



Caribisch Nederland
Belastingdienst

Manual

starting enterprises

starting enterprises

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1 Introduction

You are looking at the manual for starting enterprises.

Who is this manual intended for?

This manual is intended for anybody on the islands of Caribisch Nederland, i.e. Bonaire, St. Eustatius and Saba, who wishes to set up an enterprise or is already conducting an enterprise.

What information can you find in this manual?

Entrepreneurs have to deal with all manner of rules for taxes, as well as with some forms of social security. This manual serves primarily to describe whether or not you are liable to pay a particular form of tax. It also explains your rights and obligations in respect of the Belastingdienst.

Once it has been established that you are liable to pay algemene bestedingsbelasting and/or loonbelasting, you will receive a copy of the manual for that tax. That manual will provide further information about the specific legislation that applies.

More information

The Belastingdienst can always provide you with more information. Much of the information is available on the Belastingdienst's website: www.belastingdienst-cn.nl. On the Douane's website, www.douane-cn.nl, you will find not only tax information but also information about the Douane's non-tax-related responsibilities. Alternatively, you can also call your tax or customs office if you have any questions.

Forms for starting enterprises

This manual, which serves primarily to describe various aspects of taxation, is accompanied by one or more forms for 'starting enterprises'. Please complete and sign that form and return it to the Belastingdienst.

Brochures

The Belastingdienst and the Douane have leaflets and brochures about all manner of topics that are important for entrepreneurs. Download them from www.belastingdienst-cn.nl or collect a copy at your tax office.

Information from other authorities

Other authorities, such as the Chambers of Commerce, also have information for starting and established enterprises.

2 Tax laws

A new tax system was introduced on the islands of the Caribisch Nederland on 1 January 2011. Several laws have been largely copied from the national ordinances that were in force during the time that the islands of the Caribisch Nederland were still part of the country of the Netherlands Antilles.

Other laws (national ordinances) have been abolished, such as the law for winstbelasting. Some new laws have also been introduced.

The sections below explain the various taxes. The central issue is whether or not a particular law has bearing on your situation as an entrepreneur. To determine this, use the flowcharts to help determine which taxes you are liable to pay. The various 'starting enterprises' forms also present specific questions.

Once it has been established that you are liable to pay algemene bestedingsbelasting, for example, you will receive a specific manual explaining that tax.

2.1 Loonbelasting

In general terms, you are liable to withhold loonbelasting as an employer if you have workers in your employment. Employment is one of the possible relationships between the party contracting work and the party carrying out the work.

Such work relationships come in many forms. Those that qualify as employment are governed by the rules for loonbelasting. The term 'loonheffing' is used to describe the levy of wage tax and national insurance premiums and the employee contribution to the care insurance premiums.

The term 'werkgeverspremies' is used to describe the premiums levied for health insurance and accident insurance, severance pay and the employer's contribution to the care insurance premiums. As such, your first step should be to determine whether an employment relationship exists (see section 2.1.1.).

2.1.1 What is employment?

Employment is a work relationship that is based on an agreement between an employer and an employee about the manner in which the employee will perform in

exchange for payment. As a rule, such agreements are recorded in writing, though they may also be unwritten or tacit agreements.

For purposes of establishing the existence of an employment relationship, it is irrelevant whether or not the worker has a permanent contract. The amount of work carried out similarly has no bearing on the matter. For example, auxiliary workers or holiday workers may also be in employment.

All forms of household work can also be carried out as employment. In that case, as a private principal you must withhold and remit loonheffing. You are also required to remit werkgeverspremies.

Official appointments also qualify as employment. Statutory obligations, for example national service when it existed, might also qualify as employment.

2.1.2 Various forms of employment exist:

- actual employment
- fictitious employment
- previous employment

2.1.2.1 Actual employment

Actual employment is characterised by the following:

- The employee has taken on an obligation to carry out work for some time;
- The employer has an obligation to pay the employee wages for the work;
- A relationship of authority exists between the employee and the employer.

A relationship of authority is a situation in which you are entitled to issue orders and instructions for the work that needs to be carried out. The employee is obliged to abide by your orders and instructions. You may also delegate that right to another party, for example the party for whom the employee actually carries out the work (for example in situations of secondment).

A relationship of authority may also exist even if you barely issue any orders or instructions. This may be the case, for example, if the nature and the scope of the work and/or the employee's specific capabilities are such that it would not be appropriate to issue orders and/or instructions.

2.1.2.2 Fictitious employment

If no actual employment relationship exists, the relationship between the party contracting the work and the party carrying out the work (even assistants) may nevertheless qualify as employment for some groups. This is referred to as fictitious employment. As a rule, it means that you are required to apply the same rules to the wages as you

would with actual employment relationships.

The following relationships are qualified as fictitious employment for purposes of loonheffing and werkgeverspremies:

- contractors for work and their assistants
- some athletes;
- some artists;
- persons who have been appointed to their positions;
- persons who work only on commission.

2.1.2.2.1 Contractors for work and their assistants

Contractors for work and their assistants are in your fictitious employment if they carry out work themselves and enter into an agreement with you to carry out work of a physical nature in exchange for payment of a price. This form of fictitious employment also includes contractors and their assistants who provide services that do not fall within the scope of the contract for work. This includes such work as maintenance work, typing and reproduction.

This fictitious employment does not exist in the following situations:

- the work is carried out relates to the principal as an individual or his or her household;
- a self-employed business owner has contracted for the work;
- the agreement has been entered into with the State, Bonaire, St. Eustatius or Saba;
- the work is carried out in a sector excluded from the applicability of the regulations for contracting for work. A list of these sectors can be found on www.belastingdienst-cn.nl.

2.1.2.2.2 Artists

You should determine your work relationship with domestic artists based on the rules for actual employment. Domestic artists are defined as artists residing on the BES islands.

Actual employment is characterised by the following:

- the employee has taken on an obligation to carry out work for some time;
- the employer has an obligation to pay the employee wages for the work;
- a relationship of authority exists between the employee and the employer.

If the situation does not fulfil these conditions, the artist is not in your employment and you are not required to withhold and remit loonheffing or pay werkgeverspremies.

If an artist is not resident on the BES islands and not in your actual employment, he or she is in your fictitious employment.

2.1.2.2.3 Directors of entities domiciled on the BES islands

Any person performing work for an entity domiciled on the BES islands in the capacity of director is in your fictitious employment. This includes directors of public limited liability companies (NVs) and private limited liability companies (BVs), as well as of foundations, private foundations, associations, cooperatives and mutual insurance association.

2.1.2.2.4 Holders of substantial interests

Any person performing work while at the same time holding a substantial interest is subject to the customary wage scheme. Some are also deemed to receive fictitious wages.

A person is qualified as a shareholder holding a substantial interest if he or she meets the following conditions, if applicable together with his or her spouse:

- either directly or indirectly holds shares representing at least 5% of the issued capital in a company of which some or all of its capital is divided into shares;
- has rights to directly or indirectly acquire shares representing at least 5% of the issued share capital;
- holds profit-sharing certificates that represent at least 5% of a company's annual profits or at least 5% of the capital to be distributed upon liquidation.

The customary wage scheme applies to substantial interest holders.

The customary wage scheme involves the following:

- The holder of a substantial interest is deemed to receive wages that are appropriate to the level and duration of his or her work;
- As a rule, those wages are at least USD 14,000.

2.1.2.3 Former employment

Another possibility besides actual and fictitious employment is former employment. This is a situation in which the employment has been terminated but the former employee nevertheless receives income based on his or her former employment. Examples include pension or redundancy benefits.

2.2 Algemene Bestedingsbelasting

For purposes of algemene bestedingsbelasting ('ABB'), it is important to distinguish between ABB on imports and ABB in domestic situations. As a rule, ABB on imports applies to everybody, both enterprises and individuals.

ABB in domestic situations applies only to enterprises that are manufacturers or service providers, as well as in a

number of specific situations, for example if the ABB levy is reverse-charged to you.

Since ABB on imports is not specifically a tax for enterprises, this issue is not discussed in this manual. If the information set out below on ABB in domestic situations indicates that you are liable to pay ABB, you will receive a copy of the manual for algemene bestedingsbelasting. That manual also includes information about ABB on imports.

2.2.1 ABB in domestic situations

To qualify as an ABB taxpayer in domestic situations, you must be an entrepreneur and:

- be a manufacturer supplying goods on the BES islands;
- supply services on the BES islands.

Several definitions are important in this context:

- 1 entrepreneur;
- 2 manufacturer;
- 3 supply of goods;
- 4 supply of services;
- 5 combined supply of goods and services.

2.2.1.1 Entrepreneur

You are an entrepreneur for the purposes of the ABB if you independently run a business or practice a profession on the BES islands, but also if you operate an asset (for example, an immovable property) to generate sustainable revenue.

You can, for example, practice your activities in the form of a one-man business, a partnership, a company or another (foreign) legal form. The legal form you choose to run your company or practice your profession is not of relevance to the ABB. A foundation (fundashon) or association can also be an entrepreneur for the purposes of the ABB, because whether you do or do not aim to make a profit on your activities is not relevant to the ABB.

We take the following into account when determining whether you are an entrepreneur for the purposes of the ABB:

- Do you independently* run a business or practise a profession on the BES islands? Whether you make a profit is not of relevance to the determination of your status as an entrepreneur for the purposes of the ABB. Nor is registration with the Chamber of Commerce determinative. You must work independently. Consequently, if you carry out your work as an employee then you are not an entrepreneur.
- Are you employed and do you also carry out other work? If you carry out other work alongside your employment then you may, for the purposes of the

ABB, be an entrepreneur for this other work. It is possible that you will need to calculate ABB on the payment you receive for your other work. A plasterer, for example, who regularly plasters outside his regular employment must calculate ABB on his revenue from this other work.

- Do you operate an asset or a right? If you operate an asset or a right (for example, you let an immovable property) then you can also be deemed to be an entrepreneur for the purposes of the ABB.
- How regularly do you work independently? If you carry out your work only occasionally or within a closed circle then you are not an entrepreneur for the purposes of the ABB. If, for example, you occasionally rent out your boat to your friends or family then you are not an entrepreneur on the grounds of this activity and you do not need to take account of ABB.

* The assessment of whether you carry out your work independently must be based on the facts and circumstances of relevance to each specific case. These facts and circumstances can include:

- the nature of the work;
- the circumstances in which the work is carried out;
- the duration of the relationship with the client;
- simultaneous work for other clients, where relevant;
- the obligation, where relevant, to carry out the work personally;
- the employment of staff;
- whether you must carry out the work at specific locations and times;
- the arrangements for sick leave and holidays;
- the use of your own equipment;
- the degree of supervision;
- the financial risk to which you are exposed in carrying out the work;
- the risk of occupational disability;
- the manner in which you act towards third parties;
- the liability for loss caused by your work.

Are you uncertain whether you are an entrepreneur for the purposes of the ABB? If so, contact the Belastingdienst/Caribisch Nederland (hereinafter referred to as the 'B/CN').

2.2.1.2 Manufacturer

A manufacturer is an entrepreneur who produces goods within the territory of a public body using raw materials, ancillary materials or semi-finished products and who does not supply the goods he manufactures from an establishment that is largely (i.e. for more than 50%) equipped, destined for and used for the sale of those goods to parties other than entrepreneurs (for example, private individuals).

A building contractor may be regarded by the ABB as a manufacturer if he produces an immovable object.

A manufacturer may deduct the ABB paid by him in the form of pre-taxes, for example:

- ABB paid by him on building materials
- ABB paid by him on goods and services bought by him from other manufacturers.

A building contractor, commissioned by another company who contributes toward the manufacturing of a new immovable object, may also be regarded as a manufacturer. Hence an example: a mason who executes a certain order upon request of a construction company.

2.2.1.3 Supplies of goods

What does the ABB understand as 'goods'?

Goods are all physical objects (and, consequently, tangible objects), as well as water, electricity, gas, heat, cold and similar.

In terms of the ABB, when are goods supplied?

Goods are supplied on:

- The transfer of goods in accordance with an agreement. This relates to the sale of goods. When you sell something you conclude an agreement. This agreement does not need to be concluded in writing, but can also be concluded verbally and even without saying anything. The transfer usually takes place on the actual supply of the goods.
- The issue of goods in accordance with a hire-purchase agreement or financial lease agreement. This relates to the sale of goods when it has been agreed that the payment will be made in instalments and that the buyer becomes the owner of the goods only once the last instalment has been paid. The law stipulates that the goods are supplied at the time of issue. ABB is due at the time of issue and on the entire price, even though the price is paid in instalments.
- The passage of the title to goods that are the subject of an agreement for the attachment of goods to other goods. This relates to the assembly or installation of goods (for example, mounting sun blinds/anti-burglary bars on the client's home).
- The possession of goods for purposes other than commercial operations, as a result of which the goods are withdrawn from the manufacturer's business assets. This concerns private use of goods. For example, a manufacturer of sunglasses makes a pair of sunglasses and gives them to his partner as a present.
- The passage of the title to goods in accordance with a claim by or on behalf of the authorities. This relates, for example, to expropriation. Since this form of supply of goods is rare it is not discussed further in this manual. More information is available from B/CN.

- The possession of goods manufactured by the manufacturer's company for commercial operations in situations in which ABB would have been charged if the goods had been supplied by an entrepreneur.

This relates to the internal supply of goods. For example, a manufacturer of furniture will use furniture manufactured by the company (in the company). Without this provision the manufacturer would not have to pay ABB on the furniture. ABB would have been paid if the furniture had been purchased from another manufacturer. The inequality this would cause is avoided by the inclusion of this provision.

2.2.1.4 Services

Services are all performances you carry out for payment and which are not deemed to be the supply of goods. For the purposes of the ABB, when there is no supply of goods then a service has been performed!

When do you perform services?

For the purposes of the ABB you perform a service when you carry out work and receive a payment for that work. This payment is the amount (usually in cash, although it can also be in the form of goods, etc.) that you charge your customer for the service. Hairdressers perform services, as do bookkeepers, consultants, real estate agents, lessors, intermediaries, etc., etc.

2.2.1.5 Combined supply of goods and services

In many instances an entrepreneur's performance is comprised of a combination of the supply of goods and performance of a service. When a performance is comprised of a combination of the supply of goods and performance of a service then it is often difficult to assess whether and how a performance should be taxed with ABB. This is because a performance that is deemed to be the supply of goods is taxed with ABB solely when the goods are supplied by a manufacturer, while a performance comprised of the performance of one or more services will be taxed with ABB unless the service is exempt from ABB and/or the service is not performed on the BES islands. However, what is the situation when a performance is comprised of both the supply of goods and the performance of a service?

When you provide a performance comprised of a combination of the supply of goods and the performance of services then you will need to determine whether your performance is comprised of:

- the supply of goods and performance of a service or services;
- the supply of goods;
- the performance of a service or different services.

You can use the following principles to assess whether combinations of the supply of goods and the performance of services are comprised of the supply of goods and the performance of a service, the performance of a service or the performance of different services:

- When the performance is comprised of a series of elements and operations then all the circumstances must be taken into account;
- Each performance (the supply of goods or the performance of a service) must, as a rule, be deemed to be a distinct and independent performance. This is, in principle, also applicable to individual performances that are part of an aggregate performance. However, when a performance – in economic terms, and as perceived from the position of the average consumer – is comprised of one performance then the performance must not be broken down artificially into a number of elements. A performance can be deemed to be one performance when the elements of which that performance is comprised are very closely related to each other and do not individually achieve the required purpose;
- The fact that one price is charged is not the determining factor for an assessment in terms of one or more performances. When one fixed price is charged irrespective of whether the customer decides to receive ancillary performances then this will more readily result in the ancillary performances being deemed to be additional performances;
- The most characteristic elements of an aggregate performance determine whether the performance should be deemed to be a supply of goods or the performance of a service and how this performance should be qualified, taking due account of the average consumer's perception of the performance;
- Additional performances follow the qualification of the main performance to which they are subordinate. Additional performances are performances that do not serve a purpose as such for the average customer and which increase the appeal of the most important performance or serve as a means of gaining from another performance. This relates to performances that are provided together with another performance (in one transaction) and which have a minor influence on the total price of the relevant transaction and are provided by the same supplier.

It can be very difficult to assess whether a performance should be deemed to be a supply of goods and the performance of a service, the performance of a service or the performance of different services. For this reason it is recommended that you contact B/CN if you have any doubts.

2.3 Inkomstenbelasting

Enterprises can be conducted in various forms. One possibility is the sole proprietorship. Sometimes partnerships are formed. In those situations, as an entrepreneur you are liable to pay inkomstenbelasting.

2.3.1. Sole proprietorships

If you run a sole proprietorship, you conduct your enterprise on your own. This is the case if you are in a self-employed profession (for example a civil-law notary or general practitioner or if you are the sole owner of your enterprise). This means that you might also have a sole proprietorship if you have employees. If you fulfil the requirements for entrepreneurship, you are now an entrepreneur for inkomstenbelasting purposes. This means that you are eligible for the special facilities for entrepreneurs.

A sole proprietorship is not a legal entity. This means that if you are running a sole proprietorship you are still liable for the debts of your enterprise.

2.3.2. Professional partnerships

With a professional partnership, you are in a liberal profession conducting a business with others (your partners), for example a doctors' practice. You may draw up a partnership agreement yourselves or engage an expert. Each partner in the professional partnership who fulfils the criteria qualifies as an entrepreneur for inkomstenbelasting purposes and as such is eligible for the special facilities for entrepreneurs. For ABB purposes, the professional partnership is the entrepreneur. The partnership is subject to the rules for ABB. The partners do not qualify as entrepreneurs for ABB purposes. If you take on employees on behalf of the professional partnership, the partnership will have to pay loonheffing.

A professional partnership is not a legal entity. Each partner is proportionately liable for all the professional partnership's debts.

2.3.3. General partnerships

You are part of a general partnership if you set up an enterprise together with others (your partners). You may draw up a partnership agreement yourselves or engage an expert. Each partner that qualifies for entrepreneurship is regarded as an entrepreneur for inkomstenbelasting purposes, and might be eligible for the facilities for entrepreneurs.

For ABB purposes, the general partnership as a whole is the entrepreneur. For example, if three persons together set up a general partnership, all three will be qualified as entrepreneurs for inkomstenbelasting purposes, while the

general partnership as a whole will qualify as an entrepreneur for ABB. The partners do not qualify as entrepreneurs for ABB purposes. If you take on employees on behalf of the general partnership, the partnership will have to pay loonheffing.

A general partnership is not a legal entity. Each partner is jointly and severally liable for all the partnership's debts.

2.3.4. When are you considered an entrepreneur for the inkomstenbelasting purposes?

Not everyone who aspires to be an entrepreneur qualifies as an entrepreneur for inkomstenbelasting purposes. Various specific requirements are laid down in legislation and case law that entrepreneurs have to fulfil. Once you have registered as an entrepreneur, we will consider your circumstances and determine whether you meet those requirements. In some cases, your inkomstenbelasting return will be taken into account. If you meet the requirements, you will be considered an entrepreneur for inkomstenbelasting purposes. That means that you are eligible to use a number of special facilities. In considering your circumstances, we will take the following issues into account:

- Are you making a profit? If so, how much?
- If you are only recording marginal profits or structurally incurring losses, it is improbable that you will realise profits in the future. Your situation will not qualify as an enterprise;
- How independent is your enterprise?
- If others determine how you should organise your enterprise and how you should carry out your work, you will generally not be deemed to be conducting an enterprise;
- Do you possess any capital (in the form of money)?
- Capital is a requisite for many enterprises. You will need to invest in such matters as advertising, hiring staff and taking out insurance. The presence of sufficient capital to set up an enterprise and run it for some time might be an indication of an enterprise;
- How much time do you spend on your work?
- If you spend a great deal of time on a particular activity without generating returns, you will generally not be deemed to be conducting an enterprise. However, you must also spend sufficient time on your work to ensure that it is profitable;
- Who are your customers?
- It should be a continuous goal to have multiple customers, among other reasons to reduce your payment and continuity risks. If you have multiple customers, you will be less dependent on one or a few customers and will become more independent. Conversely, if your customers are primarily friends and family, you will not be deemed to be an entrepreneur;

- How do you publicise your enterprise?
- Your existence depends on customers. To qualify as an entrepreneur, you must make yourself sufficiently visible, for example by advertising, setting up a website, hanging up a sign outside your establishment or ordering customised stationary;
- Are you exposed to ‘business risks’?
- Does the possibility exist that your customers will not pay? Are you using the appropriate name under which to carry out your work? Are you dependent on the supply of and demand for your products or services? If you are exposed to ‘business risks’, you will likely be deemed to have an enterprise;
- Are you liable for your enterprise’s debts?
- If you are liable for your enterprise’s debts, you will qualify as an entrepreneur.

Fulfilling or not fulfilling any of these conditions does not automatically mean that you are or are not an entrepreneur. What matters is the overall picture: the actual circumstances that determine whether or not you are an entrepreneur. For example, registering with the Chamber of Commerce is nothing more than an indication that you are an entrepreneur for inkomstenbelasting purposes. Your registration there does not decide the issue.

2.3.5 If you have other work besides employment

If your situation does not qualify as entrepreneurship or employment, but if you nevertheless carry out work that is profitable, you are considered to have other income from work.

The costs that you incur in connection with that work are deductible. However, you may not deduct more than the income.

You are not eligible for certain facilities, such as the investment allowance.

You are obliged to submit information about your income and costs if so requested and if you are audited. It is important therefore that you keep that information on file. This information includes invoices, receipts and bank account statements. Your calculations of amortisation or depreciation on operating assets must also be kept.

2.4 Opbrengrstbelasting

Opbrengrstbelasting is a new tax that has been introduced for Bonaire, Saba and St. Eustatius. Together with vastgoedbelasting, it replaces the winstbelasting regime that was in place until 31 December 2010. Winstbelasting was abolished on 1 January 2011.

Opbrengrstbelasting is a tax on payments made by entities to title holders, such as dividends that are distributed to

shareholders in a N.V. or B.V. Those payments are called opbrengsten (revenues). The person receiving the opbrengsten (revenues) is the taxpayer. However, the tax is levied at the level of the entity making the opbrengst (revenue) available. This means that, as with loonbelasting, the entity has a withholding obligation.

The withholding agent withholds the tax and remits it to the Belastingdienst.

This manual only explains in what situations you qualify as a withholding agent for opbrengstbelasting purposes and in what situations you do not. Qualify as a withholding agent entails various obligations on your part, such as the obligation to file returns and to file annual reports and financial statements.

2.4.1 Who qualifies as a withholding agent?

Withholding agents are BES-domiciled:

- naamloze vennootschappen (public limited liability companies);
- besloten vennootschappen; open commanditaire vennootschappen (private limited liability companies);
- open commanditaire vennootschap (open limited partnerships);
- andere vennootschappen waarvan het kapitaal geheel of ten dele in aandelen is verdeeld (open limited partnerships);
- coöperaties (cooperatives);
- verenigingen op coöperatieve grondslag (cooperative associations);
- onderlinge waarborgmaatschappijen (mutual insurance associations);
- verenigingen welke op onderlinge grondslag als verzekeraar of kredietinstelling optreden (associations operating as mutual insurers or credit institutions);
- andere verenigingen indien zij een onderneming drijven (other associations that conduct enterprises);
- stichtingen (foundations);
- doelvermogens (special-purpose funds);
- fondsen voor gemene rekening (mutual funds).

When are these entities deemed to be domiciled on the BES islands?

As a rule, an entity’s domicile is determined ‘based on the circumstances’. The principal ‘circumstance’ for entities is the place of actual management.

For opbrengstbelasting purposes, however, a non-standard rule applies to most entities.

The main rule for opbrengstbelasting is that the entity must be domiciled in the European part of the Netherlands. This is a legal fiction, meaning that this is the rule for purposes of opbrengstbelasting.

In the Netherlands, these entities are subject to the Wet

op de vennootschapsbelasting 1969 and the Wet op de dividendbelasting 1965.

However, a number of important exceptions exist to this main rule. The entity is not subject to Dutch law if:

- the entity possesses a domicile ruling issued by the tax inspector, or
- the entity is a foundation or a special-purpose fund, or
- the entity has been admitted to a free zone as defined in Chapter V of the Douane en Accijnswet BES, or
- the entity possesses a decision issued by the tax inspector indicating that:
 - the entity has a participation of 95% or greater in an entity that has been admitted to a free zone as defined in Chapter V of the Douane en Accijnswet BES, or
 - the entity has a participation of 95% or greater in an entity that has been issued a domicile ruling (see below) by the tax inspector.

2.4.1.1. Domicile ruling

Domicile rulings are only issued if applied for.

To be eligible for a domicile ruling you will be subjected to review: an assets test and an activities test.

If you do not meet the requirements, you may under certain conditions nevertheless be issued a domicile ruling, if you provide full-time work to 3 or more persons residing on the BES islands and have the use of an immovable property situated on the BES islands with a value of at least USD 50,000 for at least 24 months.

2.4.1.2. Foundations and special-purpose funds

The main rule that an entity's domicile is determined 'based on the circumstances' only applies to foundations and SPFs. This means that for these entities it is important where the foundation or special-purpose fund has its seat of actual management.

2.4.1.3. Admittance to a handels- en dienstenentrepot (free zone)

The possibilities for an entity to be admitted to a handels- en dienstenentrepot (*free zone*) are governed by Chapter V of the Douane en Accijnswet BES. A complete explanation of those regulations exceeds the scope of this manual. Entrepreneurs should contact the customer service team of the Belastingdienst/Caribisch Nederland. The team is based on Bonaire, in the tax office at Kaya L.D. Gerharts 12 in Kralendijk.

2.4.1.4. Entities with 95% rulings

An entity is deemed to be domiciled on the BES islands if the entity possesses a decision issued by the tax inspector indicating that:

- the entity has a participation of 95% or greater in an entity that has been admitted to a handels- en diensten-entrepot as defined in Chapter V of the Douane en Accijnswet BES, or
- the entity has a participation of 95% or greater in an entity that has been issued a domicile ruling by the tax inspector.

As such, this rule concerns parent companies that, if considered independently, would not pass the tests as described in section 2.4.1.1 because their assets only comprise participations. This means that such entities must apply for a decision on this matter. You will find the template as Annex II enclosed in the form Starting Enterprise.

Use the flowchart shown on the relevant form for starting enterprises to determine for yourself whether you are obliged to withhold opbrengstbelasting or are subject to Dutch tax law.

The flow chart also indicates whether you must apply for a domicile ruling. If you do, you should use the template accompanying the relevant starting business form enclosed as an annex.

2.5 Vastgoedbelasting

As already explained in connection with opbrengstbelasting, vastgoedbelasting combines with opbrengstbelasting to replace the winstbelasting regime that was abolished on 1 January 2011.

As an entrepreneur, you might encounter vastgoedbelasting if:

- you are liable to pay opbrengstbelasting; see section 2.4 above to determine whether or not that is the case;
- you are domiciled outside the BES islands and the entity's capital includes one or more immovable property objects situation on the BES islands.

Note! *if you are deemed to be domiciled in the Netherlands (Europe) based on the domicile provisions described in section 2.4, you are not liable to pay vastgoedbelasting. In that case, immovable property is subject to tax under the Wet op de vennootschapsbelasting 1969.*

Although a sole proprietorship might also possess immovable property, immovable property that is part of the business capital of a sole proprietorship is exempt from vastgoedbelasting. It is included in the inkomstenbelasting levy.

2.6 Overdrachtsbelasting

Overdrachtsbelasting is payable on transfers of immovable property and vessels. This means immovable property situated on the BES islands and the rights to which they are subject. Vessels are defined as vessels registered on the BES islands with a gross tonnage of at least 20 cubic metres.

The acquiring party is the taxpayer for overdrachtsbelasting purposes. The overdrachtsbelasting issues are handled entirely by a civil-law notary. This means that overdrachtsbelasting results in obligations for entrepreneurs that are not directly tax-related.

2.7 Kansspelbelasting

As an entrepreneur, you are liable to pay kansspelbelasting if:

- you possess a permit pursuant to the Wet hazardspelen BES I and/or the Wet hazardspelen BES II;
- you possess a permit pursuant to the Loterijwet BES;
- you win a game of chance and you purchased the ticket or other participation document in your capacity as an entrepreneur, i.e. by your N.V. or B.V. or from your sole proprietorship's business capital, for example.

If you possess one or more of the permits specified above, you are required to file kansspelbelasting returns. You will then be registered as a withholding agent or taxpayer in the Belastingdienst's system, and you will receive return forms and the accompanying explanatory notes.

If you win a prize, you must contact the Belastingdienst. You may visit one of our tax offices, or alternatively you can request a return from via our website, www.belastingdienst-cn.nl, and complete it. You should then take the completed return form and the amount payable to one of our offices to file your return and pay the tax.

3 General rules

Once you have registered as an entrepreneur, you will notice that you will have various dealings with the Belastingdienst throughout the year. These dealings may be very diverse in nature. You are required to fill out returns regularly, and you will receive tax assessments. This serves to establish what taxes and contributions you need to pay, and how much you have to pay. Another possibility is that a representative from the Belastingdienst will visit your enterprise to audit your accounts and records or inspect other matters. Of course, you can phone us at any time if you have questions.

In all these dealings, you are entitled to be treated properly and with care.

3.1 What rights do you have in respect of the Belastingdienst?

You have various rights in all your dealings with the Belastingdienst. This does not mean simply the rights laid down by law, but also the right to be treated in accordance with general rules of conduct.

Carefulness, respect and equal treatment

In general terms careful treatment, showing respect and without prejudice, means the following:

- Within the framework laid down by law, you have the right to arrange your affairs in such a manner that you minimise your payments for taxes and social security premiums;
- You are entitled to proper information;
- We must abide by concrete promises. However, bear in mind that general information, such as that presented in brochures or given by telephone, does not constitute a promise;
- You are entitled to the same treatment as other persons whose situation is the same as your own;
- The Belastingdienst will not 'bother' you more than necessary, for example to obtain information or for an audit.

The Belastingdienst expects the information that you provide to be accurate and complete.

Your personal data will be protected

You are not required to provide more information than is necessary for purposes of levying and collecting taxes and contributions. The information that you provide may not be shared with third parties without reason. Exceptions exist to this rule, for example for purposes of preventing fraud.

You are entitled to an explanation for our decisions

You have the right to know why a particular decision was made. This is particularly the case for decisions that deviate from information that you provided, for example in a return.

If you disagree with the Belastingdienst

If you disagree with a decision, for example, with the amount of a tax assessment, you almost always have the option of filing an objection. You must file your objection within 2 months after the date specified on the assessment.

It is possible that the decision on the objection ('the ruling') will end the disagreement. However, if you do not agree with that decision either, you may appeal to the Raad van Beroep voor Belastingzaken. The ruling on your objection will explain how to appeal, what the deadline is for submitting your appeal and where it should be submitted.

Please note! *If your objection specifies the element of the assessment with which you disagree, your objection will automatically be treated as a request for postponement of payment. Your payment deadline for the amount with which you disagree will be postponed. However, you will have to pay the remainder. When you appeal, you must send us a separate request for postponement of payment.*

Objection or appeal: remember substantiation and deadlines

Whenever you file an objection or an appeal, you should clearly state what aspect you disagree with, and why. If you wish to file an objection or appeal, you always have two months' time to do so. Those two months commence on the date of the decision (e.g. the assessment) with which you disagree.

Provisional decision on an objection

You should receive a decision on your objection within the period specified by law. As a rule, that period is nine months, though in some instances it may be extended.

Have you not yet received a decision and the statutory period has expired? The inspector will then be deemed to have ruled. You may appeal that fictitious ruling. The deadlines are different in such situations.

Complaints about the treatment you receive

If you are not happy with the treatment you have received from us, you may file a complaint. Complaints may be filed with the tax office.

If you are not happy with the way in which we handle your complaint, you may contact the National Ombudsman. However, you may not do so until we have dealt with your complaint, or if your complaint concerns a dispute that you may refer to court.

3.2 What happens if you receive a visit from the Belastingdienst?

Once your enterprise is up and running, you can expect a representative of the Belastingdienst to pay you a visit sooner or later.

3.2.1 Visits to starting entrepreneurs

A representative of the Belastingdienst may visit a starting entrepreneur once the enterprise has been up and running for some time. In most cases, that first visit is not a true audit, but more of an inspection of the starting enterprise. During that inspection, we will primarily examine whether your enterprise is operating more or less 'by the book' in terms of taxes. You may also receive advice about how to organise your accounts and records and about facilities intended specifically for starting entrepreneurs.

In general terms, the Belastingdienst conducts two types of investigations: on-site inspections and audits.

3.2.2 On-site inspections

An on-site inspection involves a representative of the Belastingdienst visiting your enterprise to gather information and learn about your operations and your accounts and records. It does not involve an investigation into a specific return. Almost all on-site inspections are announced ahead of time. A report will be drawn up of the inspection. Most of the information in that report is public, i.e. you may examine it yourself. You will automatically be sent a copy of the public part of the report. If you do not receive a copy, you may request one.

3.2.3 Audits

An audit is an investigation into your returns and your accounts and records. It may concern a particular period or particular elements of your returns and your accounts and records. Audits are always announced ahead of time. As with an on-site inspection, a report will be drawn up of the audit and you will be sent a copy of the public part.

Please note! Information may be gathered during on-site inspections and audits that is important for the tax levies of other enterprises, for example.

3.2.3.1 Rules during inspections and audits

In most cases you will be informed ahead of time about the period and data that will be investigated. As a rule, our staff will not deviate from that information. If one of the team wishes to deviate, you will be notified.

Our staff must present identification papers before the inspection or audit commences. If they feel that it is necessary to enter your home, they may generally only do so with your permission.

3.2.3.2 Obligation to cooperate during inspections and audits

As an entrepreneur, you have an obligation to cooperate during an inspection or audit. This means:

- You must grant the inspection or audit team access to the buildings in which your enterprise is domiciled;
- You must submit all data and information that may be relevant to the inspection or audit;
- You must allow the team to examine your accounts and records and permit them to make copies, even in situations concerning taxes and contributions payable by another person besides yourself;
- Your employees must be able to present identification documents. If you are in the salaried employment of the enterprise, you must also be able to do so.

4 Organising your accounts and records

This chapter discusses your enterprise's accounts and records. Your accounts and records include all information about your enterprise that your record on paper or electronically. It is particularly important to your own operations to organise your accounts and records properly and in an understandable manner. However, you also need proper accounts and records in order to comply with your statutory obligations, for example filling out your returns, and as evidence in your dealings with the Belastingdienst. As such, you have an obligation to keep proper accounts and records that are appropriate to the nature of your enterprise. In most situations, moreover, you must keep your accounts and records for seven years.

If you have employees, you also must also comply with the recordkeeping obligations for loonheffing, meaning that you must set up payroll accounts.

Once your enterprise is up and running, you will of course wish to know at a glance everything that is happening. You wish to know everything about your customers. Who are they? What do they want? How many orders do you receive? When are your delivery dates? What volumes do you have to procure? However, you also want to know what is happening internally. How much money have you spent? How much money have you received? How much do you still have in hand?

Setting up and maintaining proper accounts and records is important. It allows you to foresee new developments in time, to respond to them and make the right decisions at the right moments. Proper accounts and records show what is happening in your enterprise and allows you to see the overall picture. They also make it much simpler for you to fill out your returns.

4.1 Why is it important to keep proper accounts and records?

Your accounts and records are: all information about your enterprise that you record on paper (including rough notes) or electronically (for example on a computer). Properly organised and understandable accounts and records are very important: not only to comply with your statutory obligations, but also for your operations.

As an entrepreneur, you have an obligation to set up and keep proper accounts and records that are appropriate to the nature of your enterprise. That is why you should start organising your accounts and records straight away, even before your enterprise has started.

4.1.1 For your operations

If you keep your accounts and records up to date, you can quickly access your enterprise's figures and results to examine your costs, turnover and profits. That information allows you to respond to developments and if necessary adjust your activities.

4.1.2 For completing your returns

Your accounts and records form the basis for your returns. It should be possible to inspect them quickly and properly. If your accounts and records are incomplete and cannot be inspected within a reasonable space of time, or if you do not keep your accounts and records for the required period, the consequences may be unpleasant. We will calculate your turnover and profits ourselves, as well as how much tax you owe. If you do not agree with our calculations, the responsibility of proving that they are wrong will lie with you. This is referred to as 'reversal of the burden of proof'.

If you do not keep understandable lists of your purchases and sales, you will not be able to fill out your ABB return. And without proper accounts and records you will not be eligible for advantageous facilities, such as the 'exemption from paying taxes' for ABB.

Please note! You should regularly write down calculations on paper to verify the reconciliation between your accounts and records, your returns and your financial statements. Keep those calculations (final and rough) in your records. We will ask for them.

4.1.3 How long must you keep your accounts and records?

All entrepreneurs are obliged by law to keep their accounts and records for seven years (obligation for tax purposes to retain records).

If you have outsourced some or all of your accounts and records to a computer or payroll service agency, the data carriers of those service agencies that contain data about your enterprise are also subject to the obligation to retain records.

4.2 What do your accounts and records include?

All information about your enterprise that you record on paper or in electronic form is part of your accounts and records. Examples include:

- cash records (including rough notes) and receipts;
- financial notes, such as your procurement and sales ledgers;
- provisional verification calculations;
- incoming invoices and copies of outgoing invoices;
- bank statements;
- contracts, agreements and other arrangements;
- day planners;
- correspondence;
- software and data files.

A lot of the information that you need to conduct your business is first recorded electronically. This includes not only the files of your financial accounts, but also such matters as your business planner on your mobile telephone or Personal Digital Assistant (PDA), as well as sales information that you register using a charge system, a simple cash register or a Point of Sale system.

Many charge systems are not compliant with our requirements. As such, you should obtain proper advice before buying one.

More and more accounts and records are kept on the Internet, which is also increasingly used for parts of business processes (such as sales via web shops). That information is also part of your accounts and records.

Even if you print out information on paper, either immediately or later, you must keep the information in electronic format.

You may organise and keep your accounts and records in whatever way is most appropriate to your enterprise. However, you should bear in mind that your accounts and records form the basis for your returns. If your accounts and records are incomplete and cannot be inspected within a reasonable space of time, or if you do not keep your accounts and records for the required period, the consequences may be unpleasant. We may calculate your turnover and profits ourselves, as well as how much tax you owe. Your business processes must be described in full and to a reasonable level of detail. If you record the information electronically, you must also keep it electronically, for the applicable duration of seven years. You may only keep the information on paper if your accounts and records are very small and can be inspected within a reasonable space of time.

5 Form for starting enterprises

If you wish to start an enterprise, set up an association or foundation or start working in a liberal profession, you may encounter various forms of taxation. To determine what taxes you have to pay, the Belastingdienst requires information from you.

This manual is accompanied by one of the forms for starting enterprises. Alternatively, you can download this manual and the forms for starting enterprises from www.belastingdienst-cn.nl.

These forms ask you to provide an estimate of your profits. You will also be asked to describe your business activities in as much detail as possible. Of course you are not expected to be certain about everything when you start your enterprise. Fill out the form based on the information available to you at that time, sign it and send it to your tax office or hand it in in person.

We will then determine for which taxes we should register you. This is based primarily on the information in your completed form.

You will automatically be sent return forms for the taxes for which you are deemed to be a taxpayer. In some cases, for example with the ABB and loonbelasting, you will also receive detailed information in the form of a manual.

If you hire employees: notify the Belastingdienst

If you will be hiring employees when you start your enterprise, you must also register as an employee in the form for starting businesses.

If you will be hiring employees later rather than immediately, you must register as an employer before you take on any employees. Use the form entitled 'Employer Registration' for this purpose. You can download that form from www.belastingdienst-cn.nl.



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