

THE NETHERLANDS

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AT A GLANCE

Name of the tax	Value Added Tax
Local name	Belasting over de toegevoegde waarde (btw)
Date introduced	1 January 1969
Date of membership in EU	1 January 1958
Administered by	Ministry of Finance (www.government.nl/ministries/fin)

VAT rates

Standard	21%
Reduced	There is only one reduced VAT rate: 6%
Other	Exemptions with (VAT zero-rated supplies) and without (exempt supplies) input VAT recovery.
VAT Number format	NL 123456789B01
VAT return periods	Monthly or quarterly, depending on the VAT liability
Thresholds registration	No VAT registration threshold exists in the Netherlands
Recovery of VAT by non established Businesses	Yes

HISTORY OF VAT

In the Netherlands VAT is known as belasting over de toegevoegde waarde (btw). VAT was introduced with effect from 1 January 1969. VAT is administered by the Ministry of Finance (Ministerie van Financiën)/Tax Administration (Belastingdienst). The principle legislation can be found in the Dutch VAT Act 1968 (Wet op de omzetbelasting 1968).

SCOPE OF VAT

VAT is due on any supply of goods or services made in the Netherlands, where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by said person (entrepreneur). Supply includes all forms of supply. It is not restricted to the provision of goods and services by way of sale but can equally apply to other forms of transaction. Supply does not include anything done otherwise than for a consideration.

In addition, the intra-Community acquisition of goods in the Netherlands by taxable persons or non-taxable legal persons, the intra-Community acquisition of a new means of transport by any person, and the importation of goods are also considered taxable events.

All the above mentioned events are taxable if performed in the Netherlands, even when they are carried out by non-residents.

However, certain transactions are not subject to Dutch VAT, for example supplies within a VAT group or a sale of a business as a going concern.

Furthermore, some transactions are deemed to trigger a supply (such as the application of self-produced or constructed goods by a (partly) exempt VAT entrepreneur).

REGISTRATION

If your business makes taxable supplies in the Netherlands for which you have to account for the VAT due, intra-Community supplies, intra-Community acquisitions, import or export of goods, you will be required to register for Dutch VAT purposes. No VAT registration threshold exists in the Netherlands.

In the following situations, the VAT registration of foreign entrepreneurs is required in the Netherlands:

- Where foreign entrepreneurs supply taxed services or goods in the Netherlands to private individuals or other foreign entrepreneurs;
- where foreign entrepreneurs carry out distance selling from other EU member states to private individuals in the Netherlands for which they are liable for VAT in the Netherlands;
- where foreign entrepreneurs carry out intra-Community supplies from the Netherlands;
- where foreign entrepreneurs make VAT taxed intra-Community acquisitions in the Netherlands;
- where foreign entrepreneurs import or export goods in, or via, the Netherlands.

There is a separate procedure for non-EU entrepreneurs supplying electronic services.

Entrepreneurs established outside the EU who supply electronic services to customers in the EU are liable for VAT in the EU State in which the customer is established, if the customer is not an entrepreneur. There is a special procedure for such non-EU entrepreneurs. They only need to register as entrepreneur in one EU member state and can then declare the VAT they owe in all EU member states using the 'electronic services declaration'. They use a single declaration to report their total remuneration and the VAT payable on it, broken down by EU member state.

All VAT amounts must be paid to the EU member state of registration, which will then pass the payments on to the other EU member states.

VAT grouping is possible if there are financial, economic and organizational links between VAT entrepreneurs. The Dutch Tax Administration may also instruct VAT group treatment. If financial, economic and organizational links exist, it is not possible for an entrepreneur to leave the VAT group. Provided that all other conditions are met, it is possible to apply for a VAT group retroactively.

Please note, only businesses that are established in the Netherlands may join a VAT group. However, fixed establishments of foreign companies are regarded as businesses established in the Netherlands and can join a Dutch VAT group.

VAT RATES

The standard rate in the Netherlands is 21% (19% until 30 September 2012) and is applicable to all supplies of goods and services not qualifying for another rate or exemption.

In the Netherlands, only one reduced VAT rate of 6% exists. There are approximately twenty eight categories of goods and seventeen categories of services to which the reduced VAT rate may be applied.

The most common goods are:

- Foodstuff and (non-alcoholic) beverages;
- some animals;
- medicines;
- water;
- books;
- newspapers and magazines published at least three times a year;
- agricultural goods;
- flowers;
- some works of art;
- aids and appliances for the disabled; and
- aids for the visually impaired.

The most common services are:

- Passenger transport (including taxis);
- lending of books and periodicals;
- providing hotel and camping accommodation;
- agricultural services supplied to farmers;
- entrance fees for circuses, zoos, museums, theatres, cinemas, sports games and amusement parks;
- performances by artists.

PLACE OF SUPPLY RULES

The place of taxation is determined by where the goods are supplied. This not only depends on the nature of the goods supplied, but also on how the supply is made. In principal, the place where goods are supplied is deemed to be the place where the transportation begins where the supply of the goods requires transportation. In any other case, the place of supply of goods is where the goods are located at the time of the supply.

On 1 January 2010, rules were introduced to ensure that VAT on services will better accrue to the country of consumption. The place of taxation is determined by where the services are supplied. This depends not only on the nature of the service supplied but also on the status of the customer receiving the service. A distinction must be made between a taxable person acting as such (an entrepreneur) and a non-taxable person (a private individual who is the final consumer).

Only once the exact nature of the service and the status of the customer are known can the place where the services are supplied be correctly determined. The supply of services between businesses (B2B services) is in principle taxed at the customer's place of establishment, while services supplied to private individuals (B2C services) are taxed at the supplier's place of establishment.

TIME OF SUPPLY RULES

Invoice date or the date on which the invoice should ultimately have been issued, which is on the 15th day of the month following the month in which the taxable transaction took place.

VAT under the reverse charge mechanism applies to the supply of all goods by foreign entrepreneurs to entrepreneurs established in the Netherlands, and to the supply of gas and electricity by foreign suppliers to recipients that are VAT registered in the Netherlands. In that case, VAT becomes due at the moment of the supply of the gas and/or electricity.

To fight VAT (carousel) fraud, effective 1 June 2012, the Dutch State Secretary of Finance has introduced an optional reverse charge for the supply of mobile phones and computer chips. The rules do not apply to supplies with a value below €10,000. The € 10,000 threshold applies per total invoice amount and this is a VAT exclusive amount. In a Decree published on 30 May 2012 a definition of mobile phones and computer chips is given to clarify to which transactions the reverse charge mechanism can be applied.

In case of payments on account, VAT is due at the time of receipt of the payment by the supplier. If the payment on account has been agreed by the parties, an invoice should be issued for it before it becomes due and payable. VAT is due at the time the invoice is issued (invoice date) or should have been issued.

For taxable persons legally obliged or authorized by the Dutch Tax Administration to account for VAT on the cash receipt basis, VAT is due at the moment of receiving the consideration.

For so-called self-supplies (i.e., the private use of goods), the time of supply depends on the sort of supply (goods or services).

VAT chargeable on the intra-Community acquisition of goods shall be due on the 15th day of the month following the month during which the intra-Community acquisition occurred. If an invoice is issued prior to the 15th by the supplier, the tax shall be due when the invoice is issued.

The VAT on intra-Community acquisitions of new means of transport becomes due on the 15th day of the month following the month during which the intra-Community acquisition occurred.

VAT on importation becomes due when the goods are imported, unless an import VAT deferment license (article 23 license) is obtained.

EXEMPTIONS

Exemptions with credit include, but are not limited to the following goods:

1. Goods coming from outside the Netherlands, which are not yet imported;
2. goods which are exported from the EU by a taxable person
3. goods which are stored in a bonded warehouse and qualify as customs goods
4. ocean-going vessels not being pleasure crafts, and aircraft used for international transportation
5. goods destined for the provisioning of ocean-going vessels, vessels used for naval assistance, warships and aircraft used mainly for international transportation;
6. gold destined for the central banks;
7. intra-Community supplies of goods;
8. excise goods located in or transported to an excise warehouse;
9. some mineral oils; and
10. Goods transported to or supplied in a warehousing arrangement.

Exemptions with credit include, but are not limited to the following services:

1. Services supplied for goods mentioned under 1, 2, 3, 4, 8, 9 and 10 above;
2. services supplied with respect to the importation of goods;
3. transportation of persons by means of ocean-going vessels and aircraft to, or from a place, outside the Netherlands;
4. some services supplied by intermediaries which relate to transactions performed outside the EU including services as mentioned under 2 and 3; and
5. Services supplied to some movable goods (transported to, processed in the Netherlands and thereafter sent outside the EU).

Please note that the list of exemptions without credit is extensive. Therefore, only the most important ones are mentioned below.

Exemptions without credit include, but are not limited to:

- the supply of immovable property with the exception of:
 - immovable property qualifying as new; and
 - Supplies subject to the conditions set out by the Ministry of Finance provided that the recipient can reclaim at least 90% of the input VAT.
- the leasing and letting of immovable property with some exceptions such as:
 - the letting of permanently installed equipment and machinery;
 - renting-out parking spaces; and
 - letting of immovable property other than dwellings subject to the conditions set out by the Ministry of Finance provided that the tenant can reclaim at least 90% of the input VAT;
- nursing and medical services;
- educational services;
- insurance transactions;
- services supplied by organizations performing sports or promoting them to their members;
- financial services;
- services supplied by undertakers;
- most bank services; and
- Services of composers' writers and journalists.

RECOVERY OF INPUT VAT

All EU member states must allow a non-registered non-resident (foreign) entrepreneur to claim a refund of VAT that they incur in the course of their business. From 1 January 2010, a new simplified, electronic procedure for the submission and processing of refund applications is in place. Under the new system, claims are submitted electronically via a portal in the applicant's member state. The EU member state of refund, if in possession of all information necessary to make a decision, must approve or refuse the refund within four months of receipt of the application. Entrepreneurs have the right to receive interest on late payments.

The entrepreneur must be a 'taxable person' established in an EU member state other than the Netherlands and must not:

- Be registered, liable or eligible to be registered in the Netherlands;
- have any place of business in the Netherlands;
- Make any supplies in the Netherlands (other than transport services related to the international carriage of goods, or goods and services where VAT is payable by the person to whom the supply is made).

The VAT refund application form has to be submitted electronically via an electronic portal set up by the EU member state where the claimant is established.

The minimum limits for claims per calendar year or balance of year amount to €50. The minimum limits for claims per period of at least three consecutive months within one calendar year amount to €400.

The time limit for making claim is 30 September of the calendar year following that in which the VAT was incurred.

All EU countries may allow non-registered businesses outside the EU to claim refunds of VAT that they incur in the course of their business. There are rules regarding what can be claimed and often restrictions where the home country of the claimant does not offer reciprocal rights. In the Netherlands, entrepreneurs from specific countries are not denied refunds even if there is no reciprocity.

The claimant must be the equivalent of an EU 'taxable person' and must not:

- Be registered, liable or eligible to be registered in the Netherlands;
- have any place of business in the Netherlands or the EU;
- Make any supplies in the Netherlands (other than transport services related to the international carriage of goods, or goods and services where VAT is payable by the person to whom the supply is made).

The refund claim should amount to at least €400 if the refund requests relates to a filing period of at least three months but not a full calendar year or €50 if the request refers to a full calendar year (or remaining period thereof).

The time limit for making claim is five calendar years from the end of the calendar year in which the tax was incurred. However, a claim must have been submitted no later than six months after the end of the tax calendar year in which the tax was incurred, i.e. by 30 June of the following year, if the claimant wants to have the right of appeal against a decision of the tax authorities

No VAT is refunded if incurred on the following supplies of goods and services:

- Food and drinks if consumed in for example a bar, hotel, restaurant, et cetera;
- The so-called "BUA supplies" if these supplies exceed the amount of €227 per beneficiary, per year. For example: promotional gifts and expenditures (if intended for a person who is not entitled to deduct his input VAT), staff facilities etc. Please note that specific regulations apply to bicycles as well as to staff canteens.

Supporting documentation needed consists of original invoices and, if applicable, original import documents. In addition, the person requesting a refund should prove that he is a taxable person for VAT purposes.

COMPLIANCE OBLIGATIONS

If the VAT payable per quarter exceeds €15,000 the filing will generally be monthly, otherwise it is quarterly.

Please note that if you have just started doing business in the Netherlands, and VAT is due, you have to request for a VAT return form. The tax inspector will then first send you a questionnaire which has to be filed.

The VAT return (and payment) has to be submitted one month after the end of the filing period at the latest. For foreign entrepreneurs who did not appoint a fiscal representative in the Netherlands, a two month period applies. Foreign entrepreneurs who did not appoint a fiscal representative in the Netherlands are neither required nor allowed to file returns electronically. Their returns must be filed on paper, accompanied by detailed information about each of the completed headings.

Corrections can be made to a VAT return by lodging an objection within six weeks after filing the return. Furthermore, a supplementary return can be made within 5 years after filing the VAT return. However, in the latter case, no appeal is allowed if these changes are rejected by the Dutch Tax Administration.

The VAT payable regarding a tax period, ultimately has to be paid when the VAT return has to be filed.

SPECIAL CASES

Please note that specific regulations have been implemented in Dutch VAT law for farmers, small undertakings and sellers of second-hand goods, works of art, collectors' items and antiques.

RIGHTS OF THE TAX PAYER AND THE VAT AUTHORITIES

Appeals can be made within six weeks after date of a decision.

From 1 January 2012, taxpayers in the Netherlands can be fined for not disclosing errors or omissions relevant for the levying of VAT that they are or have become aware of. Fines will only be imposed if an undisclosed error or omission that a taxpayer was aware of, leads to an additional amount of VAT payable. The maximum penalty is 100 per cent of the additional VAT due.

The purpose of these new disclosure rules is to force taxpayers to disclose any errors or omissions that they are or become aware of 'off their own accord', under the threat of a fine, because, according to the Dutch government, levying the correct amount of tax from all taxpayers may not depend on the goodwill of bona fide taxpayers and the chance that the Dutch Tax Administration performs an audit.

From 1 January 2012, taxpayers will have to apply these disclosure rules. In practice, this rule has a five year retroactive effect, because under these new rules, taxpayers will also have to disclose errors or omissions in VAT returns that are open for assessment (the statute of limitations in the Netherlands is five full calendar years). Disclosure is provided by filing an additional VAT return in which the errors and omissions are included. The assessment imposed as a result of such additional VAT returns can be appealed in court.

From 1 April 2012 the Dutch Tax Administration requires taxpayers to use a specific form for making a disclosure. Please note that the Dutch Tax Administration allows small adjustments – i.e. adjustments with a total value below €1,000 – to be made in the current VAT return.

EU DECLARATIONS

In the case of intra-Community transactions, the following additional returns must generally be filed:

- Quarterly or monthly EC Sales Lists for goods. Submission is due at the last day of the month following the reporting period;
- Quarterly or monthly EC Sales Lists for services. Submission is due by the last day of the month following the reporting period; and
- Statistical reports also need to be filed if certain thresholds are exceeded.

Please note that as of 1 January 2010 EC Sales Lists for goods will have to be filed on a monthly basis if the total value of the supplied goods exceeds €100,000.

From 1 January 2010, businesses also have to submit EC Sales Lists for all services provided to businesses in other EU countries, where the recipients of basic rule services are liable for the local VAT due on these services (reverse charge) and these services are not exempt in the country of the recipient.

Statistical reporting is required if intra-Community acquisitions or intra-Community supplies exceed €900,000 annually. These thresholds apply separately to both intra-Community acquisitions and supplies