

Netherlands

Frank Pötgens, Ingrid Mensing and Mats Cornelisse

De Brauw Blackstone Westbroek NV

Overview

1 What is the relevant legislation and who enforces it?

The relevant legislation is enforced by the Dutch Revenue Service (DRS) and the Dutch tax judiciary. The relevant legislation is found in:

- the Dutch constitution, which requires all taxes to be levied by statute (principle of legality);
- the General Administrative Law Act (GALA) and General Taxes Act (GTA), which deal with the procedure for the assessment of taxes and access to the Dutch tax judiciary. In this respect, the GTA takes precedence over the GALA as the GTA functions as a *lex specialis* in relation to the GALA;
- various specific statutes on (corporate) income tax, wage and dividend withholding tax as well as other taxes; and
- the Collection of Taxes Act, which deals with the collection of Dutch taxes, including secondary liability for Dutch taxes.

2 Other than legislation, are there other binding rules for taxpayers and the tax authority?

Beyond legislation, rules governing the assessment and collection of Dutch taxes are found in:

- multilateral and unilateral treaties, notably double taxation agreements;
- EU law instruments, including directives, regulations and case law of the Court of Justice of the European Union (CJEU);
- case law of the Dutch tax judiciary, specifically from District Courts, Appellate Courts and the Supreme Court of the Netherlands; and
- administrative guidance from the DRS, which is (in contrast to the preceding instruments) not binding on a Dutch taxpayer or withholding agent but only on the DRS.

3 How is the tax authority organised?

The DRS forms part of the Ministry of Finance and falls under the responsibility of the Secretary of Finance. The Secretary of Finance appoints the directors responsible for the management of the DRS. The DRS is divided into the following divisions:

- DRS for individuals, SMEs, MNEs and semi-massive processes;
- DRS for customs;
- DRS central administration and the Tax Intelligence and Investigation Service;
- DRS for income-based allowances; and
- DRS for several executive services.

The DRS is geographically organised. The place of the economic activity of the taxpayer determines which local DRS office has authority. Each region has one or more local DRS offices that are open to taxpayers. Also, specific expertise within the DRS is geographically concentrated.

Enforcement

4 How does the tax authority verify compliance with the tax laws? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

For practical reasons, the DRS does not scrutinise each tax return submitted. Based on a risk analysis, only a (relatively) small number of tax returns are scrutinised. Each year the DRS publishes the number of tax returns that

have been reviewed and the number of tax audits conducted. The DRS can avail itself of several measures to scrutinise a tax return, including:

- a tax audit: usually an audit commences with a letter from the DRS to the taxpayer in which the audit is announced. The taxpayer and the DRS may agree in advance on the scope, duration and the officials involved with the audit. A tax audit is labour-intensive and its duration varies on a case-by-case basis. Therefore, tax audits usually only take place where there are indications of non-compliance or fraud. Investigation methods employed are, among others, data comparison, statistical analysis, random checks and forensic accounting; and
- an exchange of information upon request by the DRS, either during its review of a tax return or before imposing a tax assessment: while disclosure in most cases requires a prior request for information by the DRS, a taxpayer is in a limited set of circumstances required to spontaneously disclose information to the DRS.

An alternative to verifying compliance is 'horizontal monitoring'. The DRS and certain taxpayers may enter into a horizontal monitoring covenant and develop an enhanced relationship in which they cooperate on the basis of mutual trust and understanding. As part of this enhanced relationship, the DRS and the taxpayer often include compliance provisions, such as a tax control framework.

5 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

In principle, taxpayers are not subject to different reporting requirements. Obviously, the applicable reporting requirements differ depending on the specific Dutch tax involved, specifically whether the Dutch tax is levied by self-assessment or on the basis of a tax return. For example, corporate entities are required to attach their annual report, including the balance sheet and profit and loss account, to their corporate income tax return.

6 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

In accordance with the GTA, taxpayers are required, upon request by the DRS, to disclose all information that may be relevant for the levy of Dutch taxes in respect of them as well as all books, documents, records and other data carriers that may reveal facts that in turn may be relevant for the levy of Dutch taxes in respect of them. The disclosure obligation applies to individuals, entrepreneurs and corporate entities irrespective of whether they are domestic or foreign taxpayers. Employees are not obliged to provide the DRS with information about their employer.

7 What actions may the agencies take if the taxpayer does not provide the required information?

Non-compliance with a request for disclosure by the DRS may result in:

- the burden of proof being shifted from the DRS to the taxpayer and being increased, requiring the taxpayer to demonstrate convincingly that any subsequent tax assessment is incorrect. The burden of proof is shifted and increased only if the DRS has issued a decision holding the taxpayer to be non-compliant and such decision has become irrevocable (due to expiry of the statutory period for filing an objection or the exhaustion of legal remedies against the decision);

- a default or culpability penalty being imposed (see question 12); or
- preliminary relief proceedings being initiated by the DRS before a civil court judge, where the DRS would request disclosure of the information requested subject to a judicially imposed penalty for non-compliance.

8 How may taxpayers protect commercial information, including business secrets, from disclosure?

In principle, a taxpayer is not allowed to refuse disclosure of information requested by the DRS by invoking any legal privilege. The taxpayer remains required to disclose such information, even if disclosure may result in a criminal charge being brought against him or her. However, persons exercising certain functions, eg, clergy, attorneys, physicians and civil law notaries, may refuse disclosure of information concerning the taxation of a third party pursuant to a professional duty of confidentiality. Coupled with the professional duty of confidentiality, these persons are accorded legal privilege. It is for these persons to determine which information falls under their legal privilege and which information is disclosed to the DRS.

9 What limitation period applies to the review of tax returns?

The DRS may review a tax return within the statutory limitation period for issuance of a supplemental tax assessment for that return. This statutory limitation period is in principle five years for self-assessment taxes and return-based taxes, starting from the end of the calendar year to which the relevant tax return relates. However, the statutory limitation period is extended for return-based taxes from five years to 12 years if the supplemental tax assessment relates to income from foreign sources. This extension may, under certain circumstances, infringe EU law.

The five-year and 12-year statutory limitation periods for return-based taxes are extended further with the period for which the taxpayer has requested and received an extension for filing its tax return. The five-year statutory limitation period for self-assessment taxes is not so extended.

Furthermore, the statutory limitation period may be extended in cases where too little tax was initially levied by the DRS due to an error that could have reasonably been known by the taxpayer. In this case, the extension is limited to a period of two years after the moment when, if no tax assessment was imposed, the decision was taken not to impose a tax assessment or, if a tax assessment was imposed, it was imposed.

10 Describe any alternative dispute resolution (ADR) or settlement options available.

In principle, a conflict between the DRS and a taxpayer can solely be settled through the general administrative law procedures. As an alternative dispute resolution mechanism, however, mediation may be available in cases where a taxpayer and the DRS have entered into a horizontal monitoring covenant (see question 4). Because such a covenant is a legal act under Dutch private law, the general administrative law procedure usually available to a taxpayer is not applicable in situations of horizontal monitoring. Mediation may be suitable if conflicts arise in such situations.

11 How may the tax authority collect overdue tax payments following a tax review?

The DRS may collect any amount of Dutch taxes formally due mainly through two alternative methods. These methods do not differ depending on whether or not collection is sought following a tax review.

First, the DRS is authorised to use all the means available to a creditor under Dutch private law to collect Dutch taxes on the basis that the amount formally due represents a receivable of the DRS. For example, the DRS may attach a taxpayer's property or, in a limited set of circumstances, pierce a taxpayer's corporate veil. If a third party has curtailed the collection possibilities of the DRS, the DRS may even claim damages (in the amount of the Dutch taxes formally due) from the third party for having curtailed tax collection possibilities.

Second, the DRS has specific authorisation to collect Dutch taxes on the basis of the Collection of Taxes Act. This authorisation allows the DRS to more easily collect Dutch taxes than a regular creditor is able to do under Dutch private law, eg, by more easily attaching a taxpayer's property. Also, this authorisation extends the collection possibilities of the DRS beyond those of a regular creditor, eg, holding the directors of a corporate entity secondarily liable for the amount of Dutch taxes due by this entity or seizing property that is present on the taxpayer's premises without belonging to the taxpayer.

12 In what circumstances may the tax authority impose penalties?

The DRS may impose an administrative penalty on a person who committed an offence under Dutch tax law. The DRS may impose a penalty on a taxpayer who:

- failed to file, or to file on time, any tax return or to pay in full, or to pay on time, self-assessment taxes; or
- failed to disclose information to the DRS that it is required to disclose (in each case, a default penalty).

In addition, the DRS may impose a penalty on a taxpayer or withholding agent who:

- intentionally filed an incorrect or incomplete tax return;
- intentionally or grossly negligently reported less than the amount of taxes formally due;
- intentionally or grossly negligently failed to pay in full, or to pay on time, self-assessment taxes; or
- intentionally or grossly negligently failed to disclose information to the DRS that it is required to disclose spontaneously (in each case a culpability penalty).

For a culpability penalty, the DRS has the burden of proof of demonstrating (by making a plausible case) that the taxpayer had a culpable state of mind at the time when it committed the offence. The requisite culpability involves intent or gross negligence.

Further, the DRS may impose a default or culpability penalty on a person who, while not being a taxpayer:

- co-committed the offence with the taxpayer;
- instigated or incited commission of the offence; or
- (only in respect of a culpability penalty) acted as an accessory to or in commission of the offence.

13 How are penalties calculated?

The maximum amount of a Default Penalty is fixed and ranges from €131 to €5,278 (in 2015), depending on the specific offence committed. The amount actually imposed may be less as a result of mitigating circumstances, which the DRS is required to consider when imposing a default penalty. The amount of a culpability penalty is fixed as a percentage of the amount of Dutch taxes which are deficient as a consequence of the offender's intent or gross negligence, with the maximum being 100 per cent. As a starting point, the DRS generally assesses a culpability penalty at 50 per cent for offences being committed intentionally and at 25 per cent for offences being committed grossly negligently.

14 What defences are available if penalties are imposed?

Generally speaking, four defences are available against a default and culpability penalties. These penalties may not be imposed or may be mitigated in case of:

- a defensible position – a default penalty or culpability penalty is not imposed if the offence results from a position that the taxpayer has taken but that is defensible, on the basis of current case law and literature, to such an extent that the taxpayer could reasonably consider to have acted in accordance with Dutch tax law;
- absence of all guilt – a default penalty or culpability penalty is not imposed if an offence under Dutch tax law occurs while the taxpayer has taken all precautionary measures that could reasonably have been required in the case at hand to prevent this offence;
- mitigating circumstances; or
- voluntary disclosure (see question 21).

15 In what circumstances may the tax authority collect interest and how is it calculated?

The DRS charges simple interest on the amount of underpaid taxes at an annual rate of 8.05 per cent for corporate income tax and at an annual rate of 4 per cent for all other Dutch taxes (in 2015) between the period from the close of the relevant taxable year up to the date of the assessment for these taxes, with no interest accruing during the first six months.

In addition, the DRS charges simple interest on the amount of Dutch taxes for which the payment terms have lapsed, at an annual rate of 4 per cent for all Dutch taxes (in 2015) between the period from the lapse of the payment terms for a tax assessment up to the date of each payment, until the tax assessment is settled in full.

16 Are there criminal consequences that can arise as a result of a tax review?

A tax review may result in criminal consequences as a matter of general Dutch criminal law or Dutch tax criminal law. For purposes of Dutch tax criminal law, a taxpayer may be subject to (figures for 2015):

- a maximum of six months' imprisonment or a fine of up to €8,100 for the intentional failure to disclose information, to maintain books and records or to cooperate with a review by the DRS, or for only doing so incorrectly or incompletely;
- a maximum of four years' imprisonment or a fine of up to €20,250 (or, if higher, the amount of underpaid Dutch taxes) for the intentional failure to file a Dutch tax return on time or to correctly and completely disclose information to the DRS; or
- a maximum of six years' imprisonment or a fine of up to €81,000 (or, if higher, the amount of underpaid Dutch taxes) for the intentional filing of an incorrect or incomplete Dutch tax return or forgery of its books and records.

Further, a taxpayer who committed an offence under Dutch tax criminal law may be subject to a criminal penalty in respect of, for example, forgery or money laundering if the offence under Dutch tax criminal law is considered separate and distinct from the offence under general Dutch criminal law. The criminal penalty for forgery of documents is a maximum of six years' imprisonment or a fine of up to €81,000 (in 2015). Subject to aggravating and mitigating circumstances, the criminal penalty for money laundering is a maximum of four years' imprisonment or a fine of up to €81,000 (in 2015).

17 What is the recent enforcement record of the authorities?

Subject to limited exceptions, the DRS is disallowed from disclosing to any other person information that it has obtained as a result of or in connection with the enforcement of Dutch tax law, beyond what is necessary for the proper assessment and collection of Dutch taxes. Accordingly, the DRS's enforcement record is not available publicly.

Third parties and other authorities

18 Are third parties involved in the authority's review of tax returns and what rights do taxpayers have with respect to their involvement?

When the DRS reviews a tax return, it does not involve third parties as part of its review. Accordingly, Dutch tax law does not afford a taxpayer any particular rights with respect to third-party involvement in the review of a tax return. However, the DRS is allowed to base its review of a tax return on the information provided by certain third parties. These third parties include Dutch resident corporate entities, Dutch resident individuals who carry on a business enterprise and Dutch resident individuals who are withholding agents for Dutch taxes.

19 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Dutch government authorities are required, upon request from the DRS, to exchange information for purposes of the assessment and collection of Dutch taxes. Conversely, the DRS may disclose information to other Dutch government authorities to the extent necessary for the proper performance of such government authority's duty.

At the international level, the Netherlands has concluded tax information exchange agreements with over 30 countries worldwide (as of 2015), which typically allow for exchange of information upon request. In addition, the Netherlands has concluded comprehensive double taxation agreements with over 100 countries worldwide (as of 2015), which include (with some variations) the OECD Model Treaty standard for exchange of information. The Netherlands recently has begun to seek incorporating spontaneous and automatic information exchange in its other bilateral instruments as well.

At the EU level, the Netherlands has implemented spontaneous and mandatory automatic exchange of information with other EU member states pursuant to Directive 2011/16/EU. The spontaneous exchange of information particularly includes transfer pricing information and artificial profit shifting, while the mandatory automatic exchange of information extends to employment income, pensions and immoveable property.

Special procedures

20 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

Under Dutch tax law, there are no special procedures available in cases of financial or other hardship. However, financial hardship, eg, a taxpayer's bankruptcy, may mitigate a culpability or default penalty (in relation to either reduced culpability or disproportionality to the seriousness of the offence). Further, the DRS may decide to waive payment of a tax assessment in exceptional cases of financial hardship.

21 Are there any voluntary disclosure or amnesty programmes?

If a taxpayer voluntarily discloses to have failed to file a tax return, or to have filed it incorrectly, a culpability penalty is not imposed or imposed at a reduced rate as a result of such voluntary disclosure. Specifically, a culpability penalty is not imposed for an incorrect or incomplete tax return only if disclosure occurs on the taxpayer's own accord and within two years after filing, or having had to file, such tax return (grace period). If it occurs after the grace period, a culpability penalty is imposed but at a reduced rate, with voluntary disclosure counting as a mitigating circumstance. With respect to self-assessment taxes, a culpability penalty is not imposed if the taxpayer discloses of its own accord not having paid the amount due. Voluntary disclosure also precludes a taxpayer from being criminally prosecuted for intentionally having failed to file a Dutch tax return, or having filed it incorrectly.

Rights of taxpayers

22 What rules are in place to protect taxpayers?

Various statutes protect the position of Dutch taxpayers (see also question 1). The Dutch Constitution provides that tax may be levied only pursuant to statute. The Dutch Constitution prohibits the Dutch tax judiciary from reviewing the constitutionality of acts of parliament. It is, however, obliged to assess whether statutory rules are compatible with international treaties. As a result, taxpayers can invoke the rights derived from human rights conventions, for instance, if a fine has been imposed. Furthermore, the taxpayer may refer to the case law of the CJEU and the Charter of the EU in a case where EU law is applied.

Substantive Dutch tax law is found in specific statutes on (corporate) income tax, wage and dividend withholding tax. The GALA codifies rules that apply to Dutch administrative law in general, also pertaining to the protection of taxpayer's rights. The GTA contains a considerable number of additional provisions. It sets out the manner in which tax can be levied and it provides taxpayers with the means to object to the infringement of their rights. The Collection of Taxes Act contains provisions on possible defences against collection measures.

Taxpayer's rights are also found in decrees of the Ministry of Finance. For example, the Administrative Penalties Decree contains instructions to the DRS as regards the imposition of fines. Taxpayers can invoke such a decree as if it were a rule of law. In addition, in case law various principles of proper administration are developed. The DRS has to apply these principles and taxpayers may invoke them. Examples of these types of principles are the principle of legitimate expectations, the fair play principle, the principle of due care and the principle of legal certainty. A few of these principles are included in the GALA.

23 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The GTA subjects DRS officials to a professional duty of confidentiality as regards a person's taxes and tax position. This duty applies to all information that is found or communicated, and not only to information of a confidential nature. Of course, an exception is made for tax officials for the purpose of carrying out their task. According to case law, this duty does not prohibit disclosure to the person or the business of the taxpayer itself or for those acting on its instructions.

In addition, a taxpayer has a formal right to access its tax file when objecting against a tax assessment imposed, to hear the reasons of the DRS for imposing such an assessment and to be heard on the reasons for its objection against it. This right can be claimed before a court.

24 Is the tax authority subject to non-judicial oversight?

A taxpayer may file a complaint for having been treated discourteously by any DRS official. Such a complaint is filed with the superior of the relevant

Update and trends

Horizontal monitoring

Horizontal monitoring is an alternative to vertical monitoring. It is expected that the number of Dutch taxpayers (both MNEs and SMEs) that will enter into a horizontal monitoring covenant will increase, thereby expanding a working method based on mutual trust, transparency and understanding between the taxpayer and DRS. The essence of horizontal monitoring is that, on the one hand, the taxpayer implements appropriate controls for its own compliance and proactively shares information with the DRS, while on the other the DRS constructively and openly discusses current tax matters for the purpose of providing certainty in advance. The advantages of horizontal monitoring are levelling the playing field for the taxpayer and DRS as well as keeping enforcement efforts by the DRS feasible in today's rapidly changing society.

Information exchange on tax rulings

In March 2015 the European Commission, as part of its Tax Transparency Package, proposed that member states should spontaneously exchange information on 'any communication or other

instrument or action of similar effect, given by or on behalf of a member state, regarding the interpretation or application of its tax laws'. Under the proposal, information on at least formal Dutch advance tax rulings and advance pricing agreements would be exchanged every three months. The Dutch government finds the overall proposal constructive but its implementation too complex and burdensome.

Cooperation with developing economies

Recently, the Ministry of Finance has made it its policy to support developing economies in organising and improving their tax administration, notably in the form of technical expertise. In addition, the Ministry of Finance has approached over 20 developing economies in an effort to include anti-avoidance measures, eg, a limitation on benefits clause, and provisions on automatic exchange of information in the double tax agreement being negotiated or renegotiated with each of these countries. According to the Ministry of Finance, these efforts put it at the front of counteracting improper use of double taxation agreements in relation to developing economies.

DRS official and subsequently with the National Ombudsman, which determines whether there has been discourteous treatment and publishes its findings in a publicly available report. In its report, the National Ombudsman may suggest improvements to the DRS but may not render legally binding decisions. Furthermore, the Petitions Committees of Parliament exercise non-judicial oversight in cases where the taxpayer believes strict application of Dutch tax law results in consequences not intended by the legislature, eg, individual hardship. The decisions of these Petitions Committees are published and are authoritative.

Court actions

25 Which courts have jurisdiction to hear tax disputes?

Cases which concern the assessment and collection of Dutch taxes, including administrative penalties imposed and interest charged in respect of Dutch taxes, are heard by the District Courts in the first instance. Appeals in these cases are heard by the Appellate Courts with the possibility of appeal to the Supreme Court.

26 How can tax disputes be brought before the courts?

Generally speaking, proceedings start with the Dutch taxpayer objecting in writing to a decision by the DRS against which an objection or appeal lies. Under Dutch tax law, an objection and appeal lies against:

- tax assessments (ie, preliminary, final and supplemental assessments), including payment, withholding or self-assessment of Dutch taxes;
- refund decisions by the DRS; and
- other decisions (ie, administrative penalties or a decision on formation of a tax group) if Dutch tax law provides for objection and appeal to lie against such a decision.

The time limit for filing such an objection is six weeks after the objected decision is taken. The DRS has to reconsider the tax assessment on the basis of the written objection, eg, whether it has been issued in accordance with substantive Dutch tax law and does not infringe on any taxpayer's rights as safeguarded by the GALA and GTA.

If the DRS denies the taxpayer's objection wholly or partly, the taxpayer may lodge an appeal with the District Court against the decision by the DRS. Again, the applicable time limit is six weeks after the appealed decision is taken. If the taxpayer and DRS so agree, a taxpayer may bring the case directly before the District Court (without filing a prior objection to the DRS). The District Court reviews the contested decision by determining whether, as the DRS argues, the correct amount of tax has been levied and collected or, as the taxpayer argues, this amount has to be reduced. In this respect, no minimum thresholds exist. If the parties' arguments do not bear upon the amount of tax levied or collected, they are not admitted to argue the case for lack of interest in the proceedings.

During the proceedings, the DRS and taxpayer may argue the facts of the case but also the application or interpretation of the relevant law. The District Court is a court of fact. Upon appeal from the District Court, the Appellate Court reconsiders every aspect of the case to the extent necessary, including questions of fact. There is, however, an essential difference

between cassation before the Supreme Court and an ordinary appeal before the Appellate Court. The Supreme Court is required by statute to base its reasoning on the facts as established by the lower court. The Supreme Court may reverse the lower court's decision on questions of law, including procedural tax law and requirements of due process.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim? Can the costs of a dispute be recovered?

Generally speaking, the DRS allows the taxpayer an extension of the payment terms for a tax assessment once the taxpayer has filed an objection against the assessment. This extension is not renewed automatically if the taxpayer decides to lodge an appeal with the District Court, Appellate Court or Supreme Court but is renewed upon request from the taxpayer. Before renewing the extension, the DRS may require additional security from the taxpayer for payment of the tax assessment. Accordingly, the taxpayer in most cases is not required to pay the amount of a contested tax assessment to the DRS before the dispute is settled.

The taxpayer is required to pay filing fees upon appeal to the District Court, Appellate Court or Supreme Court under penalty of the case being declared inadmissible. If the court sides with the taxpayer in part or in full, the DRS has to reimburse these fees. To the extent that the taxpayer has incurred travel expenses and legal fees, the court may likewise order the DRS to reimburse these expenses and fees according to a flat-rate system if the court sides with the taxpayer. If the court does not side with the taxpayer, each party bears its own expenses. The court may order at its discretion the DRS to reimburse the filing fees (but not the travel expenses or legal fees) even if it does not side with the taxpayer.

28 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Complex cases heard by the District Court and Appellate Court are decided by a three-judge panel. Other cases are decided by a single judge. All cases heard by the Supreme Court are decided by a panel of judges, consisting of three or five judges. Jury trial is not available.

29 What are the usual time frames for tax trials?

Under Dutch tax law, the DRS has to render a decision on an objection within a period of six to 10 weeks. If this period lapses, the DRS is assumed to have rejected the objection that creates a possibility for appeal. Generally speaking, each appeal to the District Court, Appellate Court and Supreme Court lasts for one-and-a-half to two years. In case of undue delay by the DRS or tax judiciary, the taxpayer may be awarded compensation for supposed emotional damage.

30 Describe the discovery process for a tax trial.

Instead of a strict discovery process, the DRS and taxpayer may freely exchange evidence and other documents after the appeal is lodged. The District Court and Appellate Court may request the parties to appear in

person for disclosure purposes or request them to submit certain documents to the court.

31 What testimony is permitted in a tax trial?

After the appeal is lodged and during the hearing, the District Court and Appellate Court may request to hear testimony from witnesses, including from the taxpayer, DRS officials or experts. In each case, the witness has a duty to testify before the court.

32 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Taxpayers may represent themselves or be represented by anyone in proceedings, as legal representation is not mandatory in tax cases. Representation by a lawyer is mandatory only for oral arguments before the Supreme Court.

33 Are tax trial proceedings public?

The proceedings in tax cases are held behind closed doors and are not public, unless the proceedings involve an administrative penalty.

34 Who has the burden of proof in a tax trial?

According to the principle of a fair allocation of the burden of proof, the DRS has the onus to prove the facts increasing a taxpayer's Dutch tax liability and the taxpayer to prove the facts decreasing this liability. The burden of proof may be shifted from the DRS to the taxpayer and increased if the taxpayer does not comply with certain disclosure or reporting requirements (see also question 7). The probative value of evidence is not fixed by statute but determined by the court.

35 Describe the briefing process for a tax trial.

The briefing process consists of an exchange of briefs in two rounds and is followed by oral arguments. The parties may waive oral arguments, but this seldom happens.

36 Can a court decision be appealed?

Appeal lies with the District Court, and subsequently with the Appellate Court and Supreme Court, against a decision by the DRS (see also question 26). In each case, the applicable time limit is six weeks after the contested decision is taken.

**DE BRAUW
BLACKSTONE
WESTBROEK**

**Frank Pötgens
Ingrid Mensing
Mats Cornelisse**

**frank.potgens@debrauw.com
ingrid.mensing@debrauw.com
mats.cornelisse@debrauw.com**

Claude Debussylaan 80
PO Box 75084
1070 AB Amsterdam
Netherlands

Tel: +31 20 577 1771
Fax: +31 20 577 1775
www.debrauw.com