IR GLOBAL - MEET THE MEMBERS

The Netherlands

IR Global - The Future of Professional Services

IR Global was founded in 2010 and has grown to become the largest practice area exclusive network of advisors in just a few years, this incredible success story has seen the network awarded Band 1 status by Chamber & Partners, recommended by Legal 500 and has been featured in publications such as The Financial Times, Lawyer 360 and Practical Law amongst many others.

The group's founding philosophy was based on bringing the best of the advisory community into a sharing economy; a system, which is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

MULTI-DISCIPLINARY

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the clients requirements.

NICHE EXPERTISE

In today's marketplace, both local knowledge and specific practice area / sector expertise is needed. We select just one firm, per jurisdiction, per practice area ensuring the very best experts are on hand to assist.

VETTING PROCESS

Criteria is based on both quality of the firm and the character of the individuals within. It's key that all of our members share a common vision towards mutual success.

PERSONAL CONTACT

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

CO-OPERATIVE LEADERSHIP

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups who focus on network development, quality controls and increasing client value.

ETHICAL APPROACH

It is our responsibility to utilise our business network and influence to instigate positive social change. IR founded Sinchi a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities / tribes around the world.

STRATEGIC PARTNERS

Strength comes via our extended network, if we feel a clients need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR or someone else.

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FOREWORD BY EDITOR, NICK YATES

The Netherlands – Strength beyond size

The Netherlands is one of Europe's most compelling investment opportunities, despite not being the first name on every CEO's mind when considering international expansion. Large city regions in countries, such as the UK, France or Germany, can often have more allure as gateways into Europe, but any decision maker who fails to look beyond this established order is making a mistake. A cursory look at the credentials of The Netherlands as an investment destination, immediately shows its vast potential.

The Netherlands is a relatively small nation of just 17 million people, but its global influence in areas such as sports, culture and economics far outweighs its size. In terms of surface area and population size, it ranks 134th and 65th in the world respectively, however a Gross Domestic Product (GDP) of EUR679 billion makes it the 17th largest economy in the world and the 6th largest in the European Union. The country was named by the World Economic Forum's 2017-18 Global Competitive Index as the fourth best country to do business in, due to factors such as high levels of labour productivity, a well-educated workforce and its strategic location in Europe.

This is a potent combination of factors, adding up to a compelling proposition for any international investor or multi-national company looking for a base with which to expand into Europe, a regional headquarters for trade with countries outside the European Union or a partnership with an existing business.

Taking its location in Europe as an example, The Netherlands is an established hub for import and export of goods, with global manufacturers using the large international seaport of Rotterdam (Europort) and Amsterdam's Schipol Airport as gateways into the continent. It is home to more distribution centres than anywhere else in Europe and has the largest inland shipping fleet in Europe. It is also the fifth-largest exporter of goods in the world, selling USD 668 billion of products in 2015, amounting to 3.5 per cent of total global exports.

Putting aside the more obvious advantages, there is also a range of less well-understood reasons to invest in the Netherlands that are equally persuasive. The Dutch authorities are extremely business-orientated and have created a fertile ground for established organisations and entrepreneurs to thrive in. Innovation is strongly encouraged in the Netherlands, via tax benefits and grants for entrepreneurs. A significant proportion of the Dutch working population is self-employed, and the Dutch government promotes start-ups because they create economic vitality, challenging existing firms and giving them the incentive to adapt and innovate.

The Dutch economy is also well equipped for new tech paradigms such as cryptocurrency and blockchain, with the Dutch Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) issuing regular updates on ongoing regulatory developments in the sector. There is a highly developed ICT infrastructure with specialist hubs such as The Hague Security Delta which focuses on cybersecurity.

A competitive statutory corporate income tax rate compared to the rest of Europe is attractive to potential investors. It is expected to drop in the coming years to 17 per cent on the first EUR200,000 of taxable profits and rises to 20.5 per cent for profits exceeding that figure. The Netherlands has a wide network of almost 100 bilateral tax treaties, designed to help businesses with operations in the country to avoid double taxation.

Finally, if that weren't enough, The Netherlands sits 10th on the United Nations Human Development Index, which records levels of prosperity and human well-being, such as life expectancy, public health and educational standards.

In this brochure you will hear from nine lawyers with expertise in different areas of Dutch business law critical to investment. We include articles on tax law, employment via digital platforms, customs and excise, tort law and cryptocurrency investment, among others.

As well as showcasing the innovative nature of the Dutch economy, we hope this provide a useful tool to help investors navigate any potential challenges they may face when deciding to invest in The Netherlands.

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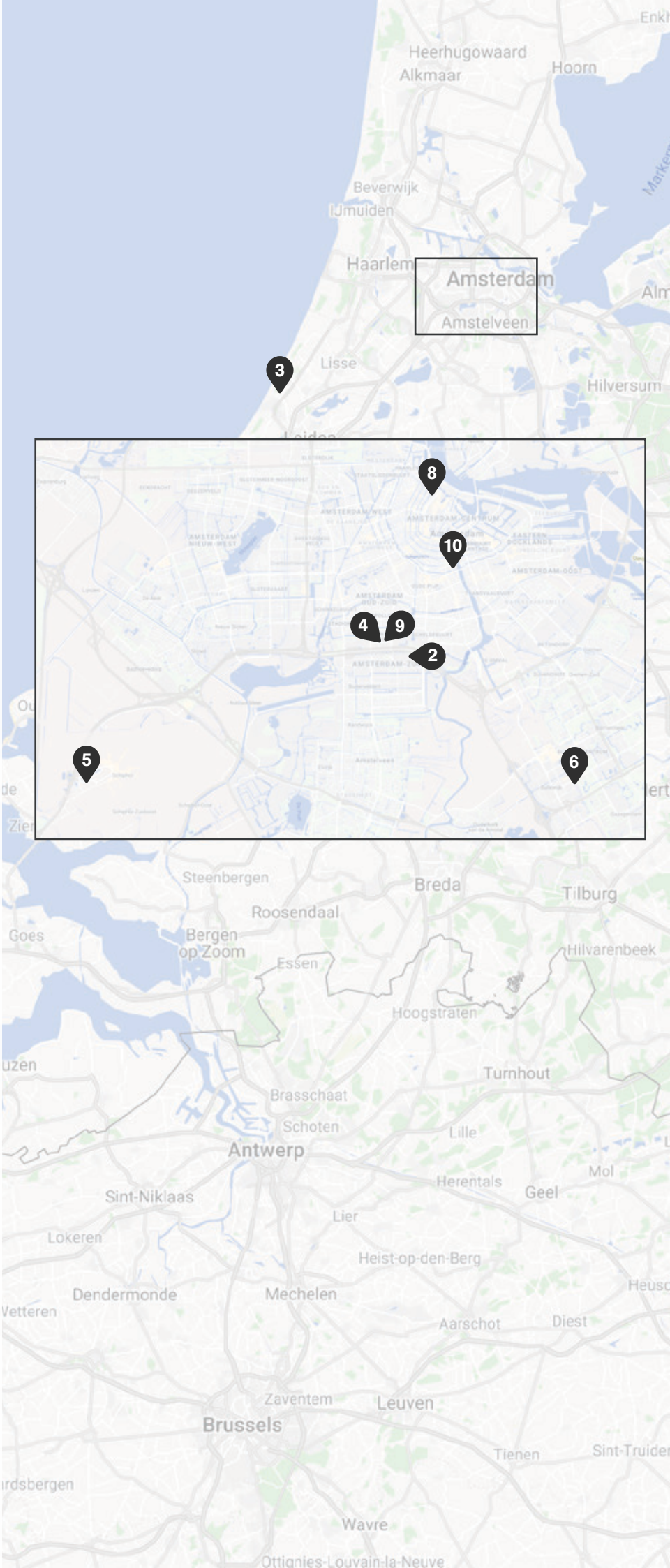

Member Firms in The Netherlands

IR Global members in the Netherlands are located in key cities throughout the country including Amsterdam, Leiden, the Hague, Maastricht and more, consisting of leading legal, accountancy and financial advisers recommended exclusively by practice area thus ensuring that our members have the highest quality niche expertise available to them.

Whether it's an incorporation of a company, advising on cryptocurrencies and blockchain, an M&A deal that needs careful management or the changing employment landscape, our Netherlands representatives are on hand to provide you with a high-quality service that suits your every business need.

Member firms featured here retain a global support network across 155+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivaled results. Please see the full list of Dutch member firms below and on the IR Global website via bit.ly/2PIZESI.

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Advocaten & Notarissen
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6 Advocatenkantoor RHJ Koopmans
koopmanslaw.nl

Bavelaar Attorneys at Law
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Daniels Huisman Advocaten
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De Clercq Lawyers and Notary
declercq.com

Dijks Leijssen Advocaten Rechtsanwälte
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Everest Legal
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HMB Accountants
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4 Kraaijeveld Coppus Legal B.V.
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Law firm Der Bedrosian
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7 Maprima
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5 McMAN Ooijevaar: International Trade and Customs
mcmanco.com

Meijer Advocaten en Belastingadviseurs B.V.
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8 Sagiure Legal B.V.
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10 Synergy Business Lawyers
sbl-lawyers.com

Pallas Attorneys-at-Law
pallaslaw.nl

2 Wintertaling Advocaten & Notarissen
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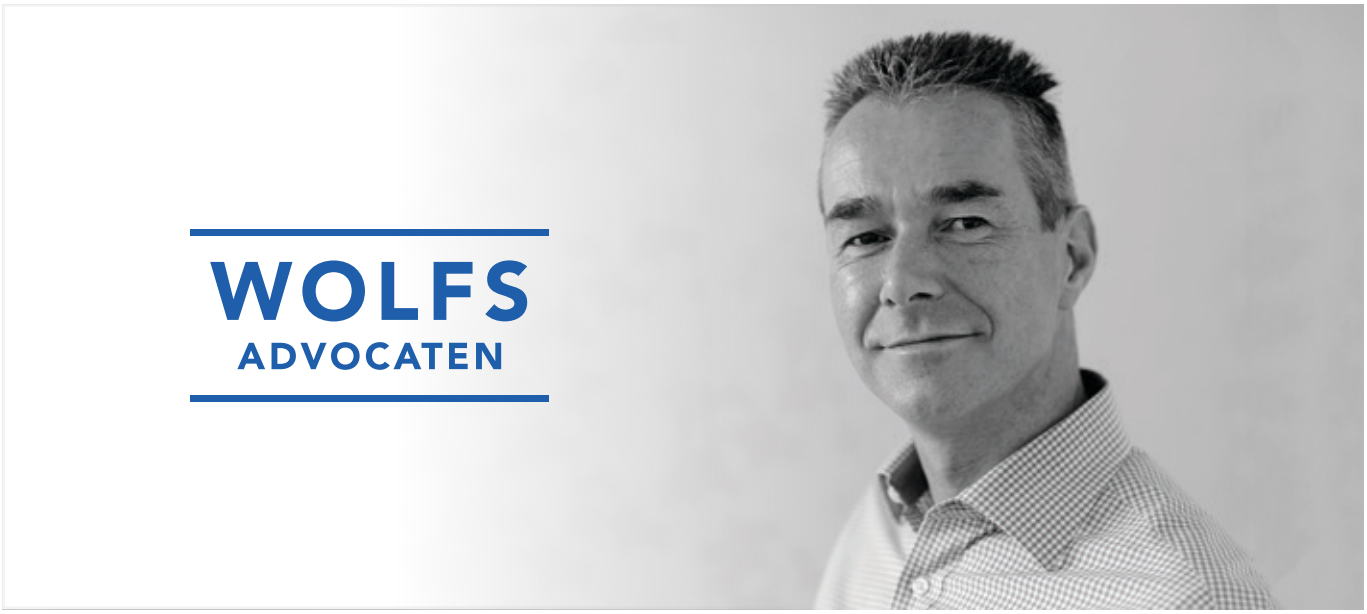

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John Wolfs is the Managing Director of Wolfs Advocaten and a thoroughbred entrepreneur. He is the founder of Wolfs Advocaten and has been working as an attorney for almost 25 years. Before founding Wolfs Advocaten in 2003, he worked for a number of leading firms in Washington DC and Rotterdam (Houthoff Buruma). The strategic geographical situation of the city of Maastricht as well as his Maastricht roots, the quality of life and his love brought him back to Maastricht.

With offices in Maastricht and Venlo, Wolfs Advocaten specialises in legal solutions for entrepreneurs in the Netherlands and abroad. Wolfs Advocaten is a so called full-service firm, where all areas of law are covered. The firm is mainly specialised in the field of (international) transport law, business law, international commercial law, customs law and insurance law.

Wolfs Advocaten now consists of a young, dynamic team of around 20 attorneys, lawyers and support staff. Wolfs Advocaten employs true team players, who make efficient and optimum use of each other's expertise. The firm is business-like, realistic, effective and accessible, as well as being very expert in its chosen legal areas.

CONTRACT LAW

Enforcing A Breach: An examination of Dutch contract law

Establishing relationships with new suppliers, clients or service providers is always challenging, particularly if it involves a new country, where the subtleties of negotiation are often very different.

Contracts are always necessary, and inevitably end up in dispute at some stage, so an understanding of the relevant tort law in the jurisdiction in question is crucial. Depending on the specifics of the contract in question, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the contract, or a does not perform at all.

Under Dutch contract law, failure in the performance of a contractual obligation gives a number of remedies for the other party. In the Dutch Civil Code, the term 'failure in the performance' is used for both attributable or non-attributable non-performance. In a situation where the performance cannot be attributed to the debtor, or where performance is permanently impossible, there is a failure in the performance right away. In all other cases, there is only a failure in the performance when the debtor is in default.

There are several remedies in Dutch law in the case of a breach of contract. It is possible to ask for actual performance or modification of performance of the original agreement. It is also possible that a Dutch court orders a definition of performance exactly as specified in the contract (specific performance), cancels the contract and excuses both sides from further performance. Any money advanced must be returned (rescission of the contract). The terms of the contract are then changed into the situation as intended by the parties (reformation of the contract) or the non-breaching party may cancel the contract and sue for restitution.

If there is no contractual obligation, then under Dutch tort law, compensation for losses due to the other party is required. Article 6:162 of the Dutch Civil Code states that the party who commits a tort towards another is obligated to compensate the losses, which are the result of the other party (or it's servants).

Dutch law also draws a distinction between the infringement of a right, an action or failure to act in contravention of a statutory duty, and an action or failure to act in contravention of generally accepted norms. Any claim in the case of the above in the Netherlands must be brought before the Dutch court within a certain period of time. Every jurisdiction has its own deadlines in the Dutch Civil Code. It is thereby advisable to contact a Dutch contract lawyer to check.

The Enterprise Division of the Amsterdam Court of Appeal

In the Netherlands there exists a special court for legal disputes within companies. This so-called Enterprise Division of the Amsterdam Court of Appeal is part of the Amsterdam Court of Appeal. The Division offers tailor made jurisdiction by highly specialised judges, and, when necessary, justice is delivered very quickly.

Contrary to popular belief, the Enterprise Division does not only deal with proceedings between large international enterprises, but mainly handles cases of small and medium-sized enterprises. With its speed, expertise and conflict resolution capacity, the Enterprise Division is an example of the innovative way in which the judiciary should work.

All legal business disputes that arise internally in private and public limited liability companies can be assessed and settled by the Enterprise Division by means of a so-called request for an inquiry. After submission of a petition, the Enterprise Division usually appoints an expert who will investigate the policy and the course of affairs of the company in order to issue its advice on the matter.

After the expert has reported on his findings, an oral hearing usually takes place, after which the Enterprise Division gives its judgment. The Division always participates actively in the negotiations with the parties in order to reach a mutually acceptable solution for the dispute. In urgent cases, the Enterprise Division may, at (very) short notice make a provisional measure as part of an inquiry procedure, which then applies for the duration of the main procedure.

Possibilities of attachment

If an outstanding claim is not paid and the amicable collection process has not led to a result in the Netherlands, the possibility of attachment exists for the creditor. The creditor can levy a pre-judgment attachment, which requires the bailiff to seize goods prior to the main proceedings.

The bailiff may seize and freeze all of a debtor's assets, such as immovable property, movable property and bank accounts. This prevents the debtor from dispersing their assets during the main proceedings and thus leaving the creditor empty-handed afterwards.

In order to levy a pre-judgment attachment, prior permission from the preliminary relief judge is required. Usually this permission is granted quickly after a brief inquiry. If a pre-judgment attachment is levied, the creditor must, in most cases, start the main proceedings within 14 days. If he fails to do so, the attachment will expire.

The debtor may request the lifting of the attachment in an interlocutory proceeding. This is possible if, for example, the attachment has been levied unnecessarily and / or unlawfully. Furthermore, lifting can also be done if sufficient security is provided for this claim.

A pre-judgment attachment is not entirely without risk. If the court rejects the claim in the main proceedings, it is established that the attachment was also wrongly levied. If the debtor furthermore can prove that he has suffered damage as a result of the attachment, the creditor will become liable for this damage. When the court does grant the claim, the pre-judgment attachment will be converted into an executory attachment, after which, for example, the sale of the goods that have been seized can take place.

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Edo's areas of expertise are; real estate investments & joint ventures, corporate commercial matters (including litigation and dispute settlement), tax and corporate (re-)structuring, investment funds.

Edo also handles shareholder disputes and litigation at the Enterprise Chamber at Amsterdam (Ondernemingskamer). He is well appreciated for his input as a sparring partner in board room matters and strategic legal issues. His clients include fund managers, real estate developers and professionals, high growth companies, investors and private wealth.

Edo is fluent in English and German and maintains a wide professional network.

Founded in 2006, Wintertaling Advocaten & Notarissen is a firm of lawyers on de Zuidas, Amsterdam's business and financial district. Although many partners originate from large law firms, they have deliberately chosen to join a firm that puts people first. In fact, providing a personal and highly professional one to one service for a reasonable price is central to everything they do.

Wintertaling has a diversified international legal practice with a team of over 25 experienced attorneys and civil-law notaries. The practice is specialised in the field of corporate | M&A, real estate, administrative law, civil litigation, employment law and estate planning. They bring expertise and experience to every case, whether that's on a contentious or non-contentious issue.

Where needed, they can also bring in high calibre specialists from an extensive national and international network.

BUSINESS RELOCATION

Economic Substance: Establishing a local presence

Those involved in today's business services industry know better than anyone else what is happening in the market. International trends in taxation and real estate are heading towards a common denominator: substance and local presence.

The need for real operations in a jurisdiction is key to enjoying the benefits of international tax treaties, or avoiding import levies. As international trade tensions increase and potential barriers to trade become more apparent, many third-country companies are looking to establish a physical presence in the EU. Brexit is just one example of a political development creating the need for EU-inbound relocation.

Business establishment and relocation (BER) is a complex process, and requires specialist legal and tax advice in order to ensure a smooth process.

Any business wishing to relocate must employ a tailored multi-disciplinary project team with operational leadership from a non-lawyer professional project manager. This project leader should be focused on getting the job done in time to meet pre-agreed deliverables.

Using a BER team (BERT) is a cost effective way to produce results in a far better, more transparent and integrated manner than traditional advisors.

The BERT process covers;

- high level country selection and cross-cultural business assessment
- real estate - industrial, offices, logistics lease and development and zoning, etc.
- immigration permits and all kinds employee residential matters
- local (interim / transitional) management, selection and providing company management
- hiring & staffing – employment law, works council, unions, work permits, employee tax benefits, HR and old age pensions
- business permits and licenses, "red tape" matters
- business partner selection, trade agents
- joint-ventures and business acquisition and business integration
- merger control and completion - national and Brussel (EU)
- incorporation - banking and company management
- privacy regulations, IT-security, intellectual property protection
- taxation - rulings - CIT, VAT and dividend withholding tax and intercompany pricing
- banking and accounting - company management services
- foreign investment incentives and regulations (municipal, Ministry of Economic Affairs)
- press and social media communications
- head hunting

Good BERTs work closely with their client's management and available professionals to make the relocation or establishment a success. Project managers should report on the progress of the affairs and provide transparent information directly to the client on a secure project information platform that is 24/7 accessible.

Working with a BERT is seen as a competitive advantage in order to efficiently and successfully get access to foreign markets. This applies in particular to clients who are not serviced by well-known giant international accounting firms.

Amsterdam law firm Wintertaling Advocaten & Notarissen have specific expertise in business establishment and relocation, representing a range of foreign clients. Their team members are selected from an advisor base of over 300 advisors covering 20+ disciplines, including legal and tax disciplines. They may operate from all parts of the Netherlands and elsewhere in Europe where needed. Law firms typically tend to welcome clients and then decide how a case is to be handled, but the Wintertaling BERT takes a different approach. They envisage smart process phasing with go/no go decisions aimed to stop projects losing traction or going off-track with a complete disregard of the initial objectives.

Wintertaling will assess their clients' objectives as a pre-project kick-off, and regularly evaluate during the process. Critical aspects are identified, such as strategic objectives, selection and appointment of BERT professionals, commitment on agreed deliveries and timelines, budgeting, methods of data supply, access and data storage and access to virtual work spheres.

Project team-working methods are no new thing in the consultancy world, but in the conservative legal industry, the introduction of a professional multi-disciplinary services model is innovative.

Mr. Edo Smid, partner of the Amsterdam based law firm Wintertaling advocaten & notarissen, has proven experience in supporting foreign businesses that wish to enter the EU marketplace, in particular via the Netherlands as a EU gateway. Mr. Smid and his team provide multi-disciplinary strategic advice paired with operational support that goes beyond legal and tax advice only. All professionals are highly skilled and handpicked.

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Robin de Raad is a tax advisor at Zirkzee Group accountants and tax lawyers, who focuses on direct taxation of (cross-border) SMEs. Also, as an ambassador at Zirkzee Group, Robin is continuously looking for new opportunities to help Zirkzee customers bring great success to their business.

After obtaining his Bachelor in Fiscal Economics in Groningen, Robin completed the Tax Advisor programme at the Dutch Register of Tax advisors (RB). Robin has 13 years of work experience within small and medium-sized accountancy firms.

In his personal life, Robin enjoys spending time with his family. He is also passionate about making coffee and finding the best coffee in every town.

Zirkzee Group's clients consist mainly of internationally operating companies, start-up companies and entrepreneurs who are excited about working within their network. The firm offers services in the following areas – accounting, payroll services, tax and expat services.

Zirkzee Group is part of a community involving lots of techno startups from the ESA-BIC incubation program. In this community companies can experience how assistance, learning and contagious enthusiasm can be an inspiration and lead to better results.

Doing business with Zirkzee Group means acquiring a new business partner. The firm's entire approach is focused on getting the best out of a client's company.

CORPORATION TAX

Tax Matters: Four reasons to incorporate in The Netherlands

The Netherlands was recently voted as one of best countries for global trade by the Centre for Global Development. This assessment was down to its open and international outlook, well-educated workforce and strategic location in Europe.

The other, and possibly more important, reason was the country's attractive tax environment. The Dutch government's view is that the tax system should, under no circumstances, form an obstruction for companies to incorporate in the Netherlands. They aim to compete with other fiscally attractive countries across the key areas of tax treaties, tax tariffs, participation exemption and incentives for innovative entrepreneurs.

Tax treaties

The Netherlands has concluded bilateral tax treaties with a considerable number of countries. The purpose of these tax treaties is the prevention of double taxation, which creates a good collaboration between two countries and creates an appealing commercial environment for entrepreneurs. Companies that are tax resident in the Netherlands, are taxed on their worldwide income, whereas non-resident companies are taxed only on income generated in the Netherlands.

A company is considered to be tax resident in the Netherlands if it is incorporated under Dutch Civil Law, or when its management and control is exercised in the Netherlands. If no tax treaty is concluded with a specific country, double taxation can be avoided with the 'Double Taxation (Avoidance) Decree (2001)'. This vast network of tax treaties provides, in many cases, reduced or no withholding tax on dividends, interest and royalties, and offers instruments for international tax planning.

Tax tariffs

The Netherlands has a competitive statutory corporate income tax rate, in comparison to other developed economies in Europe. The tax rate is 20 per cent on the first EUR200,000 (to be reduced stepwise to 16 per cent in 2021) and 25 per cent for taxable profits exceeding EUR200,000 (to be reduced stepwise to 22.25 per cent in 2021).

For fiscal investment funds that meet the applicable criteria, a corporate income tax rate of nil percent is applicable. And finally, certain investment funds (under conditions) are eligible to opt for an exempt status for Dutch corporate income tax purposes. Ordinary tax losses can be carried forward for six to nine years or carried back for one year.

Participation exemption

Besides the abovementioned tax treaties, the Dutch corporate income tax law provides for another way to avoid double taxation, with a participation exemption regime. This participation exemption regime aims to eliminate economic double corporate taxation of profit distributions paid by a subsidiary to its parent company.

The participation exemption is applicable for all benefits, such as dividends and capital gains, received from a qualifying shareholding. Basically, this is a shareholding of at least 5 per cent of the share capital. Expenses relating to the sale or purchase of participations are not tax-deductible, but as an exception to the participation exemption regime, losses that arise from the liquidation of a company in which a qualifying participation is held, can, under certain conditions, be deductible for corporate income tax purposes. There is no minimum holding period applicable to use the participation exemption.

Incentives for innovative entrepreneurs

Innovation is strongly encouraged in the Netherlands. One of the ways in which this is encouraged is via tax benefits for innovative entrepreneurs. These tax benefits include a Research and Development deduction (RDA) and the so-called Innovation Box.

Companies can lower the wage costs for R&D and other R&D costs and expenditures by deduction of the tax benefit in their income tax return. The innovation Box is a corporate income tax credit in respect of the profits from innovation. If the conditions are met, the proceeds from innovation will not be taxed at the regular 20 or 25 per cent tax rate, but at 7 per cent.

Conclusion

The attractive Dutch tax framework offers several options to avoid double taxation. Competitive tax rates, the possibility to settle financial losses and multiple incentives to stimulate innovation, make The Netherlands an interesting country in which to start a business.

A stable government and a highly accessible and cooperative tax administration, contribute to making entrepreneurs feel confident that future adjustments in the Dutch tax system will be implemented in a way that maintains attractiveness for foreign investors, minimises impediments for business and guarantees transparency from tax authorities.

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Friggo Kraaijeveld graduated in Tax Law at the University of Amsterdam. He also graduated in Civil Law and Philosophy at the University of Amsterdam and obtained a postgraduate LLM in International Tax Law from the International Tax Centre of the University of Leiden.

Friggo worked in the field of international taxation at PWC and subsequently worked with a leading Dutch law firm. Friggo is specialised in tax issues with an international dimension, such as private equity structuring, cross-border investments, international trade and labour. Friggo has a strong track record in cross-border investment structures and structured finance.

He is a member of the Dutch Order of Attorneys (NOvA), the Dutch Association of Tax Advisors (NOB), the International Bar Association (IBA) and the International Fiscal Association (IFA).

KC Legal is the go-to international tax boutique firm in the Netherlands, providing top-tier tax advisory, tax compliance services, legal and business support to those who conduct business and maintain assets in the Netherlands. The practice serves multinational enterprises, private equity funds and family-owned businesses.

Their team of international tax specialists consists of experienced tax lawyers and tax attorneys, who provide a hands-on approach and are fully equipped to tackle any challenge within their international tax practice.

TECHNOLOGY

Virtual Assets: Understanding the tax implications of cryptocurrency investment

The increasing popularity of blockchain and its adoption by mainstream industry has focused international attention on the tax treatment of cryptocurrencies, app tokens, initial coin offerings ('ICOs') and crypto investment funds.

The Netherlands is one of Europe's most progressive nations with regard to the blockchain and has already developed extensive tax legislation to cope with these new concepts. The Dutch tax treatment of cryptocurrency for Dutch personal income tax (PIT) is complex and this article also considers the implications for corporate income tax (CIT) and value added tax (VAT).

Cryptocurrency is generally divided into categories, with a distinction made on the characteristics of the cryptocurrency and its representation. It can take the form of an asset token such as a debt or equity claim, a utility token providing access to a digital or other service, or a payment token (such as bitcoin or ether), which can be used as a virtual currency.

Dutch taxation of a cryptocurrency can differ dependent on these characteristics, but the monies owed can only be paid in fiat money (Euro) and not in any cryptocurrency.

Personal Income Tax (PIT)

Dutch tax residents are taxed in one of three ways:

- Income from employment or a business;
- Income from (substantial) shareholdings of 5 per cent or more;
- Income from passive investments and savings.

When a Dutch resident holds cryptocurrency, this will generally constitute income from passive investments. The deemed income ranges from 2.87 per cent to 5.39 per cent of the value of those passive assets and will be taxed at a rate of 30 per cent. However, under certain conditions, the cryptocurrency can be treated as income from employment or business, in which case the income and gains from the cryptocurrency will be taxed at progressive rates, with a maximum of 52 per cent.

This distinction between sorts of income depends on the source of income. To qualify as income from business, economic benefits need to be demonstrated. For example, if the holder of the cryptocurrencies performs activities that have a direct influence on the value of the cryptocurrency.

An example might apply to a utility token, if the holder of the cryptocurrency token also developed the user app, then the asset may be seen as income from employment.

Corporate Income Tax (CIT)

Dutch limited liability companies are subject to Dutch CIT at the rate of 20 to 25 per cent of worldwide income, whereas Dutch foundations (Stichtingen) which do not carry out business are, generally, not subject to Dutch CIT. A common initial coin offering (ICO) structure used in The Netherlands, employs a foundation to act as the ICO company and finance the funding needs of the operating entity, which would be a Dutch limited liability company (OpCo).

The financial relationship between the ICO company and the OpCo will mainly be for the prepayment of services or debt funding, as opposed to an equity participation in the operating company. The funding received from the ICO company should therefore not generate a direct Dutch CIT liability. The same would apply to the issuance of payment tokens.

The issuance of assets tokens may be seen as a sale of the underlying asset, which could result in corporate income tax for the 'deemed' seller of the asset that has been tokenised. Any other income generated by the OpCo, such as from the provision of services to other parties other than token holders, or profits from tokens held in deposit, is subject to Dutch CIT.

VAT

The VAT treatment of cryptocurrencies is more difficult to clarify and will depend on the characteristics of the cryptocurrency. In relation to the crypto currency itself, and the mining thereof, it is still not clear whether these should be considered as economic activities for VAT purposes, falling within the scope of VAT legislation.

When analysing the letter of the law of art. 135 paragraph 1 under d, e and f of the VAT Directive, we can state that the current framework does not yet offer enough support to include certain activities regarding cryptocurrencies within the scope of VAT exemptions.

The current opinion of the Court of Justice of the European Union is that no VAT is payable on the sale of bitcoins (payment tokens). The bitcoin is not seen as money, but has the same function (i.e. means of payment), and therefore any revenue arising from their issuance falls without the scope of the VAT.

Regarding utility tokens and asset tokens, no practical guidelines have been rendered. Hypothetically, utility tokens could qualify as compensation or the advance payment of a service which would result in being subject to VAT. Asset tokens could be exempt from tax if the underlying asset is exempt from VAT, but if that asset is subject to VAT so should the asset token be.

THE NETHERLANDS

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Nico Ooijevaar has practiced customs and international trade law since 1980. First as a lawyer for Dutch customs based at Amsterdam Airport, then in private practice at KPMG's Dutch tax law firm, where he founded KPMG's Global Trade and Customs Practice.

Since 2006 he is lead partner and principal lawyer of McMan & Co, a niche firm of specialised trade and customs lawyers and advisors, in its Dutch office at Amsterdam Airport, less than 300 meters from his first office in 1980 at Dutch customs.

His practice includes all phases of trade and customs law, including EU indirect taxes levied at import or export, like excises duties and Value Added Tax. His work ranges from counselling and import planning, to representation of clients before government agencies in the Netherlands and other EU member states, including the European Commission, as well as international organisations like the World Customs Organization and the World Trade Organization.

McMan Ooijevaar is a Dutch firm providing a range of services in international trade, customs and VAT.

The practice provides counsel and representation to multinational corporations; importers and exporters; trade associations, governments, freight forwarders and carriers, with respect to international trade and customs law.

Through its extensive network of experts in many countries, McMan Ooijevaar can match and even surpass global services in international trade and customs of the large accounting and legal firms. Personal attention and compatible fees provide our clients with a good alternative to our large competitors.

CUSTOMS AND EXCISE

The Brexit Effect: Implications for trade between the UK and the Netherlands

It looks increasingly like the European Union (EU) and the UK are heading towards a hard Brexit.

As time continues to run out, with no transition deal in sight, the deadline of 29th March 2019 looms ever more imposingly on the political horizon. If no deal is reached, the UK will leave the customs union without any transition measures in place.

Leaving the customs union was probably never a consideration for the British public when they voted for Brexit, but it has become the largest obstacle to trade between the UK and the EU, and means businesses on both sides of the English Channel should therefore prepare for the worst and take appropriate measures to adapt to this potential eventuality.

The customs union currently allows Dutch traders and their UK colleagues to trade in a 'borderless' fashion with each other. That means there are no customs formalities for shipping goods to and from the UK. From a customs perspective, the UK and the other EU member states are considered one country, with one border, one outside tariff and a common trade policy to deal with countries outside the Union - the so-called third countries.

This system allows for the goods destined for the UK to first be shipped to the large harbours of Rotterdam and Antwerp. They are imported into the customs union there, and are then shipped, using smaller vessels, to various ports in the UK. Likewise, UK companies can set up their continental distribution in the Netherlands and benefit from the country's storage and shipping facilities. A hard Brexit will end that flexibility and disrupt trade with the UK.

What disruptions are likely and how should businesses prepare for them?

The main disruption would be the re-introduction of customs formalities and delays, as trade with the UK becomes the same as with other third countries.

This would mean the introduction of import and export formalities in both the UK and the Netherlands, including checks and verification, which all cause delays. Many traders will now face the responsibility for export or import declarations for EU-UK trade. Although these, mainly electronically filed declarations, can be outsourced to custom agents; the importer or exporter always remains liable for all information that has to be provided to customs.

This includes information about the sales price and how that price is established, the classification of the goods with the correct tariff code, and the origin of the goods. All these elements will have to be correctly declared at both import or export even when the goods are duty free. The fees for filing declarations will add to the cost of the trade.

Traders in the UK and the Netherlands will also have to familiarise themselves with customs rules. Small and medium-sized businesses operating between the UK and the continent will have to face new, complex rules and regulations.

General advisors, like accountants, lawyers and tax advisors, do not usually have the expertise to deal with customs law. Advisors and lawyers, specialised in trade and customs law, can provide advice to traders on how to arrange their dealings between the UK and the continent.

This includes customs advice, assistance with adapting trading contracts, finding solutions for supply chain issues and training. UK traders will still be able to benefit from the extensive Dutch distributing facilities, despite the absence of a Free Trade Agreement with the EU. The use of bonded facilities will not only allow delayed import and duty payment when needed, but also provide for duty and VAT free transits to destinations outside the EU.

Imports into the Netherlands destined for the EU, will also benefit from the VAT at import system that allows for accounting of the VAT at the VAT declaration, rather than having the importer finance the VAT at import.

McMan Ooijevaar can assist UK traders to make maximum use of the Dutch trade facilities, whatever the outcome of Brexit.

THE NETHERLANDS

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RHJ (Robert) Koopmans has over 35 years of banking and legal experience. He has worked in various positions at ABN AMRO Bank NV and the law firm Clifford Chance LLP. He is now the owner of Law Office RHJ Koopmans, linked to the Rabobank organisation, working in Financial Restructuring & Recovery.

He is a member of the Amsterdam Bar and the Dutch Association of International Law. Mr. R.H.J. Koopmans is registered as a lawyer in the Netherlands with the Dutch Bar Association, Neuhuyskade 294 2596 XM The Hague.

Robert advises, drafts and litigates. There are co-operation agreements with other law firms, so there is always sufficient backing. He is also connected to a legal first aid centre, and is a member of the Royal Dutch Society for International Law and the Dutch Society of Trade Law.

He is an honorary member and past chairman of a field hockey club and loves sailing and collecting flags.

The office of Robert Koopmans is located in the Vogelstruys Building at Hullenbergweg 280, 1101 BV Amsterdam near subway station Bullewijk. Law Office RHJ Koopmans co-operates with De Loos en Schrijver lawyers in Wassenaar and various other law offices.

BANKING AND FINANCE

Progressive Policies: Developments in Dutch financial services legislation

The Dutch financial services sector is one of the most highly developed in Europe, incorporating several international banks and a thriving fund management business. In the Netherlands various authorities supervise various fields relevant to the finance industry. The Dutch Data Protection Authority, The Dutch Central Bank (next to the European Central Bank) and The Dutch Authority for the Financial Markets (AFM) are some of the progressive bodies responsible for policing everything from EU data protection regulations, through to anti-money laundering and the treatment of crypto-assets.

This article provides an update on the most interesting recent developments in Dutch financial services legislation, covering insolvency, anti-money laundering, GDPR and cryptocurrencies.

Cryptocurrencies and blockchain

The Dutch Central Bank has ruled that, for the time being, cryptocurrencies are not legal tender in the Netherlands.

However, depending on the nature of transactions, activities and parties involved, any activity with respect to cryptocurrencies may fall within the applicability of supervisory rules and regulations. The Dutch Central Bank has issued a warning to consumers, that the entire investment may be lost and that there is no party to turn to in case of foul play. The Central Bank itself continues to experiment with cryptocurrencies and blockchain technology but has decided at this point in time, that blockchain technology is not equipped to replace, or take part in, payment systems.

GDPR

As in the rest of the European Union, The General Data Protection Regulation (GDPR) became effective in The Netherlands on 25th May 2018. It is important to adhere to GDPR rules, especially when providing financial services, since breaking the rules may result in high fines. Natural persons have stronger rights with respect to their personal data, such as the right to have them corrected or deleted and they have rights to receive a copy of their personal data kept by a third party. Natural persons may try to obtain copies of records possessed by counterparties for litigation purposes. Forewarned is forearmed!

Insolvency

Article 39 of the Dutch Insolvency Code provides that a bankruptcy trustee is entitled to end a rental contract with due notice and that a notice period of three months is in any event sufficient.

The Dutch Supreme Court recently ruled that such termination by the trustee is a regular termination and therefore no ground for the lessor or landlord to claim for damages. Any claim in relation to the payment of penalties or damages, even if part of the contract between lessor/landlord and lessee/tenant, cannot be upheld against the estate.

Any security given by the bankrupt party cannot be enforced either, however security given by third parties, such as banks (bank guarantee) or parent companies (parent guarantee), is however valid and enforceable. Such third parties cannot take recourse against the estate of the bankrupt.

Since this became apparent in various court cases, banks in The Netherlands are no longer prepared to guarantee payments beyond such three month periods. Neither will they guarantee payment of penalties or damages in case of bankruptcy of the lessee/tenant.

There are some ways around this problem, but as they cause other difficulties they are hardly practised.

Receivables transfers

A new legal proposal is being prepared under Dutch law in which the power to contractually exclude or limit the transferability of receivables will be regulated and limited, with certain exceptions.

The transferability of receivables can currently be excluded or limited by contract to the extent Dutch law is applicable. Dependant on the wording and intent of parties when agreeing to such exclusion or limitation of transferability, such exclusion has only contractual effect or proprietary effect.

It is important to realise that the transfer and pledging of future receivables is a complicated matter in The Netherlands. It is only possible in limited circumstances, and requires a notarial deed or registration with the tax authorities.

Anti-money laundering and financing of terrorism

Dutch laws, regulations and policies designed to prevent money laundering and the financing of terrorism have been further tightened in 2018.

Recently, a record fine of over EUR 700 million was handed down in September 2018 to the largest financial institution in The Netherlands, ING Bank, at the cost of the position of its CFO.

Financial services for small businesses and consumers

The laws and regulations with respect to providing financial services and financial products to consumers have also been tightened and amended. A code of conducted was issued for financing small businesses.

Bearer shares

A law has been proposed to the Dutch Parliament, designed to nullify shares to bearer in a public limited liability company (N.V., naamloze vennootschap) established in the European part of the Kingdom of the Netherlands or its Caribbean communities of Bonaire, Saba or Saint Eustace.

There will be a limited period in which the bearer or pledgee can register the shares after which the shares and any security created thereon will become void if not registered within the specified time. After passing of the bill, no Dutch company will recognise the phenomenon of bearer shares anymore.

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Roland Rompelberg holds academic degrees in industrial engineering, management and business administration and is qualified as a CPA (in The Netherlands as well as in Luxembourg). Before co-founding Maprima in 1999 Roland held financial and operational management positions in multinational companies and worked in audit at Deloitte.

He is the lead partner for both corporate clients and wealthy families. His area of expertise lies within real estate investments as well as international holding and asset protection structures. Within Maprima, Roland focusses on business development, both for the Netherlands and Luxembourg.

Maprima is an established professional service provider with a track record of almost 20 years. The practice is a BeNeLux based firm with offices in the Netherlands, Luxembourg and Belgium. Most of its clients are internationally active companies and wealthy families, who have long-standing relationships with Maprima.

The firm has been advising and servicing international clients and wealthy individuals and families since 1999. They offer services to corporate clients, start-ups as well as wealthy individuals and their families through various service lines, including fiduciary services, business support and family stewardship.

WEALTH PLANNING AND ASSET PROTECTION

The Dutch Stichting: An age-old solution to modern capital management

The Stichting (or foundation in English) is a centuries-old solution for modern charity, asset protection and international structuring. The legislation is rather concise. Paragraph 2:285 of the Dutch Civil code defines the Stichting as;

'A legal person formed by means of a juridical act, that has no members, and that intends to realise an objective (purpose), mentioned in its articles of incorporation, by using capital (property) which has been brought in for this purpose.'

The entire legislation of the foundation is contained in a mere 3,500 words, yet for more than five centuries it has proven to be a powerful vehicle for charity and non-profit purposes, private wealth planning, asset protection and estate planning - extensively tested before court.

A key feature of the Stichting is its legal personality. It is a so-called orphan entity, meaning that it has no shareholders or members. As a consequence, it is fully controlled by its management board, although additional bodies, such as a supervisory or advisory board, may be installed. There are also no specific statutory legal requirements with respect to the appointment, dismissal, composition and nationality of the board, allowing clients to flexibly lay down their wishes in the foundation's article of association and, if applicable, its bylaws.

There are no requirements with respect to minimum capital, and, in most cases, it is not subject to taxation and is not held to publish annual accounts. Distribution of profits to founders or members of its bodies is not allowed. This seems like a contradiction, given its use for private wealth planning and estate planning, but there is a reason for this.

Charity and non-profit

The original role of Stichtings was as a vehicle for charity. The initiator incorporates a foundation with a specific charitable object (e.g. annual donations to UNICEF), but also a general object (e.g. initiatives aimed at promoting a healthy lifestyle). After the incorporation, the client donates funds, to be invested by the board of the foundation. The board subsequently makes donations to the charities as defined. If certain conditions are met, the donations to and by the foundation are not subject to gift tax.

In the Netherlands, hospitals and schools are often organised as foundations. They receive government funds for spending in accordance with the foundation's goal (e.g. health care in Rotterdam).

Private wealth planning (STAK)

To avoid dilution of ownership or control over a (family) business, the foundation can be used to separate legal from beneficial ownership. The client will contribute shares of his company to the foundation and will receive so-called depository receipts (certificates) in return.

Such depository receipts can be donated to family members, and the holder of these depository receipts is entitled to dividends or other proceeds as the beneficial owner. The foundation is the legal owner of the company's shares, with the goal of holding the company shares in administration for the benefit of the holders of the depository receipts. Foundations used for this purpose are referred to as STAK (Stichting Administratiekantoor / administrative foundation). For tax purposes a STAK is transparent.

The shares of publicly-listed companies can also be held in administration by a STAK. In such case there is usually an element of protection against takeovers, since any potential acquirer of depository receipts will be less interested if he cannot gain control over the underlying company, which resides with the board of the foundation. It should be mentioned that this role of a foundation can also be used for other types of assets, such as an art collection.

Asset protection and estate planning

In the case of asset protection and estate planning, the shares are donated to the foundation. The board, which can consist of family members or trusted relations, will hold the assets for the benefit of the defined beneficiaries. By transferring the ownership to the foundation, they stop being part of the client's wealth and are thus protected from the latter's creditors. Further, the foundation can also be used to stipulate which assets should be transferred to which heir. Such donations do not qualify as last will and can be made independent from inheritance laws.

Further uses

The orphan nature of the Stichting, also makes the foundation a commonly used entity for heading securitisation structures. Its charitable nature also makes it a suitable holding vehicle for sharia-compliant investment structures.

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Combining corporate and employment law, Madeleine sees legal matters in a broader context.

As co-founder of SAGIURE, Madeleine began her career as a corporate finance lawyer at CMS. Later on, Madeleine specialised in corporate employment law with a focus on international, cross-border employment. In 2008, Madeleine continued her career with Bird & Bird LLP, an international law firm with offices across Europe, China and the Middle East.

Rachida specialises in corporate employment law. As co-founder of SAGIURE, Rachida began her career as a lawyer in 2002 with CMS an alliance of major law firms founded by the UK firm Cameron McKenna and the German Firm Hasche Sigle.

Together with Jos Pothof, head of the International Employment Group, Rachida focused on the firm's major international clients and cross border work. In 2008 Rachida continued her career and corporate employment focus with Bird & Bird LLP in The Hague, an international law firm with offices across Europe, China and the Middle East.

Sagiure Legal B.V. is an independent law firm based in Amsterdam, the Netherlands.

SAGIURE stands for knowledge and determination (SAGE), two key factors to success in the legal (IURE) business hence our firm's name SAGE [seyj] + IURE [iūre]. At SAGIURE we specialise in corporate employment and contract law.

Our focus lies with (multinational) corporations and entrepreneurs with a workforce or investment in the Netherlands or an ambition to set-up or grow business in the Netherlands.

EMPLOYMENT

Dynamic Contracts: Changing employment practices in the digital era

Digital platforms designed to deliver professional services are changing the European employment landscape as both employers and workers look for more flexible ways to work.

The pioneers of the digital platform and gig-economy phenomenon are service providers such as Uber and Deliveroo, but the model has now spread to many other industries.

As a result, digital platforms have raised many legal questions and are subject to ongoing debates in various countries. One of the main questions pertains to the legal qualification of the digital platform worker; i.e. are they truly independent workers to be classed as entrepreneurs who lack the protection of labour law, or are they employees who do enjoy full labour law protection?

Another possibility is a hybrid classification (known as a worker in the UK) which offers entitled to a select set of labour law protection.

Absent specific legislation on digital platform work, governments in developed economies are struggling with the legal, social and economic impact of platform work. There have been an increasing number of litigation suits in the USA, UK and continental Europe including, most recently, the Netherlands.

Dutch employment legislation in respect to digital platforms

Dutch legislation is well-advanced in shaping laws to cope with the new dynamic in the workforce and, under the Netherlands Civil Code, an employment contract exists when all of the following criteria have been fulfilled:

An individual (the employee) agrees to work in the service of the employer, for financial compensation/pay and for a certain period of time. A written contract detailing these criteria is however not required.

In addition to the above criteria, standing Supreme Court case law stipulates that the contracting parties' intention at the time of concluding the contract must be aimed at working under the legal form of employment. Furthermore, during the execution of the agreed work, an assessment of the actual facts and circumstances (the way the work is performed) must indeed confirm that the criteria that form an employment contract are fulfilled.

If the criteria and the execution of the contract are aligned, an employment contract and all of its (dis)advantages are a fact.

A requalification designating the digital platform worker to be an employee under Netherlands labour laws, offers the requalified employee protection against dismissal, an entitlement for paid vacation, vacation allowance, salary payment during continued illness for a period of 104 weeks, and unemployment benefits.

In certain industries, requalification can also trigger applicability of an industry wide collective bargaining agreement ('CBA') or pension scheme. In such event the requalified employee can claim the benefits under the CBA and the pension fund can claim pension premiums for the entire period that the requalified employee was engaged by the digital platform.

For the digital platform owner, who is consequently the ('requalified') employer, this leads to higher costs, penalties and an array of protective legislation to observe and comply with.

Tax consequences

From a tax and social security perspective the answer to the question on the (re)qualification of the digital platform worker has substantial impact too. In case of an employment contract the employer pays employer's contributions and withholds (and pays) payroll tax. Failure to pay social securities and withhold payroll tax can lead to tax levies and penalties imposed by the tax authority.

Furthermore, compensation paid to the requalified employee in the past for delivered work/services can also be deemed paid as a net amount (instead of the compensation plus VAT) resulting in an additional tax levy for payroll tax based on a gross-up of the paid compensation.

Unique challenges of the digital platform model

Establishing and maintaining a digital platform business comes with many benefits for the business owner in the form of lower operational and workforce related costs and flexibility in a legal sense. On the other hand, establishing and maintaining a successful digital platform business requires the business owner to constantly leverage the commercial business model and its risks.

From our experience we have seen that advising digital platform companies is a team effort, combining legal and tax expertise with close partnership with the business owner from the outset and throughout the life cycle of the company.

Advising a digital platform business on its business set up and mitigating its legal and tax risks demands a symbiosis of corporate, employment and tax law expertise that acknowledges and covers the interdependency of these areas. Governments are generally not ahead or on track with technological innovation, and as long as legislation remains absent or inadequate, entrepreneurial pioneers will keep seizing opportunities to optimise revenues and form new types organisation.

These are exciting times for lawyers and tax experts.

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Robert Bron, co-owner and founder of ABiLiTieS Trust based in Amsterdam. He is a strongly client-oriented legal counsel and manager with affinity for corporate law, tax and accounting.

Robert is skilled in setting up companies, maintenance of special purpose companies, international structuring and corporate law. Before co-founding ABiLiTieS Trust, he had a major role in the successful set up of 10+ employees trust office from scratch based on organic growth.

Robert is a trouble shooter with a Master in corporate law from Utrecht University. He is always available for clients or other IR Global members to answer questions on the Dutch jurisdiction.

ABiLiTieS Trust is a trust company specialised in the formation and guidance of start-ups and special purpose vehicles such as holding, finance and royalty companies and foundations for charitable, securitisation and estate planning purposes.

The team is committed, experienced and knowledgeable and is able to assist you with any aspect of company formation. If urgent, a new company can be set up and registered within 48 hours.

ABiLiTieS Trust can provide newly arrived entrepreneurs in the Netherlands with all regulatory and practical information on labour, tax, legal, accounting and any other topic, to make sure they enter the Dutch market well prepared.

COMPANY FORMATIONS

Frictionless Formations: Establishing a new base in The Netherlands

The Netherlands has an open economy and an international business climate. Many globally-oriented businesses have decided to create operational hubs in The Netherlands and have established Dutch companies.

Fast-growing sectors such as IT are driving this, since The Netherlands scores high in all innovation rankings and is therefore a popular location. Operational subsidiaries are also common in the Netherlands, especially within businesses that are active in import and export. The Rotterdam harbour and Amsterdam airport are ideal gateways to the densely populated areas of Western Europe.

The country is also home to a range of holding companies because of its attractive holding regime, which, in combination, with a favourable VAT regime (with import VAT deferral until moment of filing and no Dutch VAT in case of intra-community supply) makes The Netherlands an enticing prospect. Brexit is also accelerating the number of businesses that are opened in the Netherlands.

Choosing a legal form

Most new businesses, both holding and operational, make use of the private limited liability company (besloten vennootschap or abbreviated to 'BV'). The BV offers a high level of flexibility in respect of amount of capital, composition of the board and issuance of shares without voting rights or profit sharing. Since a recent amendment of Dutch dividend tax legislation, coops (coöperaties) are not popular anymore for holding purposes.

Details on the incorporation and registration process

The incorporation and registration process of a BV are straight forward processes. A notary drafts incorporation documents, consisting of draft articles in the Dutch language and including an English office translation and a power of attorney to be signed by the incorporator.

Under Dutch law the beneficiary, incorporator and director(s) of the new company shall be identified by the notary and, in case of a legal person acting as incorporator, the authority of its signee shall be confirmed. It is not necessary for the parties involved to be present in the Netherlands.

Before the company is incorporated, a registered address is arranged, which can be both a virtual and real office. This incorporation takes place by means of the execution of the deed of incorporation by a Dutch notary. The notary also arranges the registration at the trade register and incorporation and registration can take place in a day.

The listing at the trade register triggers issuance of a fiscal number and, if applicable, a VAT-number by the tax authorities.

Additional requirements

In case of any legal acts on behalf of a BV under incorporation, it is important to have these ratified by the company after its incorporation by means of a board resolution. Until ratification, the person who represented the company under incorporation will remain severally liable for any liabilities related to these acts. This liability remains if the representative knew, or should have known, at execution of the legal acts that the BV would not be able to fulfil its obligations. This is presumed when the BV will be declared bankrupt within one year of its incorporation.

It is also advisable to have the capital paid up by the shareholders and have this registered with the trade register as soon as possible. Under Dutch law paying up of shares can be relevant for the following reasons:

- the Dutch participation exemption will not be applicable in case not minimally 5 per cent of the shares have been paid up

- a Dutch fiscal unity can only be established if 95 per cent or more of the shares have been paid up

- article 2:216 section 6 Dutch Civil Code ('DCC') stipulates that distributions shall be based on the mandatory deposits on the shares and not their nominal value

- under article 2:199 section 1 DCC the seller remains severally liable against the company for the unpaid amount at transfer of non-paid up shares.

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Shai is a member of the New York and Israel Bars, and has been an international lawyer since 1986. He has lived and practiced law in the US for years, but has been based in Amsterdam since 1991, and co-managed the Israel office since 1998. He was educated in Israel, the US and Amsterdam,

Shai's experience lies with cross-border transactions, helping clients and colleagues bridge the legal culture gaps. He has done transactions and acted for clients in all parts of the world and in numerous industries: technology, pharmaceutical, real estate, energy, finance, manufacturing and more.

Shai's network of colleagues and friends is widespread, and his practice concentrates on seeking practical solutions in complex environments. He enjoys the legal practice yet mostly the people of all cultures he encounters. Shai looks for the joy of the practice and the position of win-win solutions that brings parties together, while using creativity and out of the box solutions. He truly believes that as a lawyer he can act in the best interest of his clients with openness and an eye for the position of all parties. That often results in the best possible solutions for his clients.

Synergy Business Lawyers is a boutique corporate law firm based in Amsterdam, the Netherlands. They provide legal services for international businesses in the broadest sense, from real estate and commercial contracts to mergers and acquisitions, from employment law to litigation and arbitration. With a long record in international business law, mainly in the Netherlands, the EU, the US and Israel, Synergy Business Lawyers can assist clients in all legal aspects related to international commerce, whether it is hi-tech, green energy, real estate or manufacturing.

M&A

Dutch M&A: An uncertain outlook in 2019

During the last few years, the Netherlands has developed into a seller's market.

A variety of factors underpin this trend, including exceptionally low interest rates and abundant liquidity available to prospective buyers to fund acquisitions. Prospective buyers have easy access to capital to finance acquisitions, while competition among buyers to acquire private companies has increased.

Due to this trend, buyers find themselves in controlled auctions, which is driving up prices and allowing for less due diligence on negotiated deals. Acquisition agreements have become more seller-friendly and, in the current market climate, sellers are less willing to accept much liability, as reflected in the post-closing liability regime. In turn, buyers increasingly rely on W&I (warranties and indemnities) insurance for recourse.

Although 2018 was a good year and in general the outlook for 2019 is positive, there are concerns that this trend may be waning. Tightening monetary policy, high valuation levels, changing regulations, geopolitical worries, and volatility in capital markets are factors that may contribute to a downturn in deals.

Dutch legislative practices and recent developments

The Dutch government is welcoming and promoting foreign investments, by removing acquisition legislation and promoting an attractive tax environment.

No specific restrictions apply to foreign parties when investing in the Netherlands, but investors should be aware of the principles of reasonable and fairness and good faith. When entering into negotiations, with a view to entering into an acquisition agreement, parties are considered to be in a special relationship and are expected to take each other's reasonable interest into account.

Based on this 'pre-contractual good faith', parties may not always have the right to unilaterally break off negotiations. Unlike the Anglo-Saxon practice of making negotiations subject to contract, it is advisable to clearly agree upon the terms and conditions to which the negotiations are subject. In addition, the acquisition agreement is always subject to and may, thus, be overridden by the Dutch legal principle of reasonable and fairness. Although this principle is only applied in exceptional cases, it may result in unexpected or unintended outcomes.

The Dutch jurisdiction is not familiar with the concept of 'buyer beware'. Therefore, during the due diligence process, the seller is obliged to disclose information that may be of importance to buyers, even when the buyer is responsible for its own due diligence investigation. The relationship is governed by good faith and the specific circumstances of the case will determine the extent and scope of the seller's duty to disclose and the buyer's duty to investigate.

For 2019 there are several developments of which foreign businesses needs to be aware when deciding whether to invest in the Dutch market.

In 2019, the Netherlands Commercial Court (NCC) will become operational, with a primary focus on major international commercial disputes. The NCC will be based in Amsterdam and will use Dutch procedural law, which is renowned for its pragmatic approach and efficient operation, while the working language will be in English and evidence may even be handled in French, German or Dutch, without translation being required. The proceedings will be paperless and legal documents will be submitted electronically. Although the court fees for the NCC are relatively high compared to normal Dutch court fees, by making the procedure more effective and efficient, it will ultimately be less costly. The NCC is only competent if the parties have agreed to settle their dispute under the procedural rules of the NCC. This will be a great forum for foreign parties to agree upon in acquisition agreements when acquiring Dutch companies.

In combating financial-economic crime, a legislative proposal has been submitted in the Dutch Senate to introduce a central shareholders' register for Dutch companies. This register will contain certain details of shareholders and will be kept by the Dutch Chamber of Commerce and updated with share transaction information by Dutch civil law notaries. This means that it will be apparent who the shareholders are of Dutch companies. Although this information will not become available to the public in general, it will be available to the Dutch tax authorities and notaries, as well as to other Dutch anti-money laundering/counter-terrorism financing law institutions that are yet to be determined. Foreign investors requiring privacy might be deterred from investing in The Netherlands with the prospect of this legislation becoming reality.

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