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TAXATION IN THE NETHERLANDS

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Taxation in The Netherlands

by

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Foreword

This book summarizes the main features of the various Dutch tax laws.

It will be obvious that, although every effort has been made to give a balanced description, a book of this size does not pretend to be a complete handbook. It should, however, give foreign investors, company executives as well as lawyers, tax consultants and accountants a basic understanding of the Dutch tax system.

I am grateful to a number of persons who have been of assistance in writing this book. In particular, I would like to thank my partner Herman Prast for reading the manuscript and for his invaluable advice and Simon Stubbings who was so kind to check and, where necessary, to correct my English.

Amsterdam, 1 May 1984 G.t.S.

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CHAPTER 1
General Introduction

1.1. The tax system

The Dutch tax system is based on a number of laws, some dating back many years. The right to levy a tax is based on the Constitution (*Grondwet*) which stipulates that taxes can only be levied on the basis of an Act of Parliament. Tax legislation is enacted in the same way as any other Act, *i.e.* through co-operation of the Crown (Queen and Ministers) and Parliament (consisting of the First and Second Chamber). Both the Crown, in practice the Ministry of Finance, and the Second Chamber have the right to initiate Bills, which must then be passed by both Chambers. Although most Dutch taxes are levied by the central government local government authorities, too, may levy taxes indicated by law. The most important example is the real estate tax levied by municipalities.

The most important taxes are:

(a) income tax (see Chapter 3);
(b) corporate income tax (see Chapter 4);
(c) wages tax (see Chapter 6);
(d) net wealth tax (see Chapter 7);
(e) (dividend) withholding tax (see Chapter 8);
(f) VAT (see Chapter 9);
(g) estate and gift tax (see Chapter 10);
(h) tax on legal transactions (see Chapter 11);
(i) miscellaneous, such as import duties and excise tax (see Chapter 13).

All these taxes are levied on the basis of various Acts, *e.g.* the Income Tax Act of 1964, the Corporate Income Tax Act 1969, etc.

There are, however, other Acts which also deal with taxation but which are of a more general nature. Examples are the Collection Act of 1845, the General Taxes Act and the General Act on Import Duties and Excise Taxes. In this book only the General Taxes Act, which applies to the so-called direct taxes, will be discussed in detail as it contains a large number of rules regarding the application of direct taxes, assessments, objections, appeals, etc. (see Chapter 2).

1.2. Collection of taxes

The collection of the so-called direct taxes is based on the Collection Act of 1845.

Collection is carried out by the collector of taxes. The time in which the various assessments must be paid varies from one tax to the other. Income tax and net wealth tax assessments must be paid within two months. If, however, these assessments are levied in the year to which they apply, they may be paid in equal amounts, in the months of the year following the date of the assessment. Corporate income tax assessments must be paid within one month from the date of the assessment. Taxes not levied by assessment but through self-assessment must be paid when the return has to be filed. If a taxpayer fails to pay the tax within the statutory time limits he will receive a reminder shortly after the date for payment has passed. If he still fails to pay, the tax bailiff will serve a distress warrant, thereafter the assets of the taxpayer may be seized and executed. It should be noted in this respect that the tax collector can execute the assets of a taxpayer without a court order (which would be necessary under civil law). Furthermore the tax authorities have a right of priority over other creditors but not priority over *e.g.* a mortgage.

1.3. Tax administration

The taxes levied by the government are administered by the 'administratie van 's Rijksbelastingen' or 'Rijksbelastingdienst' (hereafter referred to as the revenue service). The revenue service falls within the jurisdiction of the Ministry of Finance. The Minister and Under-Secretary of State (*staatssecretaris*) bear the political responsibility. The Ministry of Finance issues both published and unpublished directives regarding the interpretation of the laws, which do not have the force of law but are as a rule followed by the tax administration. Once published, the taxpayer can request the application of these directives.

CHAPTER 2

The General Tax Act

2.1. General principles

The General Tax Act (Algeme wet inzake rijksbelastingen of 2 July 1959) referred to as GTA, contains rules which apply to the imposition of all taxes levied by the state, with the exception of customs duties and excise taxes. The various taxes to which the GTA applies did not come into force on the same date – 1 January 1965 for income and net wealth tax, 1 January 1970, for corporate income tax. Not all the provisions of the GTA apply to gift and inheritance tax.

The provisions of the GTA also apply to taxes not levied by the state, *e.g.* municipal taxes in so far as the relevant laws do not provide otherwise.

The purpose of this chapter is to give a brief description of the main provisions, not to give critical comments.

2.1.1. **Definitions**

The law contains several definitions ('tax law', 'tax inspector', 'tax court', etc.). Article 2 defines 'the State of the Netherlands' as the part of the Kingdom in Europe. Consequently, for tax purposes, The Netherlands Antilles are not a part of 'the State'. The Dutch part of the continental shelf is generally held not to be a part of 'the Kingdom' for tax purposes. Consequently employees working on a platform in that part are not considered as working in The Netherlands.

2.1.2. **Residence**

The GTA (article 4) provides that residence of an individual or a legal entity for tax purposes is determined 'according to the circumstances'. Some tax laws, however, contain an exception to this rule. According to article 2, para. 4, of the Corporate Income Tax Act 1969, also referred to as CTA, a corporation or other legal entity incorporated under Dutch law is deemed to be a resident of The Netherlands. For dividend withholding tax the same rule applies.

2.1.3. **Contents of the GTA**

Apart from an introduction (Chapter I), the GTA contains provisions on the following subjects:

Ch.II: tax returns (2.2);
Ch.III: tax levied by assessment (2.3);
Ch.IV: self-assessment taxes (2.4);
Ch.V: objection and appeal (2.5);
Ch.VI: anti-avoidance procedure (2.6);
Ch.VII: international tax matters (2.7);
Ch.VIII: special subjects; representation, supply of information to the tax authorities (2.8);
Ch.IX: offences, penalties (2.9);
Ch. X: transitional provisions (see para. 1.1).

2.2 Tax return

2.2.1. **When to file?**

The tax inspector issues a tax return form to a person who, in his opinion, is liable to the relevant tax.

The taxpayer is obliged to file the completed return with the tax inspector. Not to file is a criminal offence; if the person receiving a form is not a taxpayer for the tax concerned he may, of course, indicate so in the return.

If a taxpayer does not receive a form he is obliged to ask for one:
- in case of taxes based on assessments: within six and a half months after expiration of the taxation period (usually a calendar year);
- in case of self-assessment taxes: before the date on which the tax is to be paid.

2.2.2. **Time of filing**

Tax returns for taxes levied by assessment have to be filed within the period determined by the tax inspector. The tax inspector can, at the request of the taxpayer, extend that period. The tax inspector may, when extending the period, require that a provisional return is filed.

If the return is not filed within the (extended) period the tax inspector will remind the taxpayer by registered letter that no return has been filed. If the return is not filed within the period indicated in that letter (usually 10 days) the tax is increased by 5% but with a maximum of Dfl.1,000.

For self-assessment taxes the return has to be filed on the day the tax is to be paid (see 2.4). Extension may be granted subject to conditions made by the tax inspector.