

# Legal 500

## Country Comparative Guides 2024

### The Netherlands

#### Tax Disputes

#### Contributor

Greenberg Traurig LLP



#### Thomas van der Vliet

Shareholder | Chair, Amsterdam Office | Co-Chair, Global Tax Practice |  
thomas.vandervliet@gtlaw.com

#### Jairo Keeldar

Associate | jairo.keeldar@gtlaw.com

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?

Yes, taxpayers must register with the tax authorities separately for corporate income tax (CIT) and value added tax (VAT), if they would be subject to such taxes in the Netherlands. The registration for both these taxes can be done through one single form, and upon incorporation a default registration is usually carried out by the Dutch tax authorities, in conjunction with the registration with the chamber of commerce and based on information shared with the chamber of commerce on behalf of the tax payer.

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

The Netherlands has two systems for determining taxes for a taxpayer: assessment taxes (*aanslagbelastingen*) and self-assessment taxes (*aangiftebelastingen*). For assessment taxes, a taxpayer must file a tax return, which is then usually checked by the tax authorities and followed by an assessment that specifies the tax payable. With self-assessment taxes, the taxpayer files a return and subsequently remits the amount due as indicated on the return filed. These returns and payments stand, unless they are later checked by the tax authorities, and this leads to a correction.

Examples of the Dutch assessment taxes are the CIT and personal income tax. In principle, taxpayers must file a tax return for these taxes once every year.

Some examples of the Dutch self-assessment taxes are the VAT, wage tax and dividend withholding tax. VAT returns, for example, should be filed quarterly, monthly or annually, and must then be paid by the taxpayer.

## 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, penalties and interest may apply under certain conditions.

For VAT returns, a supplementary VAT return (*suppletie-aangifte*) can be filed, within five years. 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 (*naheffingsaanslag*) can be issued under certain circumstances. The taxpayer has the right to object to a reassessment and provide evidence to support their position. An additional assessment should, in principle, be issued within five years after the relevant tax year. However, in certain circumstances, the five-year period is extended to twelve years.

## 5. 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.

## 6. How is tax fraud defined in your law?

According to Dutch law, tax fraud is a form of fraud in which intentionally incorrect or incomplete information is provided to obtain an unlawful tax advantage.

## 7. 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. Under certain circumstances, treatment may be escalated into a criminal investigation carried out by the public prosecutor's office and the tax authorities' investigative unit (FIOD). Parties considered to assist in fraud may also be subject to such treatment. Repercussions include the levying of a penalty but also imprisonment and/or community service.

## 8. 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 certainly become less frequent on average.

## 9. 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. 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.

## 10. 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 an information decree (*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.

## 11. 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?

Yes, the Dutch tax authorities have the power to compulsorily request information from third parties under certain circumstances. This authority is granted to assist in tax investigations and audits. As under Q10, 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 Q10).

## 12. 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 be solved through the entering into of a settlement agreement, which is a reciprocal agreement between tax payer and tax authority. Alternatively, litigation could follow if the taxpayer does not agree with the additional assessment.

## 13. 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?

Incorrect treatment by the tax authorities can, based on the aforementioned principles of good governance, be reported to the national complaints investigator (*Ombudsman*). In addition, courts may deny claims from the tax authority if the case has been pending for too long, based on the European Court of Human Rights' "undue delay" doctrine. Other than the time limits explained previously, there are no formal time limits that apply to an audit.

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

Yes, a taxpayer who disagrees with a tax assessment or additional tax assessment can file an appeal (*bezwaar*) against the tax assessment with the tax authorities. A different tax inspector will consider the appeal. The letter of appeal should be filed within six weeks after the date of issuance of the relevant tax assessment or additional tax assessment.

## 15. 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.

## 16. 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. Court proceedings are public, in principle, and the court's ruling is published in relatively anonymized form and can be accessed by the public online.

## 17. 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 and is usually held. The appeals procedure is a combination of written phases and, usually, an oral hearing.

## 18. Is there a document discovery process?

In the Netherlands, 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.

## 19. Are witnesses called to give evidence?

Yes, 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.

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

In principle, in the Netherlands, the rule 'who asserts, must prove' applies. In this context, the tax authority

would generally have to prove if it does not agree with a position taken by the tax payer in its 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 can in practice sometimes represent a very high threshold.

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

The average duration of a full appeal process is between six months and two years, per instance.

## 22. 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.

## 23. 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). In exceptional cases, the tax authorities can refuse a representative, for example, if the tax authorities believe the representative to be incompetent or unreliable. Only during an oral hearing before the Supreme Court, a taxpayer must be represented by an attorney.

## 24. 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 usually not cost-effective. Only in very special circumstances, the court could grant a request to receive additional or even actual, total cost reimbursement, for example in cases where the taxpayer was forced by the tax authorities to incur very 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.

## 25. 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.

## 26. 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.

Yes, 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 used for questions relating to facts, as well as questions related to the application of the law. After the onward appeal, questions related to the application on the law only can be made subject to a final instance appeal before the Supreme Court (*Hoge Raad*).

## 27. 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 5,514 (2024). 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 penalties.

## 28. 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.

**29. 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 authority refers to its special focus on VAT fraud, quasi-independent contractors (possibly qualifying as employees for social premium and wage tax purposes) and abuse of laws and regulations by 'high-risk networks' which may be focused on fraudulent financial transactions where tax is evaded through artificial schemes.

**30. In your opinion, are there any areas which taxpayers are currently finding particularly**

**difficult to deal with when faced with a challenge by the tax authorities?**

Dutch tax laws have continued to become more complex in recent years. Tax laws introduced decades ago underwent excessive amendments, further affecting the ease with which the taxpayers should be able to understand and apply these rules. Increasingly, taxpayers struggle to get a clear understanding of the issues and aspects that may impact their tax position. In such cases, it can be challenging to determine how to accurately present and, if necessary, defend their position to the tax authorities.

Furthermore, several years ago, the Dutch tax authorities carried out a significant reorganization, which led to the departure of many tax inspectors and other skilled and experienced tax specialists. As a result, some argue that the overall workflow of the tax authorities has increased excessively and, consequently, its effectiveness and handling speed have unfortunately declined.

**31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?**

As mentioned under Q29, the Dutch tax authorities have indicated in their annual plan for 2024 that they will specifically focus on quasi-independent contractors, VAT fraud, and tax evasion involving artificial structures. We expect these areas to be the subject of increased challenges and disputes in the coming year.

## Contributors

**Thomas van der Vliet**

Shareholder | Chair, Amsterdam Office | [thomas.vandervliet@gtlaw.com](mailto:thomas.vandervliet@gtlaw.com)  
Co-Chair, Global Tax Practice



**Jairo Keeldar**  
Associate

[jairo.keeldar@gtlaw.com](mailto:jairo.keeldar@gtlaw.com)

