

# INVESTORS' AGENDA OF PRIORITY POINTS 2014

To continue to succeed in a globalizing economy, the Netherlands – an open economy with a desire to remain competitive as a regional focus point for foreign investment – needs to continually explore avenues that will enable its workforce to align with current and future needs supported by an attractive corporate tax system.

This is a challenge for many western countries – and at a time when their economies are just climbing out of several years of economic stagnation. Those best able to meet this challenge will be the economic leaders of the coming decades. Increasing public sector efficiency, freeing stakeholders from red tape and instituting needed structural reforms – with the necessary fiscal support – are powerful tools that governments can use to boost economic growth, encourage innovation, create jobs and bring about a strong and balanced economic recovery.

The Netherlands' future is connected to its power to innovate. The country's research and innovation performance – already considerable – needs continued boosting to master the many challenges ahead and keep its place in a fast-changing world. AmCham contributes to this. Since 2001 AmCham's Pharmaceutical Committee has been a constructive partner in annual debates on innovation in the Netherlands' healthcare sector via the Clingendael European Health Forum – an AmCham initiative. The Dutch research and innovation system has succeeded in maintaining its innovative capacity during the years of financial crisis, with a high efficiency and effectiveness of public R&D investment, an improved science and technology excellence from a high existing level and the development of hot spots in key technologies, in spite of a stagnating R&D intensity.

Marketing of the country's innovation potential to foreign investors is, in AmCham's opinion, too modest. AmCham encourages a more aggressive positioning of the 'greater Randstad' from Eindhoven, Wageningen, Utrecht, Leiden, Delft to Amsterdam as an innovation ecosystem, with particular entry points for different types of innovation.

AmCham supports the constructive position the Netherlands government has taken in the negotiations surrounding the Transatlantic Trade and Investment Partnership. Significant steps are being taken by Dutch policy makers to better prepare the country for a freer trade and investment environment within an EU and transatlantic context. AmCham's 2014 Priority Points are measures to complement and support these reform actions for a stronger, more innovative and competitive Netherlands.

## **CLOSING THE WORKFORCE SKILLS GAP – A COORDINATED AND STRATEGIC APPROACH FOR FUTURE NEEDS**

AmCham members have expressed the following key concerns around workforce deployment: a growing shortage of technically skilled employees; the need for greater flexibility around fixed term contracts; the ability to keep resident and work permit status for foreign workers who are temporarily assigned to other countries; and the different generations who will be in the labor market – each with distinct needs and ambitions – which requires more tailored solutions and social acceptance of changing career patterns for life-cycle phases (remotion vs. demotion).

### **1. Align and invest in education, talents and skills.**

The single, most effective industrial policy – and stimulus for innovation – a government can adopt is to ensure that citizens gain and maintain the skills necessary for a fully competitive first world economy through life-long learning. The importance of a good start – early childhood education – and exposure to different work opportunities cannot be overestimated, or ownership of one's own continued development.

**AmCham recommends:** A joint focus of government, education and business would be powerful. Collaborate to achieve a better fit to business needs – language skills, labor agility/mobility, timing, and in particular, technical needs. Also fully recognize the importance of manufacturing and logistics based industries as employers and investors in innovation.

**AmCham further recommends:** Further stimulate employee initiative and employer facilitation for continued learning. Consider the build-up of a personal transition / (re)education fund which can be taken from employer to employer.

### **2. Implement a strategic EU approach to scarce human resources**

Increase coordination to ensure that workers with needed skills – both within and outside the EU – are aware of opportunities and facilitated in coming to the Netherlands and contributing to the economy.

The government has indicated that it will strive to focus EU immigration policy (via a points system for non-EU citizens) more on skills and less on reuniting families beyond the core family. It has also taken steps in supporting company sponsorship and accompanying partner policy. AmCham supports these initiatives.

## **STIMULATE WORKFORCE FLEXIBILITY AND PARTICIPATION**

### **1. Increase flexibility and agility in the labor market by easing employment protection legislation for both regular and flexible contracts.**

Dutch labor laws and their effect on the labor market are a topic of attention. In general, AmCham members consider dismissal procedures with the Dutch court as legally satisfying. Especially the rescission procedure that is a quick and informal pro-

cedure excluding the option of appeal, offers the legal certainty that corporations need most. Dismissal procedures with the UWV, on the other hand, are perceived as lengthy and complex, without certainty of closure of the judicial process.

The selection criteria in case of restructurings are perceived as rigid and do not allow for sufficient flexibility to organize staff serving the current and future needs of the company. This lack of flexibility hinders all sectors – in particular, technology driven corporations. AmCham continues to advocate for more flexibility, a shortening and simplification of dismissal procedures and further limitation of severance pay.

AmCham members also note an increase in restrictions on the use of contract workers and fixed term contracts. This includes the consecutive number of fixed term contracts allowed and the duration of temporary contracts, as well as legislating of rights that are normally associated with staff on an employer's payroll. This impedes the flexibility of employers in cyclical businesses and decreases their ability to re-engage qualified and known personnel on a temporary basis.

### **2. Reorientation of career and future: Remotion – a lateral step or step back is a step forward**

In the very near future, many mature companies will be confronted with an aging workforce – often with an average age of over 50 years. At the same time organizations experience difficulties in deploying their experienced employees. As they grow older, the opportunities to develop, increase salary and be promoted decrease. The employee's ability to add value can be affected. In many cases, this leads to presenteeism, side-tracking or demotion. The challenge for organizations is how to maintain these valuable, experienced employees – without a stigma around demotion. Reorientation in the last stage of the career curve needs to be considered earlier and as part of total career planning. Organizations and individuals should take the opportunity to consider voluntary remotion – a step aside or back to create a new horizon. It is important to understand that many employees still want, and are able, to contribute. Knowledge transfer, focused projects, lighter responsibility, as well as another work-life balance are key motivators.

**AmCham recommends:** Engage in social dialogue and offer fiscal stimulation to encourage different career path expecta-

tions, tailor employee benefits and opportunities to maintain the employability and motivation of the workforce. This could positively impact keeping older workers employed, increase the opportunity for work/life balance, bring experience closer to the line and open opportunities for younger employees. A vital and productive workforce generates a vital and productive economy.

## **IMPROVE INDUSTRY COMPETITIVENESS**

During the past decades significant U.S. investments have been made in production facilities in much of the Netherlands. It is of crucial importance that these production facilities remain competitive, that American companies feel confident to continue their long history of investment in the country's production capabilities, and that new investment is attracted.

Although the Netherlands offers an attractive business environment for production facilities, increasing regulatory pressure raises operational cost and requires significant investments, impacting competitiveness. This is caused by national and regional initiatives, but increasingly by legislation developed in a European context.

Industry fully recognizes that regulations are needed to meet important objectives, especially with regard to safety and the environment, but asks that objectives recognize the need for a 'level playing field' to compete internationally, and that regulations are efficient.

### **1. Help the EU to keep the EU and the Netherlands competitive**

Within Europe, the Netherlands has a relatively high level of industrial activity, with significant exports. Therefore additional legal EU requirements hurt businesses in the Netherlands more than elsewhere. Environmental and climate legislation is a particular area of concern. Policies should also be designed so that production plants can meet targets in the most (cost) efficient way.

AmCham recommends: As Dutch government, actively influence evolving EU legislation to achieve a level playing field in international context. The in January 2014 proposed Energy & Climate package offers an opportunity to find the right balance.

### **2. Avoid national gold plating.**

When transposing EU legislation, Dutch government must ensure that Dutch industry does not get a competitive disadvantage within Europe.

**AmCham recommends:** Avoid incremental requirements for industry when transposing EU directives – developing related policies or applying legislation, for example, as part of a permitting process. Ensure that implementation of the (SER) national energy agreement will not result in additional energy efficiency requirements for industry.

### **3. Give industry targets, not detailed prescriptions.**

Following regrettable safety incidents in recent years, national and regional authorities have put additional emphasis on safety. Unfortunately this results in a shift from setting targets to dictating means. This leads to inefficient investments which do not increase safety.

AmCham recommends: Recognize that industry plants are best positioned to identify optimal measures at lowest cost to meet safety targets. Give industry targets, not detailed prescriptions.

### **4. Closely monitor data privacy developments**

Data protection and privacy are increasingly important for doing business today. Legislators are struggling with relatively new phenomena such as Big Data, meta-data and subsequent privacy protection.

**AmCham recommends:** We encourage the Netherlands' government to monitor and assess the data privacy developments in Europe and the USA and the way these developments (potentially) impact business of US and foreign investment in the EU – and the Netherlands in particular – and EU and Dutch companies in the USA. Where appropriate:

- a) actively participate in sharing concerns with authorities regarding unbalanced legislation; and
- b) advocate to avoid implementation of legislation which would adversely affect business between US and Dutch parties.

## **TAXES: VISION WITH AMBITION FOR AN ATTRACTIVE FISCAL INVESTMENT CLIMATE**

The Netherlands is one of the most open economies in the world. Traditionally Dutch businesses are in the top 10 of direct investors abroad. The Netherlands receives proportionally more direct investments from abroad than almost any other country. These in- and outbound investments are important for an open economy – they are a stable source of funding, contribute to increased productivity and innovation, and create jobs. Without doubt the Dutch corporate tax

regime supports its open economy. Because profits from foreign operations when repatriated to the Netherlands are not taxed twice, businesses can compete in foreign markets at local tax rates. Double taxation is avoided by the tax treaties that the Netherlands government concludes with its most important trade partners. The APA/ATR team of the Tax Administration provides business with advance certainty about the tax consequences of an investment – a measure often copied by other countries as an example of efficiency and transparency, and an important feature of the Dutch investment climate.

However, an open economy is vulnerable to competition from neighboring countries. The continuing globalization of the world economy and advancing digitization are leading to increased competition. The Netherlands no longer is the obvious choice for a new European logistics distribution center or a digital warehouse. Surrounding countries have copied the most attractive elements of the Dutch corporate tax regime. In this fiscal convergence, small details make the difference in short lists used to rank potential investee countries. Countries like the United Kingdom and Luxembourg compete with the Netherlands for the top position on these lists. They focus their tax policies thereon and communicate these in a clear and ambitious vision (“We are open for business”). After ample reflection by the Dutch government, and following the announced unilateral measures to prevent abuse of the Dutch treaty network, AmCham now urges the Netherlands government to formulate a vision with ambition for the country's business tax climate. An ambitious vision that is clearly communicated by the Dutch government will strengthen the country's investment climate. AmCham believes this vision of the fiscal future can best be framed by the following Priority Points:

### **1. Stability, Consistency, Predictability and Simplicity of Tax Legislation**

There is no doubt that the Dutch investment climate is best served with stability, consistency, predictability and simplicity of tax legislation. AmCham is pleased that the Dutch government has not proposed any new controversial tax legislation in the past year. AmCham would encourage that the provisions restricting interest deductions are evaluated to determine if these can be simplified. Many foreign investors tend to find these provisions, and in particular their inter-

action in certain cases, too complex and very difficult to understand. AmCham notes ongoing dismay in respect of the crisis tax on higher incomes. AmCham urges the Government to repeal this tax as soon as possible and, in any case, not to extend it (again). This tax is seen as very arbitrary and is harmful to the investment climate.

## 2. OECD 'BEPS' Discussion on a Basis of Multilateral Consensus and Unanimity

The first discussion drafts on the action points from the OECD report Base Erosion and Profit Shifting will be released in 2014. AmCham anticipates that a discussion concerning a reorientation of international tax principles and their interaction with the Dutch corporate tax regime will erupt in full force.

AmCham supports the position of the Dutch government to adopt OECD recommendations only if and insofar as there is multilateral and unanimous support for them. Unilateral action will result in immediate and significant damage to the open Dutch economy with direct impact on employment. Neighboring countries will not follow Dutch unilateral restrictions. The country's competitive position will inevitably deteriorate. Many US multinationals have chosen the Netherlands as the location to set up a regional head office, often combined with substantial local operations. In order to maintain this position as preferred location for regional head offices, it is vital that US owned

holdings continue to have access to the Dutch tax treaty network. Therefore, the AmCham calls on the Dutch government to continue to support access to treaty benefits for US owned Netherlands based regional head offices.

AmCham hopes that the Dutch government is willing to engage in discussions with taxpayers and their advisers about the BEPS action points. The stakes are high – not only for the government, but also for companies and employers who depend on the continued quality of the Dutch investment climate. In addition, AmCham would encourage that an inventory is made of the potential effects of implementation of the BEPS action points. This in order to identify possible negative effects of BEPS action points on the investment climate so that positive measures can be adopted timely to counter these effects. Moreover, AmCham strongly advocates the introduction of measures that encourage foreign investors to transfer commercial substance to the Netherlands. This will attract new investments and is fully in alignment with the increased worldwide focus on "real substance".

## 3. Abolish Dividend Withholding Tax for Treaty Residents with Qualifying Interests

Neighboring countries like the United Kingdom and Ireland apply no dividend withholding tax on dividends paid to non-residents. Belgium and Luxembourg have an exemption for dividends paid to qualifying corporate citizens of a Treaty state.

However, the Dutch dividend withholding tax rate remains at 15%. Considering the present state of affairs, at this time a dividend withholding tax is no longer acceptable to international investors.

AmCham invites the Dutch Government to consider introducing an exemption of dividend withholding tax to corporate residents of a treaty country, who, had they been subject to tax in the Netherlands, could have applied the participation exemption to the dividend received. Such an exemption is expected to be largely budget neutral if applied to newly earned profits only. At a later stage, the dividend could also be abolished for portfolio investments. Thus the Netherlands would also become attractive for new, listed corporate structures that are used to connect two or more merging foreign companies.

## 4. Unrestricted Tax Loss Carry-forward

The tax loss carry-forward period has been limited since 2001. As a consequence, Dutch businesses may now pay tax over profits they economically never earned. For many years the unlimited loss carry-forward and three year carry-back were an attractive feature of the Dutch corporate tax regime. The less restrictive terms of the past are dearly missed in the current economic climate. AmCham urges the Netherlands government to reintroduce these less restrictive terms. Especially with respect to the carry-forward of tax losses, the budgetary implications would appear moderate.

## ABOUT AMCHAM

The American Chamber of Commerce in the Netherlands (AmCham) is a non-profit, non-governmental, non-political, voluntary organization of companies and individuals involved in investment and trade between the United States of America and the Netherlands. The Netherlands is one of the most important destinations for US direct investment in Europe. American direct investment (stocks and capital flows involving about 2,000 companies) in the Netherlands amounts to some \$600 billion.

American companies directly employ about 225,000 people in this country.

AmCham is concerned with matters affecting the investment climate in the Netherlands. We actively promote increased US investment in the country by emphasizing the well-known advantages of the Netherlands:

- » The Gateway to Europe with Schiphol Airport and the Ports of Rotterdam and Amsterdam;
- » A workforce with impressive language skills, trained at excellent schools and

universities;

- » An environment that stimulates and supports innovation;
- » A stable and safe political, economic, labor relations, taxation and monetary environment.

Our Investors' Agenda of Priority Points are policy suggestions and initiatives to make the country more attractive to foreign investors. We seek open dialogue and debate regarding the Priority Points with political parties, social partners and Government.

American Chamber of Commerce in the Netherlands  
Schiphol WTC, D-tower, 6<sup>th</sup> floor  
Schiphol Boulevard 171, 1118 BG Schiphol

☎ 020-7951840  
✉ office@amcham.nl  
🏠 www.amcham.nl

AmCham is a Member of AmChams in Europe / the European Council of American Chambers of Commerce and of the U.S. Chamber of Commerce.

