of the invoice has been paid the company can be finalized.

Our fixed fee is € 1,750 plus VAT which includes the costs of the notary . We will take care of all registrations and create the necessary contracts and agreements. We will make sure you have a company which will be ready to do business.

The invoice will be sent to the Dutch limited company which is being established. This way the invoice is deductible from Dutch corporate tax and VAT can be claimed back easily.

Please fill in the paperwork by hand and after the relevant signatures have been placed please forward everything to us together with the applicable documents.

Post:

Expatax BV
P.O. Box 3910
3506 GH Utrecht
The Netherlands

Fax:

+31 30 246 85 37

Email:

info@expatax.nl

15.1 Details of the company which will be set up in the Netherlands

- 1a Name of the business :
- 1b Address of the business :
- 1c Postal code :
- 1d City :
- 1e Website address :
- 1f Email address :
- 1g Telephone :
- 1h Fax :

15.2 Activities

- 2a What will be the activities in NL? :
Please describe elaborately
- 2b Is a business plan available? : Yes / No
- 2c What will be the expected turnover of the limited company in an average year? :
- 2d What will be the expected expenses of the limited company in an average year? :
- 2e Will the company sell goods to companies in other EU countries? : Yes / No
- 2f Will the company buy goods from companies in other EU countries? : Yes / No
- 2g How many employees will the company have in the Netherlands? :

Question 3, 4 and 5 concern the shareholder of the Dutch B.V. If the shareholder will be an individual then questions 3 and 4 are applicable, if the shareholder will be another limited company then question 5 is applicable. For each shareholder the details must be provided.

15.3 Details of the individual shareholder (natural person)

Please complete a form for each individual shareholder.

3a	BSN (if the shareholder is living in NL)	:	_____
3b	Name	:	_____
3c	First names	:	_____
3d	Date of birth	:	_____
3e	City of birth	:	_____
3f	Country of birth	:	_____
3g	Address	:	_____
3h	Postal code	:	_____
3i	City	:	_____
3j	Marital state	:	_____
3k	Signature	:	_____

Additional proof required:

- Clear copy passport, which must be legalized by a lawyer or notary in your country if the copy is not made in our office. The legalization must confirm that the passport is yours.
- Proof of your address: registration document of your municipality or a utility bill or driving licence

If the individual shareholder will also work for the limited company and the shareholder is not from within the EU the shareholder must have a work permit before work can be done for the company. It may be difficult to get a work permit in this situation. For more information go to <http://www.ind.nl/EN/verblijfwijzer/> and choose the option "I want to come to the Netherlands". Then choose the period and nationality and as reason of your stay for working on a self employed basis.

15.4 Details of the partner of each individual shareholder (natural person)

Please complete a form for each partner of each individual shareholder.

4a BSN (if the partner is living in NL) :

4b Name :

4c First names :

4d Date of birth :

4e City of birth :

4f Country of birth :

4g Address :

4h Postal code :

4i City :

4j Signature :

Additional proof required:

- Clear copy passport, which must be legalized by a lawyer or notary in your country if the copy is not made in our office. The legalization must confirm that the passport is yours.

15.5 Details of the company shareholder (mother- or holding company)

Please complete a form for each company shareholder.

5a	Statutory name	:	
5b	Statutory place of residence	:	
5c	Main activities in home country	:	
5d	Address	:	
5e	Postal code	:	
5f	City	:	
5g	Country	:	
5h	Telephone	:	
5i	Fax	:	
5j	Email	:	

Additional proof required:

- Extract from for example the foreign Chamber of Commerce or Secretary of State confirming the official registration of the limited company in the foreign registrations, not older than one month.
- Information about the ultimate beneficial owners or policy makers of the mother company. This concerns the individual shareholders with at least 50% of the shares or voting rights.

15.6. Details of every ultimate beneficial owner or policy maker

6a	Name	:	_____
6b	First names	:	_____
6c	Date of birth	:	_____
6d	City of birth	:	_____
6e	Country of birth	:	_____
6f	Address	:	_____
6g	Postal code	:	_____
6h	City	:	_____

Additional proof required:

- Clear copy passport, which must be legalized by a lawyer or notary in your country if the copy is not made in our office. The legalization must confirm that the passport is yours.

15.7. Details of every person you want to authorize to act on behalf of the Dutch limited company and who is not a shareholder or ultimate beneficial owner

7a Name : _____

7b First names : _____

7c Date of birth : _____

7d City of birth : _____

7e Country of birth : _____

7f Address : _____

7g Postal code : _____

7h City : _____

7i Country : _____

7j Maximum amount authorized per transaction, or : € _____

7k Special transactions for which this person is authorized : _____

7l Signature of authorized person : _____

Additional proof required:

- Clear copy passport, which must be legalized by a lawyer or notary in your country if the copy is not made in our office. The legalization must confirm that the passport is yours.

You can authorize this person for example to sign contracts up to a value of € 10,000. Or you can for example authorize this person to open a bank account or sign a lease contract for an office.

15.8 Authorization

We authorise Expatax B.V. to act on our behalf until further notice in all matters pertaining to the formation of the Dutch limited company and the registration of the company at the Chamber of Commerce and tax authorities.

.....
(Signature)

.....
(Name)

.....
(Position)

.....
(Date)

16. About Expatax

Expatax was set up in 2001 and has grown to a fully licensed tax and accountancy firm employing several qualified advisors. These advisors come from Big 4 firms, have a solid background and are interested in the client. Permanent education is part of our policy, which means that our advisors stay up to date.

We are specialized in assisting expatriates and foreign businesses who want to work and do business in the Netherlands.

Our approach is very personal and direct. Lines are short and we do all we can to find a solution around the client's needs. By focussing on the international tax advice we can keep our knowledge high, the procedures clear and the fees reasonable.

Due to our client base all our outgoing correspondence like tax reports, annual accounts, etc. are prepared in English. Specifications are provided so that you can see exactly what we have done and what the result will be.

Services

Besides assistance with the preparation of a tax return we provide the following services:

- application of the 30% ruling (www.expatax.nl/30ruling)
- setting up a company in the Netherlands (www.expatax.nl/startingbusiness)
- accounting (www.expatax.nl/bookkeeping)
- providing payroll solutions (www.expatax.nl/payrolling)
- financial advice ([www.expatax.nl/financial advice](http://www.expatax.nl/financial_advice))

Cooperation's

Cooperation's have been set up with other specialized advisors:

- activpayroll Ltd: worldwide payroll solutions
- VeDeVe legal: international labour law, pension rights and social security
- Berkenhout Finance: financial planning
- Rothwell International BV, contracting agency

Contact details

Visiting address: Plompetorengracht 6, 3512 CC, Utrecht
Post address: P.O. Box 9310, 3506 GH, Utrecht
Phone: +31 (0)30-2468536
Fax: +31 (0)30-2468537
Website: www.expatax.nl
Email: info@expatax.nl

The material contained in this brochure is not intended to be advice in any particular matter. No reader should act on the basis of any matter contained in this brochure without considering appropriate professional advice.

Expatax BV expressly disclaims all and any liability to any person, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance upon the contents of this brochure.