Netherlands

1. Government requirements

Registration requirements

Registration with the Chamber of Commerce

All companies that want to supply services, sales, trading, manufacturing, etc., and start a business in the Netherlands are obliged to subscribe to the Chamber of Commerce.

Registration with the Dutch tax authorities as an employer

In the Netherlands, wage taxes consist of wage tax and social security contributions. The social security contributions consist of national insurance contributions (i.e., insurance for old age government pension, surviving dependents and long-term care), employee insurances (i.e., insurance for unemployment and disability) and the income-dependent contribution to the Dutch health care insurance. The wage tax and national insurance contributions are due from the employee, but withheld and remitted by the employer. The employee insurance contributions and the income dependent contribution to the Dutch healthcare insurance are due from the employer. In some international situations, an employee might not be covered by the social security system of the Netherlands (see 3. Employment obligations/Social security). An A1 statement or a Certificate of Coverage confirms this. In this case, only wage tax is due if the Netherlands has the right to levy tax on the employment income.

When the employer has a Dutch wage tax withholding obligation for its employees, it should calculate and remit the wage tax and the social security contributions due each pay period (monthly or every four weeks) to the Dutch tax authorities. In order to do so, the employer has to:

- Set up a Dutch payroll
- Provide employees with a monthly payslip and an annual statement
- Register with the Dutch tax authorities as a Dutch wage tax withholding agent, and the Dutch tax authorities will then provide the employer with a Dutch wage tax number
- Perform a sanity check on the mandatory industry affiliation, as determined by the Dutch tax authorities in a letter to the employer — some social security contributions (if applicable) depend on the industry affiliation and the number of employees
- File the monthly Dutch electronic wage tax return and remit the Dutch wage taxes and social security contributions correctly and on time

Registration with the Dutch tax authorities as an employee

To arrange Dutch fiscal affairs, a Dutch fiscal number, “Burgerservicenummer” (BSN), should be obtained. For a resident, a BSN can be obtained at the municipality where the employee resides. For a nonresident, a BSN can be obtained at one of the 19 designated “Register Niet Ingezetenen” (RNI) desks by registering as a nonresident.

Ongoing compliance requirements

Wage tax return and payment

An employer is required to make electronic filings within one month after each pay period. The payment also has to be made within one month after each pay period. These filings and payments are mandatory and automatic penalties may arise for late submission.

Dutch Personal Income Tax (PIT) return

The Dutch tax year runs from 1 January through 31 December. The normal filing deadline for tax returns is 1 May of the following tax year. However, it may be possible to apply for an extension of the filing deadline. For taxpayers, it is mandatory to file a Dutch income tax return if they receive an invitation from the Dutch tax authorities.

2. Pension requirements

Registration requirements

A Dutch employer is, in principle, not obliged to offer their employees a pension arrangement, unless a mandatory industry pension fund applicable or collective labor agreement is applicable. Although a pension plan is not mandatory by law, most employers offer a pension arrangement.

In general, employees pay a contribution of 33% to 50% of the pension cost to the pension plan.

Ongoing compliance requirements

Payment of contributions to pension funds

The way in which contributions to the fund have to be made depends on the fund. The rates vary per fund. The contributions due by employees are calculated and deducted through the monthly payroll process. The employer pays their part of the contributions as well as the part due by employees, usually by bank transfer. The payment can be monthly, quarterly or annually.

3. Employment obligations

There are several requirements according to Dutch employment legislation. Below we have summed up a non-limitative list of these requirements:

Employment contracts

The employer should, in principle, draft a new employment contract taking into consideration the Dutch employment law and the collective labor agreement (if applicable).

Minimum wages

The employer should pay employees at least the minimum wage, which is a fixed monthly rate and is increased annually (as of January 2021, it is EUR1,684.80 for those aged 21 and over in full-time employment of 40 hours per week), and take into account the obligatory annual holiday allowance of 8% when drafting the Dutch employment contract.

Holiday leave

The employer is obliged to give each employee paid holiday leave at a minimum of four times the average number of days worked per week.

- The employer is obliged to continue paying 70% of the gross monthly salary during the first two years of illness, but not less than the statutory minimum wage
- The employer is required to have a work council if it has 50 employees or more.

Compensation and benefits package

Dutch employers are, within the limits of employment legislation and, if applicable, a collective labor agreement, free to offer their staff a package of compensation and benefits. Review of the formal employment contracts, pension plans and especially the level of compensation are essential for an employee offering. A review of collective labor agreements (especially for a group offering) or benchmarking are recommended to achieve an optimal compensation strategy. For employees, an annual merit increase (up to a defined maximum) and annual compensation correction for inflation are common practice.

An employee who works full-time (i.e., 40 hours per week) is legally entitled to a minimum of 20 days of holiday per year. Most employers offer more days of holiday (i.e., 25 to 30 per year). The number of bank holidays in the Netherlands is about six to eight per year, depending on calendar dates.

Extraterritorial costs and the 30% facility

Employees from another country who come to work in the Netherlands often receive a reimbursement for the additional costs incurred for their stay away from their country of origin. These costs are referred to as the extraterritorial costs. An employer can either reimburse the actual extraterritorial costs incurred by the employee or apply for the 30% facility.

Reimbursement of the actual costs

The actual extraterritorial costs may be reimbursed tax-free provided that these costs are substantiated. Qualifying extraterritorial costs include, among others, cost related to double housing, language courses, residence permits and home leave.

30% facility

The 30% facility provides special tax benefits to employees with specific expertise who are recruited from abroad. In general, the main benefit of the 30% facility is that the employer may pay the employee a tax-free allowance for extraterritorial costs up to 30% of current employment income. There are several conditions that need to be met to apply for the 30% facility, such as a salary threshold and the obligation that the employee lived outside a radius of 150 km from the Dutch national border for more than two-thirds of the two-year period prior to employment in the Netherlands. In general, starting 2019, 30% facility can be applied for a maximum period of five years. A longer period can still be applicable for existing 30% facilities based on a grandfathering arrangement. In order to make use of the 30% facility, a joint request by the employer and employee should be filed with the Dutch tax authorities. The application for the 30% facility has to be filed with the Dutch tax authorities within four months after the start of the employment in the Netherlands to have retroactive effect from the start of the employment.

Immigration

No immigration requirements are applicable to European Economic Area (EEA) and Swiss nationals. For non-EEA and non-Swiss employees, it should be determined whether a residence permit and work permit or a combined single permit should be requested.

Social security

With respect to social security, an employee is, in principle, covered by the social security system in the country in which the employee performs the employment activities. This general rule also applies when the duration of the activities is very limited. In the following paragraphs, we will describe two exceptions.

EEA and Switzerland

The social security position of an individual living in the EEA and Switzerland, and working in a different EEA country or Switzerland (or different countries) needs to be determined on the basis of the European Union (EU) regulation for social security purposes. The main rule of the EU regulation is that the employee is covered by the social security system in the country where the employment activities are performed. However, there are several exceptions to this main rule, such as if the employee is assigned to another company or if the employment activities are performed for two companies where one company is situated in the country of residence and the other is in another EEA country or Switzerland.

If an exception is applicable, it is recommended to confirm the social security position of the employee with the social security authorities of the country where the employee resides by requesting a so-called A1 statement. If a copy of the A1 statement is kept in the employee file, the employer does not have to withhold or remit Dutch social security contributions. However, social security contributions may be due on the Dutch employment income paid to the employee in the country that provided the A1 statement.

Social security treaty

The social security position of an individual from a non-EEA or non-Swiss country with which the Netherlands has a social security treaty should be based on the applicable social security treaty. Therefore, it is recommended to perform a check on the applicable social security treaty.

Foreign company pension

As a general rule, for employees who are assigned to the Netherlands and during their assignment continue to participate in their home company pension scheme, the employer contributions into the foreign pension scheme are regarded as taxable income in the Netherlands and the employee contributions are not deductible in the Netherlands. However, if certain criteria are met and a corresponding approval is obtained with the Dutch tax authorities, the foreign pension scheme can have a favorable tax treatment in the Netherlands (i.e., employee contributions deductible and employer contributions not taxable).

Healthcare

In principle, all residents of the Netherlands are obliged to obtain Dutch healthcare insurance. The following exceptions exist:

- An employee from an EEA country or Switzerland with an A1 statement is not obliged to obtain Dutch healthcare insurance. The employee will have to take healthcare insurance in the country where they remain covered by a social security system. If the employee is not moving to the Netherlands and will only stay for a short period of time, they will be able to claim healthcare in the Netherlands in emergency situations with a European Health Insurance Card (EHIC). If the employee moves to the Netherlands, an S1 statement should be obtained in the country in which they remain covered by a social security system. The S1 statement provides confirmation that the employee has the right to receive healthcare although do not live in the country where they are insured. The foreign S1 statement should be registered with the Dutch health insurance company CZ. This enables any healthcare expenses in the Netherlands to be directly borne by the foreign health insurance company.
- An employee from a non-EEA or non-Swiss country with a Certificate of Coverage is not obliged to obtain Dutch healthcare insurance. The employee will have to take healthcare insurance in the country where they remain covered by a social security system.

Employee file

The employer is obliged to hold an employee file. Below, we have provided a list of items that can be included in the employee file. The items with an asterisk are mandatory. The other documents are highly recommended. If the mandatory documents are not in the employee file, this could result in additional assessments from the Dutch tax authorities and fines.

- A copy of the signed Dutch employment contract

- A copy of the signed Dutch employment contract
- A completed and signed Dutch wage tax statement or comparable documentation*
- A copy of the 30% ruling (if applicable) *
- For employees outside the EEA and Switzerland, a copy of the residence permit and work permit or a combined single permit (if applicable)
  Occupational health service

  An occupational health service helps employers and employees in the understanding and implementation of working conditions and disability. The statutory health and safety obligations require specific expertise which the employer usually does not have. An occupational health service advises and takes over tasks from the employer in the areas of:
  - Working conditions
  - Illness and disability
  - Rehabilitation counselling
  - Risk inventory and evaluation (RI&E)

In addition, an employer can also buy sickness insurance to cover payments to employees during the first 52 weeks of sickness

4. Payroll requirements

The payroll for employees is processed on a monthly basis or every four weeks and employees receive a payslip every period.

Work-related cost scheme

A special system is mandatory for all employers with respect to determining the Dutch wage tax implications of providing allowances and benefits to employees in the Netherlands. The essence of the so-called work-related costs scheme (WRCS) is that the employer will be subject to 80% tax on benefits and allowances (including VAT) granted to employees, to the extent that these amount to more than the tax-free work-related cost budget of 21. The final levy system is applicable, i.e., the 80% tax is due by the employer and they cannot pass this on to their employees. Not all allowances and employment benefits fall under this budget. Exceptions include specific exemptions, intermediary expenses, facilities with a zero valuation for tax purposes and items that are considered mandatory taxable wage (e.g., a company car). In the following paragraph, we will describe the reporting obligations and practical details of WRCS.

Reporting obligations

The employer is obliged to calculate the final levy tax payable for the WRCS once a year. If the tax-free budget is exceeded, the 80% final levy must be specified and remitted through the Dutch wage tax return in the first tax period of the next calendar year. As a result, for 2021, the final levy should have been reported in the February 2022 Dutch wage tax return, which had to be filed no later than 28 February 2022.

From our practical experience, we recommend setting up an adequate administrative system beforehand. On the basis of the current view of the Dutch tax authorities, an explicit designation as work-related costs should take place. Without an explicit designation, the specific exemption would not be applicable. In order to benefit from the applicable exemptions and the tax-free budget, the employer should be able to reasonably substantiate that allowances and benefits that are not processed on the payslip are explicitly designated as work-related costs.

5. Banking requirements related to payroll

Payroll net payments should be made in local currency but can be made by any method and from either a Dutch or an overseas bank account.

Liabilities to Dutch Authorities

Liabilities to Dutch Authorities can be made from a Dutch or overseas bank account. If paying from an overseas bank account, the charges should be accepted by the remitting bank so that the payments received by Dutch Authorities are not reduced by charges or exchange rate differences. Any differences will result in interest charges being levied on underpayments.