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# The Legal 500 Country Comparative Guides

## 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?

In principle, companies resident in the Netherlands and foreign companies with an establishment in the Netherlands are required to register with the Trade Register (*Handelsregister*). Domestic companies are generally not required to register with the Dutch tax authorities separately. After a company registers with the Trade Register, the Trade Register passes on the details of the registered company to the Dutch tax authorities. Non-resident taxpayers register with the Dutch tax authorities using the *Aanmelding Onderneming buitenland* form. Non-resident taxpayers can use that form to register with the Dutch tax authorities for corporate income tax, payroll tax, value added tax (“VAT”) and real estate transfer tax.

### 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?

It depends on the type of tax whether taxes are levied on the basis of self-assessment or a return-based tax assessment (the Dutch tax authorities review the tax return and issue a tax assessment). Corporate income tax and personal income tax are levied through return-based tax assessment. Real estate transfer tax, VAT, wage tax and dividend withholding tax, on the other hand, are payable on the basis of self-assessment.

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

Under which conditions taxpayers can amend their filed

tax return depends on the type of tax. A corporate income tax return can be amended only up to the moment the Dutch tax authorities issue a tax assessment with respect to that tax return. On receipt of the tax assessment, the taxpayer can only challenge that assessment. The time limit for such a challenge is generally six weeks (see Q6). With respect to VAT, a taxpayer must, in principle, file a supplementary return (*suppletieaangifte*) if the taxpayer has reported too much or too little VAT, to correct its prior tax returns. However, if the correction is less than €1,000, the correction may generally be made in the next VAT return instead.

### 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.

With respect to taxes levied through return-based tax assessment, the Dutch tax authorities are in principle required to issue an assessment within three years after the end of the relevant tax year. This is the Dutch tax authorities' first opportunity to correct the amount of tax payable calculated in the tax return. The Dutch tax authorities may furthermore issue an additional tax assessment. This additional tax assessment should, in principle, be issued within five years after the relevant tax year (in certain circumstances, notably in relation to foreign income, the five-year period is extended to twelve years). A 'qualifying new fact' must be present for an additional tax assessment to be issued. This is not required, however, if the taxpayer has acted in bad faith. There are also specific rules for particular circumstances under which the Dutch tax authorities may impose an additional tax assessment on a taxpayer, such as in the case of a 'manifest error' (*kenbare fout*) in the (final) assessment or in specific situations related to disclosed DAC6 information.

With respect to taxes levied based on self-assessment, the Dutch tax authorities can challenge the amount of tax paid by issuing an additional tax assessment within

five years after the year in which the taxable event occurred. The additional requirements of a 'qualifying new fact', bad faith or other particular circumstances do not apply to additional tax assessments issued in respect of taxes levied based on self-assessment.

### 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?)

A taxpayer who is not yet known to the Dutch tax authorities should register with the Dutch Trade Register and/or the Dutch tax authorities (see Q1). In principle, not being registered with the Dutch tax authorities does not prevent the Dutch tax authorities from issuing an (additional) tax assessment to the taxpayer.

### 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)?

With respect to taxes levied through return-based tax assessment, the 'original' tax assessment should, in principle, be issued within three years after the end of the relevant tax year. An additional tax assessment should, in principle, be issued within five years after the end of the relevant tax year (under circumstances, notably in relation to foreign income, this period may be extended to twelve years). Please note that if the Dutch tax authorities grant an extension for filing the relevant tax return, the extension is added to the three-year term and five-year term, respectively.

With respect to taxes levied through self-assessment, an additional tax assessment should, in principle, be issued within five years after the year in which the taxable event occurred.

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

'Tax fraud' is not explicitly defined in legislation. However, the following acts or omissions are, among others, generally considered tax fraud and punishable by law if they result in an underpayment of tax:

- willfully failing to file a (correct) tax return as required by law, or willfully failing to do so in a timely manner;

- willfully failing to provide, or incorrectly or incompletely providing, information, data or other evidence which a person is required to provide by law;
- willfully not making available for inspection books, records or other data carriers, or their contents, or making them available for inspection in false or falsified form, if a person is required to make them available by law;
- willfully not keeping books, records or other data carriers, if a person is required to do so by law, or willfully not cooperating with the tax inspector inspecting such books, records or other data carriers that must be kept; and
- willfully issuing an incorrect or incomplete invoice or bill, if a person is required to issue an invoice or bill by law.

### 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 audits or administrative tax procedures may trigger (criminal) investigations into a taxpayer's affairs which may result in a punitive fine and in a worst case scenario in criminal investigations. The Fiscal Investigation and Inspection Service (*Fiscale inlichtingen- en opsporingsdienst*; "**FIOD**") is the authority that generally investigates and combats criminal tax fraud. If there is a suspicion of tax fraud, the Dutch tax authorities themselves may also handle the case and may issue an administrative penalty. In more serious cases, and provided certain conditions are met, the case is generally not handled by the Dutch tax authorities, but rather by the FIOD and the Public Prosecution Service (*Openbaar Ministerie*). The latter is authorized to prosecute the citizen or company for a criminal tax offence. Guidelines on whether cases are subject to administrative or criminal prosecution are set out in the Guidelines for the Registration and Handling of Tax Offences (*Richtlijnen aanmelding en afhandeling fiscale delicten*). For example, a relevant indicator is whether the loss for the State is greater than EUR 100,000. Embedded in Dutch law is the 'una via principle', which generally protects taxpayers against double sanctioning. In other words, a taxpayer's tax offence should be handled either by the Dutch tax authorities by means of an administrative procedure or by the Public Prosecutor Service by means of criminal proceedings. The Dutch tax authorities may also exchange information with tax authorities of other countries to detect tax fraud.

Penalties for tax offences (*vergrijpboetes*) and criminal penalties may also be imposed on aiders and abettors,

which, for the avoidance of doubt, can include a tax advisor. In addition, penalties for tax offences imposed on advisors in respect of aiding or abetting in relation to tax avoidance or fraud in respect of allowances may be made public on the website of the Dutch tax authorities since 1 January 2020.

### **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?**

Tax audits of the Dutch tax authorities may focus on a variety of taxpayers, from individuals (i.e. personal income tax, inheritance tax), to small-sized business (i.e. income tax, VAT), to large companies (i.e. corporate income tax, VAT, withholding taxes, wage taxes). It is up to the Dutch tax authorities to decide whether or not to initiate a tax audit. The Dutch tax authorities have certain areas of focus in this regard. Within the group of individuals, for instance, very high net worth individuals (with assets in excess of EUR 25 million) are a specific area of attention. With respect to large companies, combating and preventing tax avoidance and transfer pricing are important areas of focus. The Dutch tax authorities often also announce certain themes of focus in the *Jaarplan* (Annual Plan). The focus areas referred to in the *Jaarplan 2022* include VAT carousel fraud and abuse through liquidating a company via a simplified procedure (turbo liquidations). Sometimes, a standard audit policy is applied to certain sectors, such as auditing taxpayers in that sector once every few years.

The decision of whether to initiate a tax audit is driven by various factors, such as the (tax) attitude and behaviour of the relevant taxpayers, information derived through company interviews and samples, or information from third parties. Based on these factors (among others), a risk analysis is made to determine whether a tax audit will be carried out. In certain situations, the risk of a tax audit can be mitigated by means of pre-consultation (i.e. by having pre-empting discussions that would otherwise be conducted after the fact) with the Dutch tax authorities or by applying for an advance tax ruling (ATR) or advance pricing agreement (APA).

Together with the *Jaarplan 2022*, the State Secretary of Finance published a research report on retrospective supervision. The report focuses on the years 2016-2021. The report shows that the annual number of tax audits has dropped significantly, with a gradual decline each year. In 2016, the number of tax audits of small and medium-sized enterprises (SMEs) was 27,013. In 2021, there were only 6,519 tax audits in this group (a 75% drop), even though the number of SMEs increased during

that period. With respect to large enterprises, the number of tax audits was 917 in 2016 and 454 in 2021 (a 50% drop). The number of large enterprises remained largely the same during that period.

The Dutch tax authorities may conduct tax audits only in so far as they may be important in establishing the facts that may influence the levy of tax. The Dutch tax authorities must furthermore abide by the principles of good governance (see Q10) in conducting a tax audit.

### **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?**

The conduct of the Dutch tax authorities in relation to taxpayers is regulated by the general principles of good governance (*algemene beginselen van behoorlijk bestuur*). These general principles therefore also apply when the Dutch tax authorities carry out a tax audit. These principles include the principle of protection of legitimate expectations (*vertrouwensbeginsel*), the principle of equality (*gelijkheidsbeginsel*), the principle of due care (*zorgvuldigheidsbeginsel*), the fair play principle (*fair play beginsel*) and the principle of proportionality (*evenredigheidsbeginsel*). Violation of the general principles of good governance can have legal consequences, depending on the principle and the circumstances of the case (for example, the violation may lead to a lower tax assessment or a reduction of interest due).

The Tax Audit Manual (*Handboek Controle*) published by the Dutch tax authorities provides guidelines for tax inspectors regarding the review of tax returns, tax audits, etc. The Tax Audit Manual also includes a code of conduct for auditing officers.

### **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?**

The Dutch tax authorities have the authority to request taxpayers to provide any information for the purpose of or related to the imposition of correct tax assessments. The mandatory disclosure requirement applies to all kinds of information, provided that it is relevant to correct taxation; it may therefore also extend to e-mails. The only information that is exempt from this disclosure requirement is information covered by attorney-client privilege (such as e-mails to and from the company's

attorney). If a taxpayer fails to comply with the mandatory disclosure requirement, the tax inspector will issue a 'decision requiring information' (*informatiebeschikking*) to the taxpayer. The taxpayer may object to this decision through the regular administrative appeal procedure, followed by the judicial appeal proceedings (see Q15, Q16 and Q27). If the decision is not appealed, or is upheld in the appeal proceedings, and if the information is not subsequently provided in the remedy period (if applicable), the burden of proof in respect of a tax assessment will, in principle, be increased and reversed to the taxpayer.

### **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 mandatory disclosure requirement described above (Q11) may also apply to third parties with respect to the taxation of other taxpayers. This is the case if tax law classifies matters of the taxpayer as matters of that third party (e.g. in case of tax partners (e.g. spouses) or income of minors that must be declared by the parent). In addition, with respect to the taxation of other taxpayers, the mandatory disclosure requirement applies in general to third parties that are required to keep records by law (*administratieplichtigen*). Companies, among others, are required, in principle, to keep records. If a third party is subject to the mandatory disclosure requirement, that third party has the same obligations and rights as the taxpayer (see Q11). Attorney-client privilege also exempts information from this third party mandatory disclosure requirement. The law also explicitly states that third parties are required to provide access to data carriers (and their contents) that another party is required to keep.

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

The Dutch tax authorities and the taxpayer may settle a tax dispute by entering into a settlement agreement (*vaststellingsovereenkomst*). The settlement agreement is a Dutch civil law agreement governed by the general principles and provisions of the Dutch Civil Code. In principle, a settlement agreement is binding on both parties. Settlement agreements generally include provisions on the grounds of which the parties agree and acknowledge to refrain from conducting or continuing any further administrative or judicial proceedings.

The Public Prosecution Office may opt to settle a tax

criminal case by means of a transaction (*strafbeschikking*), whereby the taxpayer is generally required to pay a sum of money to the Dutch treasury and/or to fulfil one or more financial or other conditions. A transaction may be offered if the crime carries a statutory prison sentence of less than six years. Guidelines on the offering of transactions exist in an effort to mitigate arbitrariness and create uniformity with respect to the cases that are settled through transactions.

### **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?**

In principle, no time limit applies to the finalisation of a tax audit, but the Dutch tax authorities must of course take into consideration the time limits for imposing a tax assessment (see Q6). Furthermore, the Dutch tax authorities must abide by the general principles of good governance (see Q10). These principles also include the principle of due care (*zorgvuldigheidsbeginsel*). The principle of due care safeguards a careful and prudent decision-making process and enforcement of decisions taken by the Dutch tax authorities. The impact of the principle of due care is usually limited, but there is a clear trend in taxpayers relying on this principle. Violation of the principle of due care generally does not lead to annulment of the contested assessment. In principle, reliance on the principle of due care will result in more far-reaching measures (such as the exclusion of information from the judicial proceedings) only in particular circumstances in which the Dutch tax authorities have acted very carelessly (e.g. misuse of audit powers). According to case law, complaints such as carelessness in the gathering of information from third parties involved, inadequate communication regarding procedural consequences, and slow or inaccurate issue of the tax assessment may result in a reduction in interest due. The principle of due care may be relied on in the administrative or judicial appeal proceedings.

### **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 may file an 'administrative appeal' (*bezwaar*) against the tax assessment. The appeal must be filed within six weeks after the tax assessment is issued.

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

An appeal against a tax assessment must be filed with the Dutch tax authorities (i.e. an administrative body). The administrative appeal will be handled by a tax inspector other than the one who imposed the disputed tax assessment. The aim of the administrative appeal is a reconsideration of the tax assessment. The administrative appeal is finalised with a decision of the Dutch tax authorities, which the taxpayer may challenge before a court (judicial appeal). In the first instance, the case is handled by a Lower Court (*Rechtbank*) (see also Q27). The judicial appeal must be filed within six weeks after the decision on the administrative appeal. The taxpayer must pay a court registry fee to initiate the judicial appeal. Under certain circumstances, the taxpayer and the Dutch tax authorities may agree to skip the administrative appeal procedure. This is not common practice, however.

### 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 administrative appeal phase takes place 'behind closed doors'. The taxpayer may request a hearing during the administrative appeal phase. That hearing is not open to the public. The decision on administrative appeal is not published either.

A court hearing generally takes place in the judicial appeal phase. This court hearing is in principle also not open to the public. The court's decision may be published on a website in anonymized form.

Please note that criminal tax offences are dealt with by the Dutch criminal courts. In principle, hearings in the criminal courts are conducted in public (certain exceptions do apply).

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

In principle, the procedure in both the administrative appeals phase and the judicial appeals phase is a combination of written and oral. The hearing in de administrative appeal phase must be requested by the taxpayer; the hearing in the judicial appeal phase generally takes place, but may be skipped with both parties' consent. The greater focus in both procedures is

generally on the written part of the procedure.

### 19. Is there a document discovery process?

There is no separate formal document discovery process in tax cases. In the administrative appeal phase, the Dutch tax authorities have the authority to request information from the taxpayer (see Q11). The taxpayer, on the other hand, is in principle entitled to inspect all documents relating to the case that are in the possession of the Dutch tax authorities.

In the judicial process, documents can be submitted in the written phase of the proceedings. Documents may generally be submitted up to ten days before the court hearing (sometimes documents submitted earlier may be inadmissible or may be admissible submitted at a later stage, depending on whether introducing such documents at that stage of the process is contrary to due process of law).

### 20. Are witnesses called to give evidence?

In both the administrative appeal phase and the judicial phase, the taxpayer may introduce witness evidence in the form of a written witness statement or oral statements during a witness hearing. Whether witness evidence is relevant in a certain case generally depends on the tax question pending. If the case deals particularly with the interpretation of tax law, there is often little need to involve witnesses in the case (unless, for example, the opinion of an expert witness may be helpful). On the other hand, in very factual cases, witnesses may be helpful to support a case, especially in situations where the burden of proof is on the taxpayer. The Dutch tax authorities may also introduce witness evidence in the judicial phase.

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

Which party bears the burden of proof depends on the case. However, under the main rule, the burden of proof is generally on the taxpayer if the taxpayer is claiming a deduction or an exemption; on the other hand, it is generally up to the Dutch tax authorities to underpin the plausibility of an upward correction. With regard to fines and other penalties, the burden of proof is always on the Dutch tax authorities.

### 22. How long does an appeal usually take

### to conclude?

The administrative appeal procedure should be initiated within six weeks after the tax assessment is issued. In principle, the Dutch tax authorities' decision on the administrative appeal should be issued within six weeks after the end of the administrative appeals term (i.e. twelve weeks after the tax assessment is issued). This term may be extended, however.

The processing time of the judicial appeal phase in the first instance, before the Lower Court (*Rechtbank*), may take from 12 to 42 weeks. The processing time of tax cases in the second instance, before the Court of Appeal (*Gerechtshof*), and in last instance, before the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*), is generally longer and may take over a year.

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

An appeal against a tax assessment does not automatically postpone the taxpayer's payment obligation with respect to that tax assessment. However, the taxpayer may request postponement of payment if the taxpayer files an appeal. The Dutch tax authorities generally grant the postponement of payment. Depending on the circumstances, postponement of payment may be conditional: in certain cases, for instance, the Dutch tax authorities may require security from the taxpayer to safeguard the payment of the tax assessment in the future.

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

It is not required that a lawyer or tax adviser represents the taxpayer during the proceedings. The taxpayer may represent itself or choose to be represented by another person, who may be, but need not be, a lawyer or a tax advisor. It is only required for the taxpayer to be represented by a lawyer if the taxpayer wants to plead its case orally in the appeal in the last instance before the Supreme Court.

### 25. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

In the administrative appeal proceedings, the Dutch tax authorities do not charge costs for handling the appeal.

During those proceedings, the taxpayer may request reimbursement of the costs incurred in relation to the administrative appeal. Such a request is granted only if certain conditions are met (e.g. when the Dutch tax authorities have made a culpable mistake and revise their initial tax assessment). The standard reimbursement of costs is EUR 261 (2022), but may vary depending on the complexity of the case.

In the judicial appeals proceedings, the taxpayer is required to pay a court registry fee at the beginning of the proceedings. The amount of the registry fee varies from EUR 50 to EUR 548 (2022), depending on the nature of the taxpayer, the subject matter and the instance of the appeal. In general, if the tax court rules in favour of the taxpayer, the costs of the proceedings incurred by the taxpayer are eligible for reimbursement. This reimbursement is generally based on standardized amounts and is usually not cost-effective. Under special circumstances, on request, the tax court may grant additional or total cost reimbursement (e.g. if the taxpayer incurred high costs due to careless actions of the tax inspector). In principle, the taxpayer is not ordered to pay the costs of the proceedings unless the tax court rules that there has been 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?

There are several alternative dispute resolution ("ADR") mechanisms in the Netherlands to resolve tax disputes between taxpayers and the Dutch tax authorities. In addition, there are also mechanisms to prevent tax disputes after the fact. These preventative actions include prior consultation with the Dutch tax authorities (*vooroverleg*), possibly in combination with applying for an advance tax ruling or advance pricing agreement. The Dutch tax ruling practice essentially brings forward a (potential) uncertainty on the interpretation of Dutch tax law, before the event or transaction relating to the uncertainty. In certain circumstances taxpayers also have the possibility of entering into a "horizontal monitoring" (*horizontaal toezicht*) agreement with the Dutch tax authorities. Such an arrangement serves to have a transparent and open relationship with the Dutch tax authorities, in which relevant issues are discussed on a real-time basis to enhance compliance in an efficient way. The Dutch ruling practice and horizontal monitoring agreements may to some extent be regarded as ADR mechanisms, as these arrangements offer an instrument to settle on potential uncertainties with the DTA at an

early stage.

Other ADR mechanisms, such as mediation and arbitration, generally concern tax disputes 'after the fact'. Taxpayers may initiate mediation at any stage of a tax controversy or dispute. However, not all disputes are suitable for mediation. Most suited are matters that do not (exclusively) relate to the interpretation of the law, but merely involve the personal relationship between parties, where intervention by a third and independent party can offer solace (e.g. when a taxpayer is upset about how he was treated during a tax audit). If mediation is effective, the parties enter into a binding settlement agreement. If regular administrative or legal proceedings have already been started, those proceedings resume solely with regard to the unresolved issues.

A mutual agreement procedure (MAP) and arbitration may be possible in cases concerning double taxation. Most Dutch tax treaties provide for a MAP and an increasing number of Dutch tax treaties also provide for (binding) arbitration if the MAP does not provide a solution. In addition, the Netherlands has implemented the EU Arbitration Convention and the EU Tax Dispute Resolution Mechanisms Directive in the Tax Arbitration Act (*Wet fiscale arbitrage*) since 1 July 2019. Under this Act, the taxpayer may request the Netherlands in double taxation situations to enter into a MAP with the other jurisdiction concerned and, if necessary, subsequent arbitration proceedings. Strictly speaking, such proceedings do not directly, or formally, involve the taxpayer; the taxpayer is an interested party to the proceedings between the jurisdictions involved.

As set out above (Q13), taxpayers and the Dutch tax authorities may also settle a tax dispute by entering into a settlement agreement (*vaststellingsovereenkomst*) without the involvement of a third party.

### **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 administrative appeals procedure, the taxpayer may lodge a judicial appeal (see also Q16). The judicial system consists of three judicial levels of tax courts: in the first instance the Lower Court (*Rechtbank*), in the second instance the Court of Appeal (*Gerechtshof*) and in the final instance the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*).

The Lower Court and the Court of Appeal decide on questions relating to the facts of the case as well as the

underlying questions related to the interpretation of the law. The proceedings in the final instance are of a different nature: the parties only have the opportunity to challenge the explanation or interpretation of the law as it has been applied by the Court of Appeal. The Supreme Court is not a fact-finding court, but determines whether the law has been breached or whether the decision is incomprehensible or inadequately motivated.

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

The Dutch State Taxes Act (*Algemene wet inzake rijksbelastingen*) provides for different types of tax penalties: two types of administrative penalties and one category of criminal tax penalties. In the administrative penalty category, administrative penalties for omissions (*verzuimboetes*) and negligence penalties for tax offences (both acts and omissions) involving intentional acts or gross negligence (*vergrijpboetes*) can be distinguished. Penalties for omissions may relate, for instance, to late filing or late payment. The maximum amount of these fines is an absolute sum not exceeding EUR 5,514 (2022). Penalties for tax offences may relate, for instance, to failure to pay taxes in a timely fashion or file tax returns correctly. In principle, fines for these offences amount to a maximum of 100% of the tax not levied due to intent or gross negligence of the taxpayer. However, in the event of undeclared income from savings or investments for personal income tax purposes, the fine may be increased to a maximum of 300%. Criminal tax penalties can be imposed in respect of serious infringements (*ernstige overtredingen*), such as failure to provide the Dutch tax authorities with the requested information, and for criminal conduct (*misdriften*), for instance in the event of deliberate failure to file a (correct) tax return (see also Q7 and Q8). The maximum penalty for criminal tax offences is imprisonment for a maximum of six years or a maximum fine of the higher of (i) EUR 90,000 (2022) or (ii) the underpaid tax.

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

There is guidance with regard to imposition of administrative penalties by the Dutch tax authorities (*Besluit bestuurlijke boeten belastingdienst*), which includes mitigating and aggravating circumstances to be taken into account with respect to the amount of the penalty. Mitigating circumstances may include (i) voluntary disclosure, (ii) whether or to what extent the



taxpayer has taken measures to prevent the non-compliance or tax offence, or (iii) the taxpayer's financial circumstances. Please note that the tax court is not bound by the rules set out in the guidance: the tax court should independently assess whether the penalty imposed is appropriate, given the specific circumstances of the case.

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

The Dutch tax authorities have pointed out in their annual plan 2022 that their focus in the enforcement of tax laws will be on areas including combating tax fraud, such as VAT carousel fraud, fraud in relation to COVID-19 support measures and abuse through liquidating a company via a simplified procedure (turbo liquidations). In addition, a fair share of litigation in respect of cross-border situations comes from transfer pricing issues.

### 31. 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?

Tax disputes increasingly concern open standards in tax legislation. These matters are generally difficult to deal with, as guidance and legal certainty in these areas are very limited. From a more procedural point of view, taxpayers generally find it more difficult to deal with a tax dispute when faced with a challenge by the tax authorities if the taxpayer does not have a well-established relationship with the Dutch tax authorities. It generally helps if the taxpayer has historically had, and continues to have, an open and good relationship with the Dutch tax authorities. This generally increases the taxpayer's chances of settling the tax dispute in the early stages.

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

The developments due to the changed international tax environment following the BEPS project and the implementation of the EU initiatives against tax avoidance is likely to prompt more active enforcement by tax authorities. In addition, it is expected that the share of withholding tax issues will increase in the coming years, prompted by EU case law from the European Court of Justice regarding the concept of beneficial ownership and tax avoidance (such as the "Danish cases" of 26 February 2019) and (potential) future EU legislation to be implemented (such as ATAD3).

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