

Netherlands Limited Liability Company (BV)

Method of Incorporation

A BV is a legal entity with an authorized capital divided into shares. The BV may be incorporated by or on behalf of one or more natural persons or companies. The BV is incorporated by executing a notarial deed, which must be in the Dutch language. Before the notarial deed can be executed a statement of no objections must be obtained from the Ministry of Justice.

The BV must be registered and the Articles must be filed with the Trade Register of the Chamber of Commerce in the place of its (principal) place of business, or in the absence of a place of business in the Netherlands, in the place of its registered seat.

Registration of the BV and name(s) and other details of the (managing and supervisory) director(s) is done by filing a set of standard forms with the Trade Register.

Shareholders and Shares

Any power not conferred upon the (managing and supervisory) directors or any other corporate authority of a BV is vested in the general meeting of shareholders, such within the limits set by law and the Articles. Shareholders of a BV do not need to be Dutch residents, although care must be taken if tax residency in the Netherlands is desired.

At least once a year a general meeting of shareholders must be convened in order to discuss and approve the annual accounts of the BV. This annual general meeting must be held in the Netherlands at the place stated in the Articles. However, the shareholder may give a proxy. If the Articles allow so, the shareholders may take unanimous resolutions outside a shareholders' meeting, under the condition the resolution is in writing. The liability of the shareholders of a BV is limited to their capital contribution, provided they have paid up the par value of the shares owned by them.

Management

The BV is managed by a (board of) managing directors, appointed by the shareholders. As well natural persons as companies may be appointed as managing directors. All (managing and supervisory) directors may be foreign individuals or companies, and no residence in the Netherlands is required. However, care must be taken if tax residency in the Netherlands is desired.

Registration of Shareholders

In case the BV has two or more shareholders the names of the shareholders do not have to be registered with the Trade Register. Nevertheless, full disclosure of the personal details of the individuals and companies incorporating the BV and of the managing and supervisory directors to the Ministry of Justice is required (the names of the persons and/or companies incorporating the BV must be disclosed in the notarial deed of incorporation,

which has to be submitted to the Trade Register), and is a condition for incorporation.

In case the BV only has one shareholder, the personal or corporate details of the shareholder must be registered with the Trade Register. However, by transferring at least one share to a related company or a foundation this obligation can be avoided. Further, the personal or corporate details of the managing and supervisory director(s) of the BV must be registered with the Trade Register.

Use of BV as Holding Companies

The Netherlands is a fiscally attractive jurisdiction in which to locate a holding company. Indeed the holding companies and 'participation exemption rules' are one of the Netherlands most attractive features as a tax-planning center.

Taxation

Withholding Taxes on Incoming Dividends

Under the terms of the EU parent/subsidiary directive, if a Dutch company owns 25% or more of the shares of another EU company, no withholding taxes will be levied on dividends remitted by the subsidiary.

Where a foreign subsidiary is not covered by the EU parent/subsidiary directive the terms of a double taxation treaty will often substantially reduce the amount of withholding taxes deducted on the remittance. Dutch holding companies can rely on an extensive network of double taxation treaties the effect of which is to obtain a reduction in withholding tax rates on dividends remitted to the Netherlands from the subsidiary jurisdiction.

The Netherlands has approx. 100 tax treaties in place (Belgium has 66, Denmark has 78) The greater a country's network of double taxation treaties the greater its leverage to reduce withholding taxes on incoming dividends. An elaborate network of double taxation treaties is thus a key factor in the ability of a territory to develop as an attractive holding company jurisdiction.

Corporate Income Tax on Dividend Income Received

The general rule is that all dividend payments remitted by subsidiaries to Dutch parent corporations are subject to corporate income tax in the hands of the parent company (with tax credits being due where there is an element of double taxation).

Where a Dutch holding company comes within the 'participation exemption rules' all income received by the holding company from the subsidiary whether by way of dividends or otherwise is tax-free. To come within the "participation exemption rules" the following criteria must be satisfied:

5% rule: the Dutch holding company must hold at least 5% of the subsidiary's shares. The 5% rule makes the Netherlands a particularly attractive jurisdiction in which to base international holding companies. Similar regimes in other countries require much higher percentage

shareholdings if the company is to qualify for favorable tax treatment and require that the company be a proper holding company in the sense that its sole economic activity is to hold shares in other subsidiaries. In the Netherlands by contrast a company, which trades but also happens to own shares in another corporate entity can be deemed a holding company for the purposes of the participation exemption rules.

Shares must be held since beginning of fiscal year: The shares must be held since the beginning of the fiscal year in which the participation exemption benefits are claimed.

Subsidiary profits must be taxed: The subsidiary must pay tax on its profits in the foreign jurisdiction no matter how low those tax rates may be.

Active Management: The parent company must actively involve itself in its subsidiary's management.

Tax Exempt Portfolio Company: The subsidiary must not be a "tax exempt portfolio investment company".

Capital Gains Tax on the Sale of Shares

Under the participation exemption (see above), all capital gains made by a Dutch holding company on the sale of shares in a subsidiary are tax free in The Netherlands irrespective of whether the subsidiary is resident or non resident.

Withholding Taxes on Outgoing Dividends

Under the EU parent/subsidiary directive dividends paid by Dutch subsidiaries to EU parent corporations are exempt from Dutch withholding taxes provided the EU parent corporation has held 25% of the shares in the Dutch subsidiary for at least 12 months.

Where a foreign parent is not covered by the EU parent/subsidiary directive the terms of a double taxation treaty will often substantially reduce the amount of withholding taxes deducted on the outgoing remittance. Dutch holding companies can rely on an extensive network of double taxation treaties.

The Netherlands has 100 tax treaties in place. (Belgium has 66, Denmark has 78 and the UK has 110). The greater a country's network of double taxation treaties the greater its leverage to reduce withholding taxes on outgoing dividends. An elaborate network of double taxation treaties is thus a key factor in the ability of a territory to develop as an attractive holding company jurisdiction.

The Netherlands has taxation treaties with its metropolitan offshore territories, Netherlands Antilles and Aruba, under which outgoing dividends are subject to withholding tax of 8.3%. It is rare for high-tax countries to have such arrangements with offshore territories.

Royalty and Finance Companies

The Netherlands is an extremely attractive jurisdiction in which to locate a royalty and or a finance company. Royalty and interest payments made by a Netherlands company to a foreign company are free from withholding taxes

since the Netherlands does not levy withholding taxes on interest payments or royalty payments.

After 2001 the Dutch began to substitute fixed differentials (still accepted for existing companies until 2005) with Advance Pricing Agreements and Advance Tax Rulings.

Under the new policy structures that do not have real substance in the Netherlands, such a pure flow-through royalty structure, are in essence no longer eligible for a ruling, unless they agree in advance to certain exchange of information procedures with other countries. Rulings can however still be obtained for royalty companies provided that the Dutch company meets substance requirements of both an operational and economical nature.

The Dutch elaborate network of double taxation treaties makes it a great country to leverage these tax treaties to reduce withholding taxes on incoming royalties and interest.

Treaty with the Netherlands Antilles and Aruba

The Netherlands Antilles and Aruba have a special role to play in making the Netherlands an attractive jurisdiction in which to base international holding and trading operations. Dividends paid by a Dutch corporation to a Netherlands Antilles or Aruban company are subject to reduced withholding tax rates. This is a very unusual arrangement since Netherlands Antilles and Aruba are offshore jurisdictions, which do not normally have double tax treaties with high-tax countries.

As from 1st January 2002 the standard Dutch withholding tax rate on dividends of 25% is reduced to a rate of 8.3% on dividends remitted to a Netherlands Antilles company provided that the Netherlands Antilles company holds at least 25% of the Dutch company's paid up share capital. Previously this rate was 7.5%.

Taxation of Foreign Employees

In order to make it attractive for overseas companies to establish subsidiaries in the Netherlands and to assign employees to the Netherlands, the Dutch government has introduced an advantageous tax regime for expatriates. Under the rules of this tax regime the BV may pay to a qualifying expatriate a tax-free allowance of 30% of the total amount of the employee's remuneration during a period of 10 years.

On top of that, the employee may elect to be taxed on the basis that he is not a Dutch resident. This means that in principle the expatriate is only taxable in the Netherlands for his employment income. This beneficial tax regime may be granted for a period of maximum ten years. The top marginal personal income tax rate in the Netherlands is) 52% for taxable employment income in excess of EUR 47.745. For expatriates the highest possible marginal rate is 36.4%.