

1971

Netherlands

Touche Ross International

A. Nootboom

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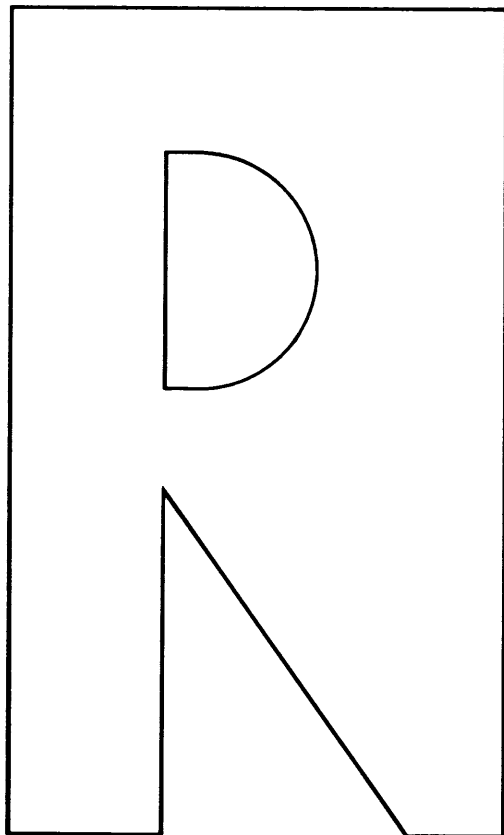
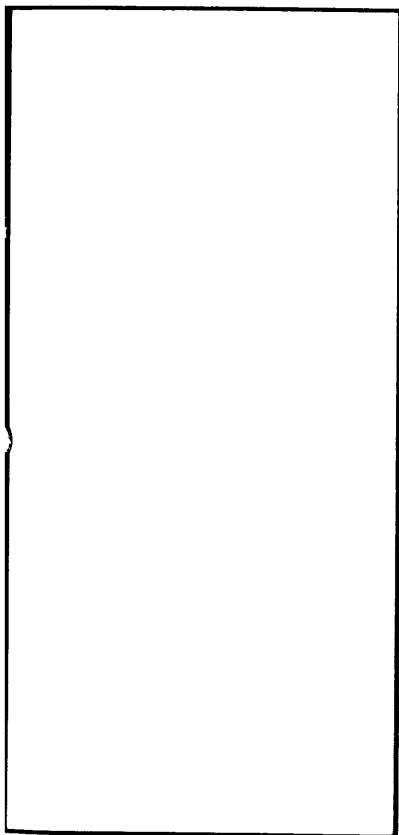
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TOUCHE ROSS International
Business Study / Netherlands



NETHERLANDS



PREFACE

This is one of a series of Business Studies designed for the use of the Touche Ross professional staff in all countries and for interested clients. Users of this Study should ascertain that the information contained here has not been superseded by later developments. Specific business questions or problems may have legal and tax ramifications that are beyond the scope of this Business Study and the assistance of professional advisors is recommended. Suggestions for revisions should be sent to the Touche Ross International Executive Office in New York City.

December, 1971

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- CHAPTER I **NETHERLANDS IN BRIEF**
- CHAPTER II **INVESTMENT FACTORS**
- CHAPTER III **LABOR CONDITIONS**
- CHAPTER IV **BUSINESS PRACTICES** AND CUSTOMS
- CHAPTER V FORMS AND CHARACTERISTICS OF **BUSINESS ENTITIES**
- CHAPTER VI **ACCOUNTING AND AUDITING** IN NETHERLANDS
- CHAPTER VII **TAXATION** IN THE NETHERLANDS

NOTE: Throughout this Business Study amounts are stated in Dutch guilders or florins (Dfl.). Use the appropriate exchange rates to judge the magnitude of these amounts in terms of the currencies of other countries.

INTRODUCTION

The Netherlands has capitalized greatly on its geographical position close to the developed and densely populated countries of Western Europe, and on its connections with these countries by short sea and land routes.

It has enjoyed an almost uninterrupted postwar economic development, partly by reinvesting a considerable proportion of its national income.

The Dutch struggle against inundation by sea waters and the other factors which molded the character of the Dutch people have, so far, saved it from some of the social excesses and breakdowns visible in other developed countries.

Certain important factors in the Dutch business scene have recently undergone significant alterations. These factors are included in this Business Study in Chapter III (development of the works councils), Chapter V (new forms and structures of business entities), and Chapter VI (requirements for publication of financial statements).

The representative of Touche Ross International in the Netherlands, Nederlandse Accountants-Maatschap, has provided much of the information contained in this Business Study. Mr. A Nooteboom, partner of Loyens & Volkmaars, tax lawyers, is responsible for Chapter VII, *Taxation in the Netherlands*.

Alexander Berger
Director of International Publications
Touche Ross & Co.

December, 1971

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CHAPTER I

NETHERLANDS IN BRIEF

BACKGROUND ON HOLLAND

THE DUTCH PEOPLE

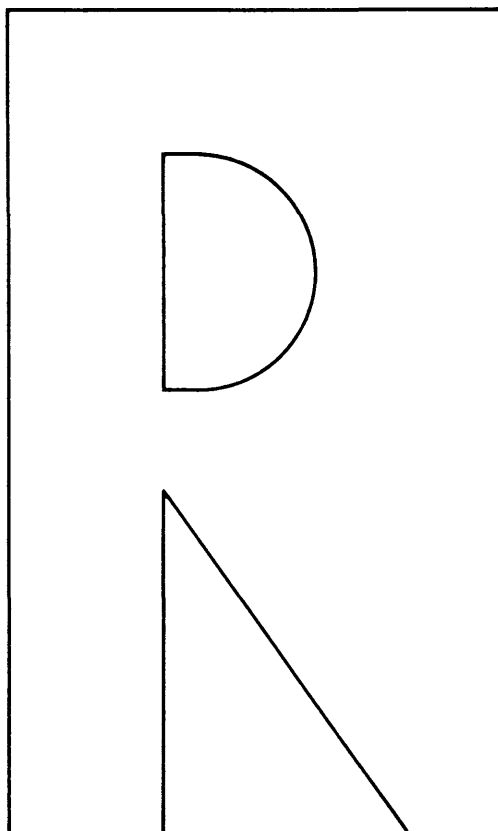
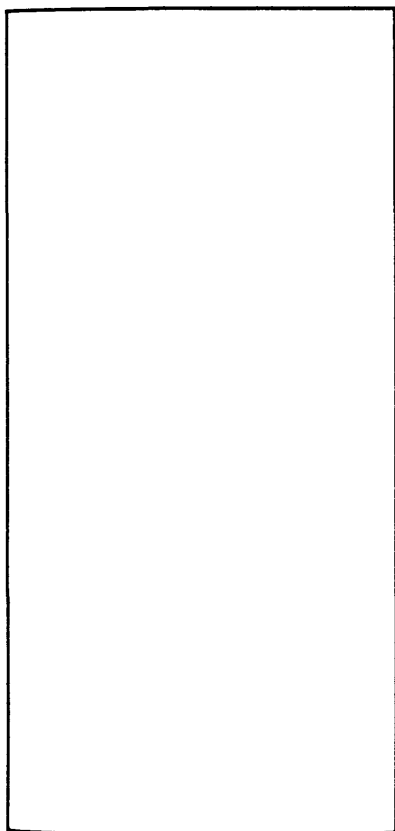
GOVERNMENT

THE DUTCH ECONOMY

IMPORTS AND EXPORTS

MEMBERSHIP IN INTERNATIONAL

ORGANIZATIONS



NETHERLANDS IN BRIEF

This country is popularly known as Holland, but its official name is the Netherlands. The Netherlands and its former South American colony of Surinam and former Caribbean colony of the Netherlands Antilles, consisting of six islands, together form the Kingdom of the Netherlands.

BACKGROUND ON HOLLAND

Area. Total area of the Netherlands is about 16,000 square miles, of which 13,000 to 14,000 constitute the land area, which is constantly increasing as land is reclaimed from water. Because Holland is a small country, interior distances are also small – the maximum north-south distance is 196 miles and east to west about 125 miles.

The country is relatively flat. In the southeast, some rolling hills reach 1,000 feet, but average elevation is only 37 feet above sea level. A fourth of the Netherlands is below sea level and is protected by sand dunes and some 1,500 miles of dikes. Low-lying land enclosed by dikes, with individually controlled water management, is referred to as a *polder* – a Dutch term that is used in many other languages.

Location. The Netherlands is in northwestern Europe. The North Sea on the north and west provides a natural gateway to important industrial areas. West Germany borders Holland on the east, and Belgium on the south.

History. Holland was once a large marsh with sand dunes to keep out the North Sea, and crisscrossed by large rivers. Its few inhabitants were in constant danger of floods. The first dikes built in the 10th century began the process of making the land habitable and productive.

In the Middle Ages, Holland consisted of autonomous counties, duchies, and cities. At the beginning of the 16th century, Holland and what is today Belgium came under the rule of the Spanish King. The King failed to respect their autonomy and religious freedom and a revolt led by William the Silent, Prince of Orange, resulted in the loose confederation of the Republic of the United Netherlands.

In 1795, the Dutch Republic was invaded by France and emerged, in 1813, as the Kingdom of the Netherlands under the House of Orange. This Kingdom included the areas known today as Belgium and Holland, which separated in 1830.

NETHERLANDS IN BRIEF

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BACKGROUND ON HOLLAND

The Netherlands was invaded in 1940 by Germany and was liberated in 1945. In 1948, after a reign of 50 years, Queen Wilhelmina abdicated in favor of her daughter Juliana. Indonesia gained its independence from the Netherlands in 1949.

The Dutch flag consists of red, white and blue horizontal bands. Many Dutchmen still attach an orange streamer to the flag to symbolize their loyalty to the House of Orange.

Climate. Holland is in northern Europe, but the Gulf Stream helps provide a marine climate free from extremes. In the coldest month (January), temperatures range from 30° to 35° F. In July, the warmest month, temperatures range from 66° to 73° F. Humidity is relatively high. Average annual rainfall of about 30 inches falls evenly throughout the year.

THE DUTCH PEOPLE

Population. A population of 13.1 million (1971) makes Holland one of the most densely populated (about 986 persons per square mile) of the world's larger countries. A high birth rate (19.2 per 1,000 inhabitants in 1969) and an unusually low death rate (8.4 per 1,000 in 1969) have increased population at the rate of 1.32% annually in recent years. The Dutch people enjoy the world's longest life expectancy at birth (70.9 for men and 76.3 for women). If these trends continue, the population is expected to reach 18 million by the year 2,000.

Dutch males marry at an average age of 26.3 and females at 23.9. The average family size according to the 1960 census was 4.61.

Work Force and Occupations. The Netherlands Central Bureau of Statistics provides data about the economically active population in terms of man-years, which counts persons not employed the entire year for the portion of the year they were employed. On this basis, the economically active population in 1969 worked 4,687 million man-years in the following sectors:

	Per 1,000 Man-years
Agriculture, forestry and fishing	340
Mining and quarrying	23
Manufacturing	1,309
Construction	486

	Per 1,000 Man-Years
Electricity, gas, and water	43
Commerce, banking and insurance	837
Transport, storage and communication	302
Other services	740
Government and other public bodies	545
Registered labor reserve	62
	<u>4,687</u>

Males comprise between 75% and 80% of the work force with single women the greater part of the balance. Only one out of four married women work, many of them part time.

Natural Resources. Commercially exploitable natural resources include large supplies of natural gas, and smaller deposits of coal (about 7 million tons per year), salt (2.7 million tons a year) and petroleum. Natural gas resources in the province of Groningen, the principal gas field, are estimated at 1.1 billion cubic meters. The Netherlands as a whole is estimated to have 6% of the world's supply. Dutch oil wells produce about 2.2 million metric tons of crude oil annually, about 10% of domestic requirements. Because of these limited natural resources, much of the industrial sector consists of processing industries which import most of their raw materials.

Because of her population density, Holland has less than one-half acre of arable land per person. Intensive cultivation, however, has raised the quality and yield of agricultural products to very high levels. The principal field crops are cereals (wheat, rye, barley, and oats), and pulse root crops (eating and farina potatoes, and sugar and fodder beets). The main commercial crops are rapeseed, flax, and agricultural seeds. Forage crops support a large cattle population. The milk yield per hectare of grassland is the world's highest.

Cultivation under glass has expanded enormously, and agricultural and horticultural products are important exports.

Religion. The 1960 census recorded 40.5% of the Dutch population as Roman Catholic, 37.2% as Dutch Reformed or other Protestant, 19.1% as not affiliated with any sect, and the balance belonging to a score of different denominations.

Principal Cities. About one-third of the population live in cities of over

NETHERLANDS IN BRIEF

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THE DUTCH PEOPLE

100,000. Based on social-economic criteria, rather than strictly political boundaries, the populations of the principal cities in 1971 were:

	Thousands		Thousands
Amsterdam	1,050 (capital)	Utrecht	460
Rotterdam	1,070 (chief port)	Eindhoven	340
The Hague	725 (seat of government)	Arnhem	274
		Heerlen	265

Education. Dutch educational levels are high and illiteracy is almost unknown. Attendance is compulsory from 6½ to 14½ at either public or private schools. Roman Catholic schools predominate, with most private schools receiving government subsidies on a basis related to government expenditures for public schools. In most cases, expenses of children attending private schools are refunded in full. The principle underlying the existence of public and private schools is the belief that parents should be able to educate their children in accord with the parents' beliefs. See page 70 for further details.

GOVERNMENT

The Dutch Government is a constitutional monarchy, whose reigning sovereign is Queen Juliana. Succession to the throne is hereditary and is confined to male and female descendants of the House of Orange Nassau. Real political power is vested in a democratic parliamentary system similar to that of the United Kingdom and in a written constitution that contains numerous safeguards of individual liberties.

Executive Powers. Executive authority is exercised by a prime minister and his cabinet, which consists of the heads of administrative departments. Cabinet ministers are formally appointed by the reigning sovereign on the basis of dominant political support. The cabinet cannot govern if the majority of the legislature is opposed to it.

Legislative Powers. Legislative power is exercised by the two-chamber States-General. The First Chamber consists of 75 members selected by the 11 provincial legislatures for six-year terms. The Second Chamber consists of 150 members elected by popular vote for four-year terms, but the prime minister may dissolve this chamber for new elections at any time. New legislation can be initiated only in the Second Chamber.

Voting rights begin at 21. Formerly, voting was compulsory in the sense that voters received a small fine for not appearing at the polling place, whether they chose to vote or not. For some years, however, voting has been entirely voluntary.

Judicial Powers. The Netherlands' judicial system is based more on codified law than on common law. All judges are appointed by the Queen on behalf of the ruling political coalition. Appointment is for life, but retirement at age 70 is compulsory. Judges decide all cases; the Netherlands does not use the jury system. Judicial powers are exercised by four levels of courts:

1. Magistrates' or Cantonal Courts – These are local courts where civil cases involving Dfl. 500 or less are heard, as well as cases involving leases, labor contracts, and certain employment contracts.

2. District Courts – These handle appeals over most decisions of the Magistrates' Courts in addition to having original jurisdiction in the larger civil cases, in divorce and bankruptcy cases, and in almost all felonies.

3. Courts of Appeal – Five Courts of Appeal hear appeals from District Courts and have original jurisdiction in tax matters.

4. Supreme Court – This is the ultimate court of appeal against sentences passed by lower courts. On appeals, the Supreme Court accepts the facts that have been established but deals with issues of law. Its main function is to assure that law is applied uniformly.

The judicial system in Holland does not discriminate between foreigners and nationals.

Provincial and Local Government. The country is divided into eleven provinces differing greatly in area and population density, and about one thousand municipalities which are the only administrative units within the provinces. Each province is governed by a Provincial Council – large bodies of varying number elected for four-year terms by popular vote. As these bodies are somewhat unwieldy, each Provincial Council appoints a six-person Provincial Executive which is responsible for preparing and implementing provincial ordinances.

Municipalities are governed by councils which are headed by Burgomasters who are appointed for six-year terms by the Crown, on behalf of the government. Members of the council are elected for four-year terms. Both

NETHERLANDS IN BRIEF

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GOVERNMENT

provincial and municipal governing bodies exercise legislative and executive powers in the spheres of local finance and administration, but they are bound by national law and interests.

Political Parties. There are seven large political parties, and a number of small ones. The major ones are the Catholic People's Party (KVP) which tends to be democratic and middle-of-the-road in social policy, the Labor Party (PvDA) which tends to favor a more planned economy within a democratic context, and a group of Protestant parties which also tend to a middle-of-the-road policy. Normally, no party polls a majority; consequently, political combinations are formed to muster the majority required for effective government.

THE DUTCH ECONOMY

Between 1958 and 1968, the average annual increase in gross national product, in real terms, was 5.3%. Manufacturing is an increasingly large contributor to national income, having reached the 40% level some years ago.

KEY ECONOMIC INDICATORS

	1968	1969	1970
Gross National Product (\$ billions)	25.30	28.42	31.33
Per Capita National Income (\$)	1,608.	1,809.	1,948.
Consumer Price Index (1963-100)	118.0	126.8	139.7
Industrial Production Index (1963-100)	143.	160.	175.
Imports (\$ millions)	9,293	10,989	13,393
Exports (\$ millions)	8,342	9,963	11,767

IMPORTS AND EXPORTS

Generally speaking, the trade policy of the Netherlands is a liberal one. Internationally, Holland is a member of Benelux, the European Community, and GATT and, internally, there are also few restrictions on trade.

This liberal policy can be traced to the importance of international trade to the Netherlands. Poor in natural resources, Dutch industry must import

raw materials and export finished products. The following United Nation's statistics of exports per inhabitant show the importance of exports to Holland's economy:

Exports Per Inhabitant

The Netherlands	\$748
West Germany	477
United Kingdom	304
France	296
U.S.A.	184

Holland's best customer for exports is West Germany. Holland is the U.S.A.'s best customer as her exports to the U.S.A. are only about half of imports.

Based on the Standard International Trade Classification (SITC), the following categories of goods constituted the Netherland's trade in 1970 (in \$ millions):

	Imports	Exports
Food and live animals	1,530.5	2,597.4
Beverages and tobacco	156.1	139.9
Crude materials except fuels	1,147.1	780.4
Mineral fuels, lubricants, etc.	1,457.8	1,256.3
Animal and vegetable oils and fats	142.4	125.5
Chemicals	1,048.0	1,517.4
Manufactured goods classified		
chiefly by material	2,894.7	2,116.4
Machinery and transportation equipment	3,409.9	2,305.9
Other manufactures	1,433.5	844.5
Other – not classified	173.0	82.0
	13,393.0	11,765.7

Source: OECD (Figures do not add exactly because of rounding.)

Government and the Economy. The Netherlands is predominantly a free-enterprise economy even though the government operates, as is common in Europe, the mails, telegraph, telephone, radio and television, and railroads, and participates in a steel company and the airlines. Provinces and

municipalities own and operate almost all public utilities. All other areas are run privately and the government has not attempted to increase its sphere of ownership.

MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS

The Dutch are members of the North Atlantic Treaty Organization (NATO) as well as strong supporters of the United Nations. They are actively engaged in the European Communities (Common Market, Euratom, the Coal and Steel Community) and the Organization for Economic Cooperation and Development (OECD).

Benelux. In 1960, Belgium, Luxembourg and the Netherlands formed the Benelux Economic Union. The treaty provides for joint negotiation of all trade agreements with foreign countries; for the free movement of labor, capital and goods among the three countries; and for the harmonization of economic policies to bring about an eventual economic consolidation of the three countries. The three countries comprise a joint market of 23 million people.

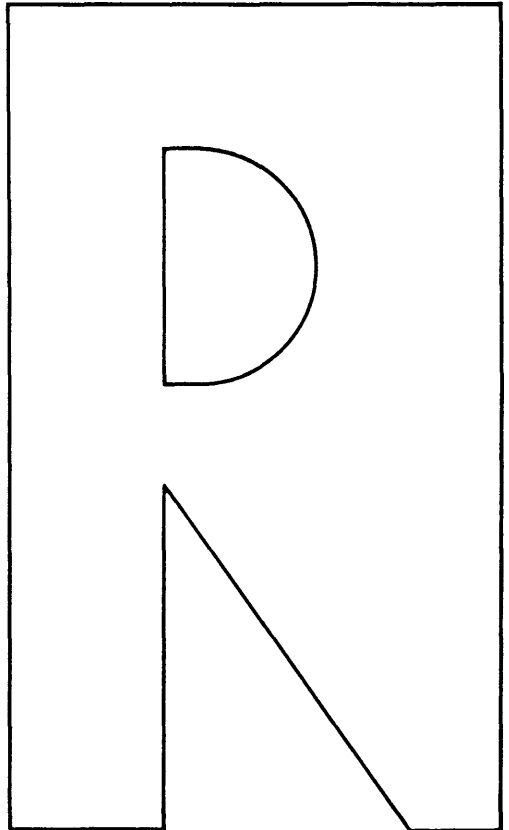
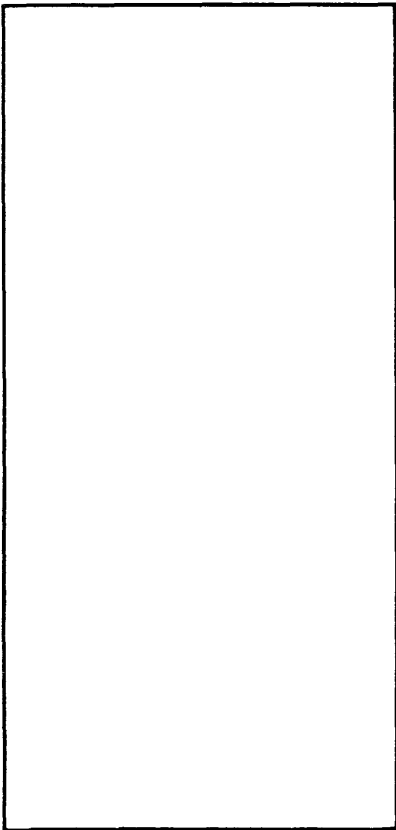
General Agreement on Tariffs and Trade (GATT). As a member state, the Netherlands has participated in all rounds of tariff reduction negotiations within the GATT framework.

CHAPTER II

INVESTMENT FACTORS

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INVESTMENT FACTORS

The economic growth of the Netherlands is largely dependent on industrial expansion and the Dutch government is aware of the important contribution that foreign enterprises can make to industrial growth. There is no discrimination between domestic and foreign companies. The private entrepreneur can operate in any branch or sector he chooses.

Where to Obtain Information. The foreign investor who is interested in industrial operations in the Netherlands may obtain information about conditions and requirements from the:

Industrial Projects Division
Ministry of Economic Affairs
Bezuidenhoutseweg 30, The Hague

Potential investors from abroad may obtain information and assistance from representative Dutch banks and the Netherlands embassies. In the United States there is an Economic Division at the following address:

The Industrial Commissioner for
The Netherlands in the United States
10 Rockefeller Plaza
New York, New York 10020

INVESTMENT INCENTIVES

Various investment incentives are offered by the Dutch government. To obtain them extensive evidential matter must be submitted to the authorities involved, which include:

- Department of Regional Industrial Affairs of the Ministry of Economic Affairs
- the County Council of the province
- the City Council of the municipality
- the Economic Technological Institute (ETI) of the province

An ETI recommendation is of great importance in the preliminary negotiations as is timely contact with the County Council.

Incentives for New Industrial Enterprises. New enterprises in new buildings are eligible for grants of 25% of the capital expenditure for fixed assets (includes the cost of land, buildings, and machinery). The maximum grant is Dfl. 3,000,000, but if the Minister of Economic Affairs feels a higher grant is

warranted, he can exceed the maximum. The following are the main prerequisites for such grants:

1. The capital expenditure on fixed assets should be at least Dfl. 400,000.
2. At least 40% of the capital expenditure on fixed assets must be from the entrepreneur's own resources.
3. After completion of the project and receipt of the grant, shareholders' equity (issued and fully-paid stock, capital surplus, and retained earnings) should be at least 40% of the total investment. These conditions apply to the northern and northeastern sections of Holland, and to Limburg. Economic and budgetary considerations may influence the government to change those sections defined as "development areas."

Since September 1, 1971, certain advantages have been offered to encourage enterprises from the western provinces to relocate to the northern provinces. A specific regulation applies to new industrial enterprises in Lelystad, the center of the New Zuiderzee polders. In this area, the investment grant consists of a subsidy of Dfl. 10,000 per male employee brought in, but the total grant cannot exceed 25% of the capital expenditure on assets, or Dfl. 3,000,000.

Grants for Expansion. Industrial enterprises in the north that expand are eligible for a grant of 15% of the new capital expenditure on fixed assets. The maximum grant is Dfl. 1,800,000 unless otherwise decided by the Minister of Economic Affairs. The principal conditions for obtaining this incentive are:

1. The new capital expenditure on fixed assets must be at least Dfl. 500,000.
2. At least 40% of the new capital expenditure on fixed assets must be from the entrepreneur's own resources.
3. After completion of the expansion and receipt of the grant, shareholders' equity (issued and fully-paid stock, capital surplus, and retained earnings) must be at least 40% of the total investment.

Interest Subsidies for New Industrial Enterprises. For new industrial enterprises of exceptional importance for the industrial structure of South Limburg or the provinces of Groningen, Drenthe, Friesland and a part of the province of Overijssel, the Minister of Economic Affairs can grant interest

subsidies for medium and long-term capital loans. The maximum interest subsidy is 3% per year for not more than 15 years.

Grants Available for the Private Services Sector. Private services enterprises in Groningen, Friesland, Drenthe, part of Overijssel, the Tilburg area and South Limburg area are eligible for grants of 25% of the capital expenditure on land, buildings, and equipment. The maximum grant is Dfl. 3,000,000 unless otherwise decided by the Minister of Economic Affairs. The principal conditions are:

1. The establishment must be of more than regional importance.
2. The enterprise must employ at least 75 persons on a permanent basis.
3. The capital expenditure on fixed assets and equipment must be at least Dfl. 400,000.
4. At least 40% of the total capital expenditure on fixed assets and equipment must be from the entrepreneur's own resources.

OTHER INVESTMENT AIDS

Reduced Interest Rates on Loans. The European Coal and Steel Community can grant loans to new operations in South Limburg which employ workers released by the mining industry. In general, the conditions for such loans are:

1. They are no more than 30% of the capital investment.
2. Their term is between 10 and 13 years.
3. Their repayment begins at the end of the third year.
4. The interest rate is 5.5% per year during the first five years and 8.25% thereafter.
5. The Commission of the European Communities decides in each case which part of a loan is eligible for interest subsidy.

Availability of Long-Term Loans. In certain cases, long-term loans (without subsidy or grants) can be obtained from the National Investment Bank (Nationale Investerings Bank) on which principal and interest are guaranteed by the government. In general, this bank extends loans of Dfl. 100,000 or more for terms of about 10 years.

The maximum loan and the interest rate are determined by the merits of each case, with the enterprise's fixed assets serving as security for the loan. The government guarantee of principal and interest is available for new industrial establishments in the province of Limburg and the north on the condition that these establishments are suited to the area's industrial pattern.

For exceptionally valuable projects in those areas, the National Investment Bank with government guarantees, or the government itself, can supply some of the risk capital. In this connection, an institution which operates exclusively as a supplier of risk capital and is an offshoot of the National Investment Bank, the Netherland Participation Company (Nederlandse Participatie Maatschappij), should be mentioned. Normally, the participation does not exceed one-third of the risk capital and is supplied only for an interim period until the company can raise capital by public issue of securities.

Tax Incentives. While accelerated depreciation was formerly available for all depreciable assets, it is currently restricted to the acquisition costs of buildings in certain districts not within the western part of the country, see page 148.

Another incentive is that losses during an enterprise's first six years may be offset against later profits for an unlimited period, see page 156.

Special tax treatment is offered to foreign employees who are transferred to the Netherlands for a period not exceeding five years, see page 139.

Availability of Sites and Buildings. Most sites usually have water and electricity and are served by good roads. Many sites are on rivers or canals and/or have railway connections, and several are accessible to large seagoing vessels.

Land and building construction costs vary by locality and type of facility. The highest costs are in the western area where piling is usually necessary. In other areas, building costs may be considerably lower. Higher costs prevail for sites close to large ports, which have mooring places for seagoing ships and railway connections. In some cases, such sites are available on long-term lease, rather than sale. Since nearly all industrial sites are owned or controlled by the municipalities, reasonable prices and good services are the rule.

Because of the persistent housing shortage, a permit is required for all building activities. As some time elapses between the application for a permit

and its grant, it is advisable to file the application as early as possible. Central government approval is no longer required for building in the northern and southern provinces, but local permits are still needed.

Several expenses are incurred in acquiring real estate in addition to the land cost. These include a 5% tax on the transfer of title to real estate, a notary fee on a sliding scale, and a 1.5% fee when a broker is involved. Depending on acquisition price, the additional expenses may vary from 7.5% to 8.5%. In a number of cases, added value tax of 14% must also be paid, but in these cases the 5% tax on the transfer of title to real estate is not applied.

PUBLIC ISSUE OF SECURITIES

When the subsidiary of a foreign firm is organized as a Dutch corporation, capital may be raised by the public issue or private placement of shares. This applies equally to foreign-owned subsidiaries and fully Netherlands-owned enterprises. As no laws regulate the proportion of foreign to Netherlands share capital, a subsidiary may be 100% foreign-owned. Shares issued in the Netherlands may be listed on the stock exchange only if paid-up share capital is at least Dfl. 500,000 and a substantial portion of the shares are held by a large number of stockholders. Because of these requirements, only a few subsidiaries of foreign companies have used this source of financing. New subsidiaries whose parent companies are not well known find debenture loans almost equally difficult to place. The prices of shares listed on the stock exchange, as well as dividends, may be quoted either as percentages of their par or nominal value, or in guilders.

The Amsterdam stock exchange is the world's oldest, dating from 1609. It is governed by the Association of the Stock Exchange (de Vereniging voor den Effectenhandel), a group of banks and other share brokers who, by law, must have their headquarters in Amsterdam and are the only persons who may buy or sell securities. Similar groups exist in Rotterdam and The Hague, but their transactions must be in accordance with the rules of the Amsterdam stock exchange. A company that wishes to list its securities on the exchange should contact a bank that is a member of the Association of the Stock Exchange. The bank will assist in drawing the required prospectus and will advise on other necessary matters. In broad terms, the primary requirements for listing are:

1. The shares or certificates to be listed must be fully paid.

2. Issued capital must be at least Dfl. 500,000.

3. There must be a likelihood of a sufficient trading volume.

4. The prospectus must comply with the stringent and lengthy requirements of the Association of the Stock Exchange. The following are merely two of the important elements required in the prospectus:

a. The full financial statements and annual report of the previous year, with the report of an independent auditor. If the listing application occurs in the first financial year, the opening balance sheet is substituted for the full financial statements.

b. All other data which the Executive Council of the Association of the Stock Exchange deems necessary to supply to the public about the company to be listed.

A recent resolution requires listed companies to supply information about the company's operations and general course of business each six months. Such publication must be issued no later than three months after the end of the six-month period.

Size of the Amsterdam Stock Exchange. In terms of financial activity, Amsterdam probably ranks just after London and Zurich. In 1971, about 350 Dutch N.V.'s were listed on the exchange. The securities of between five and six hundred foreign companies are listed and traded, more than on any other exchange in Europe.

FORMALITIES AND PROCEDURES IN ESTABLISHING ENTERPRISES

Foreign companies require an investment permit to establish a manufacturing or assembly operation in the Netherlands. To obtain such a permit, an application must be submitted to the Directorate-General for Industry and Trade of the Ministry of Economic Affairs, 30 Bezuidenhoutseweg, The Hague. This agency will discuss with the foreign investor various aspects of the proposed operation and also advise on a suitable location and similar matters. The agency also handles contacts with other governmental authorities, such as application for license to the Burgomaster and Council of the municipality concerned (the Public Nuisance Act requires such a license for enterprises that are liable to cause danger, damage, or nuisance to their surroundings), and any provisions against air and water pollution that may

be involved. In all such matters, foreign enterprises have the same rights and obligations as Dutch enterprises.

The application for investment permit is made by letter which should contain the fullest possible information about the nature and size of the project. The following data are particularly important:

1. The legal form and proposed name of the enterprise.
2. The nature of the business and the products to be manufactured.
3. Estimated annual net sales of the company. If exports are involved, an estimate of the development of export sales and the countries to which exports are likely to be directed should be included.
4. The estimated number of male and female workers to be employed.
5. The amount and origin of the capital which will be needed to attain the net sales noted in item 3.
6. The form in which the capital is to be furnished as evidenced by the liabilities side of the balance sheet; i.e., the amount of shares, bonds including data about the interest rate and provisions for amortization, bank loans, etc. Also, the form in which the capital is to be used as evidenced by the assets side of the balance sheet; i.e., a list of the assets required for operations to commence.
7. How capital will be supplied (cash, parts, equipment, etc.).

If the project complies with the agency's requirements, the company will receive written confirmation from the Directorate-General for Industry and Trade, which constitutes an investment permit. After such permit is received, application should be made to the Netherlands Bank for an exchange license. This license automatically entitles the holder to all benefits regarding the transfer of profits and repatriation of capital under the regulations administered by the Netherlands Bank.

The establishment of a nonindustrial operation (trading, servicing, etc.) does not require an investment permit. Usually, only an exchange license from the Netherlands Bank is required. The application to the Netherlands Bank is usually handled by a commercial banker experienced in these matters.

CONTROLS OVER FOREIGN EXCHANGE

In general, current payments by Netherlands residents or nonresidents can be made through any authorized bank without limitation. The following exchange provisions are of importance to foreign investors:

Transfer of Profits. Dividends paid on Netherlands shares are transferable in the currency of the foreign investor's country or, if desired, in almost any other currency.

Repayments of Loans. Payments of interest and principal to nonresidents are freely transferable in any currency provided the original loan was effected under an exchange license.

Transfers of Earnings by Foreign Nationals. Transfers of wages, bonuses, salaries and similar compensation are free – no license is required.

Reimbursements for Services and Research. Netherlands subsidiaries may freely transfer funds to foreign parent companies as reimbursements for reasonable expenses incurred for services or research work for the benefit of the subsidiary.

Transfer of License Fees and Royalties. Licensing agreements may be freely negotiated, and the resulting payments of license fees and royalties may be freely made.

Repatriation of Invested Capital. A license is not required for the transfer of capital repayments or liquidation proceeds if the investment was effected under an exchange license and the amount of the proceeds has been determined according to good business practice.

Purchase and Sale of Securities. Securities listed on the Amsterdam stock exchange may be freely purchased by nonresidents for guilders or any other convertible currency, but nonresidents require a special license to purchase unlisted securities. Listed or unlisted securities may be freely sold by nonresidents. The proceeds may be credited to a convertible guilder account or transferred in any currency. But, as a temporary anti-inflation measure which became effective September 6, 1971, bonds cannot be purchased with foreign currencies, but only with what are called O-guilders. O-guilders is a special currency which can be used only to purchase Dutch bonds, which is created only through the sale of Dutch bonds by nonresidents, and whose value is not necessarily the same as the convertible guilder. The value of the O-guilder varies with supply and demand.

Sale of an Enterprise. The sale of a foreign-owned enterprise to other nonresidents does not require a permit. The sale of a foreign-owned branch (an unincorporated enterprise) to a resident of the Netherlands requires a special license. Provided sound business practice has been followed in arriving at the sales price, such a license is granted as a rule. This license allows the seller to receive freely convertible guilders or any other currency.

Foreign Loans. Loans of up to Dfl. 100,000 per calendar year made by a nonresident to a resident do not require a license. A special license from the Netherlands Bank is required for higher amounts. Such a license may contain stipulations regarding the duration and repayment provisions of the loan.

Convertible Guilder Accounts. The benefits of the convertibility of the guilder are also available to nonresidents who maintain convertible guilder accounts. Such accounts are useful to nonresident individuals and companies in the initial stages of a venture in the Netherlands or other European country. The funds are easily transferable for later use in the Netherlands or elsewhere. Deposits in such accounts may be made by the holder or any other nonresident without a special license, and funds from the account may be transferred anywhere in the world without a license.

Dividends may be deposited in convertible guilder accounts as well as amounts to cover travel expenses. When there is no longer a need for a convertible guilder account, any remaining balance can be repatriated.

In general, convertible guilder accounts are useful for an international group which sends and receives foreign currencies.

FOREIGN TRADE

Generally speaking, no import or export licenses are required. Practically all payments to and from the Netherlands for merchandise, import duties, freight, storage, and other costs connected with commercial transactions may be made without a special license. For imports and exports on a credit basis, the Netherlands Bank must be notified whenever credit terms exceed one year.

Imports. As a member of the European Community, the Netherlands levies duties on imports based on the common external customs tariff, which

consists of 99 tariff classifications with many subdivisions. Almost all duties are ad valorem, which are based on negotiated prices prevailing between independent buyers and sellers under open market conditions at the time of import. That price includes freight, insurance, and all other costs incidental to the sale and delivery of goods to the buyer at the place of import. All imports from EC countries are exempt from import duties and no import licenses are required, provided the goods were either produced or originated in the EC or were cleared by customs of a member state (i.e., customs import duty was paid on them). No import duties are levied on goods originating in Greece (except steel products and coal) nor on goods from EC dominions (non-European territories of EC members), nor from Malaysia, nor from African countries associated with the EC (Yaounda Conference). An exception to the “free circulation principle” applies to certain agricultural products for which no common market yet exists.

Imports from non-EC countries come under the common external tariff.

An import licensing system is in effect for imports from countries whose trade is state controlled. Imports from Japan are subject to a small number of restrictions, some of which relate to cotton, porcelain, china, pottery, and rubber footwear. A number of imports from Hong Kong are also subject to special restrictions.

In certain cases, exemptions from import duties can be obtained for imports used in manufacturing other goods and for imports which are altered in some way and then exported outside of the EC. In addition, duty exemption can be obtained for certain goods imported temporarily (i.e., a machine purchased provisionally to see if it performs satisfactorily).

Storage in bond or in a bonded warehouse without paying duties and other taxes is also possible, see next page.

Excise Duties. Excise duties are imposed on varying bases on the manufacture and importation of the following goods:

Alcohol	Sugar
Wine	Tobacco
Beer	Mineral Oils (gasoline, fuel oil, petroleum, paraffin, and certain non-alcoholic drinks)

Exports. Exports are completely free, except for a few commodities and for products designated strategically important. Dutch exports enter other

EC countries duty-free provided "Common Market Certificates" are made out by the exporter and approved by Dutch custom authorities. For the purpose of these certificates, products are considered to originate in the exporting country if they have undergone processing in that country. Certificates are also issued for goods originating outside the Common Market on which Common Market customs formalities have been completed and Common Market external duties and levies have been paid; some products can be excluded from this privilege according to the procedure provided for in article 115 of the Treaty of Rome.

Dutch exports to other European countries (except where trade is state controlled), the U.S.A., Canada, and Japan have for the most part been liberalized, or are regulated in accordance with bilateral or multilateral agreements. In these countries, import and payment licenses, if any are needed, are granted for Dutch products within this framework. Quota arrangements exist with most state-controlled trade countries. In non-EC countries, Netherlands' exports enjoy the most-favored-nation rate of import duties in practically all cases.

TVA and Excise Taxes on Exports. The zero rate of TVA, see page 159, applies to exports, and exports are also free from excise taxes. If excise and/or value added taxes were paid during production in the Netherlands or on subsequent inland transactions, full refunds are granted when the goods are exported.

Value Added Tax and Excise Taxes on Imports. In addition to custom duties, imports into the Netherlands are subject to value added tax. The tax is imposed on the total value of the goods which includes transportation and any other Dutch taxes imposed. Value added tax on imports is at the same rates as those imposed on domestic goods, see page 159.

International Distribution Facilities. Instead of free trade zones or free ports, the Netherlands uses a flexible system of bonded warehouses and customs storage depots. An advantage of this system is that enterprises are not bound to a special site but can choose the most suitable location. Foreign companies often use such facilities before setting up their own establishments. Goods in transit or intended for reexport can be stored in the bonded warehouses or customs storage depots without having to pay customs duties or other taxes. Only those goods eventually released for

consumption in the Netherlands are subject to import duties, value added tax, and any excise taxes.

Transportation between warehouses and/or factories is also duty-free if special conditions and administrative formalities are fulfilled. Private companies may be engaged to handle transportation, storage, and processing of goods. This has advantages for new enterprises in that a permanent staff need not be employed until a later stage.

Customs Storage Depots. These are by far the most used for storing goods. The depots or sheds are designated locations in buildings, piers, and other places which the customs officials have found suitable. The sheds are officially locked and goods stored may not be manipulated but permission is usually granted for such operations as dividing packages, marking, cleaning, etc. Customs sheds are generally operated by municipalities, shipping companies, or forwarding agents. Space charges are moderate, and the operators are liable for lost goods. There is no extra charge for customs supervision.

Bonded Warehouses. Bonded warehouses may be publicly or privately operated. The public warehouses are storage places made available by public authorities, usually municipalities, and are available in the major port cities. Privately operated warehouses are mostly operated by private companies and are officially locked but not under official supervision. They generally provide more services than are performed by the public warehouses and they are available in major port areas and inland.

Some privately operated warehouses are merchant-controlled (fictief); others are factory. The merchant-controlled warehouse is set up by the entrepreneur himself and he must guarantee the payment of import duties and/or excise taxes, see page 27.

The factory warehouse is used for goods that require processing. It is set up as part of the factory building and is not sealed or under customs' supervision. The factory owner is required to deposit with the customs' authorities an amount equal to the duties and other taxes that may have to be paid.

Foreign businessmen usually find bonded warehouses useful. It is possible to store goods in bond for any length of time without payment of the customary duties and taxes, customs supervision is minimal, the bonded warehouse may be entered at any time during the normal working hours, and

the goods may be manipulated in almost any way as long as their identity is not changed.

Schiphol Airport has many bonded warehouses which are attractive if nearness to an air freight center is important.

Temporary Admission For Manufacturing. Holland has a flexible system under which goods can be imported for alteration to make them suitable for eventual export – without taxes and duties and without an official customs guard on the premises. Such free admission for manufacturing purposes can be obtained in either of two ways:

1. On condition that the goods are to be exported after processing and on payment of a security deposit (generally equal to the amount that would have to be paid for import duties and taxes on the imported components and materials normally present in the factory). The deposit is refunded proportionately as goods are exported. Goods sold in the home market become subject to all taxes as they are shipped.

2. By arranging with customs authorities to pay all the duties and taxes normally due on imports, and to obtain refunds on that portion of the goods which are exported after being processed. As the conditions for this type of admission have increased recently, its use has been declining.

ADVERTISING AND MARKETING RESEARCH

Advertising in Print. After recent mergers, there still are over 90 daily newspapers in the Netherlands, but most are small regional papers. Several newspaper chains offer full-country coverage with a single advertisement. Advertisements in newspapers and periodicals are the most-used medium for sales promotion. For technical goods, the best medium is a technical or professional journal.

Other Forms of Advertising. Other forms of advertising in use include movies (film shorts or slides), street advertising (posters, illuminated signs), and door-to-door advertising. Aircraft are often used as are taxicabs in some cities, and trains and stations.

Radio and television broadcasters in Holland do not permit companies to present their own programs as a vehicle for attracting attention to commercial messages. Advertising time can be purchased, but the advertisements are run in sequence at fixed intervals.

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TOUCHE ROSS

ADVERTISING AND MARKET RESEARCH

The International Industries Fair, which is held twice a year at Utrecht, provides opportunity for products to be presented to the public and to foreign buyers. Specialized shows are also held for particular kinds of products.

There are many private advertising agencies. A few semiofficial and some private companies engage in market research and analysis for private clients.

PRODUCT RESEARCH AND DEVELOPMENT

The leading concerns (Philips, Royal Dutch Shell, AKZO, DSM, and Unilever) account for about 75% of the total spending by enterprises on research. The government gives considerable financial support to research activities of the Central Organization for Applied Scientific Research (Toegepast Natuurwetenschappelijk Onderzoek, or TNO). This central organization coordinates the activities of four specialized research organizations.

The volume of research activity may be obtained from the following facts. TNO employs about 4,100 of whom 760 are scientists and engineers with advanced educational degrees and about 600 are engineers with bachelor degrees. Roughly two-thirds of TNO personnel is engaged in industrial research.

This organization works not only for the government, but is also available for sponsored or cooperative research for industrial firms. As TNO is a nonprofit organization, the normal charge for a sponsored research project is actual cost. The estimated agreed cost cannot be exceeded without the written consent of the sponsor. If a project requires less work than was estimated, charges are reduced accordingly. Advice and information by TNO institutes are provided free of charge where no research is involved. Several private institutes engage in testing of materials, and bill the companies at normal rates for work performed. Some other government and private laboratories engage in research and testing of materials:

KEMA (N.V. tot Keuring van Electrotechnische Materialen) – Testing electrical equipment.

Nationaal Lucht-en Ruimtevaart Laboratorium – National Aeronautical and Astronautical Research Institute.

Rontgen Technische Dienst – X-Ray Technical Service.

PATENTS, TRADEMARKS, COPYRIGHTS

Patents. The Netherlands is a signatory of the Paris Union Convention for the Protection of Industrial Property. Consequently, a patent application submitted in any signatory country (e.g., the United States) establishes a one-year priority in the Netherlands. Persons not domiciled in the Netherlands are required by law to submit their patent applications through a Dutch patent attorney.

Patents granted remain in force for 18 years from the date of grant. The patent applicant has seven years in which to request the novelty examination. If not requested, the application lapses. Compulsory licensing is possible three years after patent grant if the patent is not used adequately.

Annual fees are progressive, ranging from Dfl. 225 for the initial period to Dfl. 1,250 in the 18th year.

Patents are granted by the Patents Council (Octrooiraad, 6 Willen Witsenplein, The Hague). If requested, the Patents Council makes an extensive examination of the application for novelty at a cost of Dfl. 200. Under present regulations, a demand to rescind a patent for lack of originality can only be made in a separate action before the District Court of The Hague.

Trademarks. Since January 1, 1971, the Benelux Uniform Law on Trademarks has been in effect in Belgium, the Netherlands, and Luxembourg. Prior trademarks obtained in these countries will terminate unless such national trademarks are deposited at a Benelux trademark office before January 1, 1972. This deposit replaces the local deposits of the trademark in one or more Benelux countries, without prejudicing the titles obtained by such deposits. In case an individual trademark at January 1, 1971 is based on an international deposit outside the Benelux countries, the title will be maintained regardless of the above requirements. Title based on a collective trademark (if founded on an international deposit) will be maintained only if a regulation on the use and the supervision is submitted. These changes in protection available make it important to review all existing trademark rights in these countries.

The first registration of the Benelux-deposits do not have the usual validity period of 10 years, but are limited to from 1 to 10 years. This period expires in the month and on the day of the Benelux application for

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PATENTS TRADEMARKS COPYRIGHTS

registration, in the year whose date consists of the same figure as that of the year in which the right came into existence.

The law protects only trademarks for individual commodities, including three dimensional trademarks. In principle (but not at present), nonvisual and soundmarks also are covered. A family name may serve as a trademark, but other holders of the same name may use that name for purposes of identification, without giving it the appearance of a trademark. The Benelux-deposit of trademarks is performed either by the national government departments or by the Benelux-Trademark Bureau whose main office is in The Hague with branches in Brussels and Luxembourg. International applications for registration are governed by the provisions of the Agreement of Madrid.

Designs. Generally speaking, designs and drawings are not protected. However, it is possible to obtain protection on the grounds of the Copyright Act, where designs, etc. which comply with certain artistic considerations are involved.

Trade Names. The provisions of the Trade Names Act protect the name under which a business is conducted. These provisions are designed to prevent using a trade name to mislead the public as to the ownership or legal form under which a business is conducted.

In a preliminary stage of forming an N.V. or B.V., an investigation is made to check whether the proposed name is the same or similar to an existing name, see page 86.

FINANCIAL AND CREDIT INSTITUTIONS

The Central Bank. The Netherlands Bank (main office in Amsterdam) is the sole bank of currency issue, and the regulator of the credit system. The Bank is charged with limiting credit expansion to that required by growth in the national product, and with maintaining as stable a price level as possible. The law authorizes the Bank, under certain conditions, to set minimum liquidities in proportion to demand deposits for private banks. Commercial banks are the major credit grantors, but their interest rates are influenced by the discount rates of the Netherlands Bank. The Bank intervenes in the money market to ease tight periods by making cash purchases of dollars, usually in combination with simultaneous forward sales. The Bank is the

licensing authority for foreign exchange transactions, establishes the rates of exchange, and supervises the issuance of new securities.

The National Investment Bank (Nationale Investeringsbank). This Bank, whose shares are owned by the Dutch government and a number of large banks, grants long-term interest bearing loans. Its offshoot, Netherlands Participation Company (Nederlandse Participatie Maatschappij), was formed by the Investment Bank and a number of institutional investors and banks to provide risk capital.

The Giro System. Personal checks are not widely used in the Netherlands; transfer services (Giro) are widely used by government, business, and individuals. The postal service operates a widely used system which is efficiently run by computers. Each depositor receives a numbered account and a book of preprinted transfer forms similar to a checkbook in appearance. The transfer form is not a negotiable instrument so the only consequence of its loss is nonexecution of the transfer. Whenever the balance in an account changes, the depositor receives a new statement giving full details of the deposit or withdrawal. No postage is required for any transactions and no charges are imposed; the depositor receives a small interest fee for maintaining a balance in the account.

Dutch commercial banks jointly provide a betaalcheque system which uses forms similar to checks although not negotiable and which are guaranteed by the bank for Dfl. 100 each.

These forms of payment are effected immediately by the banks and post office. There is no time lost in check-clearing operations. The efficiency of these systems has reduced the need for the use of credit cards.

Private Banks. Banks in the Netherlands enjoy an excellent reputation and have a large network of branches spread over the country. Some of the largest private banks are:

Algemene Bank Nederland
Amsterdam-Rotterdam Bank
Boerenleenbank-combination (Agricultural Bank)
Nederlandse Middenstandsbank (Middle Class Bank)
Nederlandse Crediet Bank

A number of foreign banks have offices in the Netherlands, including the Bank of America, the Continental Bank, the First National City Bank, the

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FINANCIAL AND CREDIT INSTITUTIONS

Banque de Paris et des Pays-Bas, the Lloyds Bank. Most Dutch banks have correspondent banks in other countries.

OTHER TYPES OF FINANCING

Short-Term Credit. Overdraft facilities are the usual form of short-term financing. The customer is allowed to overdraw his account up to a fixed limit. Interest is charged only on the credit actually used. Private banks normally charge interest of 1 to 1.5% above the rate for promissory notes required by the Netherlands Bank. An availability commission may be charged, and a turnover commission also may be applicable. The total of interest and commissions may exceed 10% per year of the overdraft. Collateral security is normally required. This may consist of: a guarantee by the foreign parent company, a second mortgage on real estate and buildings, or transfer of title to assets while possession and use remain with the borrower.

Bank Guarantees. For a commission, the bank will guarantee an obligation of its customers. A specialized company operating in this field is the National Guarantee Company (Nationale Borg Maatschappij).

Hire-Purchase. Equipment, machinery, automobiles, and trucks may be financed by hire-purchase agreements which are considered equivalent to leasing. Several companies specializing in this field are owned by banks.

Factoring. Accounts receivable may be transferred to a factoring company for collection. The factors may advance, for example, 60% of the nominal amount of the accounts receivable, and the remaining 40% (less charges) is paid on collection.

Leasing. Financial as well as operational leases may be used to acquire buildings, installations, equipment, and cars. Leasing is considered expensive, and banks as well as their customers usually prefer alternatives. The form of the leasing may affect the deduction for depreciation and the refund of value added tax by the lessee. Careful comparison of these tax aspects with those resulting from normal purchase or the hire-purchase system is very important.

Financing of Exports. Most export financing is provided by commercial banks. The availability of financing of exports often depends on the availability of insurance to cover the credit risks of exporters, see next page.

When a transaction cannot be financed by a commercial bank, it is often possible to bring the Export Finance Company (Export Financiering Maatschappij) into the picture. This company was formed by the National Investment Bank and a number of private banks.

Another source of export financing is an international group consisting of installment credit companies in various countries which have joined together to finance transactions. The group concentrates on capital goods and certain durable consumer goods. In essence, the financing is extended by an installment credit company in the importer's own country, which saves the exporter the bother and risk of export financing.

Customarily, the financing methods outlined above are obtained with the aid of a domestic commercial bank.

Development Loans. The Ministry of Economic Affairs is authorized to grant loans to further technical developments which enable enterprises to produce new products or to apply new techniques derived from research. A special arrangement makes it possible for the debt to be canceled in certain cases and after a certain time if the project fails.

INSURING EXPORTERS' CREDIT RISKS

Exporters cannot obtain insurance against export risks directly from the Dutch government. However, such insurance is available since 1932 from one private insurance company that is authorized to reinsure with the government — Netherlands Credit Insurance Co., Ltd. (Nederlandse Credietverzekering Maatschappij N.V.), located in Amsterdam. The usual insurance agreement requires the exporter to bear part of the risk.

The risks covered are very wide. The normal risk is the failure of the exporter to receive in the Netherlands full or partial payment in guilders for goods shipped. This coverage applies to all losses caused by the buyer's insolvency and, where possible, may be extended to include political, transfer, exchange, and calamity risks. The exporter's share of the loss varies with the type of risk and amount of loss, and usually is between 10% and 25%. The premiums charged are based on the merits of each case.

The two main types of insurance coverage are:

1. *Turnover Insurance.* In principle, this type of insurance covers all

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INSURING EXPORTERS CREDIT RISKS

foreign buyers to whom the exporter provides short-term credit. In special cases, turnover insurance can be limited to importers in one country or a group of countries, or to specific sectors. Premiums for turnover insurance may be considerably less than for special insurance.

2. *Special Insurance.* This type of insurance covers transactions with one or more specific customers.

All applications for export credit insurance are screened by N.C.M. to weed out bad risks. Insurance is available for contracts involving large amounts for capital goods or construction projects.

POSTWAR INVESTMENT EXPERIENCE

Figures compiled by the Ministry of Economic Affairs indicate the number of foreign manufacturing plants (not marketing subsidiaries) in the Netherlands by country of origin and sector of industry. The following includes all firms which had set up or announced plans to do so between 1945 and December 31, 1970.

Country of Origin	Subsidiaries	In Conjunction with Dutch Firms	Total
United States	287	97	384
United Kingdom	106	73	179
E.C.M. Countries ^x	156	103	259
Other Countries ^o	128	79	207
	<u>677</u>	<u>352</u>	<u>1,029</u>

x – Western Germany, France and Belgium

o – Mainly from Sweden and Switzerland

By Industrial Sector	Subsidiaries	In Conjunction with Dutch Firms	Total
Metallurgical	264	123	387
Chemicals	128	43	171
Electrical engineering	62	9	71
Textiles	49	48	97
Food, drink, tobacco	45	28	73
Miscellaneous	129	101	230
	<u>677</u>	<u>352</u>	<u>1,029</u>

The Dutch have made large investments in other countries. Total Dutch foreign direct investment in the U.S.A. (1.96 billion dollars at the end of 1969) was exceeded only by the U.K. and Canada.

GENERAL BUSINESS REGULATIONS

Business Concentrations. The Treaty of Rome which initiated the European Common Market contains two articles (85 and 86) which bear on the subject of business concentrations. As a member of the Common Market, the Netherlands is subject to these provisions and to any implementing legislation.

At the request of the Minister of Economic and Social Affairs, the Social and Economic Council (Sociaal-Economische Raad), called SER, has drawn up the Fusiegedragsregels 1971 which contain detailed rules of conduct to be observed when mergers are contemplated and/or consummated. These rules, which apply when a public offer for the shares of a Dutch N.V. is made by another Dutch N.V. and in actual mergers, are designed to protect the interests of shareholders and of employees and should be reviewed prior to any contemplation of a merger.

Price Controls. The government has substantial powers to control prices, especially in inflationary surges. These powers have been exercised on occasion.

Use of Sales Premiums. The Law "Beperking Cadeaustelsel" restricts the use of presents, premiums, or similar offerings as sales incentives. The restrictions do not apply to small gifts of minor value, to gifts at certain times according to general or local custom, nor to premiums in the form of the goods which belong to the normal commodities of the business involved.

Other Regulations. As in all developed countries, the Netherlands has a number of laws to protect the public health and purse, see page 43.

INSURANCE

During construction and later during operations, the usual business risks may be covered by insurance. The following summarizes only the common types of insurance available in the Netherlands.

Premises and Plant Under Construction. A Contractors' All Risks and Public Liability policy is the most common type of insurance during construction.

Fire Insurance. The Dutch Industrial Fire Tariff, which is adhered to by almost all insurance companies, applies to nearly all industries. The premium depends on the type of construction, the layout of the premises, the manufacturing process, and the availability of fire extinguishers. The usual fire insurance policy also covers lightning, explosion, and aircraft damage. It can be extended to cover storm damage, water damage, burglary, and other perils.

Consequential Loss Insurance. This policy covers wages, standing charges, and loss of profit resulting from business interruption caused by a fire, but only for an agreed period (for example, 26, 52, or 78 weeks). The premium is based on the rate for fire insurance.

Machinery Breakdown. This insurance covers losses resulting from business interruption due to the breakdown of vital equipment.

Employers' Public and Products Liability. This insures enterprises against damages arising from acts of employees, or on account of product faults, etc. As claims for indemnification have been increasing, more enterprises are obtaining such insurance.

Motor Vehicles and Trucks. Third Party motor insurance is compulsory. It covers any one accident for bodily injury and property damage, including liability to passengers, to a legal minimum. Usually, higher limits are obtained for a small additional premium. Material damage to the cars, including fire and theft, can also be covered. Discounts on premiums are granted for safe driving and for fleets. It is also possible to insure against injury to occupants.

Fidelity Bond and Cash in Transit. The premium depends on the risks involved, the policy limits, and the conditions required.

Goods in Transit. Imports and exports are insured against loss by a policy in which the premium is computed on the basis of quarterly declarations of shipments prepared by the insured. Storage risks can be included. Goods transported only within Holland are usually insured against loss by a prepaid policy, with annual premium adjustments.

Other Forms of Insurance. There are special policies for the insurance of automated machinery, computers, illuminated advertising signs, valuables, and so on. Where persons are involved, personal accident and medical and hospital expenses may be insured as well as pensions, insofar as they are not already covered by compulsory insurance.

CHAPTER III

LABOR CONDITIONS

PERMITS AND VISAS

WORKING CONDITIONS

COMPENSATION OF EMPLOYEES

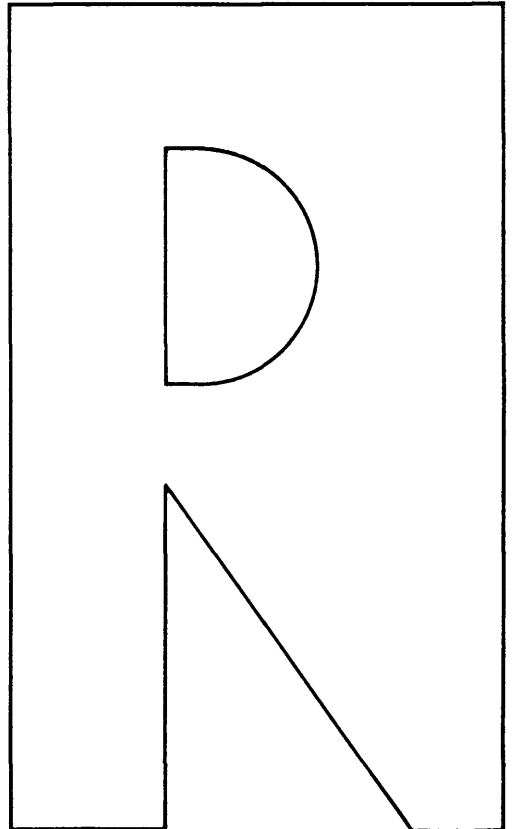
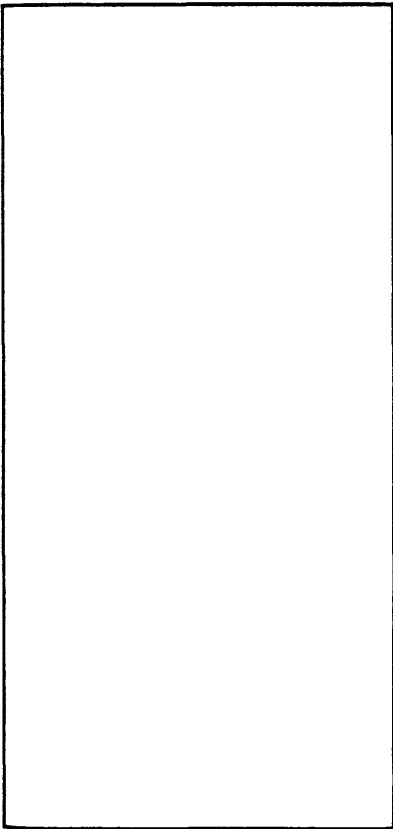
CONTRACTS OF EMPLOYMENT

HOLIDAYS

WORKS COUNCIL

LABOR MANAGEMENT RELATIONS

SOCIAL SECURITY SYSTEM



LABOR CONDITIONS

The population of the Netherlands has passed 13 million. Because of a relatively high birth-rate, the annual addition to the labor force is rather large. Expressed in man-years, the growth in the last ten years has been from about 4.1 million to about 4.7 million. Nevertheless, unemployment is very low (usually under 100,000) and some 80,000 workers from abroad (mainly Turkey, Morocco, Spain and Yugoslavia) are employed in the Netherlands.

About 94% of eligible males between 15 and 65 are gainfully employed, compared with only about 30% of females of the same ages. Some change in attitudes about the desirability of female employment is increasing the number of employed married women. Nevertheless, married women under 50 still constitute a hidden labor reserve.

Recruitment of Workers. In general, employees are hired through advertisements in newspapers and periodicals, through private employment agencies, and through the official labor offices, which are found throughout the country and whose services are free. Unemployed workers must register with these offices to collect their unemployment insurance or unemployment allowance. Under certain conditions the employment service helps unemployed workers to move to obtain employment by reimbursing the new employer for moving expenses.

New enterprises in the Netherlands may apply to one of the following offices for assistance in labor and recruitment:

1. Government employment service of the Ministry of Social Affairs and Public Health, Zeestraat 73, The Hague.
2. Any regional labor office in a provincial capital.
3. Any of the district labor offices.

Treatment of Foreign Nationals. In principle, foreign nationals receive the same treatment as Netherlands nationals. The Dutch social security system covers all employees working in the Netherlands. By special arrangement, nationals of other EC countries receive social insurance benefits similar to those available in their home countries.

PERMITS AND VISAS

Dutch hospitality to foreigners is evidenced by the ease with which visas

and residence and work permits may be obtained. Citizens of most countries, including the U.S.A., do not require a visa to enter the Netherlands although citizens of some countries must obtain visas. Some visas contain the requirement that their holders report to the local police within 48 hours of arrival in the Netherlands and this must be observed.

Residence Permits. Those planning to stay three or more months require an authorization for provisional stay (*Machtiging Voorlopig Verblijf*) which is obtained from a Netherlands embassy or consulate in the country of origin. Such provisional authorization is not required of residents of EC countries, nor for European Free Trade Association countries except for Austria and Portugal, nor for Eire, Indonesia, and the U.S.A.

On arrival in the Netherlands, foreigners who wish to stay longer than three months must file within eight days of arrival for a residence permit. This can be obtained, with little difficulty, from the police department of the municipality in which residence is intended. Holders of the residence permit are regarded as residents and become subject to tax and customs regulations.

Work Permits. Both foreign managers and other employees from non-EC countries must obtain a work permit from the government labor office before they are allowed to work in the Netherlands. In principle, the permit is granted if an equally suited person of Dutch nationality is not available for the position. In practice, skilled foreign workers are nearly always granted permits.

Work permits are normally issued for one year and are renewable. A new permit is required for each change of occupation or employer. Prospective employers of foreign nationals can submit applications for work permits to the regional labor offices.

WORKING CONDITIONS

Civil law dealing with labor agreements is based on the principle of freedom of contract. Since the Second World War, the government has exercised a certain amount of control over the dismissal and resignation of personnel, including the protection of employees from arbitrary dismissal. Other working conditions are sometimes specified in the law, but generally these laws set minimum requirements and current collective bargaining

agreements tend to be more favorable for employees than these minimums.

Hours of Work. The usual work week is five days. Average working hours range from 40 hours in offices to 45 hours in industry. In many sectors of industry, the working week is 43¾ hours. In transportation, the working week is 5 to 10 hours longer. The Labor Act (*Arbeidswet*) regulates such matters as maximum working hours, rest periods, free half-day and weekly full day of rest, overtime for male workers, and working hours as well as overtime for women and persons under 16.

Overtime. In most industries, extra compensation for overtime is made on the following basis:

1. At least 25% of the hourly wage for the first two hours immediately before or after the normal working hours.
2. At least 50% of the hourly wage for all other hours except those mentioned under item 3.
3. At least 100% of the hourly wage for work on Sundays or holidays.

The Shift System. Plants that operate on more than one shift are usually on what is known as the shift system. In this system, employees move from one shift to another on a rotating basis. The change in shift may be weekly, monthly, or some other interval. But, whatever the interval, all employees work on all the shifts in systematic rotation. As a general rule, employees who are on the shift system receive a wage premium which varies from 10% to 15%.

Persons under 18 are not allowed to work on the shift system and females may only work between 5.00 a.m. and 11.00 p.m. All employees on a 2-shift system must have a rest period of at least 7 hours between 10.00 p.m. and 6.00 a.m. on two consecutive days. Women who manage a household are, in certain circumstances, forbidden to work on a 2-shift system.

Health Legislation. The Labor Act, already mentioned, also contains restrictions on work considered dangerous, particularly for women and younger persons. The Safety Act (*Veiligheidswet*) also has a number of safety regulations and provisions concerning health and industrial hygiene, both for labor in general and for specific industries. Enterprises employing at least 750 persons must provide medical care service by a physician. This also applies to industries processing lead, and others designated by the district manager of the labor inspection office as handling dangerous materials even

if less than 750 are employed. Other health legislation includes the Silicose Act, the Caisson Act, the Stevedores Act, and the Stone Cutters Act. The Driving Time Act (Rijtijdenwet) limits the number of successive hours that truckers may drive their vehicles.

COMPENSATION OF EMPLOYEES

Wages in most industries are set by collective bargaining agreements which may apply to an entire industry or a single plant and which vary with the industry and the degree of skill required.

Wages in Holland have climbed faster, particularly since 1964, than in other Common Market countries. However, since wages in Holland were quite low, the recent spurt has not pulled them above the average of the other countries. The statistics are for average wages of men, women, and young manual workers.

Average gross hourly wage – October, 1970	Dfl. 4.82
Average percent for social charges	51.3%
Average labor costs – October, 1970	Dfl. 7.29

Extra Compensation. Employers frequently pay what is called “thirteenth month” (or more) as extra compensation. In a few cases, such extra compensation is paid in two parts: the first part is paid just before the vacation season and the other around Christmas. Manual workers also may earn premiums or bonuses based upon productivity, attendance, and other factors which contribute to productivity or a good working climate.

Minimum Wage. Since July 1, 1971, the statutory minimum wage has been Dfl. 177.90 per week for able-bodied workers 24 or older. This minimum wage rises in accordance with an index that takes into account both the trend of wages and the cost of living.

Guaranteed Wage. An employee is entitled to his regular wage for normal working hours if he is unable to work because of matters beyond his control such as a technical breakdown in the plant or sickness or other personal circumstances of the employer.

Indemnities for Plant Closings. When plants are shut down permanently, no statutory regulations entitle employees to indemnities because of the breaking of their employment contracts for an unlimited term by the employer. Usually, arrangements are negotiated between the labor union and

the employer. Sometimes these negotiations favor employees as, for example, when a plant closing is due to a merger (the SER merger rules provide for such negotiations). When the closing of a factory is caused by bankruptcy, the negotiated results may be less favorable. The Ministry of Social Affairs and Public Health is aware of the consequences of this situation for employees and, as a first step, has announced a guarantee to safeguard the payment of premiums due on employee pension plans.

Vacation Entitlements. Workers over 18 are entitled to a vacation of at least two work weeks, and workers under 18 to at least three work weeks. However, many labor agreements provide extra vacation days for young employees and those with long service. The extra vacation days for young employees (depending on age) are usually three or four, and from one to five days for older employees and those with long service. These are minimum entitlements which employers may exceed.

Vacation Pay. Employees receive their normal pay during vacations plus an additional vacation allowance. In most cases, the vacation allowance does not exceed three weeks' earnings. For each month of employment during the year, the employee earns one-twelfth of his vacation allowance, and this is paid to him at the beginning of the consecutive vacation period.

In certain industries (for example, construction) the employees receive vacation coupons weekly or monthly. Just before the vacation period, normally the same for the entire industry, the coupons are converted into money.

CONTRACTS OF EMPLOYMENT

In common with labor law in many countries, the hiring and firing of employees in the Netherlands are controlled to prevent arbitrary unjustified dismissals, and to require minimum periods of notice – both for dismissal of, or resignation by, employees.

These ends are accomplished by means of employment contracts. The contracts may be written, or may be a verbal implied agreement. In either case, the contracts cannot contain provisions less than those prescribed by law, which are discussed below.

Types of Employment Contracts. Contracts of employment with individuals are of two general types:

1. Contract for an unlimited term, which is the usual type.

2. Contract for a specific term, or for a trial period with a maximum duration of two months. During a trial period, either the employer or employee may terminate the contract at will. A trial period longer than two months is not allowed, nor may another contract be entered into which would have the effect of lengthening the trial period to longer than two months.

Termination of Employment. Employment may be terminated at any time by mutual agreement between employee and employer, with due observance of legal procedures. In the absence of mutual agreement, the approval of the director of the regional labor office is required.

In practice, most terminations do not cause serious difficulties. Immediate termination of the employment contract is possible in the event of serious misconduct or neglect of duty. Nevertheless, before deciding on any form of dismissal, it is always advisable to consult the director of the regional labor office.

Some of the statutory provisions governing the required notice period in terminations of employment are discussed in the following paragraphs. The term of notice must at least be the time which normally elapses between successive wage payments. A longer term may be fixed by written contract or by regulations provided the maximum term does not exceed six months and is the same for the employer as for the employee. Any arrangement made for the benefit of one of the parties holds good for the other. As a general rule the employer must give notice of as many weeks as the contract has run in full years after the employee has reached 21. The general rule for notice by employees is at least as many weeks as the contract has run in periods of *two* full years since he reached 21. In any case, the term of regular notice need not be longer than 13 weeks for the employer and, for the employee, one half of the notice period required of the employer. In addition, the term of notice by the employer is extended by one week for each full year an employee has been employed after his 45th birthday; the duration of this extension is similarly limited to 13 weeks. As another minimum requirement, workers who have reached 50 and have been employed for at least one year on the date they receive notice of termination must be given at least 3 weeks' notice.

The preceding rules can be changed only by a labor agreement or

regulation issued by a competent public body. However, the maximum terms can be extended by written agreement or regulation, provided that the notice required of workers is not longer than six months, and that required of employers is still at least twice that required of employees. There is no basis in the law for the substitution of pay in lieu of the notice period, but a mutual agreement about this is sometimes possible.

Whenever either party, whether or not the above provisions have been observed, terminates a contract without good reason, a court can indemnify the injured party. Terminations by the employer may be deemed obviously unreasonable;

1. When no reason or a false reason is given.

2. When, with due regard to the provisions made for the worker and his opportunities for finding suitable employment, the consequences of the termination are too serious for him as compared with the employer's interest.

3. When it contravenes a valid seniority rule, unless there are overpowering reasons for the termination.

Termination of contracts by the worker may be deemed obviously unreasonable:

1. When no reason or a false reason is given.

2. When the harm to the employer is too serious compared to the worker's interest.

The following provisions are also important. Any stipulation that permits one party to decide whether the contract has been terminated without good reason is not valid. An employer cannot give notice of termination when the worker is unable to work because of illness, unless the illness has lasted at least two years. The employer cannot give notice of termination when an employee over 21 is prevented from doing his assigned work because of an obligation imposed by law or in connection with national defense or the maintenance of public order, unless the employee adopts military or other public service as a career. This also applies to a worker who is under 21 if his employment contract had been in existence for at least one year at the time he was prevented from doing his work for the above reasons.

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HOLIDAYS

HOLIDAYS

Employees are normally entitled to the following legal holidays:

January 1	New Year's Day
March/April (varies)	Easter Monday
April 30	Queen's Birthday
May (varies)	Ascension Day
May/June (varies)	Whitmonday
December 25	Christmas Day
December 26	Boxing Day

Additional holidays are sometimes given on:

March (varies)	Good Friday
May 5 (once in 5 years)	Liberation Day
December 5 (Partial holiday)	Saint Nicholas Day
December 31 (Partial holiday)	New Year's Eve

When days off must be taken for personal reasons, the law requires employees to be reimbursed for time off within certain limits of which the following are examples:

- Death of a spouse – 4 days
- Marriage of the employee, death of a parent or child – 2 days
- 25th and 40th wedding anniversary, marriage of a child – 1 day
- Birth of a child – 1 or 2 days
- Voting, inspection for military service – 2 hours

WORKS COUNCIL (ONDERNEMINGSRAAD)

The April 1, 1971 Works Council Law has replaced the old Employees Council Act of 1950 which was not very effective. The objectives of the law are to promote mutual understanding between management and employees, and to foster employees' participation by requiring enterprises that employ at least 100 persons to establish a works council of which the managing director or his designated representative will be president. If an enterprise has branches in several municipalities, each branch is considered a separate enterprise for the purpose of determining the number of employees, but all branches within one municipality are considered jointly. The works council

must consist of at least 7 members (including the president), and gradually increases to a maximum of 25 members when employment reaches 7,000.

In certain cases, an enterprise employing between 25 and 100 persons may desire to institute a works council. The SER (see page 52) is authorized to allow a works council in such cases if the employer and a sufficient number of employees request one.

Members of the works council, other than the president, must be employed in the enterprise. The candidates for membership in the works council are submitted by labor unions. Nonunion workers also may nominate a person by obtaining at least 30 supporting signatures. Nominees must be persons over 21 who have been employed in the enterprise at least three years.

The election to the works council is by secret, written ballot. Voting is restricted to persons over 18 who have been employed in the enterprise for at least one year. Normally the terms of persons elected to the works council expire simultaneously every two years but the members are eligible for reelection. The works council has the option of changing the term to three years, and may set its own rules with regard to eligibility for reelection. In general, the council is expected to adopt its own bylaws to regulate its working methods, but these require the approval of the Business Sector Committee.

As a safeguard against intimidation by employers, a nominee for the works council or a member of the council within the last two years can only be dismissed with the consent of the Magistrate Court, in the absence of any particularly compelling reason for dismissal.

The works council is required by law to meet at least six times a year. The cost of meetings – held during working hours to the extent possible – including committee meetings, time for deliberation, consultation with experts, and training are borne by the employer.

Certain general matters must be discussed at least twice yearly, including the financial statements. Employers required to publish statements, see page 112, must supply them to the works council for discussion. If the employer is not obligated to publish financial statements, he must supply a balance sheet

LABOR CONDITIONS

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WORKS COUNCIL

after allocation of profits, as well as an explanatory note listing for the current year and the prior year:

Debit Side	Credit Side
Total fixed assets	Own capital (equity)
Total other long-term commitments	Total of provisions
Total liquid assets	Total long-term outside capital
	Total short-term outside capital

In addition, the net profit prior to allocation (or the net loss) must be stated. In the case of a controlled group, relevant data from the consolidated annual accounts may be substituted for the above. An escape clause provides that “less disclosing information” may be supplied if full disclosure may damage the personal income or company interests or net wealth of the entrepreneur.

Functions of the Works Council. The entrepreneur is required to obtain the advice of the works council prior to deciding such important matters as: transfers of control, terminations or important expansions or contractions of activities, important changes in the organization, change in location, and entering or terminating long-term joint ventures. In discussing these matters in an N.V. or B.V. that has a board of supervisory directors, the works council may request the supervisory directors to be present. The entrepreneur is expected to disclose the motivation for the decision, the consequences for the employees insofar as he can determine them, and how he expects to deal with those consequences. The works council must be asked for advice on how these decisions should be carried out, except where material reasons exist for not requesting such advice. In such cases, the works council must be informed about these material reasons *after* the final decisions have been made.

In regard to the following matters, the advice of the works council must always be obtained:

- Incentive pay and other regulations involving compensation
- Training policies
- Procedures for evaluation of personnel
- Policies on hiring, firing, and promotion
- Social aids supplied to employees and their families by the company

Matters dealt with in collective bargaining agreements need not be referred to or discussed with the works council.

Certain matters require *prior* approval by the works council. These include changes in the general working rules of the company, regulations on working hours and holidays, employer plans (such as pensions, profit sharing, and savings) and the areas of safety, sanitation, and hygiene. In these areas, no changes can be made without approval of the works council. The employer has only one avenue of appeal should the works council withhold its approval. He may present his case to the Business Sector Committee which represents both employers and employees in his industry. If this Committee does not agree with the employer, his proposal may not be carried out.

Evaluation of the Works Council. It is apparent that the provisions of the law setting up works councils has some contradictory elements, which may be ironed out in practice. After Germany, Holland is the second free-enterprise economy to provide for some form of labor participation in management. Where Germany has provided for direct participation of labor in management (one-third of the board of directors consists of representatives of labor), Holland has chosen to set up councils which have mainly advisory roles in certain areas of management and no direct participation in overall company operations. Although the two approaches differ, it is probable that before the final results of these approaches have been gathered, other countries will have moved in similar directions.

LABOR MANAGEMENT RELATIONS

Labor Unions. A special aspect of Dutch unionism is that three unions coexist; namely, a Protestant, a Roman Catholic, and a nondenominational union. This situation evolved because of the historical view in religious circles that labor is inseparable from the workers' total conception of life. The Protestant unions are affiliated with the Federation of Christian National Workers' Union (C.N.V.), the Roman Catholic unions with the Federation of Netherlands Catholic Trade Unions (N.K.V.), and the nondenominational unions with the Netherlands Federation of Trade Unions (N.V.V.). In addition, there are a few independent workers' organizations. On January 1, 1971 total union membership was about 1,580,000, which constitutes some 33% of the economically active population, as follows:

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LABOR MANAGEMENT RELATIONS

N.V.V.	610,000
N.K.V.	402,000
C.N.V.	238,000
Others	330,000

Most unions are organized on an industry-wide basis. Dutch trade union leaders evidence concern about their country's economic problems, and take into account general national aims in negotiating with employers. Consequently, strikes have not been the primary means of achieving their goals, and the number of strikes in recent decades has been remarkably small. There were only 8 strikes in 1967, 11 in 1968, and 28 in 1969. This is not because there is no conflict in labor-management relations, but so far the conflict has been settled at the negotiating table rather than on the picket lines.

Union membership is not compulsory in the Netherlands. The printing and allied industries is an exception as, under its collective labor agreement, only union members may be employed.

Employers' Associations. There are two federal associations of employers: The Union of Netherlands Enterprises, and the Federation of Catholic and Protestant Employers' Unions. In addition, there are three organizations for medium and small-scale businesses and three for agriculture.

The Foundation of Labor. Since 1945, the three labor unions and the employers' associations have joined in the Foundation of Labor to organize joint consultations and, where necessary, negotiations at a representative level between labor and management on the general lines of wage policy and similar issues. This cooperation within the Foundation of Labor has contributed to the Netherlands' relative labor peace.

Social and Economic Council (SER). The Social and Economic Council is an important institution which was organized by the Industrial Organization Act of January 27, 1950. The SER consists of 45 members of whom 15 are elected by the employers' associations, 15 are elected by the labor unions, and 15 independent experts are appointed by the government.

The SER is economically independent of the government in that its income is obtained by levying small annual contributions on all enterprises, see page 82. The provisions of its enabling act require the government to seek the advice of the SER on major social and economic problems,

including the introduction of new legislation. It also has a variety of legal functions entrusted to it.

Collective Bargaining Agreements. Agreements on wages and other working conditions are usually arrived at by bargaining between the employers' associations and labor unions. These parties often negotiate contracts for an entire industry, but sometimes for only one company. Although employers' associations may not represent all employers in an industry, and labor unions may represent only a minority of the workers, their agreements are usually imposed on an entire industry by the Minister of Social Affairs and Public Health who has legal authority to do so. Most agreements run for one year but in some important industries two and three year agreements are common.

Agreement on Wages Policy. Since 1967, there has been a standing agreement between the government and the Foundation of Labor on a free wage policy. By law, the Minister of Social Affairs and Public Health has the right, by virtue of his responsibility for the general welfare, to intervene in labor negotiations or to freeze wages for a certain period. The Minister recently used this authority to freeze wages in one industry, but this action caused some strains, particularly within the Foundation of Labor. As a result, the SER has unanimously advised the government to void his right to intervene in labor agreements.

The Role of the Courts. Upon written request, disputes over labor agreements may be brought before Cantonal Courts, see page 7. These courts usually handle cases that involve less than a fixed amount of money, but labor disputes will be handled regardless of the amount involved. Their role in labor matters is important because cases in Cantonal Courts are heard and decided more quickly than in higher courts.

The written request to the court to handle a labor dispute is made to that court in which the opposing parties are domiciled, or in which the work covered by the labor agreement is performed.

Regulation of Pension Funds. The government supervises private pensions in business firms by means of the Pension and Savings Fund Law. This Law requires an employer who has made written promises of pensions to persons employed in an enterprise to do one of the following:

1. Join an industrial pension fund operating in his sector of industry.

LABOR CONDITIONS

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LABOR MANAGEMENT RELATIONS

2. Set up a company pension fund which must operate according to the Law.

3. Conclude a pension insurance agreement (or life annuity agreement) with a life insurance company.

For alternatives one and two, the Law contains provisions for a sound financial and actuarial structure of the funds, and for their regular supervision. In addition, certain pension claims of employee-participants in these funds must be guaranteed. Among other things, an employee whose participation in the pension plan is terminated by other than death, prior to the age at which he would be entitled to a pension, must receive a minimum amount. Also, the repurchase of pension rights is prohibited.

For alternative three, agreements with an insurance company must conform to those general requirements of the Law which have as their primary purpose the guaranteeing of the claims of pensioners. Also, the repurchase of pension rights from insurance companies is prohibited.

Under the Law Relating to Obligatory Participation in an Industrial Pension Fund, the Minister of Social Affairs and Public Health may require all groups employed in a sector of industry to participate in an industrial pension fund, but only upon the request of a delegation from that industry which is sufficiently representative, in the opinion of the Minister. Since the Law was enacted, participation in industrial pension funds has been required in a considerable number of sectors.

SOCIAL SECURITY SYSTEM

The Dutch system of social security is extensive, complex, and compulsory. It consists of many acts, each of which requires different rates of contributions and provide different benefits. The acts are listed below, together with the initials popularly used in referring to them. The second column indicates whether the contributions are paid to the tax collector or to the particular industrial association (bedrijfsverenigingen) which administers the act:

Name of Act	Paid To
	A = Tax Collector
	B = Industrial Association
General Old Age Pensions (AOW) and General Widows' and Orphans' Pensions (AWW)	A
General Family Allowance (AKW)	A
Excessive Medical Expenses (AWBZ)	A
Family Allowances for Employees (KWL)	A
Health Insurance (ZW)	B
Working Incapacity (WAO)	B
Free Medical Care (ZFW)	B
Unemployment Insurance (WW)	B

Registration Requirements. Every employer of one or more persons must apply to the industrial association of their business sector to obtain a social security registration number. If the first person employed is the managing director, he is considered an employee for social security purposes.

The industrial associations submit bills for contributions based on estimated yearly payrolls. Summary wage sheets which show actual earnings must be submitted for each employee in the month of January or within 14 days after a company ceases operations, and any adjustments are made at that time.

In the case of contributions paid to the tax collectors, a separate registration number is issued by the tax collectors' office and is used for payments of contributions and withholdings on account of income tax.

Who Are Employees. All employees of an enterprise are covered by the social security programs known by the initials ZW, WW, WAO, and ZFW for which both employers and employees pay contributions. For this purpose, managing directors of N.V.s and B.V.s are considered employees even if they own shares in the enterprise. Children over 16 who work in their parents' enterprise are also considered employees for social security purposes, unless they are working under conditions which would categorize them as self-employed.

Exclusions from Gross Payroll. Contributions are payable under the four acts mentioned in the above paragraph on what is defined as gross payroll. The following are the more important types of remuneration not considered part of gross payroll for this purpose:

1. Employers' contributions for pension plans and social benefits per se.
2. Benefits for which no labor was performed (for example, sick pay).
3. Employers' contributions to employee saving plans up to Dfl. 500 per calendar year.
4. Reimbursements for necessary work-connected costs.
5. Reimbursements for the cost of pursuing a course of study.
6. Allowances for travel, within fixed limits.
7. Benefits paid on special occasions such as marriage or other celebration, within fixed limits.
8. Gifts on birthdays, holidays, etc. up to a value per gift of Dfl. 25.

In the following pages, each of the social security programs will be described in detail. Keep in mind that the contribution rates and the maximum incomes on which contributions are payable are frequently increased. Those noted here were in effect during the period beginning January 1, 1972.

General Old Age, Widows' and Orphans' Pensions Acts. These Acts relating to pensions apply to all employees who are resident in the Netherlands and are between 15 and 65. They also apply to nonresident employees in the Netherlands of a resident employer, or of a nonresident employer who has a permanent establishment.

Annual contributions of 11.9% of wages are paid entirely by employees on the first Dfl. 21,150 of wages so that the maximum annual contribution is Dfl. 2,516.85. Employers must withhold employees' contributions; contributions of the self-employed are paid on the basis of assessments issued by tax inspectors.

Employees' pensions start the first day of the month in which the insured reaches 65. The current annual pension is Dfl. 7,110 for a married couple or widow with children under 18. A single person or widow receives Dfl. 5,016. Orphans' pensions depend on age. Pensioners receive extra vacation pay amounting to 6% of all payments received during the preceding year.

All contributions due under these Acts are remitted to the tax collector, but benefits are administered by the Social Insurance Bank (Sociale Verzekeringsbank).

General Family Allowance Act. This Act provides benefit payments

(called family allowances) beginning with the third child. Allowances for the first and second child are provided by the Family Allowances for Employees Act, see page 58. All persons insured under the previous Acts relating to pensions are also insured under this Act and, in addition, persons over 65 are covered.

Annual contributions of 1.8% on maximum income of Dfl. 21,150 (maximum contribution is Dfl. 380.70) are paid entirely by employers, and self-employed pay on the basis of assessments issued by tax inspectors.

The following family allowances are paid quarterly to heads of households:

Number of Children	Quarterly Payment for Each Child (Dfl.)
Third	174.72
Fourth and fifth	233.22
Sixth and seventh	258.18
Eighth and over	285.48

Each child between 16 and 27 who is a student or disabled and who lives with his parents counts as two children in assessing the parent's right to family allowances, and counts as three if the child lives away from home for purposes of university study.

Benefits under the General Family Allowance Act are administered by the Labor Board (Raden van Arbeid), and contributions are paid to the tax collector.

Excessive Medical Expenses Act. This Act provides benefits to all persons covered by the pensions acts as well as those over 65 and under 15; hence, all individuals. The benefits provided are the rights to free treatment and nursing care in qualified institutions for the mentally handicapped, physically handicapped, and nursing homes (all from the first day). Treatment in hospitals, sanitariums, and psychiatric institutions is free from the 366th day. To qualify for these benefits, an employee either registers with a medical insurance society or obtains a medical insurance policy. The society or insurance company administers the benefits that have been noted.

Annual contributions of 2% of wages up to Dfl. 21,150 (maximum of Dfl. 423) are paid entirely by employers. For the self-employed, one combined assessment is issued by the tax inspectors for all of the social security programs that have been mentioned to this point.

Family Allowances for Employees Act. This Act provides allowances for the first two children of employees. For this purpose, employee includes anyone working in the Netherlands, whether as a resident or a nonresident. Even employees of nonresident employers without permanent establishments in the Netherlands are eligible for these allowances, which amount to on a quarterly basis:

For the first child – Dfl. 155.22

For the second child – Dfl. 174.72

These amounts are doubled or tripled for children between 16 and 27 who are students or disabled and, in special cases, who are working in the recipient's household.

Employers pay the entire annual contribution of 3.3% on maximum wages of Dfl. 21,150 (maximum contribution per employee is Dfl. 697.95).

No contributions need be paid by nonresident employers without permanent establishments in Holland, even though the employees are entitled to the benefits provided under this Act. However, the Minister of Social Affairs is authorized to register such an employer so that contributions may be collected. So far, this has been done mainly at the employer's request.

Health Insurance Act. This Act insures employed persons against loss of wages due to sickness, accident, or other infirmity. The benefits, 80% of normal daily wages up to a maximum daily wage of Dfl. 112.40, are paid for a maximum of 52 weeks, with no benefits paid for the first two days of an incapacity to work. Special benefits are available for pregnancy (100% of daily wage for six weeks before and six weeks after confinement) and on the death of an insured person (100% of daily wages for the current and next two months are paid to next of kin).

The rate of contributions varies with the insurance experience of the particular industry. The contribution rate for trading enterprises is 6% of the first Dfl. 28,188 of annual wages.

Contributions are paid by employers in principle, but up to 1% may be withheld from employees' wages.

Working Incapacity Act. After 52 weeks of benefits under the Health Insurance Act, an employee still at least 15% incapacitated for work may receive benefits under this Act of 10% to 80% of normal daily wages (up to a maximum daily wage of Dfl. 112.40), varying with the degree of disability. Each May, the incapacitated person will receive an extra vacation payment

of 6% of the benefits received under this Act in the prior year. These benefits cease when the insured reaches 65, at which time pension benefits commence.

The contribution rate is 5.4% of annual wages, limited to a maximum wage of Dfl. 28,188. In principle, contributions are paid by employers, but up to 1.35% of the required contribution may be withheld from employees.

Free Medical Care Act. This Act provides free medical and dental care, surgical treatment, as well as hospital nursing and numerous other supplies related to health to those persons whose annual wages do not exceed Dfl. 18,800 per year. Employees with higher earnings must either bear the risk themselves or purchase medical insurance.

Contributions are 8.2% of annual wages up to a maximum of Dfl. 15,921, of which half is paid by employers and half withheld from employees' wages.

Unemployment Insurance Act. This Act provides benefits to employees during forced unemployment for reasons other than disability or incapacity. Benefits are 80% of normal daily wages to a maximum wage of Dfl. 112.40 for up to 26 weeks per benefit year.

The contribution rate varies with the industry. For trading enterprises, the contributions are generally 0.24% of a maximum annual salary of Dfl. 28,188. Half of the contributions must be withheld from the employees' wages; and half is paid by the employer.

Summary of Contributions. The following chart summarizes the contributions payable under the Dutch social security system.

LABOR CONDITIONS

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SOCIAL SECURITY SYSTEM

Type of Insurance	Insured
General Old Age, Widows' and Orphans' Pensions Acts	All residents of the Netherlands and nonresident employees liable to Dutch Wages Tax
General Family Allowance Act	Same as above
Excessive Medical Expenses Act	Same as above
Family Allowances for Employees Act	All residents and nonresident employees working in the Netherlands
Health Insurance Act	All residents and nonresident employees working in the Netherlands
Working Incapacity Act	Same as above
Free Medical Care Act	Same as above
Unemployment Insurance Act	Same as above

A—Persons who are self-employed must pay these contributions themselves.

B—These amounts are based on the maximum daily earnings.

LABOR CONDITIONS

TOUCHE ROSS

SOCIAL SECURITY SYSTEM

Employer	Contribution Rates Employee	Maximum Annual Income for Calculating Contribution Rates
–	11.9%	Dfl. 21,150
1.8% (A)	–	Dfl. 21,150
2% (A)	–	Dfl. 21,150
3.3%	–	Dfl. 21,150
Average of 7.3%	Possible 1% out of the 7.3%	Dfl. 28,188 (B)
4.05%	1.35%	Dfl. 28,188 (B)
4.1%	4.1%	Dfl. 15,921 (B) – Not applicable if salary exceeds Dfl. 18,800
0.2%	Average of 0.2%	Dfl. 28,188 (B)

CHAPTER IV

BUSINESS PRACTICES

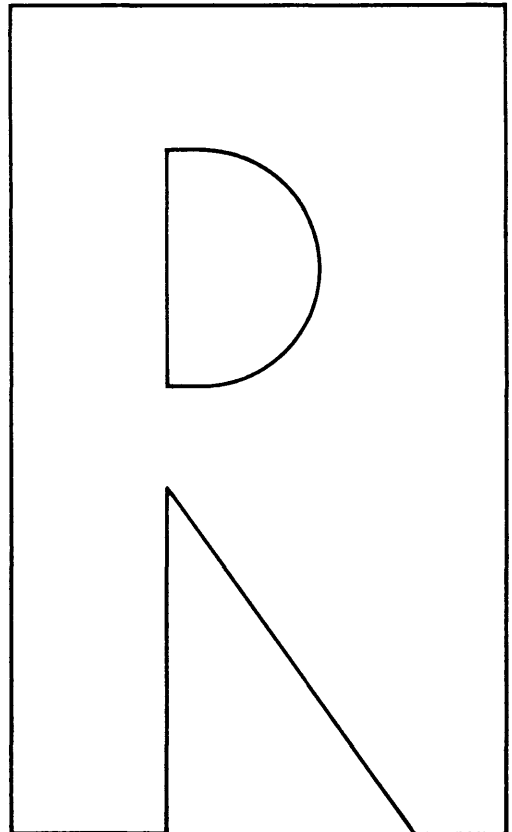
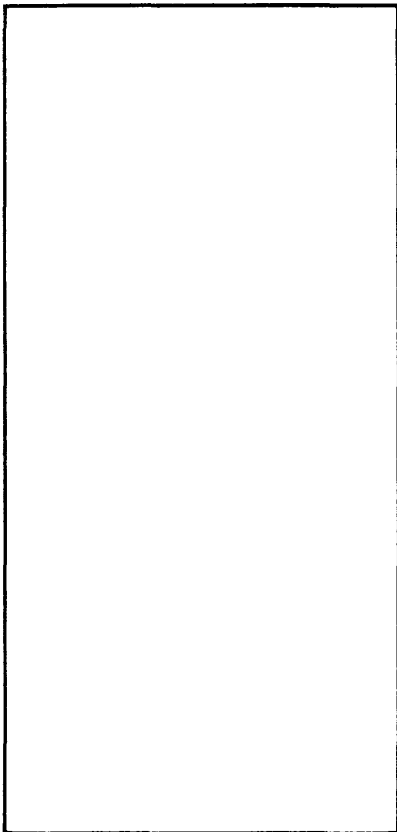
BUSINESS HOURS

COMMUNICATIONS

WEIGHTS AND MEASURES

EDUCATION AND TECHNICAL TRAINING

CHAMBER OF COMMERCE



BUSINESS PRACTICES AND CUSTOMS

Since the Second World War, industry has become the most important sector of the Dutch economy, and similar business practices and customs exist in the Netherlands as in other industrialized countries.

The Dutch are a hospitable people. Although many travel and work in all parts of the world, one of their proverbs is "East or west, home is best." Much attention is paid to furnishing their homes and tending their gardens.

For meals, close to continental standards prevail. An *apéritif* before lunch and dinner is common. Most restaurants have French cooking, but in the larger cities many serve Oriental food or specialize in Spanish, Italian, Indonesian and so forth. Some helpful pointers follow.

Best Travel Months. The best time for business travel to the Netherlands from a weather standpoint is June 15 through September 15, but keep in mind that businessmen may be on vacation in July and August. The two weeks before and after Christmas should be avoided. Easter Monday, Queen's Birthday (April 30), Ascension Day, Whitmonday, Christmas Day, and Boxing Day are legal holidays, see page 48.

Business Cards. A supply of cards is recommended, and these are normally used.

First Names. First names are normally used in Holland only with intimate friends and children. Leave it to your hosts to initiate the use of first names.

Writing in Advance. As most managers are quite busy and travel a lot, it is helpful if not essential to arrange appointments in advance of your visit. The Dutch are slightly on the formal side and are believers in punctuality. Hotel reservations also should be made in advance, particularly in Amsterdam. A number of new hotels have been constructed recently, but are often filled with tourists or international meetings of one kind or another.

Time Factors. The Netherlands is on Central European Time, and is six hours ahead of New York time (6:00 p.m. in New York is midnight in the Netherlands). When New York is on Daylight Saving Time, the differential is narrowed to five hours.

Residence and Work Permits. See page 41.

Language. The Dutch language is close to English and German, but shows many French influences, even in everyday speech. Variants of the Dutch

BUSINESS PRACTICES AND CUSTOMS

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BUSINESS PRACTICES AND CUSTOMS

language are spoken by some five million Flemings in Belgium and by two million Boers in the Republic of South Africa.

Living among larger European nations, the Dutch have an international outlook and are very well acquainted with foreign languages. Secondary schools provide instructions in at least two foreign languages, and often three, and English, French, or German literature form part of the compulsory material for the final examinations. At least 10% of the working population has a reasonable knowledge of one or more foreign languages. English, in particular, is widely used by the Dutch, even among those who did not study English at school. In business circles especially, the use of English is widespread.

BUSINESS HOURS

Offices. Business offices are normally on a five-day week, from 8:30 or 9:00 a.m. to 5:15 or 5:30 p.m. Lunches vary from 3/4 of an hour to one hour, but business lunches may take longer.

Banking Hours. Banks also operate on a five-day week, Monday through Friday. Banks and post offices do not handle money matters after 3:00 p.m.

Government Offices. A number of government offices begin work at 8:00 a.m., but for business visits or to obtain information, the usual hours are from 9:00 to 12:00 a.m., and from 2:00 to 4:00 p.m. Appointments in advance are preferred. The public hours of tax offices are from 8:30 to 12:30 a.m.

Currency and Exchange. The Dutch guilder (gulden) is a comparatively stable currency, with almost no restrictions on transfers of funds into or out of the country (see page 22). Formerly, one guilder was pegged at 27.6 U.S. cents. The Dutch government allowed the guilder to float on May 10, 1971. The Netherlands' currency is issued in the following denominations:

Banknotes:	\$
5 guilders	1.39
10 guilders	2.78
25 guilders	6.95
100 guilders	27.78
1,000 guilders	277.80

Coins: (100 cents = 1 guilder)

1 cent

5 cents (stuiver)

10 cents (dubbeltje)

25 cents (kwartje)

100 cents (gulden)

250 cents (rijksdaalder)

COMMUNICATIONS

Air. The only scheduled airline is Royal Dutch Airlines (KLM), a private stock company in which the government is the major stockholder. Schiphol, near Amsterdam, is one of Europe's most modern airports. Many international airlines make intermediate landings at Schiphol and many flights to foreign countries are available. Schiphol is the center of the world-wide network of KLM which has direct flights to 100 cities in 70 countries. In Europe, 50 towns and cities are served by frequent KLM flights. Many international passenger and air freight services are also available. Dutch airports also have facilities for smaller private planes.

The Rotterdam airport, Zestienhoven, mainly handles European flights and air freight services.

Harbor and Waterways. The huge harbor at Rotterdam has been the busiest in the world for many years. The Europort section is accessible to ships of up to 225,000 tons. Its location at the mouth of the Rhine River and its fine air, rail, and road connections make it excellent for transshipment and distribution to other European locations. Amsterdam is the second most important port.

Both of these efficient and dynamic harbors use the most up-to-date loading and unloading equipment, and are equipped to handle container shipments.

The Netherlands has no free ports or zones, but has a large variety of customs facilities for storing and transshipping merchandise, see page 25.

Inland waterways also carry extensive international and domestic freight. Over 3,000 miles of navigable rivers and canals are used by some 20,500 vessels, the largest fleet in Europe.

Roads. The country has an extensive and intensively used network of

roads and modern four-lane highways which connect at many points with the German autobahns. The industrial cities and towns of the Federal Republic of Germany are within a few hours drive from anywhere in the Netherlands. Paris can be reached in one day by car, via Belgium.

Within the cities, streets tend to be narrow and crowded and have few parking areas. An estimated three million passenger vehicles are on the roads. Several million motorcycles and bicycles are also used for transportation.

Railways. A highly up-to-date electrified railway system, equipped with the latest rolling stock, and operated by a state-owned corporation, provides fast, regular, and inexpensive services to all places of any importance in the Netherlands on over 2,000 miles of railroad track. Amsterdam is one of the terminals of the Trans-European Express (TEE), and passenger and freight services to other European countries are excellent.

Telephones, Etc. An autonomous public corporation owns and operates the telephone, telegraph, and postal services. The interior telephone network (about three million phones) is completely automatic, and all major cities have automatic dialing links with other major European cities.

Radio and television broadcasting stations are operated by the government in cooperation with private nonprofit organizations. Commercial advertising has been broadcast since 1967. Of an estimated 3.1 million households, some 3 million radio and 3 million television sets are officially registered (owners pay an annual reception fee per family or per home of under Dfl. 100).

Postal Service. The Netherlands has a reliable and fast postal service. Stamps for local letters are 30 cents for the first .704 ounces, which also applies to letters to Belgium, Luxembourg, West Germany, Italy, and France. For airmail to countries outside of Europe, the additional charge varies from 15 to 50 cents per .175 ounces (20 cents to the U.S. and Canada).

Taxis. Taxis do not accept passengers while cruising in Holland. They must be ordered by telephone or found at a taxi stand. Bus and trolley service is excellent.

Tippling. Hotels, restaurants, taxis, and barber shops add a service charge of 15% which is included in the price, and no additional tip is necessary. Ushers in theaters are generally tipped about 25 cents and cloak-room attendants about the same. Porters are tipped 50 Dutch cents per bag.

Temperature and Climate. See page 4.

WEIGHTS AND MEASURES

The metric system is used for all weights and measures. Conversions of the more widely used measures follow.

Length

1 centimeter	= 0.3937 inches (1 inch = 2.54 centimeters)
1 meter	= 39.37 inches
1 kilometer	= 0.62137 miles (1 mile = 1.6093 kilometers)

Weight

1 gram	= 0.03520 ounces
1 kilogram	= 2.2046 pounds (1 pound = 0.454 kilogram)
1 metric ton	= 2,204.6 pounds

Area

1 square meter	= 10.7639 square feet
1 hectare	= 2.471 acres
1 square kilometer	= 0.3861 square miles

Volume

1 cubic centimeter	= 0.061 cubic inches
1 liter	= 0.9081 dry quarts, or 1.0567 liquid quarts
1 liter	= 0.22 gallon (1 gallon = 4.55 liter)

Measures of Temperature. Holland measures temperature in centigrade units in which the freezing point is 0° (32° F) and the boiling point is 100° (212° F). To convert centigrade to fahrenheit, multiply by 9/5 and add 32. To convert fahrenheit to centigrade, subtract 32 and multiply by 5/9.

How the Metric System Works. The metric system is based on decimal units. The same prefixes are used with all units of measure regardless of what they measure (length, weight, volume, etc.). These units are:

deci	= 1/10	deca	= 10
centi	= 1/100	hecto	= 100
milli	= 1/1000	kilo	= 1,000

Mega (= 10⁶) is used in measuring electric voltage.

Micro (= 10⁻⁶) and Nano (= 10⁻⁹) are used in measuring time (for example, nano-seconds in computer processes).

In daily speech “kilo” means kilogram, and a kilometer is always called just that.

Dates and Commas. In the Netherlands, 5/8/72 is not read as May 8, 1972, but as August 5, 1972 (first the day and then the month). Amounts are separated by periods, not commas. Thus, 1.000.000 means 1,000,000.

Electric Current. Throughout the Netherlands electric current has a voltage of 220 and a frequency of 50 cycles. Plugs of small appliances will not always fit the receptacles so that adapters may be needed.

EDUCATION AND TECHNICAL TRAINING

Foreigners who expect to live in the Netherlands for a while may be interested in the educational possibilities for their children. Others may be interested in Dutch education in general and technical training in particular.

Schools for Americans. A standard American education, from kindergarten through senior high school, can be obtained in the Netherlands. The cities of Amsterdam, Rotterdam, The Hague, Dordrecht, and Terneuzen have American schools or international schools with American departments. In addition, three international boarding schools (with American departments) are in Werkhoven, Ommen, and DeSteege.

American schools sponsored by the U.S. Department of Defense are located in Soesterberg, Brunssum, Zwolle, and Uden. It is sometimes possible for businessmen's children to enter these schools on a tuition-paying basis if they live in the area.

Dutch Education in General. School is compulsory for eight years, between the ages of about 6½ and 14½, of which primary education generally takes six years.

After elementary school, general students continue in advanced elementary schools (MAVO) and (HAVO), or in secondary schools (Atheneum and Gymnasium). Among the subjects taught in these schools are mathematics, physics, modern and classical languages, and commercial subjects. Graduates of secondary schools are eligible for entrance to the universities.

Universities are located at Leyden, Utrecht, Groningen, Amsterdam (2), and Nijmegen. Technological universities are located at Delft, Eindhoven, and Enschede. Schools of economics are in Rotterdam and Tilburg. The only agricultural university is in Wageningen.

Elementary Technical Schools. Pupils attend these schools after their sixth year of primary education for three to four years, varying with their type of training. The elementary technical schools furnish the basis for further development either under the apprenticeship system or in factories and workshops. About 35% of male students attend some 350 of these schools.

Apprenticeship System. Under the apprenticeship system, students contract for training in trade skills in a factory or workshop. In addition, they are obliged to attend vocational schools or evening classes for general education and professional training on a part-time basis. Generally, the apprenticeship system lasts for two years.

Secondary Technical Schools. The minimum requirements for admission to secondary technical schools are two years of secondary general education or graduation from an elementary technical school. Fifty such schools offer three year courses, which include actual technical work in the last year under the school's control.

Technical College. After a minimum of four years' secondary general education, or graduation from a secondary technical school, students may attend a technical college. A year of preparatory training is provided for those who meet only the minimum admission requirements. Not including the preparatory year, the college course normally takes four years, with the third year devoted to practical work in industry. Twenty-five such schools generally offer training in architecture and civil, mechanical, and electrical engineering. Some schools also offer chemical engineering, shipbuilding, physical engineering, aircraft designing, and metallurgy. The technical college compares with the bachelor's degree program offered by foreign universities.

Technological Universities. Technological universities at Delft, Eindhoven, and Enschede offer the degree of "ingénieur," which compares with the master's degree awarded by foreign technical universities.

Vocational Training for Adults. Twenty-five centers provide vocational training for adults. These afford unskilled and unemployed workers training in such skills as machine operators, fitters, metal workers, machinists, tool and die makers, electric and oxyacetylene welders, etc. Workers are compensated for loss of wages during the training period.

BUSINESS PRACTICES AND CUSTOMS

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EDUCATION AND TECHNICAL TRAINING

In some cases, the curriculum can be adapted to special needs of particular industries. This is potentially important for certain foreign industries establishing a factory in the Netherlands.

CHAMBER OF COMMERCE

Several foreign chambers of commerce have offices in the Netherlands, including the U.S.A., Belgium, Germany, the United Kingdom, Israel, Austria, Sweden and Switzerland.

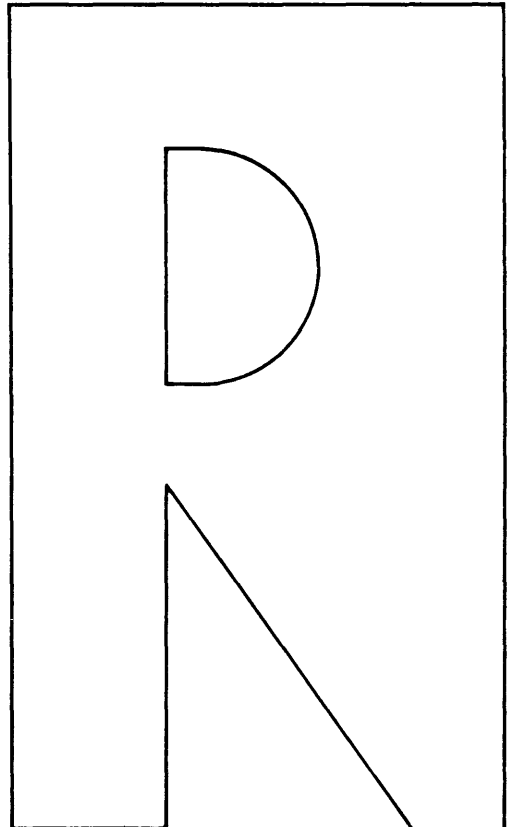
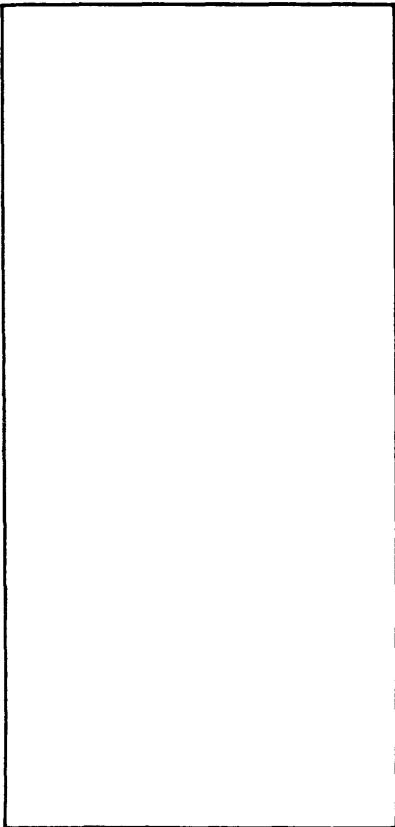
The U.S.A. Chamber of Commerce has its offices at Carnegieplein 5 The Hague, which is opposite the Peace Palace.

CHAPTER V

BUSINESS ENTITIES

NEW PROVISIONS
BUSINESS PARTNERSHIP
LIMITED PARTNERSHIP
LIMITED PARTNERSHIP WITH
SHARES
COOPERATIVE SOCIETY
SOLE PROPRIETORSHIP
JOINT VENTURE
FOREIGN COMPANY BRANCH
THE COMMERCIAL REGISTER
NETHERLANDS CORPORATION

FORMATION OF A
CORPORATION
OWNERSHIP - SHARES AND
SHAREHOLDERS
SHAREHOLDER MEETINGS
AND RIGHTS
FORMS OF MANAGEMENT
ALTERATION OF ARTICLES
OF INCORPORATION
DISSOLUTION OF N.V. AND B.V.
STOCK EXCHANGE DECREE



BUSINESS ENTITIES

The Netherlands does not discriminate between domestic and foreign individuals or corporations. Companies organized under the laws of other countries may operate in the Netherlands through a Dutch corporation or through a branch or foreign individuals and corporations may be members of a partnership, or may enter into commercial agreements with Dutch companies or individuals.

Only two founders are required to form a Netherlands company and, once the company has been formed, it need have only one shareholder. There are no requirements regarding the ratio of Netherlands to foreign share capital. A 100% foreign-owned company is permitted. No requirements exist about Netherlands nationals managing a Dutch subsidiary.

NEW PROVISIONS

Until 1971, the only legal form for a corporation was the “Naamloze Vennootschap” (N.V.). The Netherlands was the only Common Market country using the same form of corporate entity for a large public company and a small private company. New provisions have been enacted which provide for the latter type of corporate entity, known as Besloten Vennootschap, or B.V.

Although many Dutch companies previously published their annual financial statements, the legal requirements for publication had been minor until the enactment of new provisions. Until recently, also, labor had no formal participation in the control of Dutch enterprises, but a formal works council is now required in some cases.

To conform with the first Directive of the European Community concerning company law, and to introduce the changes that have been mentioned and others, the following legislation was enacted by the States-General. After the Acts are adopted, they lose their separate identity as they are incorporated into the Commercial Code.

Subject of Law	Date Effective
Revision of the Right of Inquiry	January 1, 1971
Works Council	April 1, 1971
Annual Accounts of Enterprises	May 1, 1971

BUSINESS ENTITIES

TOUCHE ROSS

NEW PROVISIONS

Adaption of Dutch Law to the First E.E.C. Directive	June 21, 1971
Closed Corporations with Limited Liability – Audit and Publications of Annual Accounts	June 29, 1971
Adaption of Law in Connection with the Regulation of Closed Corporations	June 29, 1971
Change of Articles 36e and 45d of the Commercial Code, Concerning the Statement of No Objection	June 29, 1971
Provisions Concerning the Structure of Large Corporations (Structuurwet)	July 1, 1971

The recent changes in law have been taken into account in this chapter, in the discussion of works councils in Chapter III, and in the discussion of publication requirements in Chapter VI. The following pages describe briefly the less important types of business entities and the operation of the Commercial Register, and provide a detailed description of the N.V. and the new B.V., the entities of greatest interest to foreign investors.

BUSINESS PARTNERSHIP

This entity, usually called *firma*, has been translated as *business partnership* because another form of organization bears the name *maatschap* which literally means *partnership*. The *maatschap* is best described as a professional partnership as it is often used by auditors, tax consultants, architects, and lawyers, and is a special creature of civil, rather than commercial, law.

The business partnership, or *firma*, is regulated by the Commercial Code. A written partnership agreement is required and registration in the Commercial Register is also required.

Each partner is jointly and severally liable for the debts of the partnership, and each partner may bind the partnership by his acts if within the scope of his express or implied authority. Both natural persons and entities may be partners; Dutch citizenship is not a requirement.

The admission of a new partner requires the consent of the other partners to the extent specified in the partnership agreement. The partnership does not exist as a legal entity that is separate and apart from the individual partners, nor is the partnership subject to taxation as an entity. There is no requirement that the financial statements of a partnership be published or made available for public inspection.

LIMITED PARTNERSHIP (COMMANDITAIRE VENNOOTSCHAP)

All of the rules that apply to the general business partnership (*firma*) also apply to the limited partnership. A limited partnership, in addition, has one or more limited partners whose liability is limited to their capital contributions, and who are not permitted to participate in the management of the partnership. Active management is reserved exclusively for the one or more general partners, whose liability is as unlimited as that of partners in the general business partnership.

The name of a limited partnership may not include the name of a limited partner unless he was the previous managing partner. As is true of the general business partnership, the limited partnership is not, for legal purposes, an entity separate and apart from the individual partners.

LIMITED PARTNERSHIP WITH SHARES**(COMMANDITAIRE VENNOOTSCHAP OP AANDELEN)**

This partnership is similar to the limited partnership except that the interests of limited partners are represented by shares, which may be in registered or bearer form. Although Dutch law does not contain provisions for the limited partnership with shares, this entity is permitted and is sometimes used by larger family enterprises. As yet, some of the new laws regulating business entities do not apply to the limited partnership with shares (particularly publication requirements). As with the other types of partnerships, it is not for legal purposes an entity separate and apart from its partners.

COOPERATIVE SOCIETY (COOPERATIEVE VERENIGING)

The cooperative society is an association of persons that provides for free entry and withdrawal of members. The name of the cooperative must contain the word *cooperatief*, and must give some indication of its objectives (buying, selling, dairy products, etc.). In addition, the name must contain one of the following initials to indicate the liability of its members:

- | | | |
|------|---------------------|---------------------------------|
| W.A. | = full liability | (wettelijke aansprakelijkheid) |
| G.A. | = limited liability | (gewijzigde aansprakelijkheid) |
| U.A. | = no liability | (uitgesloten aansprakelijkheid) |

The cooperative society is quite common in certain areas such as agriculture. Some are quite large and maintain separate organizations for production and marketing, particularly those involved in dairy products, vegetables, and flowers.

The cooperative society becomes a legal entity by presenting its deed of foundation to a public notary, and meeting the conditions that have been mentioned. The deed of foundation must be published in the official Dutch gazette, the *Nederlandse Staatscourant*.

SOLE PROPRIETORSHIP (EENMANSZAAK)

An individual may own and operate a business under his own or another name. He has sole responsibility for the business, and has unlimited personal liability for all debts incurred.

JOINT VENTURE

Joint ventures are sometimes used in the Netherlands. Its legal status can vary from that of a partnership formed by two or more companies to a separate corporation. It is often difficult to foresee many of the pitfalls that may arise when operating as a joint venture. It is especially important, therefore, to obtain legal and financial advice about such matters as management, contributions to capital, possible liquidation, etc.

BRANCH OF A FOREIGN COMPANY

Companies organized in foreign countries may operate a branch in the Netherlands. A minimum of formalities is involved in setting up a branch but most foreign companies have chosen the corporate form.

Requirements for Setting Up a Branch. An exchange permit must be obtained from the Netherlands Bank. This exchange permit entitles the holder to full rights to transfer profits and to repatriate capital. Applications for exchange permits are usually handled by commercial banks.

Another requirement is that the branch must be registered in the Commercial Register. Such registration includes furnishing information about the name and address of the foreign company setting up the branch.

Any information that the foreign company's country of origin requires for registry in its Commercial Register or for publication must also be provided to the Dutch Commercial Register, and the branch or office in the Netherlands which is to be considered the principal seat must be named.

Cost of Setting Up a Branch. The cost is minimal. A small fee paid to the Chamber of Commerce for registration in the Commercial Register and the cost of translating documents into the Dutch language are the only official costs.

Advantages and Disadvantages of Branches. Branches are rather readily assumed to be a permanent establishment for Dutch income tax purposes. Even when the company's representative in the Netherlands is not authorized to conclude transactions, and sales are invoiced and collected outside the Netherlands, and all costs and expenses of the branch are reimbursed by the foreign parent company, it frequently occurs that a portion of any profit will be deemed earned in the Netherlands. Such profit may be computed as a percentage of total branch costs. The same income tax rate applies to branches as to corporations.

Some of the advantages of a branch form of operation as contrasted with a corporation are:

1. The ease and speed with which a branch may be organized as contrasted with the six months that is not unusual for organizing a corporation.
2. Publication of branch financial statements is not required.
3. A branch may be useful in the preliminary stages of doing business in Holland.

THE COMMERCIAL REGISTER

Every new business entity in the Netherlands must be registered in the Commercial Register of the district in which its official seat is located. Even appointments of trading agents who are authorized to conclude agreements on behalf of foreign companies must be entered in the Commercial Register. The Commercial Registers are maintained in the nearly 40 offices of the Dutch Chamber of Commerce, which is a quasi-governmental institution. Information in the Commercial Register may be inspected by creditors or other interested persons.

Statistics gathered from the Commercial Registers indicate that before the new laws creating the B.V. form became effective, there were about 45,000 N.V.s in Holland, of which about 30,000 are expected to convert to B.V.s.

Cost of Registration. An annual fee is charged for registration, which is based on the amount of invested capital (paid-up capital plus certain reserves and loans), and in some special cases on the importance of the enterprise. The annual fee for an enterprise whose invested capital is one to two million guilders is Dfl. 500, including the fee which is paid to the SER, see page 52. The fee for the first year only is almost twice the regular fee.

Registration Data Required of Corporations. Both N.V.s and B.V.s must supply the following data for recording in the Commercial Register:

1. Name of the company and its trade name, if different.
2. The description of the business, usually in broad terms.
3. The designated official seat of the corporation.
4. For each supervising director and managing director:
 - a. Full name, address, and country of residence.
 - b. Date, place and country of birth.
 - c. Nationality.
 - d. Signature and initials.
 - e. Since June 21, 1971, whether each director is authorized to represent the corporation to third parties, either alone or in combination with other directors.
5. The amount of capital authorized, issued, and fully paid. If any issued shares have not been fully paid, each shareowner's name, address, number of shares, and the amount paid must be listed annually until all issued shares have been fully paid. This is because owners of shares not fully paid remain personally liable to the company for the unpaid portions of their shares.
6. The complete text in the Dutch language of the articles of incorporation.

Subsequent Data Required of Corporations. Whenever the articles of incorporation are altered, the complete text of the new articles must be entered in the Commercial Register. Whenever any official is suspended, resigns, or is dismissed, the corporation is not released from responsibility for his acts until the fact of his termination is entered in the Commercial Register. All letters and orders of a corporation must contain the company's Commercial Register registration number.

Registration Requirements for Non-Corporate Entities. The information required for the registration of non-corporate entities is determined by the specific form of management and capitalization. For example, a limited partnership must supply data about each limited partner, his capital contributions, nationality, and country of residence. The limited partnership with shares must provide data about the amount of contributed capital and the number of shares. However, in both entities, the names of the limited partners need not be disclosed.

THE NETHERLANDS CORPORATIONS

Until 1971, the only legal form for a Dutch corporation was the open corporation of N.V. (Naamloze Vennootschap) which is similar to the French or Belgian S.A., the German A.G., and the U.S.A. corporation. Since 1971, a new legal entity has been in existence, the closed corporation or B.V. (Besloten Vennootschap) which is somewhat comparable to the French S.à.r.l., the Belgian S.p.r.l.-P.v.b.a., and the German G.m.b.H. Shareholders in both types of corporations enjoy limited liability. The main differences are that the N.V. is subject to greater publication requirements while the B.V. must strictly control its share transfers.

Both the N.V. and B.V. should be considered when forming a corporation in the Netherlands. There are many similarities and differences, some of which may diminish under the influence of E.C. directives.

Companies presently organized as an N.V. may wish to avoid the stricter publication requirements by converting to a B.V. The necessary changes in the articles of incorporation and other elements involved in the conversion must take place before December 29, 1972. Such change would not give rise to a tax on the liquidation of the N.V., or on the capital subscriptions to the new B.V. The conversion of an N.V. to a B.V. requires:

1. An affirmative vote of the general meeting of shareholders.
2. Changing the articles and preparing the deed of conversion by a public notary.
3. A statement of no objection on that deed from the Ministry of Justice.
4. The complete text of the changed articles of incorporation must be filed with the Registry of Commerce.

Large existing N.V.s and B.V.s to whom provisions of the law on the

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THE NETHERLANDS CORPORATIONS

structure of large corporations apply have until July 1, 1973 to change their articles to conform with this law.

The following discussion of Dutch corporations deals with both the N.V. and B.V. But before the detailed discussion, two key amounts mentioned in the new laws are explained as they are sometimes confused with each other.

Dfl. 10,000,000. This amount is one of the key tests in connection with the changes in the structure of large corporations. N.V.s and B.V.s which come under this law are obliged to have a board of supervising directors which functions in a manner that is explained later in this chapter. The law on the structure of large corporations applies to:

1. Companies whose *total capital and reserves* in the balance sheet or notes are Dfl. 10,000,000 or over, and
2. Employ at least 100 people in the Netherlands, and
3. A legally obligatory works council is in existence. In determining items 2 and 3, any subsidiary in which the company owns at least 50% of the shares, directly or indirectly, is taken into consideration.

Special rules exist for international enterprises, see page 97.

Dfl. 8,000,000. This amount is one of the key tests in connection with the new publication requirements. B.V.s which come under this law are obliged to publish the annual balance sheet, notes, and auditors' report. The law on the annual accounts of enterprises applies to B.V.s:

1. Whose total *assets* listed in the balance sheet or mentioned in the notes reach Dfl. 8,000,000.
2. Who employ 100 persons at the balance sheet date. In determining the number of employed, persons employed by Dutch subsidiaries are taken into account if the parent company owns, directly or indirectly, more than 50% of the issued capital.

FORMATION OF A CORPORATION

Both the N.V. and B.V. must be organized by at least two persons or corporations who execute the articles of incorporation (*akte van oprichting* but usually referred to as *statuten*) before a public notary. A notary in Holland is a public official who is appointed by Royal Decree and whose legally-prescribed functions include drawing up articles of incorporation,

deeds for the transfer of property, mortgages, etc. He may also act as a legal adviser in certain matters.

The articles of incorporation must be in the Dutch language, and contain the following major information:

1. Official name of the proposed corporation, and its legal domicile.
2. Objects of the corporation, usually in very broad terms.
3. Authorized, issued, and paid-in capital, including the number of shares owned by each founder and their nominal value.
4. Any pre-incorporation agreements which the proposed company will be required to assume.

After the articles have been drafted by the public notary, he submits the draft to the Ministry of Justice for the purpose of obtaining a "declaration of no objection." This declaration is given if the Ministry is satisfied that all legal requirements have been met. It may be refused only for the following reasons:

1. The background of the persons who will control the company's policies indicates a serious risk of the company being used for improper purposes or engaging in activities that may harm its creditors.
2. The articles conflict with good morals, public order, the law, or principles underlying the law.
3. The founders, as a group, fail to subscribe to at least 20% of the authorized capital.

When the declaration of no objection is obtained, the founders can complete the incorporation process by registering the new corporation in the Commercial Register.

Whenever the articles of incorporation are altered, another declaration of no objection must be obtained from the Ministry of Justice.

Operation of the Company Before Incorporation. The formalities required for incorporation may take six months before they are complete. Consequently, corporations are allowed to function on a provisional basis before the declaration of no objection is obtained. But, the corporation must signify that it is operating on a provisional basis by adding the initials *I.O.* after its name. While operating on a provisional basis, the managers are individually liable for the acts of the corporation in foundation.

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FORMATION OF A CORPORATION

Formation Expenses. The relevant expenses involved in organizing a corporation are:

1. *Tax on Share Issues.* This tax is levied on both an N.V. and B.V. On January 1, 1972, the tax rate was changed to 2% (formerly 2.5% of paid-up capital and 0.25% of the unpaid amount of subscribed shares).

2. *Notary Fee.* A public notary's fee for drawing and executing the articles of incorporation varies, in part, with authorized capital. The following are selected examples of notary fees:

Authorized Capital (Dfl.)	Rate per Mill	Notary Fee (Dfl.)
Minimum		200
50,000	4.5	483
100,000	2.5	708
200,000	1.0	958
1,000,000	0.5	1,758
10,000,000	0.1	6,258

The above are minimum fees. Additional fees are charged when difficult problems necessitate much correspondence, translation, and discussion.

3. *Registration Fee Levied by the Chamber of Commerce.* See page 82.

4. *Other Expenses.* Additional notary fees and registration duties may be incurred for such matters as transferring title to real estate or the creation of a mortgage. Publication in the Netherlands Official Gazette, the *Nederlandse Staatscourant*, is not required under the revised laws.

Corporate Name. The Chambers of Commerce check whether the proposed name is in use or is so similar to an existing name as to cause confusion. There is no charge for this service other than for communication costs if quick verification is required. The name of an N.V. and B.V. must begin or end with N.V. or B.V., either the initials or spelled out.

In the case of foreign companies operating in the Netherlands through subsidiaries, the Ministry of Justice reviews their names and often requires that the word *Nederland* or *Holland* be added in brackets, to avoid confusion between the parent company and the Dutch subsidiary.

Duration of the Corporation. Unless a date is fixed in the articles, the company's existence is for an unlimited period (perpetual).

Minimum Capital Requirements. There is no minimum capital require-

ment for either the N.V. or B.V. Whatever the authorized capital, the founders must subscribe to a minimum of 20%. At least 10% of the issuing price of each share must be paid in prior to incorporation. Such payment may be in cash or in kind, but all payments not in cash must be expressly mentioned in the deed of foundation. A corporation's capital must be expressed in guilders, and the number of shares must be stated in the articles.

Typically, only a portion of the authorized shares are subscribed for. Once all authorized shares have been issued, an increase in capital requires alteration of the articles of incorporation.

OWNERSHIP – SHARES AND SHAREHOLDERS

All shares issued by an N.V. and B.V. must have a par or nominal value. Shareholders are liable only for the unpaid portions of such stated values; once a share is fully paid, its owner is relieved from personal liability.

Both corporations and natural persons may be shareholders in an N.V. or B.V., and any or all shares may be owned outside of the Netherlands. Although at least two founders are required to form a corporation, one shareholder may own all shares after incorporation. Both types of corporation may acquire their own shares, but not more than 50% of the subscribed capital. If the articles permit the acquisition of more than 50% of subscribed capital, the declaration of no objection will be denied. Recquired shares have no voting or dividend rights.

Registered shares must be recorded in a share register as must all transfers of these shares. All shares not fully paid must also be entered in a share register.

Share Certificates. It is not uncommon for companies to restrict voting control of a corporation to a limited group of shareholders. This is a type of non-statutory restriction which is accomplished by issuing original shares to a holding company, or trustee, or administrator (administratie kantoor) who, in turn, issues share certificates in lieu of the original shares. Such share certificates may be in registered or bearer form and may themselves be transferred by the owner. The holder of a share certificate, however, does not have quite the same rights as the holder of original shares. The original shares represented by the share certificates may be voted only by the administrator or trustee who holds the original shares.

Shares of an N.V. An N.V. may issue registered or bearer shares, except that shares not fully paid cannot be in bearer form until fully paid. In cooperation with the issuing N.V., an administrator or trustee may also issue registered or bearer share certificates.

Shares of a B.V. A B.V. may never issue bearer shares or bearer share certificates, nor any form of negotiable share or share certificate. All shareholdings in a B.V. must be in registered form and recorded in the company's share register. The shareholder may request an extract from the share register noting the registration of his own shares.

Transfer of Shares. Fully-paid shares of an N.V., whether in registered or bearer form, are freely transferable.

Shares in a B.V. may be transferred, unless blocking clauses are inserted in the articles of incorporation, only to a spouse, a co-shareholder, the company, and relatives in the direct line. The articles may either eliminate, or restrict, or extend the degree of relationship in which share transfers are permitted. Every other transfer requires permission of the general meeting of shareholders or of another body designated in the articles (for example, the board of directors).

Although the transfer of shares in a B.V. is restricted, the statutes may not be so restrictive that transfers are impossible or even extremely difficult. The company's board may be given the authority to approve all share transfers, but if the board refuses to approve a transfer, it must designate other persons willing to purchase the shares for cash. A refusal to approve a requested transfer without offering alternate buyers is deemed to be an approval of the transfer. A shareholder is entitled to receive a fair price for his shares. In case of disagreement about what constitutes a fair price, an independent expert (hence, not in the employ of the company) determines fair value.

In general, the voting rights of shareholders are proportional to the number of shares owned. If the authorized capital is divided into shares of the same amount, each shareholder has as many votes as he has shares.

Types of Shares. Common shares are the usual type of shares issued. Preferred shares, which may or may not be cumulative, are also issued. In addition, the following special types of shares are sometimes utilized.

Priority Shares. Certain common or preference shares may be given special priorities of one type or another provided the priority is expressly set forth

in the articles of incorporation. A common type of priority is for the holders of priority shares to have the exclusive right to make binding nominations of persons to fill management positions. The binding effect of such nominations can be overcome by a vote of two-thirds of the shares representing more than half the subscribed capital. In large enterprises, the significance of priority shares has been reduced by the authority granted to the supervisory directors (commissarissen) by the new law on the structure of large enterprises.

Founders' Shares. Founders' shares sometimes referred to as promoters' stock are seldom issued. Where such shares have been issued, they are typically given to founders in exchange for contributions of property or special services to the corporation. In all such cases, the basis on which founders' shares were issued must be disclosed in the deed of foundation. Any special rights given to such shareholders must also be disclosed to be valid. If no such disclosure is made, the corporation when formed is not entitled to ratify the agreement.

In addition, the following certificates entitle the holders to special rights:

1. *Oprichtersbewijzen.* These may entitle founders to a portion of excess profits and also to payment on liquidation. In some cases, a percentage of the oprichtersbewijzen is redeemed each year out of retained earnings, thus eliminating their right to future portions of any excess profits.

2. *Winstbewijzen (actions de jouissance).* These are normally given as compensation for reductions in share values that occur during a reorganization. Such shares have rights comparable to those of the oprichter-sbewijzen.

3. *Amortisatiebewijzen.* These are normally issued as a result of a reorganization, and are cancelled after payment of a certain amount.

4. *Restantbewijzen.* These are sometimes issued after full or partial reduction of the capital. Their rights are fixed by or in consultation with new shareholders.

5. *Bewijzen van deelgerechtigdheid.* These are sometimes issued to shareholders who have already received their equity in authorized capital out of earnings. The conditions for payment are that real net profits are available, and that the deed of foundation provides for such repayment.

Bonds. Bonds with fixed interest rates, debenture bonds, and bonds

convertible into stock are all issued in the Netherlands. Normally, only larger companies find it feasible to raise capital by issuing bonds. A trustee must be appointed when secured bonds are issued. Bonds may be issued in bearer or registered form with bearer bonds being more common. Interest paid on bonds is deductible for tax purposes while dividends paid to shareholders is not deductible.

SHAREHOLDER MEETINGS AND RIGHTS

In general, shareholders possess all rights not explicitly delegated to others. Their rights are generally exercised at the annual general meeting of shareholders which must be held no later than six months after the end of the N.V.s or B.V.s financial year. Although directors' meetings may be held outside of Holland, the annual shareholders' meeting must be held within Holland.

Calling the Meeting. Annual meetings are normally called by management and convened at the company's principal office or another location designated in the articles of incorporation. Holders of bearer shares or bearer share certificates of an N.V. are entitled to be informed of the meeting by a notice in a newspaper. If only registered shares have been issued, the articles may prescribe other means of calling the annual general meeting, such as by registered or regular mail.

A B.V. must mail notice of the general meeting to the shareholders' addresses recorded in the share register, and such notices must be received by shareholders not later than on the 15th day prior to the meeting date.

Statutory Voting Procedures. Only shareholders may vote, and each shareholder is entitled to at least one vote. Shares of equal value must have equal voting rights. The articles of incorporation may restrict shareholders' votes as follows: three votes per shareholder if total capital is less than 100 shares, or six votes per shareholder if capital is 100 shares or more. However, these restrictions may not favor large shareholders at the expense of small shareholders. Proxy voting may be restricted but cannot be excluded. At the shareholders' option, they may select lawyers, notaries, or registered accountants to act as proxies.

In general, resolutions require a clear majority of votes to pass (one-half plus one of the eligible votes). For special resolutions such as changes in

managing directors or supervisory directors or the articles of incorporation or the liquidation of the company, a higher required vote may be stipulated in the articles of incorporation. But, when the vote concerns a change in the managing directors or supervising directors, such higher vote cannot be more than two-thirds of the votes at the meeting representing more than half the subscribed shares.

Voting Procedures Other Than at Meetings. An N.V. that has issued only registered shares and a B.V. may stipulate in the articles of incorporation that resolutions may be voted on by shareholders without the necessity of calling a general meeting. The articles must clearly state that all shareholders have the right to vote on such out-of-meeting resolutions and to circulate their opinions. All votes on such resolutions must be in written form. Cable and telex votes qualify.

Availability of Financial Statements. The financial statements must be prepared by management within five months of the end of the financial year of an N.V. or B.V., although in special circumstances this term may be extended by the general meeting of shareholders. The statements and the auditor's report of the registered accountant or licensed foreign accountant, if required, must be available at the corporation's office to shareholders from the day the shareholders' meeting is announced until the end of the meeting. Shareholders and holders of certificates are entitled to receive copies of the statements without charge.

Rights of Shareholders and Share Certificate Holders. Only holders of shares may vote. Share certificate holders do not have the right to vote. Other rights of holders of shares or share certificates are:

1. Attending and speaking at the general meeting of shareholders.
2. The right to call a general meeting by obtaining the written agreement of owners of at least 10% of subscribed capital (unless a lower percentage is stipulated in the articles of incorporation). Such a meeting must be called by management within six weeks. In case such a meeting is not called, the shareholders have the right to go to the president of the district court to request his authorization of such a meeting.
3. The right of enquête or inquiry. This refers to the right of shareholders and holders of share certificates to request the judge to order an examination of the operations of a company by one or more persons who are not managing or supervising directors of the company, see page 92.

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4. To nominate, suspend, and release managing and supervising directors.
5. To determine the financial statements. The determination of financial statements is a term that implies more than approval of the statements. Once determined, the statements are definitely fixed and cannot be changed. Thus, it is a stronger term than approval.
6. The right to a pro rata portion of earnings available for distribution, and of net equity in case of liquidation.

In principle, the rights mentioned under items 4, 5, and 6 belong to shareholders rather than to share certificate holders. In a "large" enterprise, in compliance with the Law of Structure with regard to item 4, shareholders have only the right to veto a nomination, and may only approve (rather than determine) the financial statements. Both shareholders and share certificate holders have the right to receive dividends, although holders of share certificates also receive dividends, rather indirectly, through the trustee or administrator. Except for stipulations in the articles about the distribution and retention of earnings, the ultimate authority in such matters is the general meeting of shareholders.

Rights Against Management. Legal standing to request judicial investigation of the management and general course of business of an N.V. formerly rested with one-quarter of the owners of bearer shares. During 1971, this prerogative was extended as follows:

1. In an N.V., to holders of one-tenth of the subscribed capital, either shareholders or share certificate holders, or to holders of at least Dfl. 500,000 of the subscribed capital or less if stipulated in the articles of incorporation, or to a labor union whose members are employed in the company.
2. In a cooperative society, to a prescribed number of members.

A judicial investigation could result in management being cleared or facing legal charges. Another possibility is that a responsible court official (of the Companies Chamber of the Court of Justice in Amsterdam) could suspend or request the resignation of managing or supervising directors, or could revoke a specific decision of the company. It is within the Court's authority to appoint new temporary management, to permit temporary departure from the articles of incorporation, or even to discontinue the N.V.

FORMS OF MANAGEMENT

Management of a Dutch N.V. or B.V. is not by rigid formula. The law is quite flexible and it is necessary for each corporation to select the form of management most suitable for its operations. The centers of authority in corporations include the annual general meeting of shareholders, a small shareholders' committee perhaps consisting of holders of priority shares, the works council in a limited sense as explained in Chapter 3, one or more managing directors, and one or more supervising directors who are referred to either as a board of supervising directors or commissarissen.

A small corporation may have only one managing director and no supervising director. The one managing director will function as the internal operating manager of the company and will have complete authority to represent the company and bind the company in dealing with third parties.

A larger company may appoint two or more managing directors, and its articles of incorporation may stipulate whether one or more of the managing directors is authorized to represent the company in dealing with third parties. The articles may stipulate that one or more signatures of managing directors will bind the company.

In a larger company, several managing directors may meet formally or informally from time to time as a board of managing directors. However, the authority of each managing director flows from the powers vested in him by law and/or the articles of incorporation, and this may not be changed by a board of managing directors. A change in the articles is required to change a managing director's representational authority.

The articles of incorporation may stipulate that in addition to one or more managing directors, one or more supervising directors be appointed. Supervising directors are not operating heads of a company. Their function is to advise and supervise the managing directors who are the operational heads of the company.

These matters are affected by the new structure law which applies to companies classified as large enterprises under the criteria mentioned on page 84. Other details of management of an N.V. or B.V. follow:

Powers and Duties of a Managing Director. Whether a corporation has one managing director (directeur) or several (directie), unless stipulated differently in the articles of incorporation each has responsibility for his own

sphere of operations and each may represent the company in a court of law and in dealings with third parties. The power of general representation of the company may be confined to one, or to more than one, managing director by the articles. In addition, restrictions in the articles may be used to deny managing directors authority in such specific matters as the following:

1. To acquire, dispose, encumber, and hire or lease fixed assets.
2. To contract for loans or to provide guarantees.
3. To institute law suits, except in emergencies.
4. To employ persons in higher echelons or above a fixed remuneration.
5. To grant pensions, or to make any agreements above a fixed amount.

However, the above restrictions are not valid against third parties.

Managing directors are liable to the company for the reasonable performance of their duties. Such liability is several (each for the whole) unless a specific managing director proves an absence of negligence.

The first nominations of managing directors are made in the articles of incorporation. Subsequent nominations are made by the general meeting of shareholders. However, the law or the deed of foundation of the company may authorize the board of supervising directors to make subsequent nominations. The articles of a company may specify that a small group of shareholders, such as the priority shareholders, may have the sole right to offer nominations. However, the law provides that the general meeting of shareholders can veto such nominations by a vote of two-thirds of the shares polled, representing more than half of the subscribed capital. In "large" enterprises, discussed later in this Chapter, only the board of supervising directors has the authority to appoint managing directors, and to dismiss them after consultation with the general meeting of shareholders.

The compensation of managing directors is determined by the annual general meeting of shareholders, if not stipulated otherwise in the articles of incorporation. A managing director is not required to own shares of the company. If he does own registered or bearer shares of the company, and the company requires a guarantee or pledge of his performance, such shares may be used to satisfy the guarantee requirement. A managing director cannot request the company be declared bankrupt without approval of the general meeting of shareholders, unless stipulated differently in the articles.

The managing director must present financial statements and a report on

business operations and policies to the annual meeting, which may require that the report be written and be available to shareholders without charge. In case the financial statements do not present fairly the position of the company, or conflict with the accompanying notes, a managing director may be held liable to third parties. Such liability is several, unless an individual managing director can prove he is without blame.

The Board of Supervising Directors (Commissarissen). As explained previously, the articles may stipulate that one or more supervising directors be appointed to supervise the managing directors and to advise on the general course of business operations.

In all but “large” enterprises, supervising directors are first nominated in the articles and, later, by the general meeting of shareholders which also has the power to dismiss or suspend them. In the case of “large” enterprises, the board of supervising directors makes its own appointments, subject to limited veto rights of the works council and the general meeting of shareholders. Thus, the oligarchical clauses under which priority shareholders enjoy special powers will be of limited usefulness in the case of large corporations, but will remain unchanged in the case of other corporations.

Although in “large” enterprises the board of supervising directors appoints its own members (co-option), the right to recommend nominees for the board is shared by the works council and the general meeting of shareholders or a small committee thereof, and the managing directors. Nevertheless, the board appoints its own preferences unless the meeting of shareholders or the works council raises objections to the planned appointment. The objections can only be based on the personal qualifications of the nominee or on the grounds that the appointment will cause the board not to be “properly constituted” as a whole. Should the board of supervisory directors not agree with these objections, the board may carry the issue to the SER whose decision is final.

The nomination of a candidate for supervisory director requires the following information about the candidate: age, profession, past and present occupations, number of shares he owns in the company, other service as a supervisory director, and reason for his nomination. In the case of large enterprises, the board cannot be composed of less than three. The choice of persons to be nominated is free, except that the following two categories of persons are not eligible:

1. Persons in the employ of the company, or of any other corporate body of which the company owns 50% or more of the shares, directly or indirectly.

2. Anyone employed by a labor union which is involved in negotiating labor conditions of the persons mentioned in item 1.

If the articles of incorporation are silent on the compensation of supervising directors, this matter is decided by the general shareholders' meeting, or by some other group assigned this responsibility (holders of priority shares, for example).

In case the published financial statements are in disagreement with the notes or comments, or give a misleading presentation of the position of the company, supervising directors are severally liable to third parties unless the absence of personal negligence can be proved.

In the case of "large" enterprises, the law on the structure of corporations designates the following important decisions which cannot be made by the managing directors without approval of the board of supervising directors:

1. The issuance, acquisition, or retirement of the company's shares and debentures.

2. An agreement to cooperate with an administrator by issuing share certificates.

3. An application for listing on the stock exchange or for the withdrawal of a listing.

4. The initiation or termination of long-term cooperation, direct or indirect, with another legal entity.

5. Direct or indirect participation in the capital of another entity to the extent of one-quarter of the investing company's net equity.

6. An addition to fixed assets of at least one-quarter of net equity.

7. Proposed changes in the articles of incorporation.

8. Proposals to liquidate or dissolve the company.

9. An application to a court for a declaration of bankruptcy or for a moratorium on payments to creditors.

10. Proposed dismissals of a relevant number of employees at the same time or within a short period.

11. Proposed radical changes in the working conditions of a relevant number of employees.

Items 10 and 11 apply both to the company and to any subsidiaries which are at least 50% owned, directly or indirectly.

A supervising director must resign four years after his appointment, but he is not barred from being nominated for another term. He cannot serve and must resign no later than the day of the annual general meeting held for that financial year during which the supervising director reaches 72.

Function and Operation of the Works Council. See Chapter 3.

Publication Requirements for Corporations. See Chapter 6.

Law on the Structure of Large Enterprises. N.V.s or B.V.s which meet the criteria mentioned on page 84 are considered large enterprises whose corporate structure as stipulated in the articles of incorporation must conform to the Law of Structure before July 1, 1973. The Law of Structure embodies the board of supervisory directors, which has been discussed. A parent company to which the law applies must inform the Commercial Register in writing before January 1, 1972. The conditions noted on page 84 under which companies are considered large enterprises must have been met for three continuous years.

The Dutch legislature did not wish to impose the full structure on subsidiaries of foreign parent companies. The full structure includes the authority of the board of supervising directors to nominate and dismiss the managing directors, the board's right to determine the financial statements, and those important decisions for which managing directors require approval of the board. To avoid becoming unattractive to foreign companies wishing to establish subsidiaries in the Netherlands, the supervisory board's powers are curbed in certain cases. Specifically, although a Dutch subsidiary that is a "large" enterprise must have a board of supervisory directors whose approval is required for those important decisions by managing directors mentioned on page 96, their authority to nominate and dismiss managing directors and to determine the financial statements is curbed. Such authority, in the case of subsidiaries of foreign companies, remains with the foreign company through the intermediary of its control of the general meeting of shareholders of the subsidiary. The details of these exceptions as they apply both to Dutch and foreign parent companies are:

1. A subsidiary is defined as any company at least 50% of whose shares are owned, directly or indirectly, by the parent company. A joint venture is considered the same as a subsidiary if at least 50% of its shares are owned directly or indirectly by two or more other corporations by virtue of a mutual agreement for cooperation.

2. Dutch subsidiaries are completely excluded from the provisions of the Law of Structure if the Dutch parent company already has a new-style board of supervisory directors and otherwise falls completely under the Law.

3. The restricted application of the Law, as described in the second paragraph under this heading, applies to subsidiaries of foreign parent companies and of pure international holding companies that meet the single criterion that a majority of the total number of employees of the parent and subsidiary together are actually employed and working outside of the Netherlands. This restricted application is the one that will affect many foreign investors. Through their control of the general meeting of shareholders, they will retain control over the appointment and dismissal of managing directors and the determination of the financial statements.

A general escape clause has been provided under which exceptions, when requested, may be allowed with regard to those matters which normally require the managing directors to obtain approval of the supervisory board, and for other provisions of the Law. The exceptions may be authorized, under restrictions, by the Minister of Justice after consultation with the SER.

Priority Shares. The application of the structure law to large corporations goes a long way towards removing the oligarchic clauses under which priority shareholders were able to have a large influence over the appointment and dismissal of managing directors. In principle, however, it is still possible for priority shareholders to be entrusted with the following kinds of authority:

1. The establishment of a shareholders committee to recommend nominations for the position of supervisory director or to object to the ultimate persons selected by the board of supervisory directors.

2. To form a small committee of shareholders which, as one of its functions, might be authorized to initiate the procedures for the dismissal of a supervising director, or to offer approval of the financial statements (determined by the board of supervisory directors) before they are presented to the annual general meeting.

3. To offer approval of other resolutions (issuance of shares, changes in the articles, etc.) which require approval of the general meeting.

Such authority, of course, must be stipulated in the articles of incorporation and is always subject to being overridden by a vote of two-thirds of the shares at the meeting, representing at least half of the subscribed capital.

Reserves. There is no legal requirement to maintain any reserves. Reserves of various kinds or general reserves are often maintained on a voluntary basis, depending on the corporate philosophy. Bankers in Holland tend to be more impressed with a balance sheet that contains reserves as contrasted with a policy of distributing all profits.

A reserve requirement may be inserted in the articles of incorporation, and such a statutory reserve requirement must be observed. The articles often stipulate that the disposition of earnings, after the payment of bonuses (*tantièmes*) to directors and a primary dividend to shareholders, is reserved to the annual general meeting of shareholders. The meeting may decide to pay an extra dividend and/or add to the company's reserves.

ALTERATION OF THE ARTICLES OF INCORPORATION

Only the general meeting of an N.V. or B.V. has the authority to alter the articles of incorporation. In cases where the deed of foundation does not provide for alteration of the articles, changes are nevertheless possible by unanimous vote at a meeting in which the whole subscribed capital is represented. The rights of third parties cannot be diminished by alteration of the articles without their consent, unless the original articles provide for such alteration.

A proposal to alter the articles must be included in the meeting call and an exact copy of the proposed alteration must be available to each shareholder without charge at the company's office. If these strict requirements are not met, any alteration of the articles of incorporation will be invalid if one-tenth of the capital represented at the meeting votes against the alteration.

The alteration of the articles must be in the Dutch language in a notarial deed and the declaration of no objection of the Minister of Justice must be obtained. If approved, the complete text of the new articles of incorporation

must be filed in the Commercial Register. During bankruptcy, approval of the curator is also required to alter the articles.

DISSOLUTION OF AN N. V. AND B. V.

A company can be dissolved by any of the following events:

1. Expiration of the period stipulated in the articles. This occurs rarely as the majority of companies are set up for an unlimited period.
2. A resolution for dissolution approved at the general meeting of shareholders.
3. Insolvency, after being adjudged bankrupt.

The resolution for dissolution must be announced in the Official Gazette and the Commercial Register must be informed. After its dissolution, the company continues to exist only as long as is needed to settle its affairs. During that period, its name must end with the words “in liquidatie” (in liquidation) in unabbreviated form.

The dissolution is handled by the managing directors unless the articles of incorporation or the resolution for dissolution adopted at the general meeting of stockholders provide otherwise. This also applies to the supervising directors.

After paying all debts, any remaining assets are available for shareholders in proportion to their statutory rights. No distribution to shareholders is allowed until two months after announcement in the Official Gazette and a newspaper published in the same municipality as the company’s head office that the proposal for the distribution and its underlying principles have been laid down in the Commercial Register. Unless the articles of incorporation stipulate otherwise, the accounting records and vouchers of the dissolved company must be in custody for 30 years of a person assigned by the deed of foundation or appointed at the general meeting.

If a custodian is lacking, any interested party may request the court to appoint one. Shareholders who have a demonstrable interest in the books and records may be authorized by the court to examine them.

STOCK EXCHANGE DECREE OF 1947

A 1947 decree stipulates that shares may be bought and sold only by

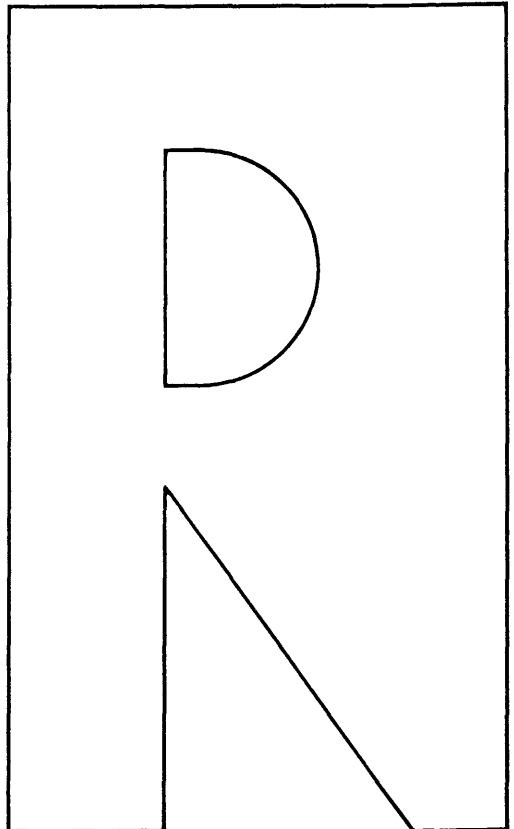
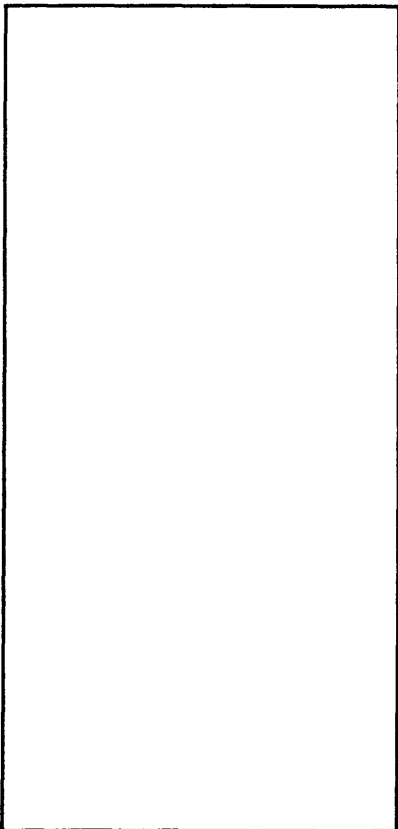
members of certain groups, see page 19. Nevertheless, in specific cases it is possible to transfer shares without the aid of the groups mentioned on page 19, and consequently without the usual commission fees. A request to make such share transfers must be in written form and addressed to the Minister of Finance. Permission is usually given for such transfer when registered shares are involved and the transfer is between a closed financial group (a husband transferring shares to a spouse, etc.).

CHAPTER VI

ACCOUNTING AND AUDITING

THE DUTCH ACCOUNTING PROFESSION

LEGAL ACCOUNTING REQUIREMENTS



ACCOUNTING AND AUDITING

The accounting profession has earned a high status in the Netherlands. Until recently, there was no legally protected title and no government standards for admission to the profession; admission standards were set by the profession itself. Dutch progress in accounting has been largely independent of developments in other countries. The accounting profession has been assisted by the concern of the business community with sound accounting practices and by the academicians. In particular, the theoretical framework of the Dutch accounting profession has evolved to a large extent from the contributions of one man – the late Professor Theodore Limperg.

THE DUTCH ACCOUNTING PROFESSION

The history of accountancy and that of the Netherlands Institute of Accountants (N.I.v.A.) have run parallel. Since its inception in 1895, this Institute has been responsible for such major functions as the education of accountants, the examinations leading to entry in the profession, and the regulation of professional activities. Until recently, all this was accomplished without support of the government. Although this had advantages, it had the disadvantage that persons with varying degrees of ability could practice under a non-protected title.

The Registered Accountants Act. This Act was passed in 1962 but because it contained transitional provisions did not become fully effective until 1967. The Act provided for the creation of the Netherlands Institute of Registered Accountants (N.I.v.R.A.) which replaced the N.I.v.A., the V.A.G.A. (Association of University-Trained Accountants), the Broeder-schap (Fellowship), and part of the N.U.v.A. (Union of Accountants), but assumed almost the same functions. The Act also established the protected title of registered accountant. This title is obtained by passing a series of examinations. Only qualified persons who have passed the examination can be entered in the official register of accountants and use the title *registered accountant*. Others may practice but may only refer to themselves as *accountant-administrative consultant* – a title which is contained in a proposed law regulating their activities. N.I.v.R.A. is authorized to maintain professional discipline which it does through a Disciplinary Board and a Board of Appeals.

Professional Training and Examinations. There are two ways of obtaining the accountant's diploma required for entry in the registry of the Order N.I.v.R.A.

1. Passing the required examinations at a university or college named in the Act on Scientific Education. A preliminary requirement is a Master's degree in economics and additional courses in applied business economics, taxes, administrative organization, and auditing. These additional courses are being taken at night and on Saturdays in conjunction with employment by an auditing firm.

2. Studying a schedule of courses given by the N.I.v.R.A. Until 1971, such training took at least 8½ years as the student was normally employed full time by an auditing firm and took these courses in the evenings and on Saturdays. It is planned to allow one or two full working days each week during which students can attend N.I.v.R.A. courses, thus shortening the training period considerably. The courses studied are divided into three sections.

Section One – Law, mathematics, social economics, business economics, practice of business economics 1.

Section Two – Tax law, business economics 2, practice of business economics 2, administrative organization (basically, accounting principles and procedures), and auditing.

Section Three – Consists of a final examination on a special subject chosen by the candidate and approved by the Examination Bureau. Examinations on the courses in the two sections are given in sequence and all of them must be passed. The written examinations in accounting and auditing are given twice a year and are the same for both methods of becoming registered accountants.

Although prior work experience is not required to take the examination, in the usual case the candidate has had several years experience prior to his last examination.

Structure of the Accounting Profession. In 1971, the 3,000th registered accountant was added to the rolls. Of this number, about 500 are employed by the government and 1,000 by private industry. The 1,500 registered accountants not in public practice continue to be subject to the ethical rules

laid down by N.I.v.R.A. and any malfeasance in performing their jobs in private industry may subject them to professional censure.

The Order N.I.v.R.A. lists about 300 accounting firms. Five of these firms each employ between 100 and 250 registered accountants and between 1,000 and 1,500 non-professional staff.

The small accounting firms generally provide tax services for clients, but the larger firms normally cooperate closely with specialized tax-consulting firms. There are no legal or ethical prohibitions against accounting firms providing expert tax advice. Historically and into current times, the accounting firms themselves have preferred to work with tax consulting firms in the complex tax areas.

A committee of N.I.v.R.A. is studying the issue of accounting firms providing management services. Since the professional rules prohibit registered accountants from working with non-registered accountants under a joint name or in partnership, experts in other disciplines must work as employees and some of them object to this limitation.

Professional Rules and Ethics. The professional code of Dutch accountants was first set down in written comprehensive fashion as long ago as 1910. The Association of University-Trained Accountants (V.A.G.A.) adopted similar but less extensive rules when it was founded in 1927 and later adopted the N.I.v.A. rules. The Minister of Economic Affairs decreed similar legal rules which have been in effect since 1967. Primarily, these rules deal with auditing standards and ethics, and changes in them are determined by members of N.I.v.R.A. The rules are too lengthy to be incorporated here but, in the main, they are similar to those in other countries with developed accounting professions. A few summaries of rules that are of interest to persons outside of Holland follow:

1. Although a registered accountant cannot base his opinion on financial statements on the work of a non-registered accountant, this prohibition does not apply to the work of a foreign accountant if: (1) a written report is provided by the foreign accountant, (2) due care was exercised in selecting the foreign accountant, and (3) the registered accountant notes the use of the foreign accountant's report in his own report.

2. There is no standard wording for an opinion. Some of the strictures governing reports are: (1) the report must give a true and fair picture, (2) the

opinion on annual accounts shall include the balance sheet, the income statement, and the explanatory notes, (3) the report shall be deemed to affirm that the statements are in accord with sound business practice, the assets and liabilities exist, and the valuation and description of the items are correct, and (4) no reports shall be issued on two consecutive balance sheets without including the profit and loss account for the intervening period.

3. Foreign accountants who meet technical and professional requirements may apply for permission to practice in the Netherlands. A small number of revocable permissions were granted on July 1, 1971 by the Ministry of Economic Affairs, based on Article 42a of the Commercial Code, and several applications are under review.

Enforcement of Professional Rules and Ethics. Disciplinary procedures enforce the profession's rules and ethics. A Disciplinary Board hears any complaint lodged and, if it finds the complaint well founded, may issue a written warning, may suspend the registered accountant for six months, or may annul his entry in the register of accountants. Such decisions may be published in whole or in part, but without identifying information.

A decision of the Disciplinary Board may be appealed by the plaintiff, the registered accountant, or the Council of N.I.v.R.A. to a Board of Appeal, whose decision is final.

Dutch Accounting Principles. The concept of generally accepted principles is less important to Dutch accountants than the concept of accounting principles that conform to "sound business practice." One consequence is that there is very little authoritative written expression of accounting principles. Even Dutch law has avoided, in the main, detailed regulations for valuing assets and liabilities. The major influence on "sound business practice" has been the tenets of business economics, which involve issues of income and valuation. Perhaps this accounts for the fact that many Dutch accountants believe that current values, generally replacement values, provide better measures of financial position, income, and rates of return than do historical values. This position is by no means unanimous, but since the Dutch accounting profession has led in this matter, a brief explanation of replacement value is in order.

The Theory of Replacement Value. The maintenance of invested capital in real as opposed to nominal (monetary) terms is considered necessary to

ensure continuity of the enterprise and its profitability, protection of creditors, and proper evaluation and reporting of operations.

This is accomplished by restating assets periodically at their replacement value. Although theoretically all fixed assets and inventories should be so restated, in practice not all cases conform to the theory. Positive adjustments arising out of asset restatements are credited to a capital account *revaluation reserve* and not to *retained earnings* where they might be misconstrued. Negative adjustments are debited to the revaluation reserve and, if the reserve is wiped out, any excess negative adjustment is charged to current income. Thus, the revaluation reserve reflects the additional investment that would be necessary to maintain current operations.

The restated value of assets consumed in obtaining revenue of the period is charged against that revenue by means of depreciation charges based on restated values. Inventory used during the current period is also charged to cost of goods sold at current price levels. Thus, replacement value accounting matches current costs, including restated depreciation, against current revenues in determining the income of each period.

Unnecessary expenditures and wasted expenses (including excess capacity) are considered avoidable expenses and not properly part of the cost of goods sold. These are, therefore, charged to a "waste" account. This implies, of course, that the company has some cost standards by which to measure the necessary, as opposed to wasted, expenses. This type of information is gathered for management information and is not normally found in published financial statements.

By no means have all Dutch companies adopted replacement value for accounting and reporting purposes. Many companies use replacement values outside of their accounting systems and only for calculating cost prices of goods or services. Companies that use replacement values have so far continued to use them even when the general price level has been relatively stable since price levels of specific categories of assets may still vary widely.

The replacement value theory is probably accepted by most academicians and practicing accountants. They believe that because inflation has been prevalent throughout the world in the last 30 or 35 years, an automatic and basic framework for the restatement of historical-guilder financial statements is necessary.

Other Differences in Accounting Principles. Besides the use of replacement values, points of difference with accounting principles in other countries are not easily noted because of the Dutch reliance on sound business practices and, therefore, little written expression of accounting principles. Dutch financial statements often contain charges to income for provisions and contingencies that are not found in the United States or the United Kingdom such as a fund for maintenance and repairs. Distributions of shares are usually recorded at the nominal value of the shares by the issuing company. Although infrequent, extraordinary gains and losses may be placed directly in retained earnings without passing through the income statement. Consequently, the actual results of operations can only be obtained by knowing the changes that have occurred in the accounts for provisions and contingencies and retained earnings.

Income tax allocation is practised, but the amount deferred is sometimes discounted. The cost of land is seldom shown separately from the cost of the related plant or building.

Influence of Tax Law on Accounting Principles. Dutch accountants have been consistent in their belief that the aims of tax law are not necessarily in agreement with sound business practice. Consequently, the influence of taxes on Dutch financial statements is almost nonexistent. However, the Law on Annual Accounts has been in effect since May 1, 1971, and it is possible that, in the future, judges' interpretations of that law may give more weight to tax law. Currently, it is common practice to prepare separate financial statements based on the requirements of tax law, and often differing considerably from those prepared for the general meeting of shareholders. These "tax" statements are reconciled with the regular financial statements. The theory of replacement value is not accepted for tax purposes.

Auditing Standards. As is the case with accounting principles, auditing practices are not codified in written form and are based on sound business practice to a large extent. The professional code, see page 107, includes what are essentially standards of general auditing and of field work.

Dutch auditors study and evaluate the system of internal controls but rely on these internal controls to a lesser extent than auditors in other countries.

In keeping with the influence of business economics, Dutch auditors

emphasize their verification of the organic relationships between the flows of money and goods. For example, starting with opening inventory, they will review the relationship between purchases and disbursements, sales and receivables and collections, and the closing inventory thus obtained will be compared with the closing physical inventory. In addition, the goods sold might be subjected to further analysis based on multiplying the quantities sold at their known sales prices and comparing the overall result with gross sales for the period. Along with this emphasis on interrelationships, more transactions are checked in more detail than is customary in, say, the United States or Canada. However, there is a steady trend towards greater reliance on the system of internal controls.

The use of sampling (both the statistical type and for selection of audit tests) is an accepted practice, with statistical sampling preferred for testing audit samples. Observation of the count of physical inventory is an essential requirement. Confirmation of accounts receivable and of cash balances in banks is not considered essential. Most Dutch auditors believe that the cash transfer system used in Holland in place of checks (see page 31) makes such confirmations unnecessary. In the usual case, the cash transfer form sent by the debtor to his bank or the post office contains both his and the seller's name, their bank or giro account numbers, and the dates and/or numbers of the invoices being paid. The copy of this form received by the seller is utilized by the auditor as outside evidence.

The Auditor's Opinion. A specific standard form of auditor's opinion on financial statements has not been prescribed. The auditor's signature is held to imply unqualified concurrence with the document covered, unless the contrary is specifically stated. However, the law on the annual accounts as well as the influence of the international accounting firms is resulting in the growing use of auditor's opinions such as the following:

“We have examined the financial statements of Co. X at December 31, 197X. In our opinion, the accompanying balance sheet and statement of profit and loss, together with the comments (or notes), present fairly and consistently the amount and the composition of the net assets at December 31, 197X and the results for the year then ended.”

Dutch auditors are in general agreement that their opinion should not contain statements about audit procedures applied or omitted because such statements would convey nothing to lay persons. In many cases, long-form reports are furnished to managing and supervising directors which contain additional information useful for managerial purposes.

LEGAL ACCOUNTING REQUIREMENTS

The changes in the provisions of the Commercial Code and the Law on the Annual Accounts of Enterprises, see page 77, have introduced new requirements concerning the form, content, and publication of financial statements, and the necessity of their verification by independent auditors. These requirements vary for different entities, as will be explained. The entities subject to these requirements include N.V.s, B.V.s, cooperative societies, mutual fire insurance companies, and agricultural credit banks. In the Law on Annual Accounts, the term financial statements refers to the balance sheet, income statement, and the accompanying notes.

What Constitutes Publication of Financial Statements. As has been noted in Chapter 5, financial statements must be completed within five months of the end of a company's financial year, and the general meeting of shareholders must be held within six months of the end of the financial year. Once the financial statements have been officially adopted by the company, they are required to be filed within eight days with the Commercial Register which is maintained by the local Chamber of Commerce, and which is open for inspection. When the statements have been filed, the Secretary of the Chamber of Commerce announces that fact in the Official Gazette, which is published each working day in the Dutch language. This constitutes the publication requirement. If an auditor's report was required, this is also filed with the Commercial Register.

Filing (Publication) Requirements of N.V.s. With one exception, N.V.s of any size or capital will be required to publish or file their complete financial statements and auditor's report in the manner that has been described. This requirement became effective for certain categories of N.V.s with the first financial year ending after June 29, 1971. However, for all other N.V.s, the effective date is the first financial year ending after December 29, 1972. In addition, the prior financial statements, but not the

auditor's report, must be filed with the Commercial Register, beginning with the financial year which includes September 11, 1970 and continuing until the N.V. becomes subject to the regular filing requirements noted above.

The one exception noted in the first sentence of the previous paragraph refers to an N.V. which is a subsidiary of a Dutch parent company. Such a company is still subject to all the filing requirements that have been mentioned, but its financial statements may be in summary form, and an auditor's report is not required. Such summary form must contain at least the following totals:

Balance Sheet:

Total fixed assets	Net equity
Total current assets	Long-term debt
	Current liabilities

Income Statement:

Operating or trading results
Balance of other income and deductions

To adopt the summary form, the financial statements of the N.V. must be consolidated or combined with the financial statements of its Dutch parent company, all of the subsidiary's shareholders must agree, and the Dutch parent company must guarantee its subsidiary's affairs, which guarantee must be filed with the Commercial Register. The guarantee is not required when the parent company's activities are exclusively or mainly outside the territory of the Common Market.

Filing (Publication) Requirements of B.V.s. The B.V. is basically a closed corporation and, as such, the publication requirements imposed are more varied and less strict. Only two categories of B.V.s are required to file complete financial statements and the auditor's report: (1) any B.V. in the banking or insurance field, and (2) any B.V. that has issued bearer bonds or bearer certificates of registered bonds. A B.V. in either category must file its financial statements for the first financial year ending after June 29, 1971. However, in order to permit B.V.s to arrange their bookkeeping systems in a manner suitable for auditing, the requirement that an auditor's report be filed with the financial statements is delayed until the close of the first financial year ending after June 29, 1974.

A "large" B.V. is one that meets the criteria discussed on page 84

(briefly, Dfl. 8 million in assets and 100 employees). Such a B.V. need not file its profit and loss statement but must file its balance sheet with accompanying notes and auditor's report. The exception noted on page 112 for an N.V. which is a subsidiary of a Dutch parent company also applies to a large B.V. that is a subsidiary of a Dutch parent company, and all of the conditions mentioned there also apply to the B.V.

B.V.s, other than those that have been mentioned, are exempt from filing. Because of this or to avoid filing a profit and loss statement or for other reasons, it is possible that some N.V.s may wish to convert to the B.V. form. This can be done under the conditions and within the time period discussed on page 83.

All B.V.s with an issued capital of Dfl. 500,000 or more are required to have an annual audit by an independent auditor, whether or not they are required to publish their financial statements.

Financial Statement Requirements. The Law on Annual Accounts which contains the presentation requirements has as its stated aims a sufficient disclosure for the obtaining of a reasonable opinion about financial position and results of operations and, within limits, about a company's liquidity and solvency. To accomplish this, the Act has some detailed requirements about the content, analysis, and classification of items in the financial statements, and these requirements must be studied carefully. As one example, the income statement or the accompanying notes must reveal all remuneration received by supervisory directors (commissarissen), in whatever form (fixed, bonuses, etc.). The number of supervisory directors also must be disclosed, including those not receiving remuneration.

Although the Act has detailed requirements, it is not precise about the sequence of items in the financial statements, nor does it specify the language that must be used. The Act, in discussing the items in the financial statements, presents them in the following order:

Balance Sheet

FIXED ASSETS:

property, plant and equipment
intangible assets
investments
advances to affiliates

NET EQUITY:

subscribed capital
reserves

LONG-TERM DEBT:

PROVISIONS:

Balance Sheet (Continued)**CURRENT ASSETS:**

inventories
accounts receivable
notes receivable
short-term investments
cash

CURRENT LIABILITIES:

bank overdraft
accounts payable
current tax liabilities

The Income Statement**REVENUES:**

results of operations
income from investments
income from securities
interest income
extraordinary income

COSTS AND EXPENSES:

depreciation of fixed assets
amortization of intangible assets
losses on investments
interest expense
extraordinary expenses
income taxes

The discussion of these items is detailed. Some examples follow.

Intangible Assets. The items to be listed under this caption include goodwill, patents, licenses, copyrights, concessions (mining, timber, etc.), and organization expenses. The maximum value assigned to intangible assets is cost less accumulated amortization.

Inventories. Inventory must be classified as to raw materials, supplies, work in process, finished goods and trade goods held for sale.

Transition Measure. Since the disclosure and filing requirements are new, consideration has been given to allowing a transition period for those companies who fear they may be unduly affected by the required disclosures. For example, in the case of inventories, companies may be exempted from the requirement that inventories be classified where such classification may be harmful in its competition with other firms, taking into

account the size of the company and the goods produced or services rendered. Such temporary exemption is also possible from the requirement that receivables be classified by type.

Notes Discounted. The face value of discounted notes must be stated to indicate the owner's contingent liability.

Long-Term Debt. All debt of over one year must be classified as to type, such as bonds payable, due on investments, due to creditors who own shares in the company, and due to pension funds. In addition to the debt amounts, information must be supplied as to whom and in what form collateral has been assigned, and any long-term debt for which the company has committed itself not to pledge assets in the future. All terms, including interest rates, must be disclosed. For loans which have the possibility of conversion into shares, the conditions of conversion must be stated. The portion of any long-term debt due within the next financial year must also be disclosed.

Company Sales. Information about the sales of the company must be disclosed, using standards prevailing in the specific industry. The data may be in absolute amounts or in terms of percentage comparisons with the prior year. The total of salaries, wages, and social charges must be stated. As a transition measure, an exemption from these requirements for up to five years may be granted.

Other Requirements. Each item in the financial statements is subject to types of requirements similar to the examples that have been discussed. Detailed requirements also exist about the information that must be disclosed about subsidiaries. It is beyond the scope of this Business Study to incorporate the full extent of these requirements.

The Independent Auditor's Report. Those entities required to file an independent auditor's report with their financial statements must obtain the services of a registered accountant or a licensed foreign accountant. The auditor is required to note in his opinion whether there is any exception from the requirement that the financial statements be prepared in accordance with the Law on the Annual Accounts of Enterprises.

Enforcement of Requirements re Financial Statements. Enforcement is vested in the Companies Chamber of the Court of Justice at Amsterdam. The Companies Chamber does not examine all financial statements but only

those brought to its attention by an interested party or by the attorney-general acting in the public interest.

Legal proceedings must begin within two months after approval of the financial statements, or after their filing at the Commercial Register in cases where filing is required. The legal claim must state the particular adjustments required in the financial statements.

After hearing the evidence, the Companies Chamber renders its decision in open court. A decision that the financial statements fall short of meeting legal requirements must include precise particulars of what is lacking. In this manner, the Court is expected to contribute to the formation and refinement of Dutch accounting principles and practices. Should the Chamber's verdict not be complied with, the delinquency is dealt with by another court.

The Companies Chamber proceedings are handled by members of the Court of Justice and a registered accountant and his deputy.

Required Journals and Ledgers. The statutory requirements for accounting books and records are of such a general nature that they are easily satisfied by the usual books and records used in business. The Commercial Code merely states that financial records must be maintained in such a way as to enable all business assets and liabilities to be determined at any time. The minimum retention period for books, records, and financial statements is ten years.

Financial Statement Presentation. To assist readers of Dutch financial statements, the Dutch terms used in such statements and comparable English terms are presented on the following pages. The format of the statements is an example of financial statements published prior to the Law on Annual Accounts.

**GECONSOLIDEERD RESULTATENOVERZICHT
(CONSOLIDATED STATEMENT OF INCOME)**

Omzet (Sales)

Kosten: (Cost of sales)

Verkoopkosten en algemene kosten, afschrijvingen
(Selling and general expenses, depreciation)

Bedrijfsresultaat (Results of operations)

Overige baten en lasten: (Other income and deductions)

Betaalde interest (Interest paid)

Diversen (Other)

Ontvangen interest (Interest received)

Winst vóór aftrek van belasting (Profit before tax)

Belasting op de winst (Tax on income)

Winst na aftrek van belasting (Profit after tax)

Aandeel in de nettowinst van niet geconsolideerde deelnemingen
(Share in net profit of unconsolidated subsidiaries)

Nettowinst (Net profit)

Voorstel tot winstbestemming (Proposed appropriation)

**GECONSOLIDEERD VERMOGENSOVERZICHT
(CONSOLIDATED BALANCE SHEET)**

Duurzame produktiemiddelen (Fixed assets)*	Eigen vermogen (Net equity)
Afschrijving (Accumulated depreciation)	Aandelenkapitaal (Capital)
Immateriële activa (Intangible assets)	Agio (Additional paid-in capital)
Niet geconsolideerde deelnemingen (Non-consolidated investments)	Ingehouden winst (Retained earnings)
Niet direct realiseerbare waarden (Other assets, non-current)	Herwaardering reserve (Revaluation reserve)
Voorraden (Inventories)	Herwaardering (Revaluation)
Fabrieksvoorraden (In plant)	Minderheidsbelang van derden (Minority interests in subsidiaries)
Commerciële voorraden (Trade inventories)	Diverse voorzieningen (Diverse provisions, taxation equalization reserve – deferred taxes)
Vorderingen (Accounts receivable)	Op lange termijn (Long term)
Handelsdebiteuren (Trade)	Op korte termijn (Short term)
Verdisconteerde wissels (Discounted notes)	Schulden op lange termijn (Long-term debts)
Diverse debiteuren (Other receivables)	Converteerbare obligatieleningen (Convertible debentures)
Vooruitbetaalde kosten (Prepaid expenses)	Overige obligatieleningen (Other debentures)
Liquide middelen (Cash)	Overige schulden op lange termijn (Other long-term debts)
Effecten (Securities)	Schulden op korte termijn (Current liabilities)
Kas en banken (Cash on hand and in banks)	Bankkredieten (Bank credits)
	Crediteuren (Accounts payable)
	Belasting op de winst (Income tax)
	Nog te betalen kosten (Accrued expenses)
	Winstuitkering (Profit distribution)

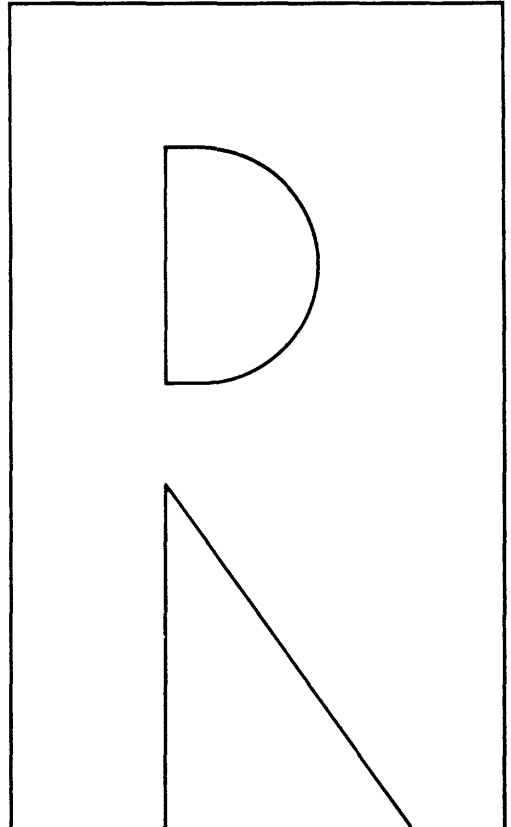
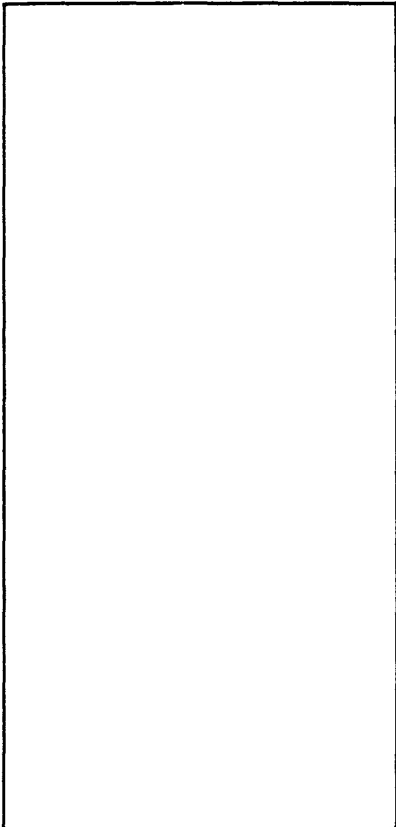
*Valuation basis: Vervangingswaarde (Replacement value)

CHAPTER VII

TAXATION IN THE NETHERLANDS

DUTCH TAXATION
TAXABLE INCOME
CAPITAL GAINS
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PERSONAL INCOME TAX
AVOIDING DOUBLE TAXATION
TAXATION OF NONRESIDENTS
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EMPLOYMENT INCOME
ALLOWABLE DEDUCTIONS
DIVIDEND WITHHOLDING TAX
INCOME COLLECTION AND
APPEAL PROCEDURES
CORPORATE INCOME TAX

CORPORATE TAXATION OF
NONRESIDENTS
INCOME TAX RATES
COLLECTION OF CORPORATE
INCOME
TAX EXEMPTION FOR
ENTERPRISES
MISCELLANEOUS TAX
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TAX ON VALUE ADDED
STAMP DUTIES
SHARE ISSUES
REAL ESTATE TAX
INHERITANCE TAX - GIFT TAX



TAXATION IN THE NETHERLANDS

SYNOPSIS OF DUTCH TAXATION

Corporations and other profit-making entities are subject to corporate income tax. The basic tax rate is 46%, which has been increased by a temporary surcharge of 5% for an effective rate of 48.3% as of January 1, 1972. For 1971, the surcharge was 3%.

Individuals are subject to personal income tax at progressive rates up to a maximum rate of 70.5%, also temporarily increased by a 5% surcharge, effective January 1, 1972. For 1971, the surcharge was 3%. An annual net wealth tax is levied on individuals only at the rate of .5%; this rate is temporarily increased to .6% for 1972 and 1973.

Corporate distributions of after-tax profits, such as dividends, are part of the taxable income of resident shareholders, except in the special case discussed on page 152. There is no tax relief for distributed profits as in other countries: Germany, for example, which taxes distributed profits at reduced rates, or France where shareholders may obtain a tax credit against their personal income tax.

Corporate income tax, personal income tax, and net wealth tax are collected by assessments levied by tax inspectors on the basis of annual returns filed by taxpayers.

Prepayments of corporate and personal income taxes are made through:

1. Provisional assessments by tax inspectors during the year.
2. A withholding tax on dividends at the rate of 25%.

Another prepayment of personal income tax is the withholding tax on wages. Taxpayers whose sole income is wages under Dfl. 18,000 are generally not assessed for personal income tax since the withholding tax on wages constitutes a final levy. Prepayments of net wealth tax are made through provisional assessments only.

Nonresident individuals and nonresident bodies corporate are subject to personal or corporate income tax, to dividend withholding tax, and to wage withholding tax, as the case may be, on certain elements of income considered to be derived from Dutch sources. Nonresident individuals are

subject to net wealth tax on certain elements of net wealth in the Netherlands.

In addition, the following taxes are important in the Netherlands, and are discussed here.

- Tax on value added (TVA)
- Stamp duties
- Tax on share issues and transfers of real estate
- Real estate tax
- Inheritance and gift tax

PERSONAL INCOME TAX

Since January 1, 1965 the statutory basis for the personal income tax has been the Personal Income Tax Act of 1964. Under this Act, residents of the Netherlands are subject to tax on their worldwide income, and nonresidents are subject to tax on certain elements of income derived from Dutch sources, see personal income taxation of nonresidents on page 138.

An important provision of the corporate income tax act incorporates the provisions of the personal income tax act in the determination of corporate net income. Consequently, much of the following discussion of personal income taxation is relevant to the discussion of corporate income taxation beginning on page 146.

ELEMENTS OF TAXABLE INCOME

The elements of taxable income are outlined in the following table and, then, discussed in detail in the following pages, under the headings appearing in the table.

TAXABLE INCOME

- A. Profits from business or independent personal services.
- B. Other elements of income:
 - 1. Income from employment.
 - 2. Income from net wealth.
 - 3. Income in the form of periodic payments.
- C. Capital gains from the sale of shares representing a “substantial interest.”

TAXABLE INCOME (Continued)**Less:**

- D. Deductions not connected with elements of income:
 - 1. Personal deductions.
 - 2. Extraordinary expenses.
 - 3. Contributions.
- E. Carryforwards and carrybacks of negative income.

Taxable Income:

Taxable income equals $A + B + C - D - E$.

Notes:

1. The income of a married woman is added to her husband's income unless the couple is separated (not necessarily legally, but to the extent of living separately on a permanent basis).
2. For tax purposes, income from the net wealth of persons under 21 is generally considered part of their parents' income.

Profits from Business or Independent Personal Services. The taxpayer for whose account a business is conducted is considered the recipient of any profit from that business. Income from independent personal services or from a professional practice is treated the same as business profit. In general, the taxable profit of individuals must be determined according to "sound business practice" and along consistent lines.

Special provisions apply to profits from the transfer or termination of a business. Such non-periodic capital gain is taxed at proportional or flat rates and is discussed on page 133. Under new provisions which probably will be effective from January 1, 1972, entrepreneurs in business and the professions who participate in an obligatory pension scheme provided for by specific acts will be able to deduct pension premiums, a situation similar to that of employees.

Income from Employment. Details of income from employment are discussed on page 141.

Income from Net Wealth. Income from net wealth includes income from movable and immovable properties, and from intangible rights to the extent such income cannot be considered as business profit or income from employment. Dividends, interest, rent, and income from usufruct are examples of income from net wealth.

Dutch residents who own shares in a nonresident investment company may be subject to tax on assumed income if the majority of the assets of the company consist of securities, immovable property, or loans secured by mortgages. If the foreign investment company meets the above conditions, the shareholder must include in his income at least 3.6% of the market value of his shares at the beginning of the year. If no dividend or a dividend less than the 3.6% mentioned is paid, the difference between that and the 3.6% is deemed to be received (constructive dividend), and must be included in the shareholder's taxable income. Offsetting deductions are the same as for any other investment in securities; for example, interest directly related to this income item or fees for a safe deposit box.

Income from net wealth also includes amounts received on corporate liquidations in excess of capital contributed to the company; in other words, liquidation sums exceeding the total of share capital and capital surplus. Such income is not subject to the usual progressive tax rates but, at the taxpayer's request, to proportional rates (somewhat similar to capital gains tax in the U.S.A.) that can vary between 20% and 40%, see page 133. Partial repayments of funds contributed to capital are considered taxable income to the extent profits were available to the corporation, unless the share capital is reduced accordingly. Thus, a majority owner of a corporation may reduce his equity investment without tax.

Shareholders may sell all or part of their shares to the company that issued them. In such cases, amounts received by shareholders in excess of the allocated portion of share capital (par value of the shares plus a proportionate share of capital surplus) are taxed at progressive rates, with one exception: if the shareholder sells at least 5% of the outstanding stock, and has not sold any shares to the corporation in any of the ten preceding years, at his request his profit may be taxed at the special non-progressive tax rates varying from 20% to 40%. It is possible that share capital for legal purposes differs from share capital for personal income tax purposes, see page 127.

Stock dividends are included in taxable income at their par value and are taxed at progressive rates. In this connection, it should be remembered that while all shares of Dutch companies must have a par value, foreign companies' shares which do not have a par value may be purchased by Dutch shareholders. If a stock dividend is issued without par value, the amount included in income is the proportionate share of the amount transferred by

the company from retained earnings to share capital. Stock dividends paid out of capital surplus are nontaxable even when the shareholder may choose between the stock dividend from capital surplus and a cash dividend.

Despite these provisions, stock dividends will be taxed at a flat 20% rate under the following two conditions (recapitalization provisions):

1. The stock dividend is at least 25% of the outstanding share capital.
2. The par value of the shares issued is not in excess of total cash dividends of the previous ten years.

In general, Dutch taxation of stock dividends has been criticized. A commission appointed to study this and other subjects has published recommendations that support the present system but asked for liberalized "recapitalization provisions". A minority pleaded for stock bonuses out of retained earnings to be nontaxable and for stock dividends out of current income to be taxable. The commission also requested a clearer definition of the method of determining capital surplus.

Article 44 and Capital Gains. Article 44 is a particular provision of the Personal Income Tax Act of 1964 under which share capital for personal income tax purposes is defined differently than for purposes of the Commercial Code. This difference occurs when a company issues shares and the purchaser of the shares, instead of paying cash, pays for the newly-issued shares by contributing shares. In such cases, for specific personal income tax purposes (liquidation of the company, partial or full redemption of shares, or sale to the company), the capital contributed is deemed to be equal to the par value of the contributed shares plus a proportional share of capital surplus. For the legal paying-in requirement and for all other legal and tax purposes, the contributed shares are valued at their fair market value. Consequently, it is possible for the company's share capital to be much smaller for those personal income tax purposes than for other purposes. This becomes important when a company is liquidated since personal income tax is levied only on liquidation proceeds in excess of share capital as defined for personal income tax purposes. The pertinent Article 44 applies to shares of both domestic and foreign companies.

The Personal Income Tax Act does not provide for general taxation of capital gains, except in the case of a "substantial interest," see page 129, and sales of business assets by an enterprise, see page 133. This is based on the

TAXATION IN THE NETHERLANDS

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ELEMENTS OF TAXABLE INCOME

assumption that all profits earned by a corporation during its existence will be distributed to and included in the taxable income of shareholders, and any profits not so distributed will be taxed in the hands of shareholders when the corporation is liquidated. Consequently, at liquidation, any distribution of retained earnings to shareholders is taxed, regardless of the acquisition price of the shares. Although this assumption may seem valid in some cases, it can be inequitable in other cases. For example, an individual may purchase for 1,000 a share whose par value is 100. If the company is liquidated the next day, the new shareholder may have to add 900 to income.

Rent Income. Rent derived from properties is another example of income from net wealth. Rent income is included in taxable income after deducting the necessary costs of earning and collecting the rent.

A homeowner must include an assumed rent income in his taxable income. The assumed rent income is derived from the following schedule:

Market Value of Dwelling (Dfl.)		Assumed Annual Rent Income (Dfl.)
From	To	
0	15,000	—
15,001	30,000	150
30,001	60,000	300
60,001	120,000	600
120,001	240,000	1,200
240,001	—	2,400

The assumed annual rent income is deemed to be net income, so that such expenses as repairs and the like cannot be deducted. However, interest on loans to finance ownership of the dwelling is deductible.

Income in the Form of Periodical Payments. Periodical payments are defined as those forms of periodic income which cannot be considered as profit from an enterprise, or income from employment or from net wealth. Taxable income in this category includes such items as alimony received from a former spouse and periodical grants to students for purposes of carrying on a course of study.

**CAPITAL GAINS FROM THE SALE OF SHARES
REPRESENTING A "SUBSTANTIAL INTEREST"**

Although no general tax on capital gains exists, as an exception profit arising from the sale of shares belonging to a "substantial interest" is taxed at the flat rate of 20%. If the shares sold were not owned by an individual defined as a holder of a "substantial interest", no tax would be levied. The term, therefore, is important.

"Substantial interest" is defined in Article 39, paragraph 3, of the Personal Income Tax Act of 1964. In summary form, a taxpayer has a "substantial interest" if for the five years prior to the disposition of the shares, the taxpayer met all of the following conditions:

1. The shares were owned directly or indirectly as a nonbusiness asset by himself or within a prescribed group of next of kin.
2. The shares as a group amount to at least one-third of the nominal value of the outstanding shares.
3. The taxpayer and his spouse together own more than 7% of the nominal value of the outstanding shares.

The capital gain on shares belonging to a substantial interest is measured by the difference between the sales price of the shares and their acquisition cost. Gifts are also considered a sale with a deemed sales price equal to the fair market value of the transferred shares at the moment of the gift.

The basis for shares owned by a holder of a substantial interest is not stepped up on the death of the owner. Thus, inherited shares retain the same cost basis in the hands of heirs.

In case of a capital loss, 20% of such loss may be credited directly against the income tax assessment until the 20% is absorbed in the following sequence: the current year, the preceding year, or one of the six following years.

In case the sale or other transfer of title occurs in the "framework of a merger," the tax picture is different. In such case, it is possible for a taxpayer who is a holder of a substantial interest to request postponement of the capital gains tax. "Framework of a merger" is the situation that occurs when a Dutch resident company acquires all or almost all the shares of

another company in exchange for its own shares. The purpose must be to create a lasting link between both companies. Both companies must continue in existence. Dutch commercial law does not yet provide for dissolution of a company through merging with another company as distinguished from the liquidation of a company. If the transfer of shares by the holder of a substantial interest occurs within the framework of a merger, the tax on any resulting capital gain may be postponed by request until the newly-acquired shares are disposed of.

The new shares acquired by the owners of the selling corporation may or may not qualify as a "substantial interest" in the selling corporation. Even if the acquired shares do not qualify as a substantial interest, one will be deemed to exist for tax purposes (a deemed substantial interest). Consequently, tax will be levied if and when the shares obtained through the merger are disposed of. The tax at that time is limited by the unrecognized gain which was present at the moment of merger. However, any postponed tax claim on a deemed substantial interest terminates on the taxpayer's death.

DEDUCTIONS NOT CONNECTED WITH ELEMENTS OF INCOME

Personal Deductions. Personal deductions are specific payments restricted to the following:

1. Life annuity premiums up to Dfl. 5,000 per year, and unlimited insurance premiums for the right to receive periodic payments in case of disability, illness, or accident.
2. Interest and other payments incurred on loans except for interest payments that must be offset against the related income items.
3. Alimony, including a lump-sum settlement to provide for the divorced spouse.
4. Premiums paid under the General Old Age Act.
5. Payments of pensions or life annuities to individuals, but not as a gift. Other periodic payments on the condition that they are includable in the recipient's income.

Extraordinary Expenses. The following extraordinary expenses are deductible:

1. Support payments to next of kin within a prescribed degree are deductible to the extent such payments exceed a flat Dfl. 200 per year. However, if 1% of gross income is less than Dfl. 200, the excess over 1% becomes the deductible amount. In the case of children for whom the taxpayer obtains tax relief by virtue of the tax rates in Schedule III, see page 132, support payments are never deductible.

2. A portion of excess expenses paid by the taxpayer for himself, his spouse, and next of kin for any of the following: sickness, disability, childbirth, adoption, or burial. The deductible amount is 125% of the actual expenses in excess of the following:

- Dfl. 2,500 for a person whose income is over Dfl. 40,000.
- Dfl. 1,800 for a person whose income is between Dfl. 18,000 and Dfl. 40,000.
- 10% of gross annual income in all other cases.

The factor of 125% of actual payments is increased to 150% if the taxpayer had a similar deduction in the preceding year or was entitled to be taxed under the special Schedule III tax rates for five or more children. For similar deductions in the two preceding years, the factor is increased to 175%. The amount deductible, however, can never be in excess of the actual expenses.

3. Expenses of training and study for potential employment to the extent of the excess of either 1% of gross annual income or Dfl. 200, whichever is lower.

Contributions. Contributions to religious institutions; to charitable, cultural, and scientific institutions; as well as to public interest institutions are deductible to the extent of either the excess of 1% or gross annual income of Dfl. 120, whichever is lower, provided the recipient is a resident institution.

All the deductions that have been described – personal, extraordinary, and contributions – are taken into account on a cash basis.

Carryovers of Negative Income. See page 156.

PERSONAL INCOME TAX RATES

The Personal Income Tax Act of 1964 includes tax schedules for determining the tax due. The tax rates are progressive with a maximum rate of 70.5%, not including a possible business cycle surcharge of up to 5% (the

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PERSONAL INCOME TAX RATES

surcharge for 1972 is 5%). The tax rates in the schedule apply whether or not the taxpayer was subject to tax during the entire taxable year. There are four tax schedules that apply to the following individual taxpayers:

Schedule I – All taxpayers except those in the other schedules.

Schedule IA – Taxpayers not in the next two schedules, and who are over 40 at the end of a calendar year.

Schedule II – Taxpayers not in Schedule III who were married and lived together part of the year. Taxpayers over 65 at the end of the year. Married taxpayers not living together but who either have been married for at least five years during which period they had lived together or whose marriage had produced children.

Schedule III – Taxpayers who have one or more dependent children – subdivided according to the number of children. Tax relief is given for each child by way of reduced tax rates. No tax relief is granted in the form of personal exemptions for adults.

The following are selected examples of 1972 tax rates, inclusive of the temporary surcharge of 5%.

Taxable Income (Dfl.)	(2 Children)			
	I	IA	II	III
100,000	56,919	53,659	50,398	48,982
65,000	31,943	29,549	27,155	25,859
32,250	10,991	9,834	8,677	7,704
22,000	5,917	5,156	4,395	3,624
14,300	2,911	2,453	1,995	1,411

A married woman's income is added to that of her husband, but she receives a special deduction of:

1. The first Dfl. 1,046 of earned income, plus
2. Twenty percent of earned income over Dfl. 1,046 up to a total deduction (items 1 and 2) of Dfl. 4,184

A woman who renders services for her husband's enterprise is considered to earn a portion of any pre-tax profit, as follows:

Annual Working Hours In Husband's Enterprise	Income Deduction
At least 2,000	35%, but at least Dfl. 3,000
At least 1,000	22½%, but at least Dfl. 3,000
All other cases	Dfl. 3,000

Proportional Tax Rates. At the taxpayer's request, certain types of income will be taxed at proportional instead of progressive tax rates, provided the income to be taxed at proportional rates exceeds Dfl. 1,000 for the year. The actual proportional tax rate is calculated as follows:

1. The income taxed at progressive rates for each of the three preceding years is added together to obtain the average annual income.
2. Using the current year's tax table, the tax rate that would apply to the top Dfl. 600 of the average income is obtained.
3. The tax rate applicable to the top Dfl. 600 is the taxpayer's proportional tax rate for the current year, subject to a minimum rate of 20% and a maximum rate of 40% (increased by a temporary surcharge of 5%).

As a practical matter, if the taxpayer's progressive tax rates were below his proportional rates, he would not request to be taxed at the proportional rates. The following are the more important elements of income subject to proportional tax rates.

1. Capital gains on the termination and transfer of an enterprise, or a part of an enterprise if it can be considered an enterprise in its own right.
2. Liquidation proceeds of a corporation to the extent the proceeds exceed share capital as determined for personal income tax purposes.
3. Lump sums received in lieu of income in the form of periodic payments.
4. The excess of selling price over par value for income tax purposes of shares sold to the issuing corporation. The shares sold must constitute at least 5% of outstanding share capital, and the company must not have purchased its shares from the same taxpayer in its current fiscal year or the ten preceding calendar years.

Certain types of income are not subject to proportional tax rates varying between 20% and 40%, but to a flat rate of 20% (increased by a temporary surcharge of 5%). These are:

1. When a business is transferred to heirs on the owner's death, the transfer may be taxfree provided the heirs adopt the existing book values for the assets transferred. The heirs may elect to step up the basis of the assets to fair market value but, in such case, the increase in basis is taxed at the flat rate of 20%.
2. Capital gains on shares belonging to a "substantial interest" are taxed at the flat 20% rate.
3. Bonus stock is taxed at 20%, provided the issuance can be brought under recapitalization provisions, see page 127.
4. Lump sum payments on account of an employee's death or serious injury.

When some elements of income are taxed at progressive rates, and others at proportional rates in the same tax return, deductions not connected with elements of income (personal, extraordinary, and contributions) may be taken against that income which will yield the maximum benefit to the taxpayer.

Tax Benefit for Varying Incomes. The Dutch version of income averaging is restricted to income derived from the same enterprise or the same contract of employment for three consecutive calendar years. If such income apportioned equally to each of the three years would have resulted in reducing taxes over the three years by at least 5% (minimum of Dfl. 150), the excess tax is refunded.

AVOIDING DOUBLE TAXATION OF DUTCH RESIDENTS

Since individuals resident in the Netherlands are taxed on their worldwide income, it is not at all unlikely for such income to be taxed in its country of source outside the Netherlands and again by the Netherlands. To avoid such double taxation, relief is provided by:

1. Dutch unilateral measures for avoiding double taxation (Royal Decree of April 7, 1965 and supplement of April 27, 1970).
2. Many bilateral tax treaties.

Unilateral Measures. Unilateral measures for avoiding double taxation apply only to those elements of income from foreign sources specifically defined in the Royal Decree. The elements of income are listed in A and B below. The unilateral measures for avoiding double taxation apply to those elements listed, provided the income was subject to an income tax levied by the central government of a foreign country. In principle, it is sufficient that the foreign-source income is subject to such a tax; it is not necessary for the tax to have been levied or paid.

A. Profit derived from a foreign enterprise to the extent the enterprise is carried on wholly or partly abroad, either through a permanent establishment or a permanent agent. The term *permanent establishment* includes a fixed place of business in which the enterprise is wholly or partly carried on. It includes a place of management, or farm land, or a building or construction site used for more than twelve months.

The term *permanent agent* does not include an agent who is essentially independent. Neither does it include an agent who lacks authority to conclude contracts, even if he maintains an inventory for quick deliveries. The maintenance of goods on consignment in a foreign country does not imply that the existence of a permanent agent in that country is accepted for purposes of Dutch unilateral avoidance of double taxation.

B. Net income from:

1. Employment performed abroad.
2. Real estate situated abroad.
3. Debts secured by a mortgage on foreign real estate, but not when the debt is incorporated in a negotiable security.
4. The right to share in profits of an enterprise whose seat of effective management is located abroad, to the extent such net income is not derived from securities or employment.
5. Rights to periodic payments (including salary) obtained from a foreign public body (such as a state or province) unless these rights are obtained as an employee of an enterprise owned by a public body.

Relief Provisions. The relief for double taxation is provided for total foreign-source income; no relief is provided on a country by country basis. Relief is given according to the exemption method, provided tax rate

progressivity is taken into account. Unlike the relief provided by countries that follow the U.S.A. system, the amount of foreign tax paid is irrelevant. The relief is determined by the formula contained in the following example.

Example:

Income from employment in Argentina, before income taxes	20,000
Dutch-source income	<u>30,000</u>
World-wide income	<u>50,000</u>
Dutch personal income tax on 50,000 = 18,000	
foreign-source income	
(20,000)	
<u> </u>	X Dutch tax (18,000) = 7,200
world-wide income	
(50,000)	

The tax payable in the Netherlands would be 10,800 (18,000 – 7,200), independent of the amount of tax, if any, that has been paid to the Argentine government.

For a year in which foreign or domestic income is negative, precise rules exist. Foreign income may exceed worldwide income as occurs when domestic income is negative. In such case, relief can be obtained for the excess foreign income in one of the six following years. For example, if foreign income is 100 and total income is only 75 because Dutch income is minus 25, the current year's deduction for foreign income would be based on 75, and the remaining 25 would be fictitiously deemed to be foreign income in one of the six following years.

Negative foreign income is deducted from the total income of the year concerned. Any negative foreign income must be used to offset positive foreign income of the following six years. Consequently, the relief for foreign income of a later year will be reduced by such negative income of the earlier year. In this manner, the original offset will be neutralized.

Since January 1, 1971, a Royal Decree has provided special relief from double taxation for interest and royalties received from debtors in developing countries (a list defining developing countries was published in 1971; this list is somewhat similar to Schedule A which is used in the U.S.A.

in connection with regulations for the control of U.S.A. foreign direct investment). If interest and royalties received from such countries are subject to a local income tax, either by way of assessment or by withholding, such tax may be credited directly against the Dutch tax payable on such income. Therefore, this relief for taxes on interest and royalties is similar to the U.S.A. system of tax credits. The tax credit is the lower of:

1. The foreign tax paid.
2. The result of the following calculation:

$$\frac{\text{Interest and royalties from developing countries, less directly related costs}}{\text{total income}} \times \text{tax on total income}$$

The relief outlined in this paragraph applies only to interest and royalties not included in foreign income for which relief under the exemption method has been obtained.

International Tax Treaties. The tax treaties concluded by the Netherlands generally provide for the avoidance of double taxation in a manner comparable to the unilateral measures that have been described, although frequently differing in details. Almost all treaties provide for foreign and Dutch withholding taxes. Some treaties provide for foreign withholding taxes on dividends, interest, and royalties to be credited against the Dutch tax on such income. This is accomplished in basically the same way as the unilateral relief for interest and royalties from developing countries described in the preceding paragraph. The following tax treaties have been ratified:

Austria	France	Ireland	Norway	U.K.
Belgium	Finland	Italy	South Africa	U.S.A.
Canada	Germany	Japan	Singapore	Netherlands
Denmark	Hungary	Luxembourg	Sweden	Antilles &
			Switzerland	Surinam

Notes: 1. The U.K./Dutch tax convention of 1948 has been extended to include Malawi, Rhodesia, and Zambia.

2. The agreement with the Netherlands Antilles and Surinam is in the form of an Act applying to the entire Kingdom of the Netherlands. Tax

treaties with the U.S.A., U.K., and Denmark have been extended to include the Netherlands Antilles. However, provisions for the extension protocols with the U.S.A. and U.K. differ from those in the original conventions.

3. Treaties have been concluded, but not yet ratified, with Indonesia, Israel, and Spain.

4. Treaties, revisions, and/or additional protocols are being negotiated with France, Germany, Indonesia, Portugal, and Turkey.

5. Treaty negotiations are planned with Brazil, Australia, and Thailand.

Withholding on Dividends to Foreign Shareholders. The statutory dividend withholding rate is 25%, but this is affected by the provisions of international tax treaties. The table below illustrates the effect of the tax treaties on withholding from dividends sent to shareholders in the following countries:

Canada: 15%, none under specific conditions.

France: None.

Germany: 15%, in certain cases.

Switzerland: 15%, none if shareholding is at least 25%.

United Kingdom: 15%, 5% if shareholding is at least 25%.

United States: 15%, 5% if shareholding is at least 25%.

PERSONAL INCOME TAXATION OF NONRESIDENTS

Nonresident individuals are subject to personal income tax only on Dutch-source income. The most important Dutch-source income are profits and income from other sources. Both categories will be discussed below.

Profits Derived from an Enterprise. Profits of an enterprise of a nonresident individual carried on within the Netherlands through a dependent agent or a permanent establishment (branch) are subject to Dutch personal income tax. Where no tax treaty exists, only Dutch law applies. Remarkably, however, Dutch legal provisions relating to the levy of taxes do not contain a definition of permanent establishment. Unilateral measures for the avoidance of double taxation do define the term, see page 135, but this definition only provides one indication of the meaning of “permanent establishment” for

purposes of Dutch taxation of nonresidents. Treaties frequently limit the taxation of permanent establishments. On this topic, see a report to the 1967 International Fiscal Association Congress in Stockholm which has been published in *Cahiers de Droit Fiscal International*, Volume III, pages 484 to 486.

Income from Other Sources. Other sources of income which are subject to personal income tax in the hands of nonresident individuals include:

1. Employment within the Netherlands.
2. Income from real estate within the Netherlands owned by a nonresident. Capital gains realized on the sale of real estate are not taxable, unless owned by an enterprise (foreign or Dutch).
3. Income from loans anywhere in the world, if secured by mortgages on real estate situated in the Netherlands.
4. A share in the profits of an enterprise whose seat of effective management is located in the Netherlands, to the extent such income cannot be considered as arising from securities or employment.
5. Income (including capital gains) on shares owned by a nonresident who is a holder of a substantial interest in a Dutch company. This also applies to income from certificates (see page 89), debts, and bonds of Dutch resident corporations in which the holder has a substantial interest.

Interest payments on debts secured by mortgages (where the real estate is situated in the Netherlands) can be deducted from total income from Dutch sources, as can contributions for certain social charges. Nonresidents are taxed at the same rates as resident taxpayers.

Foreign Employees Residing Temporarily in the Netherlands. Employees who are not Dutch nationals, and who are transferred to the Netherlands for not more than five years can request the Dutch tax authorities to issue a predetermined deduction for the first five years of their stay in the Netherlands. They normally grant such a ruling which permits the foreign employee:

1. To report his worldwide income only from employment for Dutch tax purposes, including living allowances, but to deduct a flat 35% from such employment income in computing his taxable income.

2. Income from Dutch sources, if any, must be included in taxable income.

3. Other sources of income need not be reported for Dutch tax purposes.

Technically, the ruling implies that such employees are deemed to be nonresidents only for purposes of the personal income and net wealth taxes.

Reciprocal Tax Treatment of Dutch and U.S. Citizens. A provision of the Dutch-U.S. tax treaty (Article XVI) affects Dutch or U.S. citizens who earn employment income as a nonresident of the other country for not more than 183 days during the taxable year. Provided the income is for personal services or labor performed as an employee of a resident or corporation, or of a permanent establishment of a resident or corporation, of his own country, and provided the income is not deducted in computing the profits of a permanent establishment, the employment income will not be taxed by the country of nonresidency. The term employment income includes income from services of officers and directors of corporations, but does not include services performed by partners.

WAGE WITHHOLDING TAX

In general, the wage withholding tax constitutes a prepayment of the personal income tax. All employers in the Netherlands, including the permanent establishment of a foreign employer, are required to withhold this tax and remit it to the tax collector quarterly.

The tax is levied on employment income of both resident and nonresident employees. The withholding rates are progressive and, in principle, are in tune with the tax schedules for the personal income tax. Incidental payments such as bonuses are subject to withholding at flat rates depending on two elements: (1) the class of the taxpayer (Schedule I, Ia, II or III) and (2) ten classes of annual income (the higher the income class, the higher the withholding rate).

In certain cases the withholding tax on wages constitutes the entire tax levy, and no personal income tax return need be filed. This occurs when:

1. Total annual net income does not exceed Dfl. 18,000, and

2. The employment income portion of the total income does not exceed Dfl. 18,000, and

3. Other net income does not exceed Dfl. 400.

If the tax withheld exceeds personal income tax payable, resident taxpayers may request refunds, provided the refund exceeds 5% of the entire income tax and is at least Dfl. 25. A request for refund must be accompanied by a filled-out tax return. Nonresidents are not eligible for refunds.

ELEMENTS OF EMPLOYMENT INCOME

Employment income includes all compensation derived from employment whether in cash or in kind. It includes current salaries as well as earnings derived from previous employment such as pensions. Employment income may also include employer-provided benefits. For example, an employer may pay insurance premiums to provide employees with lump-sum payments at 65. The lump-sum payment will not be taxed, but the annual premium will be added to the employee's annual taxable income.

Every employee receives a quarterly social security allowance for each child under 16 or up to 27 in the case of students. These are taxable in the period covered by the allowances rather than when received by the employee. Employers' contributions for the Free Medical Treatment Act are includable in the taxable income of employees, while employers' contributions for the Excessive Medical Expense Act are not. However, the benefits received by employees under these two Acts are nontaxable. All other social security benefits received are taxable as deemed employment income, with two exceptions: (1) benefits received under the General Support Act (for which no premiums are collected), and (2) benefits received by self-employed persons under the General Family Allowance Act, which are taxed as income in the form of periodic payments, see page 128.

Stock Options. No special provisions apply to the taxation of stock options. In general, an employee is taxed at the moment the option rights are acquired on any difference between the market value of the shares and the lower option price. If the employee is entitled to execute an option for a certain amount of shares immediately, but is required to return a proportionate number of shares for leaving employment prior to a fixed date, some

tax experts maintain that the tax consequences are still based on any difference between market value and option value at the moment the rights have been granted by the employer.

Pension Rights. Employer-paid premiums to provide pensions for employees in accordance with a pension plan, hence a periodical life annuity, are not included in the taxable income of employees. However, actual pension payments are taxable when received.

ALLOWABLE DEDUCTIONS FROM EMPLOYMENT INCOME

Expenses directly related to employment income are deductible. The general principle is that allowable deductions from employment income include those expenses required to obtain, collect, and maintain the income. Depreciation of the acquisition cost of an automobile, which is necessary to perform the job, is an allowable deduction, as are similar items.

To simplify these deductions for most employees, a standard deduction is provided. The standard deduction is 4% of *actual* employment income (hence, excluding pension benefits received by employees), but with a minimum deduction of Dfl. 200 and a maximum of Dfl. 800. For pension benefits, a separate standard deduction of Dfl. 150 per year is provided. Employees whose actual expenses exceed the standard deductions may deduct their actual expenses.

The employee's portion of contributions for old age pensions and other social security contributions are deductible from employment income, except for contributions related to provisions for medical care.

The following predetermined standard deduction is provided for expenses related to regular travel between home and place of employment.

Distances (km)	Standard Deduction (Dfl.)
0-10	50
10-15	260
15-20	390
20-30	650
30-40	910
40-50	1,170
over 50	1,430

An employee who is reimbursed for travel expenses does not, of course, utilize this standard deduction. Such a reimbursement is fully deductible by the employer, and is tax-exempt to the employee to the following extent.

Distances (km)	Tax-Exempt (Dfl.)
0-10	270
10-15	585
15-20	780
20-30	1,170
30-40	1,560
40-50	1,950
over 50	2,340

The difference between the standard deduction and the tax-exempt amounts when the employee is reimbursed is due to an imputation made by the Undersecretary of Finance, which was authorized in the Act. The tax-exempt amounts were derived from the formula: 150% X (standard deduction + Dfl. 130).

Employees who earn less than Dfl. 18,000 annually under the conditions noted on page 140, normally do not receive a regular personal income tax form. Primarily for their benefit, the wage withholding tax provides for the deduction of the same personal deductions, extraordinary expenses, and contributions as are available to users of the personal income tax form.

Employees have the right to object to a tax inspector if they feel the amount withheld under the wage withholding tax is excessive. A decision of the inspector can be disputed in a District Court, and this court's decision can be challenged before the Cassation Court, see page 145.

DIVIDEND WITHHOLDING TAX

No tax withholding is required on any payments of interest, royalties, or licensing fees. Companies resident in the Netherlands must withhold tax on payments of dividends and other distributions of profit at the standard rate of 25%, or at any lower rates provided in bilateral tax conventions, see page 138. The tax is due on the dividend declaration date and must be remitted

to the tax office within one month. Resident individuals and corporations treat the tax withheld as a prepayment of income taxes, or may apply for a refund if no income tax is payable. In the case of nonresidents, the tax withheld generally constitutes a final levy. Where the nonresident recipient is the holder of a substantial interest in the dividend-paying corporation, personal income tax will be payable and, therefore, the dividend tax withheld is merely a prepayment.

Distributions of shares out of earnings are subject to dividend withholding tax based on the par value of the shares. Liquidation payments to shareholders are subject to dividend withholding tax on any amounts in excess of share capital. Tax must also be withheld on distributions to holders of the certificates mentioned on page 89 and to holders of profit-sharing bonds.

No tax is required to be withheld on dividends paid to resident corporations that have an affiliation privilege, see page 152, under which dividends received are exempt from tax. Article 44, see page 127, is generally held not applicable to the dividend withholding tax, although this matter is being studied.

PERSONAL INCOME TAX COLLECTION AND APPEAL PROCEDURES

The tax year for the personal income tax is the calendar year. Taxpayers are assessed provisionally in April or May of the current year, based on the taxpayer's estimated return which is filed together with the income tax return for the prior year. Taxpayers whose employment income is under Dfl. 18,000 need not file a tax return nor an estimated return. In case a tax return for the prior year is not filed by the due date (April 1), the taxpayer is still required to file an estimated return for the current year. Professional tax return preparers are entitled to send in clients' tax returns up to one year past the normal due date (but the estimated returns cannot be delayed).

After receiving the annual tax return, the tax inspector determines the assessment. This must take place within three years after the calendar year for which the return is filed, plus any postponement granted the taxpayer for filing his return. Payments on provisional assessments, and taxes withheld from wages and dividends are deducted from any personal income tax

payable on the definite (final) assessment. The definite assessment is payable by the end of the second month after the date the assessment bears. Provisional assessments can be paid over the remaining months of the current year, which may be more than five.

If the taxpayer objects to his definite assessment, he has two months in which to file any objection by letter with the local tax inspector. The inspector's decision must also be in writing, and the taxpayer may object to this decision within two months in any of five District Courts. Within one month of the mailing of the District Court's decision, it may be challenged in the Dutch Cassation Court (Hoge Raad der Nederlanden), but only on legal grounds, not on issues of fact. The Minister of Finance may also challenge the District Court's decision.

Reassessments. If the tax inspector could not have been aware of a meaningful fact when he first determined the definite assessment, he is entitled to issue a reassessment within five years of the year concerned (plus any postponement of the filing date granted the taxpayer). Such a reassessment may be accompanied by a penalty of up to 100% of the additional tax payable as a result of the reassessment, but only if the reassessment is caused by the taxpayer's willfulness or gross negligence. A taxpayer has two months within which to object to a reassessment in a District Court. The court's decision may be disputed within one month of its mailing, by the taxpayer or the Minister of Finance, in the Cassation Court.

Procedures in Court. The courts are not restricted by formalistic rules with regard to evidence or other matters. It is normal to exchange written statements of the issues prior to a hearing. The inspector and the taxpayer himself often argue their cases orally, even though the taxpayer is entitled to hire tax counsel and most do. Normally, the tax counsel is not a member of the bar, but either an ex-inspector or a person who has obtained a Master's in tax law. The only formal requirement in this area is that a taxpayer's oral defense in Cassation Court may only be handled by a member of the bar.

Special Provisions to Limit Tax Evasion. The General Tax Act contains a special provision against the use of juridical acts (legal artifices) to avoid direct taxes. Such legal artifices are ignored if their obvious purpose is not to change essential relationships, or if circumstances indicate that their purpose

was merely to avoid or reduce taxes. This anti-evasion weapon may be used by the tax inspector only with the approval of the Minister of Finance.

In a series of decisions, the Cassation Court has developed the *substitution* of one juridical act by another where the first act is deemed “in fraudem legis” (misuse of the law). The court has applied this interpretation only in cases where tax has been avoided, but some opinion holds that in doing so the court has created legislation in contravention of the constitution.

CORPORATE INCOME TAX

Since January 1st, 1970, the statutory basis for the corporation income tax is the Corporate Income Tax Act of 1969 which replaced the Corporate Income Tax Decree of 1942. Both resident and nonresident taxpayers are subject to corporation income tax. These terms are defined as follows:

Resident Taxpayers: bodies corporate (and other entities organized for profit-making purposes), whose head office or place of management is within the Netherlands – *even* if such an entity was created under foreign law.

Nonresident Taxpayers: bodies corporate (etc.) whose head office or place of management is outside the Netherlands, and who collect income from sources specifically indicated as Dutch. In principle, corporations created under Dutch law are always subject to corporate income tax as resident taxpayers.

Resident Entities Subject to Corporate Income Tax. The most important corporate entities subject to the tax are the naamloze vennootschap (N.V.) and the newly created corporation, the besloten vennootschap (B.V.), see page 83.

Cooperative associations and mutual insurance and banking associations are also subject to corporate income tax as are certain public enterprises. Other entities, including associations lacking legal personality, are taxable to the extent of ownership of a taxable enterprise. Mutual funds are considered taxpayers if their certificates can be transferred without the approval of all holders of certificates (except for transfers to ascendants and descendants).

Partnerships, except for the limited partnership with shares, are not liable to the corporate income tax. Instead, each partner is subject to either

personal income tax (if the partner is an individual) or to corporate income tax.

The Determination of Taxable Corporate Income. The general requirement is that profits are determined according to “sound business practice” and along consistent lines. The net income of a corporation is deemed to be profit; therefore, all capital gains are also part of the income to be taxed. An important provision of the corporate income tax act incorporates the provisions of the personal income tax act in the determination of corporate net income.

Inventory Valuation. The taxpayer may value inventories by almost any method, subject to the general rule that the method selected must be in accordance with sound business practice and be consistently applied. Inventories are generally valued at cost or market, whichever is the lower. The cost method used to value tangible goods may be FIFO, LIFO, base stock, or specific identification. The average cost method has been used in connection with portfolio investments.

Bad Debt Expense. Provisions for bad debts may be determined either on a per-debtor basis or as a percentage of all outstanding debts. In the percentage method, the percent used must accord with the taxpayer’s prior experience.

Depreciation. Both tangible and intangible assets may be depreciated. The depreciable amount is purchase price less residual value. Adjustment of the cost basis for inflation was permitted in 1950 as an exceptional measure, and has been discontinued.

Depreciation starts, for tax purposes, on the first day an asset is used. The straight line method must be used, except that the declining balance method is permitted for those assets deemed to suffer disproportionate wear during their early years. Flexible depreciation is not permitted for tax purposes. The tax authorities permit change in depreciation methods only if consonant with “good business practice”. As an example, economic obsolescence caused by technical progress may warrant a change in method. In practice, such changes are permitted only in exceptional cases. Dutch tax law does not require that tax and book depreciation be in agreement.

Intangible assets such as capitalized expenditures for goodwill or patents are amortizable over their useful lives. In practice, a five-year writeoff period

is generally used for goodwill but, if appropriate, other periods may be used.

Rates of Depreciation. Annual depreciation may be based on an asset's physical or economic life, whichever is shorter. The tax authorities do not provide tables of normal life expectancy or acceptable rates of depreciation. An indication of normal life expectancies may be obtained from the following rates of depreciation frequently used by taxpayers:

office buildings	2-3%
industrial buildings	2-5%
office furniture	10-20%
office machines	up to 100% for large firms with many machines, otherwise 20 to 50%
rolling stock (automobiles and trucks)	25-33-1/3%
machinery	10% (average)
small tools	100%

Once established, an asset's useful life may be shortened only when the difference between initial estimated life and the present anticipated useful life is considerable.

Accelerated Depreciation. Although provisions for accelerated depreciation are part of the tax law, the Minister of Finance is authorized, after consultation with the Minister of Economic Affairs, to restrict the use of accelerated depreciation – provided the restrictive measures are subsequently approved by Parliament. At the present time, accelerated depreciation only applies to the acquisition costs of buildings in certain districts not in the western part of the country, and to a maximum of one-half of 33 1/3% (16 2/3%) of acquisition cost in each of the first two years. Thus, 66 2/3% of the cost must be depreciated on the basis of the normal life of the building.

If the building is put into use in the middle of a year, say July 1, only half of the normal annual depreciation may be deducted. However, the provision for accelerated depreciation may be used fully. In the first year, 16 2/3% of acquisition cost (accelerated depreciation) plus one half of the annual depreciation on 66 2/3% of cost may be deducted. In the second year another 16 2/3% of acquisition cost (accelerated depreciation) may be deducted in addition to normal depreciation for the entire year.

Investment Allowances. Entirely apart from the question of depreciation, a percentage of the acquisition costs of assets (with a few exceptions) during the first two years may be deducted. As is the case with accelerated depreciation, the Minister of Finance can reduce or issue a general ban on such allowances. At the moment, only aircraft used by international airline companies (8% per year) and ocean-going vessels (5% per year) qualify for investment allowances. If assets for which investment allowances have been granted are sold in the year of acquisition or the six subsequent years, recapture provisions take effect. Taxable profits in the year of sale and the subsequent year must be increased by an amount equal to the investment allowances as a percentage of the selling price.

Allowances for Individuals Deriving Income from Business or Independent Personal Services. Individuals are entitled to an allowance of Dfl. 300 in all cases. If annual business income is under Dfl. 100,000, the Dfl. 300 is increased by a percentage varying from 12.5% to 2.5% of the investments mentioned in the preceding paragraph, depending on the amount of annual business income. The allowance is 12.5% for income under Dfl. 60,000 and gradually decreases to 2.5% for income of Dfl. 100,000.

Secret Commissions. Secret commissions are deductible in principle although it may be difficult to prove this type of expenditure. A court has ruled that amounts paid as bribes are deductible, provided such bribes are not unusual and are not in excess of the amounts or percentages common in the particular trade or industry.

Contributions. Contributions to resident religious, charitable, cultural, and scientific institutions as well as to resident public interest institutions are tax deductible. The maximum contribution is 6% of annual taxable profit before any loss carryover. The first Dfl. 500 of total contributions is not deductible.

Capital Gains. Capital gains are included in taxable profit and are subject to normal tax rates while capital losses are fully deductible. The basis for computing capital gain or loss is original cost less depreciation (book value).

If there is a genuine intention to replace a tangible fixed asset, any gain arising from the sale of an asset or from an insurance recovery in case of a fire loss, etc., can be tax-exempt by crediting and maintaining the proceeds in a replacement reserve up to the end of the fourth year following the year

in which the reserve was created. On replacement, the depreciable basis of the asset acquired must be decreased by the amount of replacement reserve.

Interest, Royalties, and Fees. These payments are all deductible in the usual case.

Payments to Related Companies. Payments such as those mentioned in the preceding paragraph and others are deductible when made to related companies provided arm's-length conditions are deemed to prevail. No regulations exist as to the intercompany payments, but Dutch tax authorities are rather keen on checking whether the payments exceed those that would have been made under arm's-length conditions. If portions of such payments are deemed to exceed arm's-length requirements, the excess is considered an artificial distribution which is added to taxable profits and, also, becomes subject to dividend withholding at the standard rate of 25%.

Compensation of Managerial Personnel. Compensation paid to managing directors is deductible, provided that if the managing director is a holder of a substantial interest in the company, the compensation is considered to have been negotiated at arm's length.

Compensation paid to members of the supervisory board of directors is deductible unless the member is a holder of a substantial interest in the company. In such case, 50% of the compensation is deductible with a minimum deduction of Dfl. 4,000 and a maximum of Dfl. 20,000.

Provisionally Taxfree Allocations to Reserves. The reserve to replace assets is provisionally a taxfree reserve. The reserve for equalization of future expenses (such as the survey reserve for vessels) is also provisionally taxfree. The reserves are referred to as provisionally taxfree because in operation they postpone taxes rather than reduce them. For example, while the contributions to the reserve to replace assets are tax deductible, when the assets are purchased from that reserve their depreciable basis is reduced to that extent. The consequent lower deductions for depreciation offset the tax "saved" when contributions were made to the reserve. Similarly, owners of vessels that require an extensive survey every five years can set aside and deduct annually 20% of the estimated cost of the survey. However, the actual cost of the survey in the fifth year must be charged to the survey reserve and is not tax deductible to that extent. The survey reserve is a

specific example of the general term – reserve for equalization of future expenses.

A self-insurance reserve may be created for risks usually insured against. The annual provisions for such a reserve are deductible, but actual losses must be written off against the reserve.

Profit Distributions of Cooperative Societies. Article 9 of the Corporate Income Tax Act deals with determining the taxable profit of a cooperative society. One requirement is that the determination of the cooperative's profit must be based on the general principle of arm's-length conditions. In practice this means that relationships with members must be conducted as if the cooperative were a completely independent body.

Unlike profits distributed by corporate entities, profit distributions of cooperatives to individuals who are members are deductible provided such distributions are related either to services rendered to the cooperative by such members or to purchases and sales of the members. The deductible profit distributed to individuals cannot exceed the formula: expenses of the cooperative related to services rendered by or to members, divided by total expenses of the cooperative, and multiplied by total profits.

Distributions of profit to members, other than individuals, are not deductible by the cooperative and, in the hands of the recipients are exempt from corporate income tax. This exemption is based on the participation exemption, see page 152.

Resident Investment Organizations. Investment organizations are organized as resident corporations (N.V.s or B.V.s) and as funds whose articles of association state as their objects investments in securities, and real estate and loans secured by mortgages. Actual activities of such organizations must be confined to those objects.

Qualified investment organizations are exempt from corporate income tax and will be compensated for foreign taxes withheld from income derived from foreign securities. If all shareholders of a qualified investment organization are residents of the Netherlands, the compensation granted is equal to the foreign tax withheld. This is so because, if the securities had been owned by individuals residing in the Netherlands, the foreign tax withheld would have been deemed a prepayment of the personal income tax. If shareholders

include others than resident individuals, a partial compensation is granted, based on a prescribed formula.

To qualify for exemption from the corporate income tax, an investment organization must meet the following requirements:

1. Apart from equity, loans on the real estate secured by mortgages must be less than 60% of the book value for tax purposes of the real estate owned by the organization.
2. Other assets are financed by loans not in excess of 20% of the book value for tax purposes of securities owned.
3. Annual profits must be distributed within eight months of the end of the financial year. Capital gains, however, may be placed in a special taxfree reserve.
4. Less than 25% of the outstanding shares are owned by one foreign resident, fund, or corporation.
5. Less than 25% of the outstanding shares are owned by resident individuals or corporate bodies through the intermediary of foreign funds or corporations.

Participation Exemption (Affiliation Privilege). Dutch companies which are not investment organizations as defined above, are nevertheless eligible for what is termed *participation exemption*. This participation exemption is one of the most important and used provisions of Dutch tax law. It provides that dividends received by a Dutch corporate body from a qualified participation are exempt from corporate income tax, as are capital gains derived from the sale of a qualified participation. This tax exemption is based on the principle that dividends paid from profits that have been subject to corporate income tax should not be taxed again in the hands of the recipient corporation. Distributions by cooperative societies are also tax exempt on the basis of the participation exemption provisions. Participations must satisfy the following conditions to qualify for a participation exemption.

1. The recipient company must have its participation in the other company as of the beginning of its financial year. This normally means that dividends received in the year the participation is acquired are not exempt from corporate income tax, but dividends received in later years *can* be

exempt. Dividends received from retained earnings in existence when the participation is acquired serve to reduce the recipient's cost basis of the participation.

2. The recipient must own at least 5% of the outstanding shares of the distributing company. The Dutch internal revenue service is authorized to declare ownership of less than 5% to be a qualified participation, provided either of two conditions is met:

A. The shares are held for reasons connected with the operation of the business.

B. The shares are acquired with a public interest in mind.

3. Dividends from foreign companies are also tax exempt provided two additional requirements are met:

A. – The foreign company must be subject to a tax similar to the Dutch corporate income tax.

B. – The recipient corporation's ownership of the foreign company's shares must not be in the nature of a portfolio investment. Where the activities of the recipient and foreign corporations are similar, no portfolio investment will be deemed to exist.

Capital gains derived from the sale of shares in a participation have the same tax exemption as dividends. However, capital losses are deductible only when the company whose shares are held is liquidated.

Costs related to participation in *foreign* companies, such as those for management or financing, are not deductible from taxable profit in the Netherlands. These costs are deductible if related to participations in Dutch companies.

Advantages of Consolidated Tax Returns. A Dutch parent company must own 100% of the outstanding shares of another corporation to file a consolidated tax return. Minister of Finance approval is required and is normally granted, provided the Minister's standard conditions are met. The Minister is authorized to set additional conditions for specific cases, but this occurs rarely.

The term for a group that files a consolidated tax return is *fiscal unity*. The term implies that the parent and subsidiary corporations are deemed to

be one taxpayer, but only for purposes of the corporate income tax. A fiscal unity is allowed only if both the parent and subsidiary are domestic corporations, but not all members of a related group need be part of the fiscal unity. Fiscal unity terminates at the beginning of the fiscal year in which either the parent ceases its 100% ownership of the subsidiary's shares, or the parent declares to the Minister that it wishes to cease the fiscal unity with a specific subsidiary.

The advantages of a fiscal unity are evident: profits and losses can be used to offset each other, assets can be transferred without regard to capital gains or losses and, in general, a very flexible tax situation exists. However, losses prior to a fiscal unity can be carried forward only to offset profits of the company that suffered the loss, and not those of the entire fiscal unity. In a fiscal unity, a subsidiary may be liquidated taxfree, but the assets and liabilities transferred to the parent company will carry the same basis for tax purposes as in the subsidiary's hands.

If a parent company sells shares in a subsidiary prior to five years after the termination of the fiscal unity with that subsidiary, any capital gain is taxable. This is contrary to the provisions of a participation exemption and was introduced in 1970 to prevent tax avoidance through artificial transactions within a fiscal unity prior to its termination. The above will not apply if it can be proved that during the fiscal unity either there were no transactions between the parent and subsidiary that changed the elements or composition of net wealth, or such transactions were within the normal course of business operations.

Mergers and Takeovers. Dutch civil law does not yet provide for terminating a corporation within the framework of a merger, see page 129. It is possible to transfer all assets and liabilities to an absorbing corporation in exchange for its shares, but the shares can only go to the transferring corporation and not to its shareholders, and shareholders can obtain such shares only by an official liquidation of the transferring corporation. The transfer of all assets and liabilities is taxfree provided:

1. The sole compensation received by the transferring corporation is shares of the absorbing corporation.
2. The future levy of corporate income tax is assured. The implication of

this requirement is that the absorbing company must record the assets and liabilities acquired at the same book value for tax purposes as they had in the transferring company.

3. The participating companies have not suffered losses prior to the merger that qualify for carryforward.

4. Both companies are subject to the same income tax rules. This would not be the case where one is an operating company and the other is a qualified investment organization, see page 151.

Subject to other conditions that may be imposed, the Minister of Finance is authorized to approve a transfer as taxfree even if conditions 3 and 4 are not met.

5. The shares acquired by the transferring corporation are not disposed of within three years.

Because of the absence of civil legislation dealing with the absorption of the transferring corporation, the merger in which all assets are exchanged for shares is infrequent as the shares go to the transferring corporation and not to its shareholders.

The usual takeover in the Netherlands involves the exchange of shares for shares, convertible bonds, or cash. The exchange of shares for shares by an individual is either taxfree (due to the absence of a general capital gains tax), or tax can be postponed (where the individual is the holder of a “substantial interest”) provided the exchange takes place within the framework of a merger (see page 129). Where shares are exchanged for bonds or cash, the capital gains tax that is levied only on the individual who is a holder of a substantial interest cannot be postponed.

The acquiring company frequently applies for a fiscal unity after it has obtained all of the shares of the company taken over. This enables the acquiring company to liquidate the company taken over free of tax. However, when the sellers are individuals, not holding the shares as a business asset, they must pay a specific income tax at the 20% to 40% rate if the company is liquidated within a short period after the sale. The tax is based on the difference between the sales price and the relative portion of the company’s paid-up capital (tax on deemed liquidation). Consequently, they frequently require that the company taken over will not be liquidated within five years of the sale.

Carryover of Losses. Negative income of one year can be carried back to the preceding year or forward to the six following years. However, losses incurred during the first six years after the establishment of an enterprise are carried forward indefinitely. But, losses incurred during such initial six years must be carried over before subsequent losses are applied.

To halt the purchase of shares in corporations for their tax losses, the carryover of losses is not allowed when the operations of the acquired company have almost or completely ceased at the time that shareholders have changed. If the change of shareholders is due to inheritance or change in family status, the carryover is not banned.

CORPORATE INCOME TAXATION OF NONRESIDENTS

Nonresident taxpayers subject to corporate income taxation include legal bodies, as well as nonlegal bodies such as limited liability partnerships and other partnerships whose capital is divided into shares. Other associations and funds receiving Dutch-source income can also be nonresident taxpayers. The concept of Dutch-source income that applies here is basically the same as for nonresident individuals subject to the personal income tax, see page 138. However, one difference should be noted since it is sometimes overlooked. A nonresident whose shareholdings in a Dutch corporation constitute a substantial interest (33 1/3%, see page 129) is subject to the usual corporate income tax rate of 46% on income arising from dividends and capital gains. The income would be tax exempt if the shares in the Dutch corporation were considered business assets of the nonresident owner. In almost all cases, such shares are considered business assets when owned by a nonresident corporation. However, when owned by associations or funds, such assets are usually considered nonbusiness assets and the aforementioned dividends and capital gains may be subject to the full 46% tax rate.

CORPORATE INCOME TAX RATES

As of January 1, 1972, a 5% temporary surcharge is added to the following standard corporate income tax rates:

1. Taxable income from Dfl. 0 to 40,000 – 43%.

2. Taxable income from Dfl. 40,001 to 50,000 – 43% plus 15% of the excess over Dfl. 40,000.
3. Taxable income over Dfl. 50,000 – 46% of the full taxable amount.

COLLECTION OF CORPORATE INCOME

Resident taxpayers must adopt as fiscal tax year their accounting year. The taxpayer receives a provisional assessment for the current year of 80% of the prior year's tax, unless the taxpayer can prove that the current year's income will be lower than that of the preceding year. In the first year of a corporation's existence, the provisional assessment is based on 80% of the current year's estimated profit. Provisional and final assessments must be paid within one month after the date borne by the assessment.

An annual tax return must usually be filed within six months of the close of the financial year. On the basis of this return, the tax inspector determines the definite assessment for that year. The procedures for objections, appeals, and reassessments are similar to those that have been described for the personal income tax, see page 144.

TAX EXEMPTION FOR ENTERPRISES ENGAGED IN INTERNATIONAL TRANSPORTATION

Shipping and aircraft enterprises engaged in transportation activities between a foreign country and the Netherlands, or between places outside of the Netherlands, may be eligible for a special tax exemption. Provided their seat of effective management and control is not in the Netherlands, and if the country in which the effective seat of management is located provides a similar exemption, profits derived from such transportation activities are not taxed in the Netherlands. If the other country does not have a similar exemption, profits of foreign shipping and aircraft companies will be subject to tax in the same manner as any other foreign corporation that has a permanent establishment or permanent agent in the Netherlands.

The exemption from tax also applies to shipping and aircraft enterprises

owned by individuals. For an individual, however, it is not required that his country of residence provide a similar exemption.

MISCELLANEOUS TAXES

NET WEALTH TAX

Only individuals are subject to an annual tax of 0.6% levied on net wealth. Data for the assessment of net wealth tax are supplied by individuals on a special form together with the tax return for personal income tax. Tax inspectors determine the annual assessment and mail it to the individual. The assessment is paid to the tax collector in the same manner as assessments due for personal income taxes.

What is Taxable Net Wealth. Net wealth subject to tax is the market value of an individual's wealth on each January 1, with certain exceptions of which the more important are: furniture and other household goods including objects of art, annuity policies if not a business asset, life insurance policies for which annual premiums are paid, and the cash value of pensions and certain annuities. The net wealth of a married woman is added to that of her husband, if they are living together.

Deductions. Standard deductions of Dfl. 40,000 are allowed for single and Dfl. 55,000 for married taxpayers. Taxpayers over 65 are entitled to an extra deduction of Dfl. 35,000. In addition, a deduction of Dfl. 13,500 is allowed for each child for whom the taxpayer receives special tax rates, see page 132. If the total taxes on income (except the temporary surcharge on income tax of 5%) and net wealth exceed 80% of the taxable income of resident taxpayers, the excess is refunded.

Net Wealth Taxation of Nonresidents. Nonresident individuals are subject to net wealth tax only on the following assets situated in the Netherlands, less directly related liabilities:

1. Assets belonging to a permanent establishment in the Netherlands of a foreign entrepreneur or partnership but excluding net wealth represented by shares.

2. The following assets if not part of a domestic Dutch enterprise:

A – Real estate situated in the Netherlands.

B – Outstanding loans secured by mortgages on real estate in the Netherlands.

C – Title to a share in the profits of an enterprise whose management is situated in the Netherlands, to the extent this right is not embodied in securities or related to employment.

Offsetting liabilities include debts related to domestic enterprises, and other debts not related to domestic enterprises but secured by mortgages on real estate situated in the Netherlands.

TAX ON VALUE ADDED (TVA)

The Netherlands adopted a tax on value added on June 26, 1968 which became effective on January 1, 1969 and replaced the cumulative turnover tax. TVA is levied on:

1. Goods delivered and services rendered within the scope of a business activity.

2. All imports of goods.

In accordance with directives of the EC, TVA-type taxes were introduced by France and Germany on January 1, 1968, by Luxembourg on January 1, 1970, by Belgium on January 1, 1971 and is scheduled to be introduced by Italy in July, 1972.

Definition of Terms. The term *delivery* includes the transfer of title to goods according to an agreement, making goods available under a hire-purchase agreement, and the disposal of goods for nonbusiness purposes. All movable and immovable goods are goods in the context of TVA.

Taxable Basis of TVA. The taxable basis on which TVA must be levied is the total compensation in cash or in kind charged to the purchaser, reduced by TVA itself, cash discounts offered for prompt payment, and deposits on returnable containers. For imports, the taxable basis is the import value determined by customs law plus all Dutch taxes and levies and inland freight, but not including TVA itself.

TVA Rates. There are three tax rates and a number of exemptions:

1. The normal rate of 14%.
2. The reduced rate of 4% which is applied to certain goods deemed prime necessities of life.
3. The zero rate which applies inter alia to exports of goods, goods not cleared by customs, goods transported to the Netherlands from abroad if the agreed place of delivery is outside the Netherlands, certain services to persons not resident in the Netherlands, and deliveries of (and services rendered to) sea-going vessels.
4. Exemptions apply to certain companies which are not permitted to charge TVA even though they must pay TVA on their own purchases. Technically, these companies are classified as exempt. Exemptions apply inter alia to deliveries of food and drink and nursing services by nonprofit organizations, radio and television broadcasting, special services rendered by sporting organizations, medical services rendered, and educational services.

The distinction between the zero rate and the classification as exempt is that where a zero rate applies, an enterprise is entitled to recover TVA charged on its own purchase of goods or services. Exempted entrepreneurs do not have such TVA refund rights.

Mechanics of TVA. TVA charged on turnover during a calendar month or quarter must be remitted by the seller to the tax collector within one month after the calendar month or quarter. TVA paid by the seller on his purchases of goods and services is deductible from the TVA collected on sales, but both amounts must be stated on the tax return. In the event TVA paid exceeds TVA collected on sales, the difference is refunded.

TVA paid on purchases is deductible only if the entrepreneur has a dated, numbered, and otherwise proper invoice on which TVA is separately stated. The right to deduct TVA paid arises when the invoice is received, not when paid. Where deductible TVA exists, but no TVA has been collected on sales (zero rate transactions), the tax form must be filed to obtain a refund.

TVA Recordkeeping Requirements. There is a general requirement that enterprises must keep records of TVA paid and collected on each transaction. However, small business (annual net TVA payable of Dfl. 1,300 or less) may request exemption from this requirement.

TVA Refunds for Foreign Enterprises. If foreign enterprises have proper invoices on which TVA charged is stated separately, they may obtain refunds of TVA. The only requirements are that the invoices must include all information required under Article 35 of the Act, and that if the enterprise had been a domestic enterprise, it would not have been classified as exempt.

The following information on invoices is required by Article 35: invoice date and number, names and addresses of buyer and seller, a clear description of the goods and/or services, date of delivery of goods or the period/date when services were rendered, the price (basis for TVA), and TVA itself.

Transitional Measures re Fixed Assets. For fixed assets purchased during the transition period (originally from 1969 through 1972), only partial credit is given for TVA paid, as follows:

Purchases	Credit
1971	60% of TVA charged on sale
1972	67% of TVA charged on sale

Increased credits for subsequent years remain uncertain. As an exception, full credit for TVA is granted for purchases of ships and certain machinery and equipment used in the textile and footwear industries. An additional tax credit is granted for assets purchased after 1969, and sold after a period of use, as follows:

Sold	Additional Tax Credit
1971	40% of TVA charged on sale
1972	33% of TVA charged on sale

After the transition period, additional tax credits on subsequent sales will cease.

STAMP DUTIES

Insurance Premiums. A number of documents are/or will be subject to a flat rate stamp duty. As of January 1, 1972, a 4% stamp duty will be levied on premiums for indemnity insurance. The duty will be collected and

remitted to the tax collector by the insurance company. For nonresident insurance companies, the tax will be collected and remitted by the official representative of the firm in the Netherlands. The following types of insurance are exempt from tax: sickness benefits, medical expense reimbursements, disability, transportation, reinsurance, marine, and life.

Stock Exchange Transactions. A stamp duty is levied on the purchase and sale of securities, except for newly-issued shares, through a broker who carries on his trade within the Netherlands. The basis for the tax is the purchase or sale price, excluding the broker's fee and the stamp duty itself. The tax rate is 0.12% per mill and is levied on both the buyer and seller. The tax is collected by the broker who submits a quarterly return with the required payment.

TAX ON SHARE ISSUES AND TRANSFERS OF REAL ESTATE

Tax on Share Issues. This tax is levied on shares issued on formation or subsequently by bodies corporate (including limited partnerships with shares) whose capital is totally or partially divided into shares. The tax is levied on the total contribution (including premiums paid, if any). It is paid by the issuer of shares and is deductible for corporate income tax purposes. As of January 1, 1972, the rate was reduced from 2½% to 2%. A reduced rate applies to new shares issued within the framework of a merger or as a result of an internal reorganization.

Transfers of Real Estate. A tax of 5% of the value of the real estate is levied on the acquisition of title to immovable property located in the Netherlands. The tax is imposed on the transaction and is payable by the purchaser, but it is customary for the buyer and seller to agree between themselves on how the tax burden will ultimately be borne. For purposes of this tax, the shares of a real estate company are considered immovable property in those cases where the buyer of the shares acquires a substantial interest (see page 129) and the assets of the company consist mainly of immovable property located in the Netherlands.

Exempt Transfers and Contributions. The following acquisitions and contributions, among others, are exempt from the tax on transfers of real estate.

1. Acquisitions by way of inheritances and gifts, except gifts of shares in real estate companies, mentioned above.
2. Acquisitions by an N.V. or B.V., within the framework of an internal reorganization.
3. Contributions of immovable property to a body corporate whose capital is partially or totally divided into shares, if the immovable property is either an entire enterprise or such portion of an enterprise that it can be considered an enterprise by itself. A contribution of land is not exempt if outside the above framework.

REAL ESTATE TAX

Both resident and nonresident companies and individuals are subject to tax on the ownership of land and buildings in the Netherlands. The tax is based on a percentage of the market value and income as determined about a century ago. For new buildings, the tax is based on a percentage of deemed income.

The actual tax burden varies widely among municipalities. Generally, it is a few percentage points of the actual value/income, and is within the range of similar taxes in other countries.

INHERITANCE AND GIFT TAX

Property acquired by inheritance or gift from a Dutch resident is subject to tax at progressive rates. Property located in the Netherlands that is acquired by inheritance or gift from a nonresident is subject to tax at a flat rate. The tax is levied on the beneficiary or donee.

Inheritance Tax on Residents. Inheritance tax is levied when property is inherited from:

1. A resident of the Netherlands.
2. A nonresident Dutch citizen who dies within ten years of departure from the Netherlands. Partial relief is granted for inheritance taxes paid abroad.

The rate of tax depends both on the relationship between the deceased

and the heir, and the amount of inheritance. In the Schedule of Inheritance and Gift Taxes on page 166, the figures in the “a” columns are the duties payable on the amounts in the column headed *From*, and the figures in the “b” columns are percentages of additional duties payable on amounts in excess of the *From* column and up to the amount in the *To* column. These rates are currently in effect, but as both inheritance and gift taxes are under study, possible changes in rates may be anticipated. The amounts of inheritance in the Schedule are after exemptions.

Exemptions. Acquisitions from a spouse are tax exempt up to Dfl. 250,000. The exemption for minor children varies from Dfl. 11,250 to 54,000, depending on age. For adult children, the exemption is Dfl. 6,000. For charitable institutions, the exemption is Dfl. 10,000 and amounts above the exemption are taxed at a flat rate of 10%.

Example. A man of 22 inherits Dfl. 80,000 from his father. His exemption of Dfl. 6,000 leaves a taxable remainder of Dfl. 74,000. The Schedule indicates for inheritances of Dfl. 50,000 to 100,000 a fixed tax of 3,820 and a rate of 11% on the excess. The tax on the excess ($74,000 - 50,000 = 24,000$) at 11% is 2,640, and total tax is Dfl. 6,460 ($3,820 + 2,640$).

Gift Tax on Residents. Gift taxes are levied at the same rates as inheritance taxes when gifts are made by:

1. A resident of the Netherlands.
2. A Dutch citizen who departed from the Netherlands less than ten years prior to the date of the gift.
3. A nonresident alien who departed from the Netherlands less than one year prior to the date of the gift.

Exemptions. Gifts from parents to children are exempt to the extent of Dfl. 2,000 per year. If the child is married, the exemption increases to a maximum of Dfl. 5,000 per year, depending on the parents' income. Other gifts are exempt up to Dfl. 2,000 every two years. The exemption for charitable institutions is the same as for inheritances.

Inheritances and Gifts from Nonresidents. Inheritances and gifts from nonresidents are taxed at the flat rate of 6% of market value of the following assets, if located in the Netherlands:

1. Assets belonging to a permanent establishment.
2. Real estate, and loans secured by mortgages on real estate.
3. The right to share in the profits of a resident enterprise to the extent these rights do not arise from securities or from a contract of employment, less:
 - A. Debts allocable to a Dutch enterprise.
 - B. Loans secured by mortgages on real estate located in the Netherlands.

TAXATION IN THE NETHERLANDS

TOUCHE ROSS

SCHEDULE OF INHERITANCE AND GIFT TAXES

Amount of Inheritance		Acquired By			
From	To	Children or Spouse		Descendants Twice or Further Removed	
		Amt. a	% b	Amt. a	% b
0	1,000	0	3	0	5
1,000	2,000	30	4	50	6
2,000	5,000	70	5	110	8
5,000	10,000	220	6	350	10
10,000	25,000	520	7	850	12
25,000	50,000	1,570	9	2,650	14
50,000	100,000	3,820	11	6,150	16
100,000	200,000	9,320	13	14,150	18
200,000	500,000	22,320	15	32,150	20
500,000	over 500,000	67,320	17	92,150	22

Acquired By

Ascendants		Brothers and Sisters		Children of Brothers and Sisters		Other Persons	
Amt. a	% b	Amt. a	% b	Amt. a	% b	Amt. a	% b
0	10	0	18	0	27	0	36
100	12	180	20	270	29	360	38
220	14	380	22	560	31	740	40
640	16	1,040	24	1,490	33	1,940	42
1,440	18	2,240	26	3,140	35	4,040	44
4,140	20	6,140	28	8,390	37	10,640	46
9,140	22	13,140	30	17,640	39	22,140	48
20,140	24	28,140	32	37,140	41	46,140	50
44,140	26	60,140	34	78,140	43	96,140	52
122,140	28	162,140	36	207,140	45	252,140	54

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