

StartRight Off-Shoring Guide

Second Episode | March 2022

Netherlands

In total, there are several well-known geographical jurisdictions that offer considerable offshoring incentives. The key to choosing the most suitable offshore jurisdiction is to fully understand the extent of the incentives offered by each jurisdiction, how they impact your business in Egypt, and how much you can financially invest in any of them. There are elements that may allow you to determine which jurisdiction is the best for your business such as the geographic territory, the forms of companies in that jurisdiction, the duration of incorporation, the requirement of a bank account for incorporation, the tax rates, the minimum number of directors and shareholders, the types of legal systems, the publicity of corporate information, the economic substance requirements, the foreign ownership ratio, the setup fees, the ongoing annual fees, and the requirement of a local agent or director.

Disclaimer: this guide should not in any manner be interpreted or considered as a legal advice or a tax advice.



1. Corporate Structures*

A BV is a Dutch private limited liability company, an NV is a Dutch public limited liability company, and a Coop is a Dutch cooperative.

The main difference between a BV, Coop, and an NV is in the minimum share capital requirement, where both a BV and Coop require no minimum share capital (EUR 0.01-0.05), while an NV requires a minimum share capital of EUR 45,000.

Another difference is in their corporate structure; a BV and NV are similar in requiring a minimum of 1 shareholder and 1 director, while a Coop requires a minimum of 2 members and 1 director.

****A BV is assumed hereinafter.***

Characteristics of a BV include the following:

1. Minimum paid-in capital upon incorporation of 0.01-0.05 Euros.
2. Division of share capital into registered shares.
3. Issuance of share certificates.
4. Transfer of shares may only occur following consent of other shareholders.

2. Incorporation Procedure

Duration: possible in 3 days

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Procedure:

1. Execution of a notarial deed that contains the Articles of Association by a Dutch Civil notary in the NL;
2. Registration of the company with the Commercial Register of the Chamber of Commerce and Industry within 8 days following incorporation (registration to include details of all managing directors, supervisory directors, and sole shareholders of the company); and
3. Ascertainment of the UBO—this can be done via in-person identification before the certified agent or notary in the case of a natural person, or via providing an official legal opinion (contents TBD) if the incorporating shareholder is a pre-existing company in another country.

Registered Agent: A registered agent office must be maintained in the NL.

Articles of Association (AoA):

AoA govern the company and include the following important terms: Company name, seat, objects, capital, blocking clause, management board, representation, and liquidation.

- Company’s “seat” must be in the Netherlands, and that will be stated in the AoA. The registered office must be in

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the NL from a tax point of view (see discussion on taxes below for reasoning).

Management Board:

The board is engaged the company's management and responsible for day-to-day handling. From a tax perspective, the management must be performed in the NL (but see tax discussion below for reasoning). There are no requirements for nationality or residence of managing directors either (but see tax discussion below for further recommendations). A legal entity may act as a managing director.

Representation:

Under Dutch law, the Management Board is entitled to represent the company and the authorization of each managing director to represent the company solely may be stipulated.

Board Meetings:

Management Board may hold its meetings wherever it deems fit unless the Articles of Association dictate differently; however, from a tax perspective, the recommendation is for Board Meetings to be held in the NL (see tax discussion below suggesting that Management Board meetings be held in the NL). Management Board resolutions can be recorded in minutes or adopted outside a meeting.

Shareholders Meeting:





At least one general shareholders meeting shall be held annually. Unless the AoA provides for a shorter waiting period, the annual meeting will be held within 6 months following the end of the company's fiscal year. In this meeting, adoption of the annual accounts of the company should occur. Within 5 months following the end of the company's fiscal year, the management board should draw up the annual accounts; this period can be extended to a maximum of 6 months.

The shareholders meeting may be held outside of the NL if the AoA provide for that, or it may be held anywhere else if all shareholders agree and the managing/supervisory directors had the opportunity to advise on the proposed resolutions beforehand.

A physical meeting is not required, and decisions can be taken outside a physical meeting and via a written resolution of shareholders/members.

3. Incorporation Costs & Running Fees

Initial Costs:

A non-recurring cost of 51.95 Euros to cover administrative costs is due upon the registration of a new company or organization in the Dutch Commercial Register, and it is a requirement stipulated in the Law on the Chamber of Commerce. Payments can only be made digitally: via mobile, debit, or credit card.

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This cost is due upon a first-time registration of a company or organization, or upon the registration of a restart, takeover, division, or merger that would result in the issuance of a new KVK (Netherlands Chamber of Commerce) number and a new registration in the Dutch Commercial Register.

Incorporation costs can go up to Euros 3,000.

Running Annual Fees (Around Euros 6,500-8,500):

1. Notary's fee: ranges between 500 and 1,000 Euros.
2. Bookkeeping/accounting fee: ranges between 600 and 1,800 Euros per year. *
3. Annual corporation tax return must be filed (along with financial statements).
4. Annual Management Board report must be filed.
5. Annual corporate fees to trust companies for management, administration, and domiciliation services.

*Note: no mandatory audit required unless 2 of the following 3 are fulfilled by the company during 2 successive years: (1) total assets exceeding 4.4 Million Euros, (2) turnover exceeds 8.8 Million Euros, or (3) workforce comprises of more than 50 million employees.



****Note:** Annual corporate fees of trust companies for management, administration, and domiciliation services range from 6,000 to 8,000 Euros. There are no governmental fees.

Optional:

- (1) Paper company extract: one has the option to buy a paper company extract (seal) from the Commercial Register, which costs 15.60 Euros, and the payment can only be made digitally. Whether or not one needs a Commercial Register Extract depends on the bank involved and whether or not wholesalers come into play, where some banks request its production and wholesalers *always* request one.
- (2) Registered UBOs: If one registers a UBO, one may want to order a UBO extract; this can only be done online for 2.55 Euros.

Importance of UBO extract: The UBO extract contributes to the prevention of using the financial system for financing terrorists and laundering money. It contains the Chamber of Commerce number and name of the organization, personal data of UBO(s), and the importance of the UBO in that organization. It provides insights into who the UBO(s) are within an organization. It is also part of a legal requirement imposed on certain institutions (banks, insurance companies) to obtain a UBO extract from the Chamber of Commerce to facilitate



4. Tax & Residency

customer due diligence in order to establish the identity of the UBOs.

Note: the company's register and articles of association are publicly accessible, i.e. information concerning directors, sole shareholder, registered address, incorporation date (contained in the company register) will be accessible.

Note on Tax Optimization: If the purpose of a company is to be a holding company, that renders it super-efficient. To increase tax optimization, however, one may choose to take advantage of tax benefits that exist for individuals moving to the NL; a portion of that person's income could be paid as tax free allowance because it is considered a reimbursement or compensation cost of moving to the NL rather than a salary.

NL residents are taxed on their worldwide income, while nonresidents are taxed only on NL-source income. Participation exemptions exist and apply to certain income from shareholdings, permanent establishments, and innovative activities, especially in the case of a Holding Company. Subsidiaries and branches of foreign companies are treated the same way when determining corporate income tax, but branches are usually exempt from withholding tax on profit remittances to foreign head offices.





If an individual or an entity establishes residency in the NL, that could facilitate tax optimization (and to make it easier to open a bank account [see information on Bank Account below]).

Individuals: Individuals (natural persons) need to spend more than 183 days in the NL, which is more than half a year and is not permitted on a standard visa. To spend that much time in the NL, one would need a work permit. This can be facilitated where the applicant has a double nationality (one of which is European) or has family members with European passports located elsewhere in Europe. If this process is not available, then setting up a Dutch company and employing the applicant by that Dutch company is another option, after which the applicant would apply for a visa under the “Skilled Worker Rule,” which is a rule put in place to attract bright people to move to the NL to kick start their businesses or create startups there.

There are other programs to apply for and some are available to investors, individual shareholders, and founders themselves (e.g. Highly Skilled Migrant program¹).

Entities: Incorporating a company in the NL renders it a resident of the NL. To make sure the company is not deemed to

¹ https://ind.nl/en/work/working_in_the_Netherlands/Pages/Highly-skilled-migrant.aspx





be a resident of any jurisdiction other than the NL by incorporation, at least one of the directors should be a resident of the NL and board meetings of that entity should be held in the NL. There is no legal rule applicable to Holding Companies (as opposed to Specific Companies) mandating that a specific percentage of directors be Dutch; legally, only one director is required, the residency of whom is not material but for the following issue: from a tax perspective, it would be difficult to sustain a company in the NL if board meetings are not held in the NL (which would likely be the case if only two directors exist that work and live outside of the NL) because all decision-making will occur outside of the NL. Evidence that decisions are being made in the NL is imperative and would only be possible if half of the directors are in the NL (e.g. one founder moves to the NL short-term, and the other remains abroad).

5. Income Tax

In principal, a Dutch BV is subject to tax regardless of its activities. Corporate income tax is 25% (20% for the first 200,000 Euros of profits) and due on all profits that derive from conducting a business, including trading income, foreign source income, passive income, and capital gains. All costs relating to the business are deductible in principle.

If the income of a Dutch company is only consistent with capital gains, there is a broad exemption that typically applies.





If you are just a Hold Co (holding company) in the NL, the income tax is zero, especially if it is a Hold Co for a startup. *

*Comparatively, if distribution of dividends to shareholders is in order, there is a 15% tax on dividends, which is the standard domestic rate, and it can potentially be lowered if the shareholder is in a tax treaty jurisdiction or if the shareholder is a company. There is a distinction between individuals and entities, where individual dividend tax is 15%, but a company shareholder tax can go down to 0% if the company shareholder is a resident of a country in which the NL had entered into a double tax treaty (the NL has such a treaty with 95-96 countries, including Egypt, 25 of which have gone into force**) **and** the company shareholder owns more than 5% of the shares in the NL BV. Some treaties contain “anti-treaties hopping” provisions and/or detailed “Beneficial Ownership” tests.

**Note: Egypt is a party to such a treaty with the NL, but it is unclear whether Egypt ratified the treaty by March 31, 2020 such that it would be in force. If it is in force, one must check for specific anti-treaties hopping provisions or beneficial ownership tests.

6. Capital Gains Tax

Participation Exemption:





Full exemption is permitted for capital gains (and dividends). Capital gains derived from the sale of a participation are exempt if the “participation exemption” applies.

The minimum participation is of at least 5%, then one of the following three tests must be met for the exemption to apply:

1. Purpose Test: the objective re: participation is to obtain a return that is higher than a return that may be expected from regular asset management.
2. Asset Test: the direct and indirect assets of the subsidiary consist of less than 50% of “low-taxed free passive assets.” This test is generally easily met by operating companies with an “active business enterprise” (as opposed to Holding Companies).
3. Subject-to-tax Test: Subsidiary is subject to a genuine tax determined on Dutch tax standards (i.e. effective tax of at least 10% according to Dutch standards).

StartRight Analysis:

i.e. The participation exemption applies when dividends and capital gains are derived from shareholdings of at least 5% and any of the following apply:

- (1) the subsidiary is not a mere portfolio investment (e.g. group financing and/or licensing activities are mere portfolio investments);

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- (2) less than 50% of the subsidiary’s assets consist of “passive” assets based on their fair market value according to the asset test; or
- (3) the subsidiary is subject to a reasonable effective tax rate (according to Dutch tax principles).

In the event the subsidiary is predominantly engaged in portfolio investment activities such that it is held to be a mere portfolio investment, it must additionally meet either of tests (2) or (3) above for the participation exemption to apply.

From 2016 onwards, interest payments (and dividends received) are taxable if the payment is tax deductible in the country of the payer (subject to tax credits discussed above).

Incentives:

Investment deductions and reliefs are available:

1. “Innovation Box”—Income derived from self-developed intellectual property (R&D) is effectively taxed at a rate of 5%.
2. Special Tonnage tax—applies to shipping companies.
3. Tax exemption/0% tax is provided for investment funds that qualify.





7. Foreign Tax Credit

Profits from a permanent establishment of a Dutch company are generally exempt from NL tax base, and a tax credit will be granted for foreign tax paid on low-taxed portfolio activities that the permanent establishment is engaged in. A tax credit is also generally available for foreign withholding tax on interest and royalties under the NL tax treaties. If there is no treaty, tax credits are also available for interest or royalty income received from developing countries.

8. Other Taxes

No capital duty tax (capital contribution tax)

No payroll taxes.

Real property tax: in the event a company owns real property in the NL, an annual tax is imposed by municipalities on such owners of real property, and real estate tax is deductible for corporate income tax purposes.

Transfer tax: 6% real estate transfer tax is payable on acquisition of real property in the NL or certain related rights, while a reduced rate of 2% applies to transfers of residences.

9. Bank Account

To do business in the NL and be active there, an entrepreneur must open a business IBAN account if the account holder is in the SEPA Zone (Single Euro Payment Area Zone) to facilitate easy and secure national and cross-border Euro payments.





Private bank accounts are to be kept separate from business bank accounts.

An entrepreneur located outside of the SEPA Zone must apply for a business account with a bank located in the NL. Strict legislation and individual acceptance policies exist that banks must follow, and banks scrutinize applications before they can make decisions. It can be a relatively a time-consuming process.

Consider the following for time-saving purposes: Entrepreneurs that are already in the process of registering with the NL Chamber of Commerce (KVK) and are obtaining a residence permit (receiving assistance from the NL Foreign Investment Agency [NFIA]) have access to a “Quick Scan ‘Dutch Business Bank Account,’” which the Dutch Banking Association has created specifically for them.

10. Economic Substance

The NL frowns upon treaty shopping. The abuse of law doctrine applies when the purpose of a transaction or a series of transactions is to avoid taxes.

While there are no requirements as to the nationality or residence of managing directors, some events trigger the requirement under Dutch tax law that *some* “substance” be in the NL, resulting in a request for Dutch Management Board Members to prove such substance.





11. Enforcement of Rights

(See discussion re: taxes above for residency and board meeting location recommendation).

ESOP

New legislation for ESOP went into effect on January 1, 2022, which renders ESOP taxable as employment income as a benefit in kind (up to 49.5%). The taxable event of stock options moved from the moment of exercise of stock option to the moment the shares received by exercising stock option become tradeable. The choice to be taxed at the moment of exercise is reserved to employees and made possible if an employee chooses via written request to their employer.

Old rules considered stock options granted to employees to be wages for the purpose of the Dutch Wage Tax Act, which imposed wage taxes when employees exercise or sell their stock option. The newly rule allow taxation on employee stock options to be deferred until the option is tradeable instead of taxation at the point of exercising stock option.

Transfer of Shares

The transfer of shares in NL is subject to restrictions included in the AoA of the respective company. Lock-up clauses can be included and invoked to prevent the transfer of shares for a certain period of time.





Registered shares are available to both BVs and NVs. Registered shares are transferred by a notarial deed before a Dutch civil notary, subject to other restrictions in the AoA.

Four subcategories of registered shares:

1. Ordinary shares—shareholders of these shares have voting rights but no special rights; these can be divided into classes by the AoA, and the higher classes have more rights awarded.
2. Priority shares—the shareholders of these shares receive extra controlling rights via the AoA.
3. Preference shares—shareholders are entitled to receive a fixed dividend that has preference over any dividend. Shares do not provide any voting rights most of the time.
4. Share certificates—apply to public limited NV companies only. Shareholders of these certificates are only interested in profits.



StartRight Final Words

Go to the Netherlands if you have Enough Funding!

The only thing you have to make sure you plan for is having an annual budget of around Euros 6,500 - 8,500 to maintain this Holding Company Structure. There are other options in the UAE but are not very well-structured like the Netherlands.

StartRight Off-Shoring Next Episode: UAE