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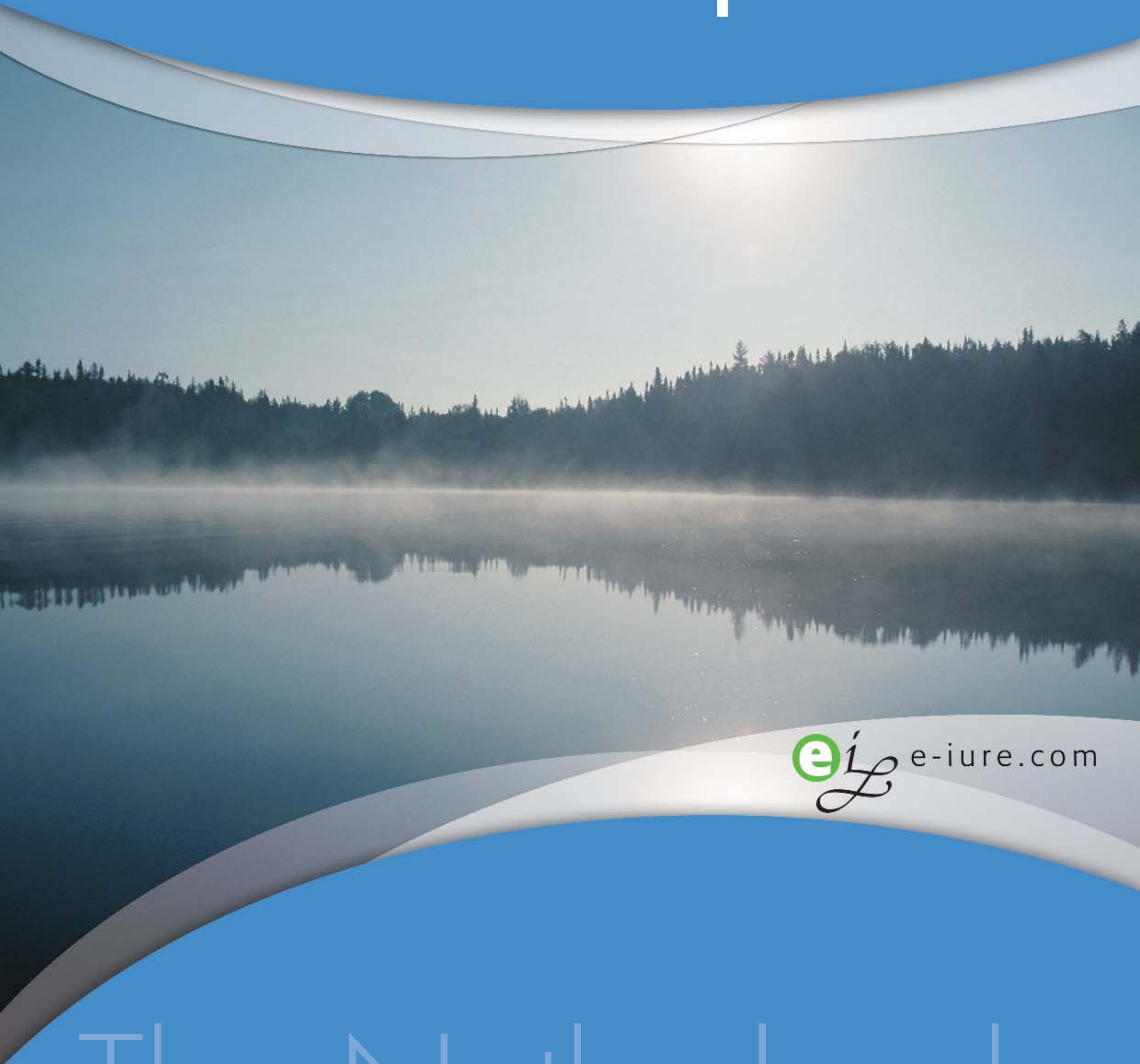

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content

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Kaiser Advocaten & Belastingadviseurs is a full-service law and tax firm with two offices in the centre of the Netherlands. We focus mainly at providing legal and tax services to companies and at individual estate planning. Our firm is characterised by its quality in service and flexibility in approach.

Kaiser Advocaten & Belastingadviseurs is the result of a recent merger between two firms: Kaiser Advocaten & Belastingadviseurs. Together, we represent a great amount of experience and proficiency, especially in the following areas of expertise:

Corporate: Restructuring, M&A, joint ventures, MBO's, competition
Commercial: Business contracts, distributor agreements, franchise, agency
Tax: Corporate and individual tax, VAT
Estate planning
Employment: Employment contracts, dismissal, reorganisations, collective labor agreements, employee representation
Real estate: Building contracts, development, acquisition, securities, lease, emphyteusis, rights of superficies
Intellectual property
Insolvency: Bankruptcy, moratorium, debt restructuring
Administrative: Permits
Criminal law
Immigration
Litigation: Representation in civil, administrative (tax) and criminal procedures, arbitration and ADR

In the near future also a notary public firm will join Kaiser Advocaten & Belastingadviseurs, completing the range of legal services provided to our clients.

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Questionnaire corporate law

Regulations and rules

The Dutch law applicable to legal persons and, more specifically, to corporations can be found in the second book of the Dutch Civil Code. Apart from this general framework, a number of specific statutes and regulations exist.

Types of companies

The organizational forms of doing business in the Netherlands can be divided in those with legal personality and those without legal personality. This distinction is of importance for the way in which the business is treated by the law: as far as patrimonial law is concerned (i.e. the laws of succession, property, contract and tort), legal persons are in principle treated in the same way as natural persons.

Organizational forms of business with legal personality are, amongst others, both types of corporations: the public limited liability corporation ('Naamloze Vennootschap', hereinafter: NV) and the private limited liability corporation ('Besloten Vennootshap met beperkte aansprakelijkheid' , hereinafter: BV). Organizational forms lacking legal personality are the sole proprietorship ('eenmanszaak'), the general partnership ('vennootschap onder firma') the private partnership ('maatschap'), and the limited partnership ('commanditaire vennootschap'). Due to the limited scope of this article only the NV and BV are dealt with in more detail.

The NV and BV are both legal persons, with an authorized capital divided in shares. The shares of an NV can (in principle) be transferred freely, whereas the shares of a BV cannot. Incorporation of a BV or an NV takes place on initiative of the founders by a notary deed, containing the articles of association (By-laws do not exist under Dutch corporate law). Prior to incorporation, a so-called declaration of no objection has to be obtained from the Minister of Justice.

The liability of shareholders

The shareholders of an NV or a BV are in principle only liable for the unpaid balance on their shares. This liability is limited to the nominal value of the shares plus the subscription price for as far as it exceeds the nominal value. Only under exceptional circumstances a shareholder can be liable based on tort.

Share capital

Minimum capital

The authorized capital and the nominal value of shares have to be stated in the articles of association. At least one fifth of the authorized capital stated in the articles of association of an NV or a BV has to be issued in shares. Furthermore, for an NV the capital to be issued in shares should be at least € 45.000, whereas for a BV € 18.000 suffices. These amounts have to be actually paid in. Provided that the aforementioned minimum requirements are met, a corporation and its shareholder can agree that (up to a maximum of) three quarters of the nominal value of a registered share has to be paid-in when the corporation requests this.

Classes of shares

Shares can be subdivided in two main classes: registered shares and bearer shares. An NV may issue both, whereas a BV is only allowed to issue registered shares. The shareholders' register is kept by the management board of the corporation.

Both registered shares and bearer shares can be issued as, amongst others, ordinary shares, preference shares and priority shares. Ordinary shares are shares to which no special provisions apply. Preference shares provide the holder with a preference over other shareholders in respect of dividend payments. Priority shares provide the holder with certain powers attributed by the articles of association (e.g. certain veto and nomination rights).

Categories of shares can be provided for in the articles of association, which is usually done by giving them a letter (e.g. priority shares A and B). The articles of association can attribute different rights to each category..

Furthermore, in the Netherlands it is possible to separate the voting rights of a share from the rights to dividend. This so-called 'certificering van aandelen' is done by issuing shares to a (corporation founded) foundation, which exercises the voting rights. The capital required to subscribe to these shares is provided by investors, who in turn have a claim against that foundation for their share of the dividend received.

Corporate governance

Introduction: two-tier system

Dutch corporate law is based on a two-tier system. This system provides for a management board, charged with the management of the corporation and a supervisory board, which advises and supervises the management board. Having a supervisory board is only mandatory for 'large' corporations (i.e. an NV or a BV with an issued share capital of € 16.000.000 or more, a works council and one hundred or more employees). The mandatory supervisory board of a 'large' corporation has more powers than the supervisory board voluntarily installed by the articles of association of a 'small' corporation.

For the remainder of this article, the word corporation comprises both the NV and BV, unless stated otherwise.

Shareholders' meeting

At least once a year, within six months after the end of the financial year or at such shorter notice as the articles of association prescribe, a shareholders' meeting has to be convened. This meeting is sometimes called the ordinary shareholders' meeting, in contrast to other (extraordinary) shareholders' meetings, which are optional.

In principle, the shareholders' meeting has, within the boundaries of the law and the articles of association, all powers that are not attributed to the management board or others. In practice, the shareholders' meeting has the following basic powers to:
Appoint, suspend and dismiss members of the management and supervisory board;
Amend the articles of association;
Adopt the annual accounts;
Decide on the dissolution, change of legal form, merger and split-up of the corporation.
In case of a corporation with a mandatory supervisory board, the powers under a) and c) are attributed to that board.

Increasing the share capital to an amount exceeding the authorized capital, or reducing it by lowering the nominal value of shares, or changing the corporate purpose requires amendment of the articles of association, and therefore approval of the shareholders' meeting, as well as a declaration of no objection by the Minister of Justice. Also redemption and repurchase of shares, although no amendment of the articles of association is needed, requires approval by the shareholders' meeting.

Management board

As already mentioned above, the management board is charged with the management of the corporation. The articles of association may restrict the powers of the management board. However, this may go not as far as attributing management powers to either the shareholders' meeting or the supervisory board. Although prior approval for certain decisions may be required, the management board has its own responsibility and may ignore certain instructions by the shareholders' meeting if they are, in the opinion of the management board, contrary to the corporation's interests. For corporations that are part of an international network this may differ however.

The members of the management board are appointed by the shareholders' meeting for 'small' corporations and by the mandatory supervisory board for 'large' corporations. In principle there are no restrictions as to who can be appointed as a board member (e.g. legal persons and shareholders can also be board members). Membership of the management board and the supervisory board cannot be combined however. Board members can be appointed for a definite or indefinite period of time.

Liability of board members may arise under certain circumstances. In case of 'mismanagement' for instance, board members are liable towards the corporation. Discharge of this liability is possible however, and is usually done after closure of each financial year on adoption of the annual accounts. Liability towards third parties can arise in case of bankruptcy of the corporation (if it is caused by the board not taking proper care of its management tasks), non-payment of taxes and social insurance premiums, presenting wrong or misleading information in the annual or interim accounts on the state of affairs of the corporation, and in certain cases of tortious behaviour.

Supervisory board

As already mentioned above, the supervisory board is charged with advising and supervising the management board. In doing so it has to represent the interests of the corporation. The articles of association can contain supplementary provisions on the powers of the supervisory board. In case of a 'large' corporation the board has special powers, including amongst others the power to appoint, suspend and dismiss members of the management board, adopt the annual accounts, and prevent certain management board decisions.

At least two thirds of the members of the supervisory board are to be appointed, suspended and dismissed by the shareholders' meeting. In case of a 'large' corporation all board members are nominated by that board and appointed (for a maximum term of four years) by the shareholders' meeting.

(Disclosure of) remuneration

The remuneration of management board members as well as supervisory board members is in principle determined by the shareholders' meeting and without limit. Disclosure of the remuneration is mandatory as part of the annual accounts.

Works council

If a corporation has fifty employees or more, according to the Works Councils Act ('Wet op de ondernemingsraden'), employee representation by a works council is mandatory. The management board is obliged to consult with the council at its request. Furthermore the advice of the council has to be obtained prior to taking decisions concerning amongst others merger, (partial) termination of the activities of a company run by the corporation, and important changes in that company's organization.

Annual accounts and the annual report

Every year, within five months after the financial year has ended the management board of a corporation has to draw up the annual accounts. Under special circumstances, this period can be extended to eleven months by the shareholders' meeting. Eventually adoption takes place by the shareholders' meeting or, in case of a 'large company' by the supervisory board, after which approval of the shareholders' meeting is required.

Next to the annual accounts, which should contain a profit and loss account and balance (both with explanatory notes), the management board has to draw up an annual report. This annual report should contain an accurate description of the sate of affairs of the corporation on the balance date, and of the ongoing and expected future state of affairs. 'Small' corporations without a mandatory works council are exempt from the obligation to draw up an annual report.

An audit of the books and accounts is mandatory, except for 'small' corporations. This audit has to take place by a registered auditor, which is appointed by the shareholders' meeting. The auditor examines whether the annual accounts provide the required insights in the financial state of affairs of the corporation, and whether they are drawn up according to the relevant statutory provisions. Furthermore, the auditor checks the compliance of the annual report with the annual accounts. The findings of the auditor have to be presented to the shareholders' meeting / the supervisory board before adoption of the annual accounts can take place.

In principle, all corporations have to file their annual accounts, together with –if available–the annual report and the findings of the auditor. Filing has to place (by the management board) with the Trade Register, kept at the Chambers of Commerce, within eight days after adoption or approval by the shareholders' meeting, and –if adoption or approval has not taken place (in time)– at least within thirteen months after the financial year has ended. Late filing can result in liability of the management board in case of bankruptcy and criminal liability of the corporation itself.

Quoted companies

On 9 December 2003 the Corporate Governance Committee published the Dutch Corporate Governance Code. This code contains principles and best practice provisions on, amongst others, remuneration of the management board, remuneration of the supervisory board, disclosure of remuneration, independency of members of the supervisory board, and conflicts of interests. Although the Corporate Governance Code is in itself not legally binding, quoted companies must state with reasons in the annual report how far the code has been observed.

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Introduction

Two notable features of Dutch labor law are:

- The great influence –elected– works councils can have on company policy. In certain cases the works council has to be consulted before the employer can take a decision. Sometimes even approval of the works council is required.
- The duty of the employer to pay his employee during the first two years of his disable ment due to illness. Only after this period the employee is entitled to benefits.

Employment Contracts

a. Types of contracts

In general, employment contracts in The Netherlands can be subdivided into two main groups. Contracts concluded for a definite period of time and contracts concluded for an indefinite period of time. This subdivision is mainly of relevance to the conditions under which the contract can be terminated.

Instead of actually concluding employment contracts with workers it is also possible to hire temporary workforce from an employment agency or to make use of freelance workers. These working-relations are not fully subject to Dutch labor law and, more in particular, to the provisions on termination.

b. Dismissal

Employment contracts can be terminated by mutual consent, by giving notice of termination and by rescission by the court. Furthermore, an employment contract for a definite period of time ends ipso jure when that time-period has expired.

Termination by giving notice

Termination of an employment contract by giving notice cannot take place without a dismissal permit, which is to be obtained from the Central organization for Work and Income (CWI). Without this permit, notice is null and void. The permit will be issued because of business-economic reasons (e.g. reorganization), when an employee is not competent for the job and when the working relationship between the employee and the employer is severely disturbed.

As an exception to the general rule, the dismissal permit is not required for giving notice of termination during the probationary period, for giving notice of termination when there is urgent cause for dismissal “on the spot” (e.g. theft and refusal to carry out work) and for giving notice to managing directors of corporations.

Once a permit is issued a (statutory) minimum notice period must be observed, the length of which depends on the duration of the contract. Furthermore, notice may not be given under certain circumstances. Giving notice of termination is prohibited, amongst others, in case of inability to work due to illness, during pregnancy, during membership of the works council and because of marriage or trade union membership.

The termination of a contract by giving notice can be “apparently unreasonable”, even when CWI has issued a permit. Termination will be deemed apparently unreasonable if either no reason or a false reason is given, or if the hardship endured by the employee is disproportionate to the employer’s interests. In such an event the employee may claim reinstatement or compensation.

Termination by rescission by the court

The subdistrict sector of the district court can on request rescind an employment contract on grounds of serious cause. A change of circumstances of such a nature that the contract should in all reasonableness be terminated instantly or on short notice (e.g. an irresolvable dispute) is considered to constitute serious cause, as well as circumstances that would have justified dismissal “on the spot”.

If the court decides to rescind the contract on grounds of serious cause constituted by a change of circumstances, compensation may be awarded to one of the parties. In practice however, compensation is awarded most often to the employee. The amount of compensation is calculated by multiplying the number of years of service, the monthly remuneration and a correction factor with each other. Years served by an employee when he or she was between the ages of forty and fifty count each as one and a half year, whereas the years served above the age of fifty count each as two years. The correction factor is used to compensate for blame regarding the dismissal and will be ‘one’ if neither employer nor employee is to blame.

The procedure has both a written and an oral phase. However, instead of a procedure with full argument on both sides, employer and employee can also agree in advance on the termination of the contract and –optional– on a compensation. In such cases, only a shortened pro forma procedure is required, which is sometimes used to try not to loose entitlement to unemployment benefits for the employee.

Collective dismissal

Dismissal of twenty employees or more within a time period of three months or less has to be notified by the employer to CWI and the relevant trade unions. If the company has a works council the employer furthermore must ask the council for advice concerning the dismissal. The notification should at least contain the reason(s) for dismissal, criteria for the selection of the employees involved, whether or not the works council has been or will be consulted, and how severance payments –if any– are calculated. Without notification and –in order to leave room for consultation– within one month after notification, CWI will not issue any permits.

In practice, the employer often draws up a so-called “social plan”. This plan describes the consequences of the collective dismissal and contains measures for compensation. A 'good' social plan will positively influence the position that the trade unions and CWI will take on the proposed collective dismissal.

Dismissal of managing directors

Both company law and labor law govern the relationship between a corporation and its managing directors. The removal of a director from the board does therefore not automatically terminate his or hers employment contract. Termination of the latter contract has to take place according to the 'ordinary' labor law rules, with the above-mentioned exception that no permit is needed in case of notice of termination.

Employee Representatives And Union Representation

Works councils

Within a company employees are represented by the works council, an elected body within consisting of employees of that company. A works council is compulsory for companies with fifty employees ore more. The employer is obliged to regular consult with the council and to keep it informed. Furthermore the advice of the council has to be obtained prior to taking decisions concerning amongst others merger, (partial) termination of the activities of the company and important changes in the company's organization. Decisions concerning amongst others pension plans, working hours, bonuses and policies on illness, even require prior consent of the council.

Trade Unions

Another form of employee representation takes place through the trade unions. Apart from negotiations with the government and federations of employers on government policy, trade unions conclude collective labor agreements with (federations of) employers.

Collective Bargaining Agreements. Other Agreements

Labor contracts are often heavily influenced by collective labor agreements. These collective agreements are concluded per sector of industry or trade between trade unions and federations of employers or individual employers. Their scope is, depending on the contracting parties, either nationwide or restricted to one company. Their content often comprises wages and other labor conditions.

Employers who are a member of a contracting federation of employers are bound by the collective labor agreement. Furthermore, the government can on request declare a collective labor agreement binding for a complete sector.

Wages And Other Types Of Compensation

Remuneration for work can roughly be subdivided into three classes: salary, holiday allowance, and other (e.g. bonus, company car, stock options etc.). The first two classes form a mandatory part of every employee's remuneration. The holiday allowance is fixed at a minimum of 8% of the overall salary.

The amount of the remuneration is –apart form certain minimum standards– freely negotiable, at least in principle. In practice however, it is often prescribed by collective labor agreements. The overall minimum salary per 1st july 2007 is € 1.317,– per month.

Apart from the abovementioned classes of remuneration an employee is entitled to a minimum number of holidays with pay. This minimum is fixed at four times the weekly working hours, i.e. twenty holidays per year in case of a full time contract.

Overtime hours have to be paid if and to the extent agreed upon in the employment contract or prescribed by the applicable collective labor agreement. In absence thereof it depends on the individual circumstances.

Employment Regulations

Employment regulations are often incorporated in a so-called "personnel guide". Regulations of a general order (i.e. working hours, breaks, rules of conduct etc.) can be imposed unilaterally, although in certain cases approval of the works council is required. Other regulations, as far as they concern the labor conditions, in principle require approval from the individual employee. Employment contracts usually contain a provision stating that the employee approves of the contents of the personnel guide.

Social Security

The social security system in The Netherlands is based on social assistance (i.e. benefits available to all citizens, such as welfare and old age pensions) and social insurance (i.e. benefits available to those insured, such as unemployment benefits). For labor relationships the social insurance is of particular relevance.

All employees fall under the compulsory insurance against unemployment and disability. Both, employer and employee pay premium for unemployment insurance. The premium for the disability insurance is fully paid by the employer and is dependent on the number of (ex-) employees that receive benefits in respect of a disability incurred during their work for the employer.

Entitlement to benefits under unemployment insurance exists if an employee becomes unemployed after he has worked during at least twentysix out of the last thirtysix weeks. If an employee furthermore has worked during at least four out of the last five years the duration and amount of the entitlement will be increased. In order to actually receive benefits however, the unemployment must be involuntary and the employee must actively seek for a new job.

Entitlement to benefits under the disability insurance exists if an employee is after a so-called "waiting-time" of two years still unable to go back to his work. During the waiting-time the employer has to pay the employee, even though the latter is not productive.

Health And Safety

A number of statutes require the employer to take action in the field of health and safety. As a general requirement the employer should have an active policy on labor conditions, encompassing care for security and protection of health and welfare of the employees. More specific requirements are derived from this general requirement, such as the duty to have policies on absence due to disability and on the prevention of sexual harassment and violence. A government body, able to impose fines, is charged with the inspection on compliance with the mentioned requirements.

In the case of disability of an employee due to illness, the employer has some special duties. These duties encompass payment during the first two years of disability and an active policy on reintegration (i.e. offering adapted or other suitable work and regular consultation). The two-year period is prolonged if the employer does not put enough effort into the reintegration of the disabled employee.

Contracting And Outsourcing Of Work Or Services

Based on a contract of assignment, work and services can be outsourced to third parties. Although the contract of assignment is not subject to Dutch labor law, assigning work to an individual, such as a freelance worker, is not without risk. If in practice a contract bears too much resemblance to an employment contract, the provisions of labor law are applicable to it.

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Introduction

The most important taxes in the Netherlands are corporate income tax, individual income tax (together with wage tax) and value added tax. Dutch financial jurisdiction is restricted to the European part of the Kingdom of the Netherlands.

Corporate Income Tax

Resident corporations are subject to corporate income tax ("Vennootschapsbelasting") on their worldwide income. Non-resident corporations are subject to corporate income tax only for certain types of 'Dutch-source income'. The definition of corporation includes companies with share capital, co-operatives, certain limited partnerships and other legal entities, which carry out a commercial business. The most important corporations are the BV (private limited liability corporation) and the NV (public limited liability corporation).

Whether a corporation is resident mainly depends on its place of effective management. However, for corporate income tax purposes, all corporations incorporated under Dutch law are deemed to be resident companies.

Corporate Tax Rates

The standard rate of corporate income tax is 25.5% (2007). This rate applies to both resident and non-resident companies. A rate of 20.0% applies to the first € 25,000 of income. A rate of 23.5% applies to the second € 35,000 of income.

Determination of Taxable Profits

Corporate income tax is levied on taxable income, which is basically determined by comparing net equity at the beginning and end of the financial period. Taxable income should be determined according to sound business practices.

Tax accounting methods, should be applied consistently, which means that they may be changed, only if this is in accordance with sound business practice. An important principle in determining taxable income is that there may be a deduction for unrealised losses, whereas unrealised profits may be deferred. Capital gains are included in taxable income and capital losses are fully deductible.

An inventory is generally estimated at the lower cost or net realizable value. A tax deduction is available for certain investments in fixed assets.

In general, all expenses, which have been incurred in the ordinary course of business, are tax-deductible. Certain costs are not deductible, such as costs relating to criminal activities, fines and penalties. Also profit distributions, corporate income tax and certain profit-sharing payments are not deductible.

In principle, Dutch taxpayers (resident taxpayers and non-resident taxpayers having a permanent establishment in the Netherlands) must calculate their taxable income in accordance with Dutch bookkeeping. Dutch taxpayers are also able, under certain circumstances, to report their taxable income in a more functional currency than the Euro.

Tax losses

In general, losses can be carried back to be offset against the taxable income for the previous year and can be carried forward for nine years.

Group taxation

Dutch resident companies may form a fiscal unity with other such companies if certain conditions are met. The most important of these conditions is that the parent company has at least 95% of the legal and beneficial ownership of the shares of the subsidiary and that both companies have the same financial year.

The fiscal unity concept means that the subsidiary is said to be absorbed by the parent company for corporate income tax purposes. The main advantage of this type of tax consolidation is that losses of one company can be set off against profits of another company and that a consolidated tax return can be filed. In addition, (fixed) assets can be transferred at book value from one company to another.

Thin capitalization-rules

As of January 2004 the Netherlands has introduced thin capitalization rules: if a Debt/Equity ratio of 3:1 is met, interest paid to related parties will not be deductible. This will only apply if the liabilities are € 500.000 above the net equity.

The participation Exemption

The Dutch participation exemption for dividends from, and capital gains on, shares in subsidiaries has made the Netherlands a very attractive country in which to locate holding companies. All gains from qualifying shareholdings are tax-exempt and losses from such a shareholding are not deductible. Also, the Netherlands has an extensive tax treaty network.

Exceptions to this general rule apply with respect to liquidation losses, which are deductible under certain circumstances. Furthermore, there is the possibility, under certain circumstances, to make a temporary deduction for a decrease in value of a capital investment in a subsidiary.

Costs relating to shareholdings in resident and non-resident subsidiaries are deductible. Such costs include interest on loans for the acquisition of the subsidiary and currency exchange results on such loans. The purchase price of the subsidiary is not deductible.

As of January 1st, 2007 costs concerning the sale of subsidiaries are not deductible anymore.

Broadly stated, in order to qualify for the participation exemption, all following conditions must be satisfied:

The holding company must own at least 5% of the paid-up share capital (or, if less, the shares must be held in the course of the ordinary business activity of the taxpayer or the acquisition must serve a general interest);
The shares may not be held as inventory (this provision is mainly designed for certain shelf-companies, held by financial institutions);
Shares in a non-resident company may not be held as a portfolio investment;
If the company in which the shares are held is a non-resident company, it must be subject to a profit tax at state level in its country of residence.

As of January 1st, 2007 the participation exemption in principle also applies for participations of 5% or more in investments institutions and in foreign subsidiaries.

Mergers and de-mergers

If certain conditions are met, the transfer of assets and liabilities regarding share-mergers, business mergers, legal mergers or legal de-mergers, are fiscally neutral, which means that capital gains and hidden reserves will not be taxed.

Permanent Establishment – Branch income

Non-resident companies may be subject to corporate income tax if they carry on a business in the Netherlands through a branch, which qualifies as a permanent establishment under Dutch tax law and the relevant tax treaty.

Intercompany pricing

There are some specific rules concerning intercompany pricing and payments to related parties, all based on the principle that intercompany transactions must be at arm's length. Furthermore, with respect to intercompany interest and royalties transactions a risk-qualification is applicable. This means that the net equity of a company amounts to at least 1% of the outstanding liabilities, or € 2.000.000.

Ruling practice

The Netherlands traditionally has an extensive, efficient and reliable advance ruling practice. In general these advance rulings, which can be agreed upon with the tax inspector, provide a framework of conditions which can be regarded as a guideline for the "arm's length" principle in the given situations.

An APA (Advanced Pricing Agreement) provides certainty in advance regarding the arm's length pricing of cross-border intercompany transactions, including financing of licensing activities and the provision of services. An ATR (Advanced Tax Ruling) provides certainty in advance regarding the tax consequences of certain international structures.

Tax returns and tax payment

In general, the Dutch income tax return should be filed with the Dutch tax authorities within five months of the year-end. At request, this period can be extended. The Dutch tax inspector issues final assessments based on the tax return, which should be paid within one month. Furthermore, preliminary assessments may also be issued, which are set off against the final assessment.

Exit taxation

Should a resident company be considered no longer as a resident, because for example its place of effective management is no longer in the Netherlands or the company is liquidated, the capital gains and financial or hidden reserves of the company are taxable, unless the participation exemption is applicable. This also applies for the 'Dutch source-income' of non-resident companies.
Groupinterestbox

The groupinterestbox is put before the European Commission for approval. If the European Commission approves the box in 2007 than the box will be effective (retrospective) as of January 1st, 2007.

The groupinterestbox implies in principle that on request a rate of 5% applies on the difference between received and paid interest on grouploans.

Patentbox

As of January 1st, 2007 it is possible to request for a rate of 10% for income from intangible fixed assets for which a (foreign) patent has been granted. Several conditions must be met before the box is applicable.

Restriction of depreciation of fixed (buildings) and intangible assets (goodwill)

As of January 1st, 2007 the depreciation of fixed assets has been strongly restricted. In general the restriction implies as follow. Depreciation on investment buildings rented to non-allied companies is limited to 100% of the value of property according to the Valuation on Immovable Property Act (Wet Waardering Onroerende Zaken a.k.a. WOZ). Depreciation on buildings for own use or rented to allied companies is limited to 50% of the value of property according to the Valuation on Immovable Property Act (Wet Waardering Onroerende Zaken a.k.a. WOZ).

Furthermore depreciation on other tangible assets is restricted to a maximum rate of 20%, which equals to a depreciation in five years.

The depreciation on goodwill must be minimal 10 years, which equals to a depreciation of maximum 10% per year.

Work in process

As of January 1st, 2007 the so-called constant part of the general costs must be activated. Furthermore profit must be taken progressively. This means that profit cannot be put off until moment of realisation of the work is done.

Withholding Tax

There is no Dutch withholding tax on paid royalties and interest.

Dividend Tax

Dividend tax ("Dividendbelasting") is an advance payment for individual income tax or corporate income tax. The company paying a dividend is obliged to withhold 15% dividend tax (see above regarding EU-resident parent companies). Revenues in respect of the liquidation of a company are also liable to a dividend tax of 15%.

The tax rate can be reduced to 10%, 5% or zero, if a tax treaty applies, depending on the recipient's status.

International Issues

As mentioned above (participation exemption, ruling practice etc.), the Netherlands is an excellent location for holding companies. The extensive tax treaty network provides for extremely low withholding taxes on dividends, interest and royalties.

The special relationship with the Netherlands Antilles and Aruba has proved to be of paramount importance for investors from countries with no, or relatively few tax treaties. The combination of a Dutch BV and an Antilles company can give access to the Dutch tax treaty network and make it possible to realise profits at favourable (withholding) tax rates.

All of these factors make the Netherlands a very attractive country through which to channel foreign investments

Individual Taxes

Individual Income Tax

Resident individuals are subjected to individual income tax on their worldwide income. Non-residents are subjected to individual income taxes only on certain Dutch-source income, as defined by Dutch tax laws. The term "residence" is not specifically defined in Dutch tax law but depends on the individual's personal circumstances. In general the centre of vital interests will be decisive.

Gross income

Three boxes
For income tax purposes, there are three types of taxable income, classified into three so-called boxes:

Box 1: Profits from entrepreneurial activities, net income from employments, form the property of an own primary house and from certain periodical payments. The tax accounting methods and the deduction rules regarding companies are also applicable at the entrepreneurial activities. The taxes, including social security contributions, are at a progressive rate: 33.65% on the first €17,319; 41.40% on the next €13,803; 42% on the next € 21,942; and 52.00% on the remainder.

Box 2: Dividend and capitals gains regarding a substantial interest (5% or more) in a corporation. This income is taxed at a flat rate of 25%. In 2007 the rate of 25% is once only lowered to 22% for the first € 250,000 (fiscal partners: € 500,000).

Box 3: The averaged net assets (not relating to Box 1 and Box 2) are taxed for a fictitious income of 4% of the averaged net assets at a flat rate (30%).

Tax return

In general, the Dutch income tax return should be filed with the Dutch tax authorities within 6 months of the year-end. At request, this period can be extended.

Wage Tax

Wage tax or wages withholding tax ("Loonbelasting") is an advance payment of individual income tax. Wage tax and social security contributions are levied jointly on income from employment. Wage tax rates are equal to individual income tax rates of Box 1.

To encourage foreign investors, certain foreign employees with special skills can be eligible for a special tax status, known as "the 30% -allowance regulation" regarding their income. This means that 30% of there income is paid as a tax-free allowance.

Gift And Inhertitance Tax

The Succession Tax Act ("Successiewet") comprises three types of taxes: inheritance tax ("Successierecht"), gift tax ("Schenkingsrecht") and tax on inheritance or gifts from non-residents ("Recht van Overgang"), all of which are subject to the same tax rates. Property obtained through inheritance or gifts from a Dutch resident is subject to tax at a progressive rate depending on the degree of relationship and the value of the property acquired.

There are various exemptions and tax-free amounts, particularly for spouses and children. The rate of tax ranges from 5% to 68%.

Value Added Tax ("Vat")

Value added tax ("BTW") is a consumer tax, which is included in the retail price of all goods and services. Certain goods and services are exempt from VAT. There are three rates of VAT: a general rate of 19%; a reduced rate of 6% for basic goods such as food, and a zero rate for exports and intra-community (EU) supplies.

Other

Import Duties And Excise Duties

Import duties ("Invoerrechten") are levied on goods imported from outside the EU. The rates vary in accordance with EU requirements. Excise duties ("Accijnzen") are levied on certain consumer goods such as alcoholic beverages, tobacco, fuels and mineral oils.

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Foreign Investment questionnaire

Registration with Government, authorities and permits
Foreign investment in the Netherlands by incorporating (subsidiary) companies, opening branch offices, taking shares in Dutch corporations or granting loans, is subject to the same requirements as investment by Dutch (legal) persons. In principle, for foreigners no special registration or permit is required.

General requirements for investment are amongst others, in case of incorporation of a new company, a declaration of no objection to be obtained from the Minister of Justice, and in case of holding more than 5% of the shares in a quoted company notification of this interest and its mutations to the Minister of Finance. Furthermore, a permit may be required to run a specific type of company (e.g. a bank or an insurance company).

Transfer of dividends, interest and royalties abroad

The transfer of dividends, interest and royalties abroad is not restricted by Dutch law. There is no Dutch withholding tax on paid royalties and interest. Dividends may be subject to withholding tax, depending on the applicable tax treaty and EC-law.

Repatriation procedures and restrictions

Corporations incorporated under Dutch law remain subject to it until liquidation. Change of 'nationality'/applicable law is only possible under specific circumstances prescribed by law, such as (threat of) war and revolt. Furthermore, the official seat -to be stated in its articles of association- of a corporation must be in the Netherlands.
'Transfer' of a corporation by transferring its place of effective management is possible however, but often is subject to exit taxation, unless the participation exemption applies.

Foreign personnel (permits, etc)

In order for a foreigner to work in the Netherlands he or she must have a valid title to stay in the Netherlands (i.e. visa and/or residence permit) and in most cases also a work permit. In general, in case of a stay of three months or less a visa is required, whereas in case of a stay of more than three months a residence permit and a prior special visa (i.e. authorisation for temporary stay, 'MVV') is required. Visas and authorisations for temporary stay can be applied for at Dutch embassies or consulates worldwide. Application for a residence permit has to take place at a Dutch municipality.

EU/EEA and Swiss nationals are exempt from the visa and residence permit requirement, provided that they reside in the Netherlands on basis of Community law (e.g. for work). They can

-but do not have to- apply for a so-called ‘proof of lawful residence’, confirming the lawful basis of their stay. Furthermore, they can apply for a residence permit, which may be necessary for practical reasons (e.g. the opening of a bank account).

In order to be eligible for an MVV or a residence, permit certain requirements have to be met. In principle, a person can obtain an MVV or a residence permit if he or she has a valid passport, has no criminal record, does not constitute a risk to the public order, national peace or national security, has sufficient means of support or a sponsor with sufficient means of support, is prepared to cooperate on a tuberculosis test, has a health insurance that covers him or her in the Netherlands, and furthermore, meets the specific requirements associated with his purpose of stay. For working as an employee in the Netherlands these specific requirements are an employment contract that guarantees an independent sustainable income, a work permit (not always necessary, as seen below), and sufficient sustainable means of support.

As mentioned above, in order to actually work in the Netherlands also a work permit may be required. This permit is required for all non-EU/EEA nationals (again with the exception of Swiss nationals) and for nationals of the ‘new’ EU member states. The employer has to apply for a working permit, which will only be granted if the employer has taken enough care to find an employee for which no permit is required. No work permit is required for so-called ‘knowledge workers’, which are amongst others workers below the age of thirty with an annual salary of at least € 32.600 and workers thirty years of age or above with an annual salary of at least € 45.000 (but not professional soccer players). Also ‘knowledge workers’ must have a valid title to stay in the Netherlands however.

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Types of ownership

Under Dutch law, ownership is the most comprehensive right a person can have in respect of a good. Dutch law only knows one type of ownership. Limitation of this right of ownership is possible however, by dismembered rights (i.e. rights in rem a third party has in respect of a good and that can be invoked against everyone, such as hypothec), and by personal rights (i.e. rights a third party has and that can in principle only be invoked against the owner, such as lease). Furthermore, an owner can be restricted in the exercise of his right of ownership by the legal interests of third parties and by regulations of public law.

The right of ownership can be held by one person or by more persons collectively (the so-called 'gemeenschap'). A special form of collectively held ownership is the right of apartment, which is used to divide flats and other buildings into units that can be sold separately. For collective interests such as (maintenance of) the roof and shared spaces, an 'association of owners' is founded, of which all holders of apartment rights in a building are member by law.

Due to its limited scope, this article only deals with (the ownership of) so-called registered goods ('registergoederen'). Registered goods are immovable goods (i.e. land and buildings) and other goods that require registration (i.e. ships and aircrafts). Furthermore, for the purpose of this article the word person comprises natural persons as well as legal persons, unless stated otherwise.

(Land) registers

A public organ, named the 'Kadaster', keeps the public registers that contain the notary deeds of transfer and establishment of ownership and dismembered rights. From the data of these registers, along with geographical data, the land register -in Dutch also called 'Kadaster'- is built.

The method of registration by the Kadaster is a negative one: the public registers are not a source of rights in itself; they merely contain facts relevant for the determination of those rights. Furthermore, since registration is not mandatory for all relevant facts, absolute reliance on the registers is in principle not possible. In general however, fairly accurate information on the ownership of registered goods and its limitations by dismembered rights can be obtained from the land register.

Transfer formalities

Only the person that may lawfully dispose of a good is able to transfer its ownership.

Requirements for transfer are, apart from this right of disposal, a valid title (e.g. a sales contract) and delivery. This delivery of the right of ownership has to take place by a notary deed, which in turn has to be registered in the public registers. If one of the above-mentioned requirements is not met, transfer of ownership does not take place.

Hypothec (mortgage)

Hypothec is one of the dismembered rights, and is intended to provide recourse against the good subject thereto for a claim for payment of a sum of money. A number of different types of hypothecs can be distinguished according to the basis of the claim to be secured. Common types are the 'fixed' hypothec (i.e. a hypothec securing payment of a determined claim), 'credit' hypothec (i.e. a hypothec securing repayment of a determined revolving credit) and 'bank' hypothec (i.e. a hypothec securing payment of possible future claims).

A right of hypothec is established by a notarial deed, drawn up between the parties in which the grantor grants a right of hypothec to the hypothecary creditor over a registered good. This deed has to be registered in the public registers and must contain an indication of the claim for which the hypothec serves as a security or the facts, on basis of which that claim can be determined. It also should state the (maximum) amount for which the hypothec is granted. Furthermore, the notary deed may contain a limited number of optional conditions, which are: a prohibition on granting a lease to the encumbered good without consent of the hypothecary creditor, an entitlement of the hypothecary creditor to take over the management of the good in case of default of the grantor, and an entitlement of the hypothecary creditor to take the good under his control for execution purposes.

If a registered good is encumbered with two or more hypothecs, a ranking order is established based on the time of registration. The holder of the highest-ranking hypothec has a first right to the proceeds if execution takes place. Hypothecary creditors can agree however, that one hypothec shall have a higher rank in respect of one or more other hypothecs over the same good, then the one assigned to it according to its time of registration. This change of rank has to take place by a notary deed, which has to be registered.

If the grantor of the hypothec is in default of performing that for which the hypothec serves as a security (e.g. when the grantor does not repay his loan in time), each hypothecary creditor is entitled to have the secured good sold in public before a competent notary public (execution). With permission of the president of the competent court the good may also be sold privately. Appropriation by the hypothecary creditor is never allowed.

Other forms of security: retention of title/hire purchase

Another form of security in respect of (immovable) goods is retention of title, which entails that a good is transferred under a dilatory condition (e.g. in case of a sales contract: payment of the sales price). If this condition is not met, transfer of ownership will not take place.

Retention of title is used in so-called hire purchase contracts. Under this type of sales contract, the buyer is given direct control over the good sold, whereas the actual ownership will only be transferred if the buyer has paid (in instalments) the sales price. Hire purchase contracts for immovable goods have to be concluded by notary deed and can be registered in the public registers.

Restrictions on acquisition by foreigners

In the Netherlands, foreigners can acquire property under the same conditions as nationals. No special restrictions apply.

Pre-emption rights

Under the Act on pre-emptive rights for municipalities ('Wet voorkeursrecht gemeenten'), municipalities have a pre-emptive right to purchase immovable goods, located in an area designated by the municipality. Only areas which are intended for non-agrarian use by the relevant zoning or structure plan, and the actual use of which does not comply with these plans, can be designated for a pre-emptive right to purchase. If an owner intends to sell a good on which a pre-emptive right to purchase rests, he or she first has to offer it for sale to the municipality. If the municipality is not interested in the good, the owner is free to sell it to other interested parties within a three-year time period.

Furthermore, under the expropriation Act ('Onteigeningswet'), immovable goods can be expropriated for the public interest. Expropriation can only take place with adequate compensation however, and is subject to judicial review. In principle, if the owner of an immovable good chooses to realise himself the objective of the expropriation, and if he is able to do so, expropriation cannot take place, since it is deemed to be an ultimum remedium. This so-called 'self-realisation' is also possible in cases of the above-mentioned pre-emptive right of purchase.

Special legal protection for parties

In case of the sale of an immovable good intended for residence, the buyer has a right of cancellation during three days after the sales-contract has been signed and handed over, provided that the he or she is (acting as) a consumer, i.e. (as) a natural person acting for purposes, which are outside his business or profession. Legal persons, and natural persons acting in a professional quality do not have this right.

Furthermore, it is possible to register the sale of a registered good prior to the actual transfer of the ownership by notary deed. As from the date of this registration in the public registers until the actual transfer, the buyer is protected -for a maximum period of six months- against amongst others consecutive sales-contracts, establishment of dismembered rights, attachment, and bankruptcy of the seller. If the buyer is not a consumer as described above, parties may exclude this possibility of prior registration however.

Construction and use restrictions

In general, for the construction or alteration of a building, a building permit has to be obtained from the municipality. Conditions for this permit are amongst others compliance with the applicable zoning plan, and building regulations (including those on the external appearance of buildings). The municipality publishes the application for a permit, whereupon third parties with an interest may lodge appeals against it within six weeks.

The use of a building may be restricted by the applicable zoning plan. For instance, in areas designated as residential, an owner of a building is not allowed to run a business from that building. Under certain circumstances, exemption from the zoning plan can be obtained however. Again, the municipality publishes the application for exemption, and third parties with an interest may lodge appeals against it.

Furthermore, since inexpensive residential space is in high demand, municipalities may require a housing permit for occupation of a building for residence purposes. In general, almost all large cities require such a housing permit for residential occupation of buildings with a sales price below € 100.000.

Lease of immovable goods

For the purpose of this article three types of lease of built immovable goods (i.e. buildings) are distinguished: lease of residential space (e.g. houses and apartments), lease of retail space (e.g. stores, and restaurants), and lease of other commercial space (e.g. offices and warehouses). Conditions under which the lease can be concluded -especially those on the protection of the lessee- vary per mentioned type of lease.

In principle, lease contracts can be concluded orally or in writing. No special form requirements apply. As to the contents, mandatory provisions of law are equally applicable to oral and written lease contracts. Registration of lease contracts in the public registers is not possible. The transfer of ownership of a leased good does not terminate the lease (contract) however.

Lease of residential space

A lease of residential space can be concluded for a definite or an indefinite period of time. Unless the lease is of short duration by nature, terminating a lease contract -both for a definite and an indefinite period of time- requires giving notice. Law prescribes the minimum notice period and the lessor may only give notice based on grounds exhaustively summed up by law (e.g. occupation of the residential space by the lessor). If the lessee does not consent with the termination of the lease contract within six weeks after the lessor has given notice, the lease-contract will remain in force. The lessor can then institute court proceedings for determination whether the contract should end and on what date. Apart form giving notice, a lease contract can also be terminated by mutual consent, and by rescission by the court if one of the parties is in default.

Furthermore, if it complies with certain requirements on size and facilities, a residential space can be subject to lease price control. In that case statutory provisions prescribe a maximum lease price. ‘Large’ residential spaces (i.e. with a floor area of 143 square metres or more) are excluded from lease price control. An annual increase of the lease price, also in case of spaces subject to lease price control -be it limited-, is possible by law and customary. Also for the occupation of leased inexpensive residential space, the municipality may require a housing permit.

Lease of retail space

A lease contract for retail space can be concluded for a minimum period of five years, and will be prolonged ipso jure (by right) for another five years, provided that the total duration of the lease contract does not exceed ten years. After ten years the contract is prolonged ipso jure for an indefinite period of time.

At the end of the first five years the lessee is free to terminate the contract by giving notice, whereas the lessor may only give notice based one of the two grounds exhaustively summed up by law (i.e. mismanagement by the lessee, and pressing own use of the retail space by the lessor). Similar to the lease of residential space, the lessor has to initiate court proceedings if the lessee does not consent with termination within six weeks after the lessor has given notice. Termination after ten years is subject to the same requirements as termination after the first five years, with the exception that the lessor can base his notice on four grounds instead of two. The minimum notice period is one year. Apart from giving notice, a lease contract can also be terminated by mutual consent, and by rescission by the court if one of the parties is in default.

Lessor and lessee may deviate from the foregoing with consent of the court. Furthermore, if a lease contract is concluded for the duration of two years or less the foregoing is not applicable, at least not during the first two years.

At the prolongation of the lease contract, or -in case of a contract for an indefinite period of time- at least every five years parties can review the lease price. If no consent is reached the court may be asked to determine the lease price, taking into account the average lease price of comparable retail spaces in the neighbourhood during a five-year period prior to the request.

Lease of other commercial space

In respect of the lease of other commercial spaces that are not retail spaces, parties are to a large extent free to determine the lease conditions. Lease contracts for such spaces for a definite period of time, actually end when that period has expired without the need for giving notice. Both lessor and lessee can terminate contracts for an indefinite period of time, simply by giving notice at a minimum period of one month. Furthermore, such a lease contract can be terminated by mutual consent, and by rescission by the court if one of the parties is in default. However, the court may upon request of the lessee prolong the term for clearance of the space after the lease contract has ended. Prolongation can take place up to three times, and for a maximum period of one year.

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