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## **The Netherlands TAX DISPUTES**

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in The Netherlands.

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## THE NETHERLANDS TAX DISPUTES



### 1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Companies that are domiciled in the Netherlands should register with the Dutch Chamber of Commerce upon establishment. This registration is subsequently relayed to the tax authorities by the Chamber of Commerce, eliminating the need for these companies to independently file for taxation. Non-resident taxpayers, on the other hand, must register for the taxes owed in the Netherlands by means of the 'Registration Form Foreign Companies'. This enables non-resident taxpayers to register as a foreign company with the tax authorities in the Netherlands for value added tax (VAT), corporate income tax (CIT), payroll taxes and real estate transfer tax returns.

### 2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment - or there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

CIT returns, for example, are return-based-. These are in principle checked and subsequently followed by a CIT assessment (*aanslagbelasting*).

VAT, dividend withholding tax, payroll tax and real estate transfer tax returns are filed based on a self-assessment and then paid by the taxpayer to the tax authorities and stand, unless they are later checked by the tax authorities and this leads to a correction (*aangiftebelasting*).

### 3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

For CIT returns this is in principle possible, until the final assessment has been imposed. After this, it is possible to file an objection against the assessment within six weeks after receiving the assessment.

For VAT returns, a supplementary VAT return (*suppletie-aangifte*) can be filed. This supplementary VAT return may be used to correct errors or omissions in previously filed VAT returns. It allows taxpayers to adjust their VAT liability or claim additional input VAT that they may have missed in their original filings.

### 4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

Tax Audits/information requests: the Dutch tax authorities can conduct audits to review a taxpayer's financial records, transactions, and tax returns. These audits can be random or targeted based on specific concerns, industry focus or risk factors. During a tax audit, tax inspectors may request any and all information and documentation relevant to ascertain the taxpayer's tax position, interview the taxpayer, and assess the accuracy of the reported information. Taxpayers are legally obligated to provide requested information within a specified timeframe.

Additional assessment: If the tax authority believes that the initial assessment or self-assessment is incorrect, an additional assessment can be issued under certain circumstances. For return-based taxes, specific requirements must be met before the tax authorities can issue such an additional assessment. This is because the tax authorities would have had a chance to review the return filed by the taxpayer before finalizing a tax assessment.

In cases where taxes are based on self-assessment, there are no such requirements because the tax authorities do not have the opportunity to inspect the returns in those instances.

The taxpayer has the right to object to a reassessment and may provide evidence to support its position.

An additional assessment should, in principle, be issued within five years after the relevant tax year. However, in certain circumstances, such as in case of hidden foreign income, the five-year period may be extended to twelve years.

#### **5. What is the procedure where a taxpayer has not registered so is unknown to the tax authority (for example a newly incorporated company or a foreign company operating through a permanent establishment?)**

Taxpayers that carry out activities in the Netherlands should register with the tax authorities and under certain circumstances with the Dutch Chamber of Commerce (*Kamer van Koophandel*). Also, if no such registration has been carried out, the tax authorities may still issue tax assessments.

#### **6. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?**

The tax authorities may challenge tax returns filed, for return-based taxes, through an assessment that would deviate from the tax return filed. Such assessment should be issued within three years following the last day of the relevant tax year. If an extension for filing the tax return has been granted by the tax authorities, then such extension period is added to the three years.

An additional tax assessment should be issued for return-based taxes within five years after the end of the relevant tax year (again, unless an extended period of twelve years applies). Also in this case, any extension period granted by the tax authorities should be added to the five-year period.

For self-assessed taxes, an additional tax return should be issued within five years after the year in which the taxable event occurred.

#### **7. How is tax fraud defined in your law?**

The term “tax fraud” is not explicitly defined in Dutch tax law. However, the law encompasses various actions related to taxes that are considered illegal and, as such,

are commonly referred to as tax fraud. These actions include situations in which a taxpayer intentionally provides incorrect information to the tax authorities to obtain an unlawful tax advantage.

#### **8. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?**

Tax fraud is a criminal offense, which may be punished by the levying of a penalty. In cases of suspected tax fraud, the Dutch tax authorities may initiate proceedings and impose administrative penalties. More serious cases meeting specific criteria are typically referred to the tax authorities’ investigative unit (FIOD) and the Public Prosecution Service, which have the authority to prosecute individuals or companies for criminal tax offenses under Dutch criminal law. Parties considered to having assisted in tax fraud may also be subject to such treatment.

#### **9. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?**

In practice, CIT and VAT returns are primarily audited when significant amounts are involved or if there are other elements in the return that give the tax authorities a reason to scrutinize it further. Additionally, there are random sampling audits. Historically, the tax authorities sought to audit every taxpayer once every five years, but more recently tax audits have become less often on average. As mentioned under Q4, the tax authorities also target specific industries or risk factors based on current concerns. In an annual plan, the tax authorities also outline the audit priorities scheduled for the upcoming year.

#### **10. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?**

Yes, the rights and obligations of a taxpayer and the rules that the tax authority must adhere to during a tax audit are described in Dutch law and are regulated by the general principles of good governance (*algemene beginselen van behoorlijk bestuur*). These principles have been elaborated in case law and partially codified.

Based on these principles, taxpayers, for example, must be treated equally, and both the taxpayer and tax authorities should be able to interact on an equal footing as much as possible.

The handbook for control procedures and the code of conduct for the tax authorities (*Handboek Controle*) have also been published. This provides insight into the tax authority's conduct rules during tax audits. In addition, the tax authorities in general are subject to general principles of good governance, which include the principles of equality, due care and proportionality.

### **11. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?**

In principle, the tax authorities have the authority to obtain all information and documentation that may be relevant for the assessment of taxes. If a taxpayer believes that certain information does not fall under that obligation, it can refuse to provide this information and wait until the tax authorities issues a decision requiring information (*informatiebeschikking*). Against such an information decree, the taxpayer can object, and if the objection is not followed, file an appeal with the appropriate court which would then determine whether the information is indeed relevant for the assessment of taxes and, therefore, should be provided by the taxpayer or not. If the decision requiring information is not contested on appeal or is affirmed during the appeal process, and if the required information is not subsequently provided within the specified remedy period (if applicable), the burden of proof regarding a tax assessment will, by default, shift to the taxpayer and will become increased. In practice, this increased burden of proof is often perceived as highly challenging, as it is generally difficult to convincingly substantiate one's entire fiscal position.

### **12. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?**

The Dutch tax authorities generally have the power to compulsorily request information from third parties under certain circumstances. This authority is granted to assist in their tax investigations and audits. As under Q11, the tax authorities can request this information if they believe that such information is relevant to determining a taxpayer's tax liability or compliance.

Companies are legally obliged to keep their administration for seven years and can thus be required to cooperate in such a third-party investigation. Such parties have the same rights as regards objection and appeal through an information decree as the taxpayer itself (see Q11).

### **13. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?**

An audit may lead to an additional assessment (*naheffingsaanslag*) – with or without penalties and interest, depending on the reason for underpayment of tax in the first place. Any difference of opinion between the taxpayer and the tax authorities may also be solved through the entering into of a settlement agreement. Alternatively, litigation could follow if the taxpayer does not agree with the additional assessment. If the case is being handled by the Public Prosecution Service, it can be resolved through a transaction (*strafbeschikking*), typically involving the payment of a monetary sum by the taxpayer. A transaction can only be concluded if the maximum penalty that could be imposed for the taxpayer's offense is less than 6 years.

### **14. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?**

As mentioned under Q10, the Dutch tax authorities are bound by fundamental principles of effective governance. In exceptional circumstances, breach of these principles can lead to measures against the tax authorities in appeal procedures. Incorrect treatment by the tax authorities can also be reported to the national complaints investigator (*Ombudsman*). Other than the time limits explained previously, there are no formal time limits that apply to an audit.

### **15. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?**

A taxpayer who disagrees with a tax assessment or an additional tax assessment can file an objection (*bezwaar*) against the tax assessment with the tax authorities. The objection will be reviewed by a different tax inspector than the one who initially issued the tax assessment. The letter of objection should be submitted within six weeks from the date of issuance of the relevant tax assessment or additional tax assessment.

## 16. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

In the Netherlands, the right of appeal in tax procedures typically follows a two-step process:

- i. Objection (*bezwaar*): The first step is the administrative stage, where taxpayers have the right to file a letter of objection with the tax authorities if they disagree with a tax assessment or decision. During this stage, the tax authorities review the objection, and taxpayers may provide additional evidence and arguments to support their case.
- ii. Appeal (*beroep*): If the taxpayer is not satisfied with the outcome of the objection process, they can then proceed to the judicial stage, by filing an appeal with a court.

## 17. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

The objection process is not public, and the decision upon such objection is not published. As a general rule, court proceedings for tax cases are not open to the public, and the court's judgments are published in anonymized form, accessible to the public through online channels. On the other hand, legal proceedings conducted in Dutch criminal courts are typically open to the public.

## 18. Is the procedure mainly written or a combination of written and oral?

The objection procedure consists mostly of written correspondence, although an oral hearing can always be requested. The appeals procedure is a combination of written phases and an oral hearing. It begins with the submission of written arguments and evidence by both parties. Subsequently, an oral hearing would, in principle, be scheduled where the taxpayer and the tax inspector can provide oral testimony and clarify their positions.

## 19. Is there a document discovery process?

In the Netherlands, as explained, the tax authorities can obtain any and all information required to determine the tax position of a taxpayer. In that sense, a document

discovery process can be considered to be in place, but it is not as extensive as the discovery procedures commonly found in some other legal systems such as in the United States. In an appeal procedure, documents can generally be submitted to the court up to ten days prior to the court hearing.

## 20. Are witnesses called to give evidence?

Witnesses can be called to give evidence in legal proceedings in the Netherlands, including tax-related cases. This can occur in writing and/or through giving a statement during a hearing. In cases where the facts play a pivotal role in determining the outcome of the case, the inclusion of witnesses can be of significant value.

## 21. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

In principle, in the Netherlands, the rule 'he who asserts must prove' applies. In this context, a taxpayer must generally be able to prove the position taken in tax returns filed. Under certain circumstances (e.g., if legally required minimum documentation is unavailable, or if an information decree has become final and binding), a reversal and/or increase of the burden of proof can occur, requiring the taxpayer to convincingly prove their position, which in practice represents a very high threshold.

## 22. How long does an appeal usually take to conclude?

The initiation of the objection process with the tax authorities should occur within six weeks from the issuance of the tax assessment. Generally, the Dutch tax authorities aim to render a decision on the objection within six weeks after the conclusion of the aforementioned period. The duration of the judicial appeal phase, initially before the Lower Court (*Rechtbank*), can take up to almost a year.

## 23. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

If a company files an objection or appeal, it is possible to separately request a deferral of payment for the outstanding tax liability and any fines. If the procedure ultimately results in the amount still needing to be paid, interest will be due on this amount. Alternatively,



taxpayers may settle the taxes levied, and receive a repayment thereof if the appeal is followed by the court.

#### **24. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?**

In principle, a taxpayer does not have to be represented by anyone in tax matters. And if represented, a taxpayer can be represented by anyone (not necessarily a (tax) lawyer or attorney). Only during an oral hearing before the Supreme Court, a taxpayer must be represented by a lawyer. In exceptional cases, the tax authorities can refuse a representative, for example, if the tax authorities believe the representative to be incompetent or unreliable.

#### **25. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?**

If a taxpayer prevails in an appeal procedure, a cost reimbursement is granted to the taxpayer based on standard quota which are hardly cost-effective. Only in very special circumstances, the court could grant a request to receive additional or even total cost reimbursement, for example in cases where the taxpayer was forced by the tax authorities to incur high costs due to unnecessary actions from the side of the tax authorities. Conversely, if the tax authorities would prevail in the appeal procedure, usually the taxpayer is not charged with the tax authorities’ costs of the proceedings, unless in case of an abuse of procedural law.

#### **26. Is it possible to use alternative forms of dispute resolution - such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?**

Yes, it is possible to use alternative forms of dispute resolution with the Dutch tax authorities in certain situations, such as voluntary mediation or binding arbitration. However, this is not very common. Before taking a position in tax returns, it is in certain circumstances also possible to engage in a prior consultation (*vooroverleg*) with the tax authorities to establish a ruling that provides certainty regarding a transfer pricing position (Advance Pricing Agreement, **APA**) or other uncertain tax positions (Advance Tax Ruling, **ATR**).

#### **27. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.**

After the first instance appeal process, the taxpayer and the tax authorities have a right of onward appeal before a Court of Appeal (*Gerechtshof*). Both the first instance appeal process and the onwards appeal are both used for questions related to facts, as well as questions related to the application of the law. After the onward appeal, questions related to the application of the law only can be made subject to a final instance appeal before the Supreme Court (*Hoge Raad*).

#### **28. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?**

There are two kinds of administrative penalties and one further form of criminal tax penalty. For omissions, administrative penalties are levied, varying from a warning only to a penalty of max. EUR 1,377 (2024) for taxes based on a self-assessment and EUR 5,514 (2024) for return-based taxes. For (intentional) gross negligence and other forms of offences, a penalty can be levied equal to a percentage of the tax levied, up to 300% of the tax levied. Criminal tax penalties may even include imprisonment, in addition to very substantial monetary tax penalties.

#### **29. If penalties can be mitigated, what factors are taken into account?**

In the Netherlands, penalties imposed by the tax authorities can sometimes be mitigated or reduced if there are so-called penalty reducing facts and circumstances as set out in a decision (*strafverminderende feiten en omstandigheden*). The decision to mitigate penalties is typically based on several factors and considerations, including (i) a disproportionality between the severity of the offense and the penalty to be imposed or imposed under this decision, (ii) mitigating circumstances that led to the punishable act, (iii) if there is a voluntary disclosure under certain circumstances, and (iv) financial circumstances of the taxpayer are also among the circumstances that may warrant mitigating or reducing the imposed or imposed penalty.

**30. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?**

In their annual plan for 2024, the tax authorities

mentioned to conduct random inspections at the target group of medium to large enterprises. These are organizations that meet at least two of the following three criteria: they have more than 50 employees, a turnover of more than €12 million, or assets of more than €6 million. Furthermore, the tax authorities will stay focused on combating VAT fraud.

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