Supervision Large Business in the Netherlands
To the reader: All references to the he, him or his masculine pronouns made in this publication that are used in a context in which it would be equally correct and reasonable to use feminine pronouns should be read as she or her as so required. This is also applicable to the use of masculine names of professions and similar.
Preface

This edition of Supervision Large Business in the Netherlands is a completely revised version of the previous edition. This was not only necessary to keep this Guide up-to-date with experience acquired in practice and the responses received from users within the Netherlands Tax and Customs Administration and others, but was also necessary in view of the findings of the Tax and Customs Administration Horizontal Monitoring Committee (the Stevens Committee). This Committee evaluated the horizontal monitoring concept and published the ‘Tax supervision – Made to measure, Flexible when possible, strict when necessary’ report of its findings in mid 2012. The Committee was gratified to note that the Netherlands Tax and Customs Administration had recognised in good time that there was a need for a fundamental modification of its supervision strategy. The Committee also endorsed the horizontal monitoring philosophy as a concept, but was of the opinion that some further development was necessary and that the implementation could and should be improved. These suggestions have been taken to heart and have been given shape by measures including the publication of the new edition of the Guide.

However, the objective of horizontal monitoring and the vision on this form of supervision have remained unchanged. Consequently, the intention of this Guide has also remained unchanged: to provide for the uniformity of implementation. The Guide outlines the broad supervisory spectrum of the compliance risk management strategy and the position of responsive regulation and horizontal monitoring in this strategy. As a result, the Guide not only provides a summary of and an insight into the Netherlands Tax and Customs Administration’s procedure, but also offers a framework for a recognisable approach in its actions. The second edition, in analogy with the first edition, is also being published externally. This increases the reliability and transparency.

Scope

This Guide has been prepared for the individual account management for large businesses as carried out by the Netherlands Tax and Customs Administration/Large Business, a division of the Netherlands Tax and Customs Administration/Taxes. Customs also supervises some of these large businesses. Customs has adopted the same general principles for its compliance risk management strategy and horizontal monitoring referred to in Section 1 of this Guide. Organisations that qualify for individual account management are processed by the Large Business account management teams and Customs, who cooperate in accordance with the Guide, self-evidently to the extent that there are relevant Customs interests. Customs also implements its specific horizontal monitoring programmes with organisations falling under Large Business. For this reason various sections of the Guide devote attention to elements of the joint horizontal monitoring programme that are specific to Customs, and Section 14 of the Guide focuses on the specific Customs context and the opportunities for cooperation in horizontal monitoring.

Everyone involved in Large Business’ horizontal monitoring – administrative client coordinators, audit specialists, client coordinators, tax collection specialists, management, specific tax specialists and others, colleagues within the NTCA and external stakeholders – is invited to exchange experiences and to continue to share proposals for improvements.

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Netherlands Tax and Customs Administration/Large Business

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1 http://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/themaoverstijgend/brochures_and_publications/tax_supervision_made_to_measure

2 This Guide uses the term Large Business to refer to the division Netherlands Tax and Customs Administration/Large Business. When is referred to the Netherlands Tax and Customs Administration as a whole the abbreviation NTCA is used.

3 Customs is also a division of the NTCA. For the purposes of clarification, this Guide makes a distinction between Large Business and Customs.
1 The NTCA´s supervision

1.1 Introduction

The NTCA´s policy objective is to maintain and enhance the (in principle, assumed) willingness of taxpayers and persons entitled to benefits to fulfil their statutory obligations (compliance). This is achieved when taxpayers and withholding agents (natural and legal persons):
1. (justifiably) register to pay tax;
2. file their returns (in time);
3. file correct and complete returns;
4. pay their tax (in time).

To achieve this objective the NTCA intends to adopt a service-oriented and respectful approach. However, when necessary, the NTCA provides for the fulfilment of the taxpayers’ obligations by taking corrective actions. Ultimately, if required these corrective actions are enforced with criminal prosecution.

The NTCA´s ability to improve compliance increases with its knowledge and understanding of taxpayers and persons entitled to benefits. Knowledge refers to the possession of an insight into the activities of taxpayers and persons entitled to benefits that are of relevance to tax. The NTCA also needs to be aware of the tax (risk) group of comparable taxpayers and persons entitled to benefits in which the relevant natural or legal person can be classified, the probability that they will contravene (accidentally or with intent) or interpret the rules incorrectly, and what will be required to ensure that the rules are observed in the appropriate manner.5

This Guide describes the general policy objective of the NTCA for its Large Business division, in particular for businesses for which horizontal monitoring is feasible. Where necessary, the Guide explains the relationship with Customs’ supervision.

1.2 Compliance risk management strategy

Large Business endeavours to achieve the large organisations’ maximum possible voluntary compliance through enhancing the responsibility of these large organisations for their obligations. Consequently, Large Business’ policy is focused on improving compliance as specified in the NTCA’s strategic objective and, ultimately, the provision of assurances for and the further optimisation of tax revenues. This is based on justified trust and endeavours to enhance assumption of the businesses’ responsibilities.

The degree, form and timing of the supervision of a large organisation is determined on the basis of the compliance risk management strategy, whereby the limited available capacity and competences are deployed as efficiently and effectively as possible. This process begins with the determination of the required effect on behaviour and continues with the selection of the instruments to be deployed to achieve this effect in the most efficient manner. The strategy is cooperation with an organisation within the scope of horizontal monitoring which either results in or arises from an individual compliance agreement. When the implementation of this strategy is not feasible or is not desired by the organisation then the NTCA will select one or a combination of the other supervisory instruments at its disposal. However, also in the latter case the NTCA’s actions are tailored to its knowledge of the attitude and behaviour of the organisation (responsive regulation). The NTCA bases its actions on the principle that citizens and businesses are willing to fulfil their statutory obligations. The NTCA Administration adjusts its supervision when their attitude and behaviour indicate that this principle will not be satisfied. All the NTCA’s actions, from the provision of services to criminal investigations, focus on the promotion, maintenance and optimisation of the willingness to comply with the regulations.

In addition, Customs protects the internal market and the safety and health of citizens by supervising the goods that cross the EU’s external borders.  
1.3 Basis of the supervision

Supervision is, in the first instance, based on the determination of the acceptability of the entire tax return, followed by the timely payment of the tax debt as based on the return. The procedures employed both for horizontal monitoring and the various other forms of supervision are based on the principles laid down in the NTCA’s Audit Approach (the CAB). The NTCA makes the maximum possible use of the work that has already been carried out by the organisation and the external specialists involved. The effectiveness of the adjustment of the NTCA’s supervision to the quality of that work increases with an increasing insight into its quality. Supplementary work carried out on individual issues for attention (for example, during preliminary consultations or the assessment procedure i.e. desk reviews) also enhances the insight into the acceptability of the entire return. This approach is based on the so called ‘layer model’ or ‘onion skin model’.

The NTCA relies on the work of parties that contribute to the quality of the tax return (the various layers of the layer model). It is assumed that the organisation will wish to optimise the quality of the information required for the tax return, as the organisation will also need to possess reliable information about its processes if it is to manage and control its operations in an adequate manner. For large organisations this is demonstrated by the attention to and improvement of the internal control system, in particular the elements of the internal control system of relevance to tax: this is also referred to as the tax control framework (TCF). The audits conducted by the internal audit departments and/or external specialists are also of importance: this work also contributes to the quality of the information on which the tax returns ultimately will be based.

The preliminary information the NTCA receives during its supervision offers the feasibility of adjusting the form and intensity of its supervision. Current information about the quality of the layers in the layer model, for example, enables the NTCA to assess whether the organisation actively shares tax issues that require attention. The content of the preliminary consultations and the manner in which the organisation approaches these consultations also offer preliminary information about the quality of the tax return.

The implementation of horizontal monitoring for some organisations is not feasible (at present), in part because insufficient preliminary information is available for the implementation of horizontal monitoring (at the time). When horizontal monitoring is not feasible then the NTCA will usually need to devote more effort to its supervision of the organisation (audits, the assessment procedure (desk reviews), preliminary consultations, tax collection activities and other supervisory tasks). The group of businesses that do not participate in horizontal monitoring (at present) is varied. Positive preliminary information about them will be available to a greater or lesser extent.

The NTCA increases the stringency of its supervision of organisations that betray the trust placed in them and will take appropriate action in response to the situation on the basis of the organisation’s earlier attitude and the (motives for) its behaviour. Organisations that usually fulfil their tax obligations and make an unintentional mistake deserve a response different from organisations that knowingly and wilfully seek the loopholes in the tax regulations, even contravene the regulations or act on the assumption that there is a low probability of them being caught.

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6 External specialists are understood as all parties involved in the provision of services (ranging from recommendations on, analyses of and the enhancement of the tax control framework (TCF) and the control of the organisation. Consequently, they also include tax consultants and independent accountants.

7 See ‘NetherlandsTax and Customs Administration’s Audit Approach - The Audit Approach and its models deployed in supervision’.

8 An explanation of adjusted supervision and the supervisory activities is enclosed in Section 9.
1.4 Horizontal monitoring

Agreements are reached with organisations participating in horizontal monitoring with respect to mutual trust, understanding and transparency. These agreements are laid down in a compliance agreement. These ensure that the NTCA receives current and actual information about the organisation’s tax strategy, tax control and transparency. These are elements of the NTCA’s client profile of the relevant organisation. This information enables the NTCA to adjust its supervision and restrict its activities solely to those required to validate horizontal monitoring. As a result, both the organisation and the NTCA gain a more rapid and reliable insight into the organisation’s tax and financial position – the advantage horizontal monitoring offers to both parties. Both the party participating in the compliance agreement – the party with which the NTCA has reached agreement on horizontal monitoring – and the NTCA benefit from this concept. The organisation has insight into its tax and financial position but also, indirectly, into all its other processes preceding or otherwise related to its taxation business processes.

The NTCA has less current information about the aforementioned elements when organisations do not participate in horizontal monitoring. This limits the Administration’s ability to adjust its supervision and work in real time. The supervision will then largely be retrospectively. The design of the horizontal monitoring process ensures that the NTCA gains systematic access to positive preliminary information about the organisation’s tax behaviour and internal (tax) control and, as a result, about the quality of the accounting information included in the tax returns. The horizontal monitoring meeting with the organisation and the compliance scan (see sections 3 and 4) do not focus on the organisation’s internal control, but rather on the organisation’s tax culture and lead to a more in-depth conversation about the interests and expectations with regard to the compliance agreement. The NTCA assumes that once the organisation has concluded the compliance agreement it will assume its responsibilities and, where relevant, will address its internal (tax) control procedures and its monitoring of those procedures. The further implementation of the horizontal monitoring process will then need to demonstrate that the mutual favourable expectations and trust are justified. This in turn implies that the NTCA will need to demonstrate that it is a reliable, honest and motivated partner to the compliance agreement. In effect, all contacts with organisations result in the continuous development and enhancement of the trust between the organisation, the relevant external specialists and the NTCA (predictability). This enables the organisation and the NTCA to establish that both parties are willing and able to assume their responsibility for compliance with the regulations. This conclusion justifies the NTCA’s adjustment of its supervision during the horizontal monitoring process. The NTCA validates its premise that organisations are in control of their tax processes and are transparent by conducting audits to assess the acceptability of tax returns. However, the NTCA does not audit the organisation’s internal control system as such and, consequently, never issues an opinion on the internal control system in any phase of the horizontal monitoring process. Nevertheless, and self-evidently, the degree to which the organisation is in control is of relevance to the planning of and the nature and scope of the NTCA’s assessment of the acceptability of tax returns.

Essence

The State Secretary expressed the essence of horizontal monitoring in the following terms in his letter of 8 April 2005 to the House of Representatives of the States-General (DGB 2005/1109):

‘Horizontal monitoring refers to mutual trust between the taxpayer and the Tax and Customs Administration, as well as to the more precise specification of each other’s responsibilities and the options available to enforce the law and comply with the mutual agreements. As a result, the underlying relationships and communications between citizens and the government shift to a more equal situation. Horizontal monitoring is also compatible with social developments in which the citizen’s personal responsibility is accompanied by the feeling that the enforcement of the law is of great value. In addition, the horizontal monitoring concept also implies that enforcement is feasible in today’s complex and rapidly changing society solely when use is made of society’s knowledge.’
Key values of horizontal monitoring

Horizontal monitoring is based on three key values: mutual trust, understanding and transparency. Transparency refers to openness by the organisation and the NTCA. The organisation is transparent about its tax strategy and relevant tax issues and provides open answers to questions. The NTCA is open about the background to its questions and the implementation of the Administration’s supervision. Constructive cooperation is possible only when both parties understand the position and (on occasion, conflicting) interests of the other party. Mutual trust is necessary for the adoption of this approach.

The key values and the compliance agreement

The NTCA endeavours to lay down procedures based on the principles of horizontal monitoring in a compliance agreement. In the compliance agreement both parties agree to work on the basis of understanding, transparency and trust. The organisation submits relevant (tax) standpoints that it has adopted or plans to adopt to the NTCA as soon as possible for preliminary consultations. These standpoints relate to issues about which the NTCA may have a different opinion, such as in the interpretation of facts or legislation. The organisation actively provides the NTCA an insight into all the relevant facts and circumstances, the standpoints and the organisation’s perception of the resultant legal consequences. The organisation also implements a system of internal control, internal audits and external audits that enable it to prepare and file acceptable returns in time and to settle its tax debts in time. The NTCA undertakes to provide rapid certainty in the event of requests to adopt a standpoint, to tailor the form and intensity of its supervision to the quality of the internal control, internal audits and external audits, and to pay any tax refunds in time.

Filed tax returns do not adopt standpoints without prior discussions with the NTCA.
The horizontal monitoring process

The steps involved in a horizontal monitoring process are shown in the following figure.

The horizontal monitoring process begins with an internal research of the client, carried out by the NTCA. This is followed by a horizontal monitoring meeting with the client (Section 3), a so-called compliance scan (Section 4) and subsequently the analysis and improvement of the tax control system and monitoring (Section 7). The work involved in completing each step provides the NTCA with preliminary information (that is expected to be positive). Self-evidently, when working through these steps the NTCA makes use of any information it may already possess. Any such preliminary information is used to adjust the supervision while the horizontal monitoring process is in progress (see Section 9).

International developments

Large organisations often operate on a global scale. They are not only confronted with differences in national legislative systems but also with differences in supervision and enforcement methods. The globalisation of the business community, expansion of international operations and the high degree of digitalisation all exert an influence on the relationship between tax authorities and businesses. Differences of opinion not only frequently arise between large businesses and tax authorities, but also between tax authorities. This is a reason why the OECD promotes enhanced relationships between tax authorities and large organisations. These relationships pivot on cooperation and emphasise the personal responsibility of citizens and businesses in achieving compliance. This cooperation is based on principles including transparency and trust. The OECD also observes increasing public attention to corporate governance of multinational organisations.

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10 For example, when a comprehensive audit has been conducted recently it will no longer be necessary to carry out some or all of the work involved in the first steps.

11 ‘Study into the Role of Tax Intermediaries’, www.oecd.org/tax/administration/39882938.pdf
Tax authorities in several countries all over the world are engaged in the development and implementation of supervisory models based on enhanced relationships with taxpayers which are based on trust and cooperation. Virtually all these programmes focus on large business. Large business itself has also attached increasing importance to this approach in recent years, and countries and businesses all over the world are being urged to work on the basis of an enhanced relationship.

The NTCA is in the vanguard of these developments: parties outside the Netherlands often exhibit interest in the Dutch horizontal monitoring model. Although other countries have adopted different supervisory models, they all share a number of elements in common, such as working in real-time, offering a specific service level and transparency on the consequences for supervision.

As a result of the experience acquired and the continuing developments in both the business community and at the various tax authorities the ‘enhanced relationship’ term no longer serves as an adequate expression of the concept. A new term, ‘cooperative compliance’, is now being introduced at an international level, a term which not only refers to cooperation but also to the objective of that cooperation: the development of a framework for large businesses’ compliance which devotes attention not only to an improved relationship and transparency, but also to tax control and tax strategy.

The developments in the EU are following the global trend towards enhanced relationships and cooperative compliance and, consequently, have been addressed in the EU Compliance Risk Management Guide published in 2010. This Guide lays down a European model for the tax authorities’ law enforcement.

The Dutch approach explained in this Guide to supervision within the Large Business Division is fully in line with the international developments. The NTCA’s compliance risk management strategy is based on the prevailing EU model and the important role horizontal monitoring plays in this strategy is compatible with the enhanced relationship principles. The revised conceptual framework for horizontal monitoring within the large business division as laid down in this Guide, the emphasis this places on the large organisations’ responsibility for their compliance position and the Tax and Customs Administration’s intention to enhance this responsibility bring the Dutch developments into line with those outlined by the OECD, namely towards cooperative compliance.
2 Compliance risk management strategy and individual account management

2.1 Introduction
The NTCA’s supervision of large businesses is carried out by a client coordinator and an account management team. This Section reviews these terms and explains the NTCA’s organisation of individual account management.

2.2 Account management team and client coordinator
Large Business consists of teams managed by a team leader. These teams are responsible for the integral supervision of a group of organisations. Each team is comprised of a number of client coordinators and assistant client coordinators, as well as specialists in tax matters, audit techniques, tax control (TCF) and tax collection. The client coordinator is responsible for the individual strategic supervision plan, which is drawn up in cooperation with the specialists involved in the processing of the specific business (the account management team). The individual strategic supervision plan specifies the supervision strategy for the relevant organisation and the specific choices made. The strategic supervision plan is based on the compliance effects that are to be achieved and the method that is expected to lead to the best results. The client coordinator is also responsible for the implementation of the strategic supervision plan. For the implementation, the client coordinator makes use of the specialised knowledge and competences available within the NTCA.

The client coordinator also serves as the taxpayer’s permanent contact person at the NTCA. The client coordinator receives support from the assistant client coordinator, in particular for the administrative processes. The team leader manages the team and is also involved in the considerations on and prioritisation of the actions based on the strategic supervision plan and the deployment of specialists.

The client coordinator builds up a permanent insight into the client (the client’s business, the current client profile and the extent to which the business has the tax elements of its operations in control). Consequently, client coordinators have two tasks, namely an external and an internal task.

External task
The client coordinator works on the relationship with the organisation in a carefully-considered and professional manner. The client coordinator serves as the organisation’s initial contact person and partner for discussions. The client coordinator holds meetings with the organisation to collect the information required to determine the issues that currently are relevant and the issues that are essential for the tax treatment of the organisation. The client coordinator ensures that the tax issues requiring attention, the status of the tax control framework and the organisation’s attitude and behaviour are discussed during these meetings. The client coordinator discusses his favourable and unfavourable observations of the organisation’s attitude and behaviour. Self-evidently, the organisation can also call the NTCA to account for its procedures. The client coordinator requests specialists in the account management team and/or the team leader to take part in these meetings.
Internal task
The client coordinator plays a coordinating role and monitors the contacts with the internal officers involved, including the client coordinator’s team leader, the account management team and tax specialists in the national knowledge and coordination groups. For this reason the client coordinator is always involved in the determination of tax standpoints. The client coordinator ensures that all relevant factors, such as the effects on compliance, spillover effects and the relevant social and political sensitivities are taken into account when determining tax standpoints. These standpoints are, self-evidently, compatible with the supervision strategy determined for the organisation, the relevant legislation and regulations and the uniformity of policy and its implementation. The client coordinator also assists the members of the account management team in setting priorities, with reasons, for the tax treatment of the organisation. The client coordinator prepares (interim) evaluations of progress in the client processing and of the need for any adjustments, where relevant. The client coordinator is involved in the acquisition of an insight into the tax control systems (the tax control framework). The client profile is drawn up in cooperation with the various members of the account management team and serves as the basis for the strategic supervision plan.

2.3 Strategic supervision plan
The (strategic) supervision plan serves as the basis for responsive regulation. The strategic supervision plan consists of the client profile, the analysis of the client profile, the supervision strategy and intended supervisory activities. The client profile analysis is based on the NTCA’s observations of the organisation’s attitude and behaviour, i.e. the degree of transparency, the degree of tax control and the tax strategy. The client coordinator uses the client profile and the client profile analysis to determine, in consultation with the specialists, the effect on the organisation’s behaviour that is to be achieved, the enforcement instruments to be deployed (the supervision strategy) and the capacity, knowledge and competences that will be required.

In addition to the observations included in the client profile, the account management team also addresses the organisation’s behaviour, the underlying motives and the degree to which this behaviour can be influenced, as supervision is focused on exerting an influence on compliance. It is necessary to determine whether and, if so, the extent to which, the observed behaviour needs to change, why this is required and how it can be achieved (client profile analysis).

The strategic supervision plan explains the decision to employ a specific enforcement instrument or combination of instruments and specifies the planning of the supervision. This increases internal transparency and lays the foundations for external transparency. The supervision strategy states the short and long-term intended supervisory activities to ensure that the strategy is as clear as possible. The client coordinator, in consultation with the team leader, assigns these intentions a higher or lower priority. When the facts and circumstances change then the client coordinator ensures that the strategic supervision plan is adjusted accordingly.

Transparency towards the taxpayer and predictability of the supervision are essential in horizontal monitoring. The client coordinator explains the supervision strategy and the intended supervisory activities to the organisation, by sharing the strategic supervision plan with the organisation from the time that the compliance agreement is concluded. The client coordinator also states that any unexpected circumstances that may arise can result in a departure from the intended supervisory activities.
Sharing the strategic supervision plan with the organisation ensures that the organisation is aware of the manner in which the NTCA experiences the organisation’s behaviour and the consequences this has for the Administration’s supervision. This also improves the consistency of the intended supervisory activities and promotes effective and efficient cooperation – especially when the strategic supervision plan is discussed with the organisation in advance, this will result in a shared agenda that both parties accept as binding.

2.4 The individual organisation in the overall client portfolio

The NTCA is responsible for the supervision of all returns filed by taxpayers and withholding agents, whereby selections are made on the basis of the compliance risk management strategy. These selections then need to be made in a manner that achieves an optimum level of compliance.

The total of individual client profiles offer the (account management) teams an overall insight into the various organisations. This overall insight provides for customisation. The insight into the overall client portfolio needs to justify the nature, intensity and prioritisation of the supervision for each individual business. The ability to make an appropriate selection from the overall work package is beneficial to the effectiveness of the supervision. The ability to use the client strategy to make appropriate choices in the individual account management is also beneficial to effectiveness. This is because the discretionary powers available to the NTCA in performing its supervisory duties takes account of the available preliminary information about the organisations (their tax strategies, transparency and tax control). The intensity of the supervision of a specific organisation needs to be in balance as viewed from the perspective of the overall client portfolio.

2.5 Discussion, reflection and evaluation of the organisation’s attitude and behaviour

The NTCA performs its duties as laid down in the tax legislation and enforces compliance by taxpayers. Ethical tax dilemmas are addressed from this perspective. In its role as an implementing government agency the NTCA (and its officers who represent the Administration in contacts with organisations) needs to exhibit reticence in referring to (subjective) standards and values. Taxpayers are entitled to exercise their tax rights at their discretion, provided that they remain within the boundaries of the legislation and regulations. The NTCA adopts a neutral, professional, reliable and predictable attitude and, as a result, is very reticent and refrains from expressing moral opinions. The outcome of the taxation of taxpayers participating in horizontal monitoring is neither more favourable nor less favourable than the outcome of the taxation pursuant to other forms of supervision.

The principle of legality ensures that taxation is founded on a statutory basis. When organisations intend to avoid, reduce or frustrate taxation then the NTCA shall need to exhibit an adequate response. The organisation may then differ from the NTCA in its opinion on the qualification or interpretation of the facts or interpretation of the rules of law. When the opinions continue to differ the case is submitted to the tax courts. When the NTCA has decided to contest the issue (with its interpretation of the facts or rules of law) and the case is rejected by the highest court then – pursuant to the principle of legality – the legislator will, where relevant, need to take the initiative in giving the definitive answer.

There are two sides to this justification. Firstly, and self-evidently, less compliant organisations receive the attention they require and, secondly, organisations that do comply with the regulations receive solely the necessary attention.
The NTCA does not demand that the taxpayer organisation shall pay a *fair share*. However, two nuances are important. The first nuance is that organisations need to be given reflection when they employ aggressive tax methods. Giving reflection on and opening the organisation’s behaviour to discussion does not constitute an adjustment of the supervision. Demanding a *fair share* as a condition in supervision could be regarded as putting wrongful pressure on the organisation and, moreover, be in conflict with the neutrality required from the NTCA. Reflection does not impose this pressure and is not in conflict with neutrality. Nevertheless, the account management team does — after consultation with management and the relevant specialists — state its opinion on the use of an aggressive structure. The conclusion of a compliance agreement is not subject to the demand that the organisation shall refrain from structures that the NTCA qualifies as aggressive. However, it is important to ensure that an organisation’s decision to employ an aggressive structure is not legitimised by the NTCA’s silence.

Giving reflection is a permanent element of individual account management and, preferably, is a topic during the various contacts with the client. It should be noted that this is applicable both to organisations that have concluded a compliance agreement and organisations that have not concluded such an agreement. Usually more formalised opportunities are available for giving reflection to organisations that are partners to a compliance agreement: the strategic supervision plan is discussed and both parties evaluate the compliance agreement on a regular basis. The attitude and behaviour of organisations that have not concluded a compliance agreement will also be discussed. It should be noted that it will always be worthwhile for the account management team to refer to the positive elements of an organisation’s attitude and behaviour during the client processing, the strategic supervision plan and during the periodic evaluations. This increases transparency and predictability and promotes the desirable attitude and behaviour.

The second nuance that needs to be made relates to the choices made for supervisory activities, the timing of those activities and the supervisory capacity to be allocated. Making these choices falls within the discretionary powers the legislator has assigned to the Tax and Customs Administration (*freies Ermessen*). This enables the NTCA to customise its supervision through individual account management. This customisation is based on the client profile, the client profile analysis and the supervision strategy. *Freies Ermessen* usually refers to the discretionary powers available to the NTCA in its role as an implementing organisation. Broad discretionary powers are offered for the organisation and implementation of supervision: decisions to carry out an investigation of a specific issue and the depth of any such investigation are made on the basis of the account management team’s professional judgement of the issue. Self-evidently, the discretionary powers for the adoption of (tax) standpoints are determined by the legislation and regulations, case law and uniformity of policy and implementation.

For example, by deducting a deductible item several times or by artificially breaking the symmetry of taxation in several jurisdictions.
3 Horizontal monitoring meeting

3.1 Introduction

The meeting to explore the feasibility of horizontal monitoring (the horizontal monitoring meeting) is held with the organisation’s senior management. This distinguishes the meeting from the regular contacts with an organisation or external specialists, which are not usually held with the senior level. Managers from the NTCA attend the horizontal monitoring meeting to emphasise the importance of this meeting. The meeting’s agenda should preferably be restricted to horizontal monitoring. The horizontal monitoring meeting takes account of the client profile and the existing client relationship. This Section reviews the objective of the horizontal monitoring meeting and the issues that should be discussed during the meeting.

3.2 Objective

The objective of the horizontal monitoring meeting is to enable both parties to explore the feasibility of implementing horizontal monitoring. Elements of this mutual exploration are:

1. the objective of horizontal monitoring, horizontal monitoring’s position in the NTCA’s compliance risk management strategy, and an explanation of horizontal monitoring’s key concepts and the principles on which it is based;
2. the client profile, the favourable and unfavourable elements of the existing contacts, and the reasons why a meeting is being held with this particular organisation to discuss horizontal monitoring;
3. the importance of the ‘tone at the top’ at both the organisation and the NTCA;
4. the responsibilities and expectations of each party;
5. an outline of the steps in the horizontal monitoring process;
6. reaching agreement on the following steps in the horizontal monitoring process.

3.3 Contents of the horizontal monitoring meeting

A brief explanation of elements 1, 3 and 4 is given below. During the horizontal monitoring meeting mutual experiences are used to illustrate specific issues.

Key concepts and principles of horizontal monitoring

Practice has revealed that many organisations have heard about horizontal monitoring, for example via other organisations, external specialists or articles in (professional) journals. For this reason it will be worthwhile to discuss the organisation’s perception of horizontal monitoring and its significance for the organisation’s tax position. This perception is not always in line with the intention of horizontal monitoring. Consequently, the horizontal monitoring meeting offers an opportunity to adjust the senior management’s perception by reviewing the key concepts and principles discussed in Section 1 of this Guide.

‘Tone at the top’

The ‘tone at the top’ refers to the attitude and behaviour of an organisation’s senior management. In an ideal situation, their attitude and behaviour will be in line with the organisation’s vision and strategy, the standards and values on which the vision and strategy are based, and the attitude and behaviour the senior management expects from all others in the organisation. The ‘tone at the top’ refers to the consistency of the (exemplary) behaviour exhibited by the organisation’s management with the organisation’s vision, strategy and key values. The NTCA’s interest in the tone at the top is focused on tax matters. This is also the reason why the horizontal monitoring meeting should be held with officers who represent the ‘tone at the top’, i.e. the senior management. The presence of an external specialist can offer added value. The NTCA’s tone at the top is also of great importance: for this reason the NTCA is at least represented by the client

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16 Often the board (CEO, CFO, director/majority shareholder) or the officers with the administrative and political responsibility for a non-profit organisation.

17 The organisation determines whether an external specialist attends the meeting.
coordinator and a member of the management.\footnote{The team leader, Large Businesses deputy director or director and the account management team hold discussions to determine which officers will attend the meeting.} When the ‘tone at the top’ is not compatible with earlier experiences with the organisation – and vice versa – then this will also be discussed during the horizontal monitoring meeting.

It is not logical to initiate a horizontal monitoring programme with an organisation that continually seeks the limits of what is acceptable from a tax perspective and endeavours to expand these limits: this would not only give an incorrect and not intended impression, but would also give cause to permanent and intensive supervision – which is in conflict with the horizontal monitoring concept.

Specific situations require special attention, such as organisations with one or more directors/major shareholders,\footnote{See also the answers that the State Secretary Mr De Jager gave to questions from the House of Representatives of the States-General during the emergency debate on profit tax levied on multinationals, 28-2-2008, Parliamentary Documents 2008, 57-4055, and the answers to questions from the House of Representatives of the States-General (Question 8), VN 2010/31. 2.} non-profit organisations and entities with a parent company outside the Netherlands. In the last of these situations it will be necessary to obtain an insight into the consistency between the ‘tone at the top’ in and outside the Netherlands as well as the mandate issued to the Dutch management. There may be cultural differences and differences in perceptions of horizontal monitoring may have arisen following the implementation of similar concepts in other states.\footnote{Situations can arise in which directors/major shareholders indicate that although they endorse the concept they do not wish to take part in the agreements on horizontal monitoring (for the time being). This does not need to be an impediment to reaching agreement on the entity’s other divisions (companies). The director/major shareholder, in his or her role as director, remains responsible for the ‘tone at the top’ but does not need to be a party as a shareholder. However, it is necessary to review whether the director/major shareholder’s arguments are compatible with the concept.} This awareness serves as the basis of an exploration carried out with the relevant organisation to review the Dutch management’s mandate and the manner in which the management of the organisation outside the Netherlands can be involved in the horizontal monitoring process.

A number of issues that can be addressed during discussions of the ‘tone at the top’ are listed below. These can be reviewed during the horizontal monitoring meeting, although it is not necessary to obtain an equally clear insight into all issues. These issues are discussed again during the compliance scan. The issues include:

- the strategic objectives in general and the tax strategic objectives in particular;
- the organisation’s attention to tax compliance;
- the organisation’s attention to the internal control, internal auditing and external auditing system, in particular in relation to tax matters.

**Responsibilities and expectations**

The horizontal monitoring meeting also extends to an explicit discussion of the mutual responsibilities and expectations. These discussions will then enable the organisation to give consideration to the feasibility and desirability of an horizontal monitoring process. As stated earlier in Section 1, the NTCA expects that the organisation will file acceptable tax returns and settle its tax debts in time. Consequently, the organisation, in addition to adopting a transparent attitude, is also expected to devote attention to a tax control framework that exhibits an adequate performance. The NTCA bears the responsibility for the adjustment of its supervision to the extent that is justified by the organisation’s transparency and efforts. This also extends to the rapid adoption of a standpoint on tax issues submitted during the preliminary consultations. The NTCA also promises to pay tax refunds in time. These responsibilities are also reflected in the text of the compliance agreement. Both the organisation and the NTCA bear the responsibility for promoting working in real time.

A number of states have introduced a programme for large businesses that is comparable to horizontal monitoring, although the approach they adopt may differ. More information is available in the OECD’s reports on cooperative compliance (the term which replaces the enhanced relationship term formerly used by the OECD).
Consultations on the following steps
Following the meeting both parties review whether they wish to begin the process. Practice has revealed that a second (and, occasionally, third) meeting to discuss the principles may be required. Self-evidently, the organisation is free to exercise its discretion in deciding whether to continue with the process. When the management board decides that it has no need for horizontal monitoring (at present) then the NTCA will be interested in the reasons for its decision. Obviously, the possibility of implementing horizontal monitoring can be reviewed at a later time. Either party can raise this option.

Minutes of meeting
The NTCA strives to make minutes of the horizontal monitoring meeting in consultation with the organisation. The organisation and the account management team reach agreement on the party that will take the initiative.

Concurrence with a tax service provider compliance agreement
In practice, on occasion an external specialist is holding discussions with an organisation on participation in a tax service provider compliance agreement at virtually the same time as the account management team’s initiation of a horizontal monitoring process. The reverse also occurs on occasion. This will then become apparent at some point in time during the horizontal monitoring programme. It is then necessary to avoid the risk of both parties becoming dissatisfied and of the organisation experiencing the situation as a competitive struggle. This can be avoided by making a link between these two processes quickly and, in consultation with the external specialist, informing the organisation of the situation. The organisation can then exercise its discretion in deciding whether to conclude an individual compliance agreement or seek affiliation with a tax service provider compliance agreement. The account management team retains the responsibility for the individual account management of the organisation and amends the strategic supervision plan in accordance with the organisation’s decision.

See also Section 11.
4 Compliance scan

4.1 Introduction
The objective of the compliance scan is to carry out a joint assessment with the organisation to review the feasibility of horizontal monitoring. The compliance scan is carried out by interviewing a number of the organisation’s key officers. These interviews yield information for the determination, in consultation with the organisation, of the feasibility of horizontal monitoring and the need for further agreements, where relevant, to be included in the process. A discussion of the mutual expectations of the further steps in the horizontal monitoring process lays the foundations for appropriate cooperation.

The compliance scan yields an improved insight into the tax attitude of the organisation and parties involved (the ‘willingness’) and the fulfilment of the preconditions attached to the achievement of adequate tax control (the ‘ability’). The information collected about the organisation gives more depth to the client profile and is directly used in the determination of the form and intensity of the supervision and its prioritisation.

4.2 Preparations
The NTCA’s client coordinator directs the compliance scan. The client coordinator, in cooperation with the account management team, uses the current client profile and the findings from the horizontal monitoring meeting to assess the additional work required before a conclusion can be reached on the feasibility of horizontal monitoring. Knowledge and experience from the past can reduce the quantity of work to be carried out. The account management team, in consultation with the organisation, establishes whether the organisation or external specialists called in by the organisation have carried out baseline measurements, quick scans or other investigations and analyses. The NTCA takes account of any such activities when determining the scope of its work. The NTCA may then, in consultation with the organisation, decide to interview the external parties. However, in view of the objective of the compliance scan the external parties will not be requested to provide access to their files of the organisation.

Once the internal preparations have been completed a preparatory meeting is held with the organisation, i.e. the kickoff meeting. This meeting with the organisation is necessary to determine the objective, procedure, planning and the required scope and depth. During the meeting the account management team consults with the organisation on the results from the NTCA’s internal preparations and explains the work required for the compliance scan. This discussion also clarifies why more interviews are conducted at some organisations during the compliance scan than at other organisations. The principles of horizontal monitoring can also be discussed again during the meeting: this will avoid uncertainty during the following phases of the process and disappointment with the mutual expectations. When the organisation has implemented a tax department or has entrusted the tax portfolio to an officer then this department or officer is intensively involved in the compliance scan.

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23 This objective indicates this does not constitute an audit (a test of a statement against a standard on the basis of audit information).

24 On occasion the NTCA may not even need to carry out any work during the compliance scan phase.

25 For example, external accountants, tax specialists, tax assurance providers, IT auditors and tax and IT service providers.

26 When Large Business, Customs or the organisation are of the opinion that cooperation will be efficient and effective then the horizontal monitoring meeting can also review the need for a joint Large Business and Customs horizontal monitoring process.
A horizontal monitoring process is a joint process. The NTCA is responsible for the conclusion following the completion of the compliance scan on the feasibility of horizontal monitoring and the resulting implications for the supervisory activities as reviewed in sections 9 and 10. The organisation is responsible for the (enhancement of the) tax control framework: The division of the responsibilities is emphasised during the kickoff meeting.

During this kickoff meeting the organisation and the NTCA jointly determine which key officers can provide a further insight into the organisation’s control in general and tax control in particular. The number of the organisation’s key officers that need to be interviewed depends on the nature and size of the organisation. Examples of key officers that may need to be interviewed are listed in Subsection 4.4.

The NTCA and the organisation consult on the planning of the interviews and the Administration’s officers who will conduct the interviews. The NTCA’s client coordinator and members of the account management team are always involved in these interviews.

4.3 Implementation

Preparation
The interviews can be held using an agenda of issues that are to be addressed. Subsection 4.4 contains a non-exhaustive list of issues that can be discussed during the interviews. The interviews focus on current, recent developments in the organisation or the organisation’s industry, as a result of which the compliance scan also contributes to the enhancement of the client profile. Self-evidently, the interviews also make use of information and experiences from earlier contacts with the client and insights from the tax treatment of the organisation from the past. The organisation makes an active contribution by raising issues which it perceives to be of value to the compliance scan.

Interviews
Preference is given to interviews based on open questions that are focused on obtaining an improved insight into the organisation’s ‘tone at the top’, tax attitude and attention for control within the organisation. On average, between two to five interviews will be required for the compliance scan. The number of interviews is largely dependent on the size and complexity of the organisation and the number of key officers involved. Self-evidently, key officers can be interviewed simultaneously.

The compliance scan is not intended to serve as an in-depth tax audit of the organisation. Pursuant to the objective and principles of the compliance scan, the NTCA needs to exhibit reticence in requesting documentation and in the review and analysis of the documentation that the taxpayer organisation furnishes during or in connection with the interviews. This information needs to be primarily regarded as illustrative when reaching the decision on the feasibility of horizontal monitoring.

Minutes of the meeting
Minutes are taken of the meetings to ensure that the issues discussed during the interviews and the underlying reasons for the joint conclusion on the feasibility of horizontal monitoring are completely transparent. The account management team and the organisation agree on the necessary working agreements. The organisation approves the minutes.

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27 Key officers are important members of the organisation: they have, for example, a decisive influence on, an insight into or are responsible for important decisions made by the organisation (the company strategy, the (financial) accounts, IT and, in particular, decisions on tax matters).
Evaluation

On the completion of the interviews the client coordinator and account management team hold internal consultations on the feasibility of horizontal monitoring. The most important issue to be given consideration during these consultations is the question as to whether the NTCA’s officers have gained the impression that the organisation is willing to gain tax control (in the longer term) and is transparent about tax issues, or that their earlier impression that this is the case has been established. Horizontal monitoring is regarded as feasible unless there are indications to the contrary. When the latter is the case then the account management team supports its conclusion with substantive arguments. Once the account management team has arrived at an internal standpoint it contacts the organisation. During the resultant meeting further agreements on the horizontal monitoring process and/or the planning may be reached. The account management team draws up a report of the evaluation meeting in accordance with the format developed for this purpose.28

4.4 Issues to be discussed during the compliance scan

An explanation of the themes and the issues to be discussed for each theme is enclosed in the following paragraphs. These issues can be addressed during the interviews, but do not need to be discussed exhaustively. The selection of issues in combination with the existing client profile results in a sufficiently clear insight into the feasibility of the organisation’s participation in horizontal monitoring.

Strategic objectives

This theme focuses on the manner in which the organisation’s strategic objectives demonstrate its attention to compliance with the regulations. Issues for attention include, for example:
- the business’ mission and vision and the resultant strategic company objectives;
- the operational objectives and performance indicators;
- the manner in which the management assesses that the objectives have or will be achieved;
- the degree to which the organisation fulfils its tax and other statutory obligations;
- the attention to (potential) conflicts between the various objectives;
- the management’s attitude to (tax) risks (risk appetite) and the resulting consequences for its tax planning;
- the organisation’s tax policy;
- the organisation’s remuneration policy.

Potential partners to these discussions include members of the executive board (CEO/CFO), the tax department, controller and/or the compliance officer.

Internal control environment

This theme focuses on the manner in which the organisation’s internal control devotes attention to tax matters. Issues for attention include, for example:
- the responsibility for the organisation’s internal control, including the tax function;
- the cooperation between the various parties involved (controllers, tax specialists, accountants or other external specialists);
- the attention to risk control;
- the composition of the supervisory board, the selection of its members and its duties;
- the compliance with ethics regulations and integrity standards;
- the degree of the transparency with regard to (tax) activities and behaviour;
- the performance of the internal control system;
- (internal) monitoring;
- the manner in which points for improvement in the (tax) control are identified and addressed.

28 This format is available in the TOP (Toezicht Ondersteunings Programma ‘Supervision Support Program’) application.
Potential partners to these discussions include members of the executive board, supervisory board, the controller, head of the tax department and internal auditor.

**Information systems**

This theme focuses on the manner in which the organisation devotes attention to information systems of relevance to tax. Issues for attention include, for example:

- IT and internal control;
- the importance of tax matters within IT;
- the importance of IT within tax matters;
- the control of IT;
- general data security requirements.

Potential partners to these discussions include the IT manager and controller. In view of the relationship with IT, it will be advisable to hold the discussions in cooperation with an EDP audit specialist.

**Tax function**

The arrangements for the performance of the tax function vary between organisations. Some organisations assign the duty for the preparation of the tax returns to the administrator, while others assign this duty to a large tax department within the group. The scope and design of the tax function is usually related to the size of the organisation and the complexity of its tax issues. The manner in which an organisation has given shape to the performance of its tax function is an indication of the quality of and the attention to the AO/IC of relevance to tax.

This theme focuses on the manner in which the organisation has given shape to the performance of the tax function. Issues for attention include:

- the assignment of tax responsibilities;
- the duties of the tax department;
- the contracting of external specialists (who, what, how, where and why);
- the performance of duties related to tax by officers other than members of the tax department;
- the integration of the tax function within the business processes;
- the extent to which the organisation’s tax knowledge is up to date and the assurances that the knowledge is kept up to date;
- the manner in which the officers responsible for tax matters are kept up to date with developments within the organisation;
- occasional occurrences or board decisions that influence tax issues;
- the manner in which the tax planning is given shape;
- the recognition and control of tax risks;
- the (internal) monitoring;
- the preparation of the various tax returns;
- the manner in which the organisation maintains control of the settlement of its tax debts and tax refunds to be received.

Potential parties to the discussions include the controller, head of the tax department, internal tax specialist, head of the human resources department, logistics manager (Customs), the salary administrator (payroll tax) and/or VAT administrator.
External monitoring and advice
Pursuant to the NTCA’s Audit Approach, external (supervisory) parties are also of importance. The central question is then which role external supervisors and specialists play in the organisation’s tax control and compliance. Issues for attention include, for example:
– the duties, powers and assignments awarded to external supervisors and specialists (including the tax consultant and the external auditor);
– the frequency of the work carried out by the external supervisors and specialists;
– the policy for the consultation of external specialists (for example, proactive or in response to problems);
– audits and the results from those audits;
– the follow-up given to identified issues for improvement;
– the attitude of the external supervisors and specialists towards the horizontal monitoring concept.

When a discussion is held with an external specialist during the compliance scan then the external specialist is not requested to provide access to his files.

Attitude and behaviour
In view of the fundamental importance of the organisation’s attitude and behaviour, also referred to as the control environment, corporate culture or, as an element of the above, the ‘tone at the top’ of the organisation and its staff, this issue will usually already have been addressed in many interviews. General questions that may be of relevance to this issue include:
– How can the corporate culture be characterised?
– What are the organisation’s core values?
– How are these core values conveyed to the staff?
– How can the communications between the NTCA and the various management levels within the organisation be characterised?

Potential partners to these discussions include members of the executive board (CEO/CFO), the head of the tax department, controller and/or compliance officer.
5 Resolution of pending tax issues

5.1 Introduction
This Section reviews the settlement of pending issues, the issues involved, the objective and the manner in which the issues are resolved in practice. The objective is to settle as many pending issues as possible before the conclusion of the compliance agreement. When this is not feasible then the account management team and the organisation reach procedural agreements.

The pending issues are, for as far as possible, settled with due regard for all the horizontal monitoring principles. The settlement of pending issues is regularly complicated by the adoption of standpoints by each party that have become hardened due to past disruptions in the process or relationship. Opening disruptions of this nature up to discussion often results in the parties’ ability to make progress in the process or relationship. A relationship-oriented approach on the basis of the key values trust, transparency and mutual understanding often brings solutions nearer.

5.2 Objective of the resolution of pending tax issues
Settling pending issues clears the way for working in real time. As such, this process also contributes to the NTCA’s detailing of the profile of the prospective partner to the compliance agreement, whilst the organisation obtains an improved insight into the manner of cooperation involved in horizontal monitoring. This is of importance, as mutual trust lays the foundations for successful and efficient cooperation.

5.3 What are pending tax issues?
Pending tax issues are understood as tax issues or collection issues that are known to the organisation and NTCA at the start of the horizontal monitoring process. These are issues that impede working in real time and can frustrate flexible cooperation and which, consequently, need to be settled. These can relate to current audits, filed but not yet processed tax returns, requests for payment (customs duties) and pending notices of objection, as well as procedural issues such as backlogs in the provision of information, processing of tax returns and audits. Therefore, pending tax issues relate solely to known issues. Investigations carried out within the context of the horizontal monitoring process extend no further than the work required to settle the known pending tax issues. Consequently, when the horizontal monitoring process is initiated the account management team does not, within the scope of this process and within the discretionary powers, of the account management team, actively search for unknown past misstatements. However, the above is not applicable when there are specific indications of irregularities.

5.4 Resolution of pending tax issues in practice
The NTCA and the organisation jointly draw up a summary of the current issues and assign priorities to their settlement. In addition, they preferably reach agreement on the work and responsibilities, as well as the associated planning.

The parties’ results-oriented attitude, transparency and mutual understanding will contribute to the rapid settlement of the current issues. Both parties will need to have the intention to explore the existing tax issues under discussion and gain an insight into the issues. This exploration will reveal both the issues that can be settled and the tax issues about which the parties continue to differ in opinion.
The account management team exercises its discretionary powers – its freies Ermessen – when resolving these issues, in particular when valuing the facts and estimating the uncertainties.\textsuperscript{29} The general framework for this approach continues to be the correct application of the legislation, regulations and case law.

It should be noted that the objective is not, as such, to reach agreement on all the issues under discussion: the parties may be unable to reach agreement on a solution. Any such cases are then submitted to court. The NTCA and the organisation should then endeavour to reach agreement on the facts, so that the proceedings before the court can be completed as smoothly as possible.

5.5 Adjustments and penalties

It may be necessary to adjust tax returns that have already been filed. Section 12 reviews the procedure to be followed when making these adjustments and the associated penalty issue.

\textsuperscript{29} It should be noted that this is also applicable to dealing with the issues of organisations that are governed by horizontal monitoring.
6 Compliance agreement and evaluation

6.1 Introduction
The NTCA and the organisation will have jointly reviewed the feasibility of horizontal monitoring during the horizontal monitoring meeting, experiences in managing the individual account and the compliance scan. Both parties have now obtained a clear insight into the horizontal monitoring process, the division of their responsibilities and their mutual expectations. The organisation will have stated that it is both willing and able to comply with and continue to comply with the horizontal monitoring principles. The horizontal monitoring relationship can now be laid down in a compliance agreement.

6.2 Use of the standard text
A standard text has been formulated for individual compliance agreements. Two variants have been formulated, namely one for agreements when both Large Business and Customs are parties to the agreement and one for agreements when solely Large Business is a party to the agreement. The first variant is employed when Customs cooperated in the horizontal monitoring process. The text of the compliance agreement is formulated in general terms. Pursuant to legal equality, procedural efficiency and neutrality requirements, variances from the standard texts are not permissible.

The principles governing the compliance agreement include the following:
- A member of the Large Business’ management signs the compliance agreement on behalf of the NTCA.30
- The compliance agreement is signed by a member of the organisation’s management (usually a member of the executive board, i.e. the CEO, or CFO, director/major shareholder or the officer of a non-profit organisation bearing the administrative and political responsibility for that organisation).
- The compliance agreement does not lay down additional individual (tax) agreements. When agreements in addition to those in the compliance agreement need to be reached, for example about pending issues, then these are laid down in a separate settlement agreement.
- The standard text does not include any submission or response deadlines: this is a carefully-considered decision, and the compliance agreement states solely that the parties shall take account of each other’s interests. Specifying deadlines would not be compatible with the spirit of the compliance agreement, which is a framework agreement.
- The compliance agreement does not lay down requirements with regard to the organisation’s internal control system in the form of specific control measures, as this is the responsibility of the organisation. Pursuant to the horizontal monitoring principles, the organisation shall implement control measures which are compatible with the nature and size of the organisation.31
- The covenant contains a footnote under the ‘Principles for the Dutch levy of all state taxes’ heading. This footnote states that: ‘As the occasion arises, this is also understood as the application of the VAT compensation fund.’ This footnote is relevant when the entity is a non-profit organisation or government body. The footnote can be omitted when this is not the case.
- The Dutch-language version of the standard compliance agreement is always employed for the formal adoption of the agreements and this is the version that is signed by both parties. When an English-language translation of the compliance agreement is required then the translation is attached to the compliance agreement in an annex. The NTCA does not employ compliance agreements in languages other than Dutch or enclose these in annexes.

30 The team leader, deputy director or director of the large business division and the account management team hold management discussions to decide which officer will sign the compliance agreement.

31 In accordance with Article 52 of the State Taxes Act.
Working in accordance with a compliance agreement

On occasion, an organisation chooses to cooperate in accordance with the principles of the horizontal monitoring concept, but is unwilling or unable to conclude a compliance agreement. These are extraordinary cases. The account management team and the organisation will then review the reasons for the organisation’s unwillingness or inability to conclude a compliance agreement (for the time being). When the parties conclude that a compliance agreement is not feasible, then they will both need to understand that horizontal monitoring without a compliance agreement will require their cooperation in accordance with all the horizontal monitoring principles.

6.3 Parties

When the partner to the compliance agreement is an organisation with more than one business unit in the Netherlands then the parties jointly determine which of the taxpayer business units shall be governed by the compliance agreement. The NTCA endeavours to bring the entire economic entity (all tax liable legal entities in the Netherlands belonging to the same group entity) under horizontal monitoring, or at least those business units/entities which are engaged in the core activities and over which the Dutch management exercises a controlling influence.

In many instances the group entity will also include tax liable legal entities other than the entities engaged in the core activities, for example directors/major shareholders, holding companies and sister companies. The NTCA will intend to ensure that these entities or sub-entities are included in the compliance agreement. In principle, directors/major shareholders with a decisive influence are included in the compliance agreement. They sign the compliance agreement as directors of the group and as private individuals. When a director/major shareholder puts forward arguments for refraining from taking part in a compliance agreement then the NTCA gives careful consideration to the arguments’ compatibility with the horizontal monitoring principles.

When joint ventures are an issue then the account management team will hold internal consultations with the account management team that is responsible for the account management of the joint venture, for example in the event of a participating interest of which the organisation does not have complete control.

When a group entity is comprised of a number of autonomous divisions with different shareholder structures then it will occasionally be necessary to review whether separate compliance agreements can be concluded with these divisions. The organisation’s wishes and motives will then be of importance: it is possible to conclude more than one compliance agreement. However, the NTCA will still then endeavour to implement horizontal monitoring for the entire group entity.

6.4 Publicity for a compliance agreement

Organisations will often wish to give publicity to the conclusion of a compliance agreement with the NTCA. The account management team will then contact one of the Ministry’s press officers. The press officer will consult with the account management team and organisation on the manner in which publicity will be sought and on whether the content of the press release is compatible with the NTCA’s perception.
6.5 Working agreements
In practice, some organisations state that they wish to reach specific working agreements after or in combination with the conclusion of the compliance agreement. This request is then based on the wish to obtain an insight into the actions the organisation and the NTCA will take in specific cases. Working agreements of this nature do not detail the meaning of terms and standards referred to in the compliance agreement, such as ‘acceptable tax return’, ‘arguable standpoint’ or ‘material misstatement’: this takes place at a national level. Nor do working agreements relate to deadlines and similar items. Working agreements are not laid down in a (standard) agreement attached to the compliance agreement. However, a number of items can be discussed with the organisation (and the external specialist) to how the parties intend to approach specific elements of horizontal monitoring. The agreements reached during the meeting can be recorded in the minutes. These working agreements can, for example, relate to:
- contact persons;
- periodic consultations;
- consultations on the enhancement of the tax control framework (see also Section 7);
- procedural agreements.

6.6 Changed circumstances
The circumstances prevailing at the time of the horizontal monitoring meeting, compliance scan and conclusion of the compliance agreement may change at a later date. Changes can occur at the NTCA, for example:
- changes in policy;
- changes in the members of the account management team.

Changes can occur at the organisation, for example:
- changes in the strategy;
- changes in the management or shareholders;
- changes in the accounting or legal structure of the organisation (relocation of business divisions, mergers, takeovers and demergers);
- changes in the tax department;
- changes in the external auditor, tax consultant or other external specialists.

Both parties can raise changes of this nature for discussion during the evaluation of the compliance agreement, or on other occasions. They will then also review the consequences for amendments to the compliance agreement. When the changes are fundamental then it may be worthwhile to discuss the principles of the compliance agreement again and to reconfirm them.

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A change in the director (the officer signing the compliance agreement other than a director/majority shareholder) does not give cause to the need to conclude a new compliance agreement. However, a discussion of the mutual expectations of horizontal monitoring and the tone at the top will be appropriate. A change in the director (the officer signing the compliance agreement who is the director/majority shareholder) will give cause to the need to conclude a new compliance agreement when the tax matters of the former director/majority shareholder were included in the original compliance agreement. The original compliance agreement is terminated and a new compliance agreement is concluded. Self-evidently, the discussions on the new compliance agreement can also address the director/majority shareholder’s joint signing of the agreement with respect to his tax matters. The former director/majority shareholder cannot be a party to a compliance agreement as a private person independent from the company.
6.7 Periodic evaluations of the compliance agreement

Periodic evaluations are always a permanent element of the horizontal monitoring relationship. In principle, evaluations of compliance agreements with very large businesses are held once a year and with other large businesses once every two years. It can be practical to combine the evaluation with a company meeting/real-time visit. The evaluation meeting also devotes attention to reflection (see Section 2). The meeting offers the account management team an opportunity to evaluate the organisation’s expectations at (senior) management level, for example with respect to the enhancement of the organisation’s tax control framework and the experienced transparency.

These evaluation meetings not only need to involve the account management team, but also the officers who played a role in concluding the compliance agreement (such as members of the organisation’s executive board and the officers of the NTCA who were involved).

The evaluation offers the organisation an opportunity to reflect on the NTCA’s performance in relation to the compliance agreement. How does the organisation experience working pursuant the horizontal monitoring concept? Has it met their expectations? Can the organisation suggest any points for improvement for the NTCA? Minutes are taken of the evaluation meeting.

6.8 Termination of the compliance agreement

It is not possible to formulate an exhaustive list of circumstances that give cause to the termination of the compliance agreement. In principle, compliance agreements are terminated solely for serious reasons. When one of the parties wishes to terminate the compliance agreement then the account management team must always consult with the Tax and NTCA’s management and professional specialists.

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33 Organisational factors, such as the organisation’s size, organisational maturity and complexity.

34 More information about tax control frameworks is available in Tax Control Framework – Van risicogericht naar ‘in control’: het werk verandert (‘Tax Control Framework – From risk-oriented to in control: the work is changing’) document.

35 For example, Article 10 Title 1, of the Civil Code 2, Article 52 of the State Taxes Act and the Dutch Corporate Governance Code. A number of sectors also prescribe specific sectoral governance codes or codes of conduct.

36 Control objectives are referred to in documents including the documents published by COSO. An explanation of COSO’s control model is given in the Tax Control Framework – Van risicogericht naar ‘in control’: het werk verandert (‘Tax Control Framework – From risk-oriented to in control: the work is changing’) document.
7 Tax control framework

7.1 Introduction

All organisations employ tax control instruments. The design of the tax control framework depends on both organisational factors and the decisions on the required scope and quality of the control. In addition, the tax control framework can be in one of various development stages. As a result, each organisation has a unique tax control framework as part of a unique more extensive business control framework (tailor-made). However, a tax control framework always is set up with the objective of providing for the timely, complete and full availability of tax information required to file an acceptable tax return. Businesses also need to retain control of their timely settlement of tax debts or receipt of tax refunds.

This Section reviews the design, implementation and performance of tax control frameworks. The organisation bears the primary responsibility for the tax control framework. The NTCA adopts an active approach to the encouragement of the organisation in this process, for example by entering into discussions on, providing input for and – and above all – by giving feedback on the tax control framework. When so required the NTCA also shares its knowledge of statistical sampling and explains the consequences for its supervision. This Section begins with a general explanation of tax control frameworks and then reviews the following elements of this process in the following order:

- the analysis of the current tax control framework;
- the expansion and/or improvement of the design of the tax control framework (the design and implementation);
- the implementation or optimisation of internal monitoring of the measures implemented for the tax control framework (the performance).

This Section has been designed in a manner such that its contents are applicable to all organisations governed by individual account management. However, the detailing for relatively small organisations may differ from that for relatively large organisations. In relatively small organisations the responsibility for the sub-processes in the tax control framework reviewed in this Section will more often be assigned to one officer or a limited number of officers and will often be designated less explicitly.

7.2 Tax control framework

An organisation’s control framework enables its management to achieve its objectives for the effectiveness and efficiency of the business processes, quality of the financial reports and compliance with the legislation and regulations. Organisations will wish to be in control in order to achieve their own objectives. In addition, a large number of (new) regulations address the quality of an organisation’s internal control.

Tax control frameworks are an element of organisations’ overall control systems. Consequently, the objectives of the tax control framework result from the following general control objectives of an organisation:

- to achieve the strategic objectives; for example, with respect to corporate social responsibility.

Organisational factors, such as the organisation’s size, organisational maturity and complexity.

More information about tax control frameworks is available in Tax Control Framework - Van risicogericht naar ‘in control’: het werk verandert (‘Tax Control Framework – From risk-oriented to in control: the work is changing’) document.

For example, Article 10 Title 1, of the Civil Code 2, Article 52 of the State Taxes Act and the Dutch Corporate Governance Code. A number of sectors also prescribe specific sectoral governance codes or codes of conduct.

Control objectives are referred to in documents including the documents published by COSO. An explanation of COSO’s control model is given in the Tax Control Framework - Van risicogericht naar ‘in control’: het werk verandert (‘Tax Control Framework – From risk-oriented to in control: the work is changing’) document.
– to promote effective and efficient operations;
  this objective refers to the primary processes. The organisation needs to be aware of the tax consequences
  of its activities as soon as possible.
– to promote the quality of the internal and external (tax) accounts;
  this objective refers to the tax returns and to the information submitted to the NTCA or to third parties.
– to promote compliance with the relevant (tax) legislation and regulations;
  this objective refers to the organisation’s filing of tax returns that comply with the legislation and
  regulations and which are free of material misstatements.

The tax control process extends to a variety of areas for attention and can be broken down into a number of
sub-processes. The larger accounting firms and tax consultancies also recognise these areas for attention
when advising their clients on the design of a tax control framework. In addition, they can serve as a
framework for discussions between the NTCA and taxpayers. An example of these various sub-processes and
associated areas for attention is enclosed in the following table.

<table>
<thead>
<tr>
<th>Sub-process</th>
<th>Area for attention</th>
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<tbody>
<tr>
<td>Tax organisation</td>
<td>Agreement between the tax objectives and organisational objectives</td>
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<td></td>
<td>Organisational and tax structure</td>
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<td></td>
<td>Duties, powers and responsibilities</td>
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<td></td>
<td>Staffing level and training</td>
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<td>Integration in the organisation</td>
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<td>Tax planning</td>
<td>Recognition and implementation of tax opportunities</td>
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<td>Tax risk management</td>
<td>Organisation of tax awareness within the organisation</td>
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<td></td>
<td>Identification of tax risks</td>
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<td></td>
<td>Response to tax risks (control)</td>
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<tr>
<td>Communication</td>
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The following paragraphs give a brief explanation of each of these sub-processes. This has been included to
provide an insight into the process organisations carry out when optimising their tax control framework.

**Tax organisation**

Organisations need to have an insight into all their divisions (business units and subsidiaries, etc.) and into
the relevant tax processes of these divisions. The commercial structure often differs from the legal structure,
which in turn often differs from the tax structure. It will be self-evident that the attention that needs to be
devoted to the organisational structure will increase with the size of the organisation and the frequency of
changes to the structure.37

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37 On occasion, it may difficult to obtain an insight into the tax implications of mergers, takeovers and demergers of
international concerns. This is of importance to issues such as the consolidation of the financial statements. The organisation
also needs to gain certainty about the tax positions of the various elements of the organisation: in practice the NTCA observes,
for example, that some non-profit organisations do not have an appropriate insight into the elements liable to pay VAT or that
some operations are incorrectly deemed to be operations for which VAT is due.
The organisation uses its tax strategy (and the tax control framework derived from the tax strategy) to formulate its tax objectives. The organisation also assigns the associated duties and responsibilities to members of its staff and supervises their performance. The organisation also needs to have a clear insight into the officers responsible for the tax processes, the officers who report on the tax processes and the officers who prepare the various types of tax returns.

The organisation needs to devote specific attention to the assignment of the duties, powers and responsibilities in a manner that ensures that the organisation receives timely information about all tax relevant events. This implies that the officers bearing tax responsibilities are involved in consultations and decision-making with potential tax consequences in good time. The organisation can then assess the resultant tax risks.38

**Tax planning**

Tax planning refers to the planning and structuring of the (business) activities and the legal form within which these activities are carried out in a manner that achieves control of the tax burden.39 Tax planning is necessary to obtain control of the tax consequences of the (business) activities and, consequently, is an essential element of the tax function. Organisational decision-making also needs to take account of the tax consequences of those decisions. For this reason the tax planning needs to be compatible with the organisation’s business strategy and risk appetite. Tax planning is one means of giving shape to the tax strategy. In practice, tax planning often results in preliminary consultations with the NTCA. For this reason the account management team needs to have an insight into the manner in which the organisation has structured its tax planning.

**Tax risk management**

The organisation has designed its tax control framework in a manner that ensures that it is aware of all relevant events with consequences for taxation. This requires communication structures to be employed by the officers bearing tax responsibilities. Examples include forms of consultation that discuss financial, legal and operational events and which involve the officer bearing the tax responsibility. This is necessary as the organisation needs to identify risks. The tax risks are then assessed and, where relevant, action is taken to control those risks.

Appropriately organised tax risk management enables the taxpayer to identify and control the relevant tax risks and, where relevant, discuss them with the NTCA during the preliminary consultations.

**Communication**

The organisation provides for the communication of its tax strategy and the manner in which it this is given shape. Does the organisation ensure that all the officers involved are aware of the tax strategy? Do they comply with the rules? The pivotal question for the organisation is then the manner in which it ensures that the ‘tone at the top’ is clear to everyone and that everyone acts accordingly.

**Information technology (IT)**

IT not only supports the achievement of the strategic objectives, but is rapidly becoming an element of the strategy. IT also plays (an increasingly) important role in the achievement of the tax objectives, as a result of which organisations need to involve IT in the achievement of the tax objectives at an early stage. IT is not only an increasingly important means of providing support to the business processes but is also expanding and becoming an integral element of the business processes. With these developments the traditional form

38 These activities involved in the performance of the tax duties are also jointly referred to as Tax Risk Management.

of internal control (AO/IC) is increasingly being replaced by automated control measures (what are referred
to as application controls). As a result, the tax control measures implemented for the tax control framework
(TCF) will progressively extend to the business’ automated environment. For this reason an EDP auditor
needs to be involved in the process at an early stage of the horizontal monitoring process.

Monitoring
Monitoring ensures that the control measures continue to exhibit an appropriate performance. This
provides for the identification of gaps in the internal control system and the implementation of measures
to fill any identified gaps.

Tax accounting
The tax component needs to be recognised in the commercial financial statements in the correct manner as
viewed from the tax accounting perspective.

Tax compliance
The organisation reviews how it provides assurance that records are made of all transactions and that those
records are stored. Virtually all organisations have implemented logistics and/or financial information
systems to provide support for and control their business processes. The financial results are used to file the
various types of tax returns. In addition, the (results from the) tax decision-making moments are often
included in the information systems. The complete and accurate data need to be recorded and processed
in the information system as this is a condition attached to the ability to file acceptable tax returns.
Consequently, the organisation’s management needs to recognise the importance of the various
information systems.

Various members of the organisation’s staff are directly or indirectly involved in tax matters. Organisations will
be wise, for example, to review the potential tax consequences of a human resource management officer’s
issue of laptops to the staff prior to the issue. This is also applicable, for example, to the sales department that
provides for inter-company deliveries, the legal department that purchases participating interests and the R&D
department that submits an application for a subsidy, etc. The organisation must ensure that it has up-to-date
tax knowledge at its disposal (either in-house or via contracted specialists) and that the officers bearing the
responsibility for taxation are consulted in time so that the transactions are interpreted in the correct tax
manner. The organisation also needs to recognise preliminary consultation issues.

In addition, the organisation needs to monitor the timely refund of excess tax payments or settlement of its
tax debts, as well as the timely payment of the amounts of payroll tax withheld once the (provisional) tax
returns have been filed.

7.3 Analysis of the current internal control system
Knowledge of the current level of tax control is of primary importance to the organisation. Self-evidently,
the depth of the insight into the level will vary between organisations. When necessary, the organisation
will carry out a further analysis. The organisation will then assess -at group level- the manner in which the
specified sub-processes have been implemented in the tax processes. In practice, organisations often
request a tax consultant or an internal audit department to carry out these analyses.

For example, the statement of VAT amounts on sales invoices (regular, high or low rate, Export or ICL) and the accurate
payrolling of salary components.
The organisation bears the responsibility for its tax control framework. Various officers are involved in the design of the tax control framework, such as controllers and/or tax specialists. The internal auditors also play a role in the design, in particular in the design of the monitoring. Organisations can also make use of various services provided by external specialists during the expansion and improvement of their tax control framework: they can, for example, make use of the methods and techniques developed by consultants for the design, implementation and/or monitoring of the tax control framework. The organisation can also make use of the services of a tax service provider for the filing of all or specific tax returns filed by the organisation.

**Action plan**

The analysis offers the organisation an insight into the risk of its failure to identify relevant tax issues in time and in full. The organisation weighs this risk against the required level of its tax control (with due regard for its risk appetite) as laid down in the organisation’s tax strategy.41

The organisation uses the comparison of the actual and required level of tax control to determine which steps it will take. The organisation specifies this follow-up programme in an action plan. The design and implementation of a tax control framework or the enhancement of the internal tax control is not an autonomous process, but rather a process that is scheduled for and implemented during a longer period of time. The action plan usually specifies a phasing of the work to be carried out: the specification of phases simplifies monitoring the progress.

Organisations can adopt two lines of approach to the implementation of the required control measures:

– They can opt for the initial implementation of a large number of control measures. They can then expect fewer misstatements in their monitoring and will then need to make fewer adjustments to the control measures on the basis of shortcomings revealed by the monitoring.

– They can opt to begin with a sample to review whether it is necessary and desirable to avoid misstatements of the observed magnitude by implementing improved control measures.

When it is assumed that relevant misstatements are identified and rectified to an adequate extent both lines of approach will yield the same result.

The scope of the control measures may be subjected to limitations. In practice, tax control frameworks are often designed and implemented in a series of steps, for example by beginning with the introduction of the tax control framework for:

1. specific parts of the organisation (countries / operating companies / business units / operational processes and similar);
2. specific types of tax (for example, payroll tax);
3. specific risks.42

Organisations regularly opt for a risk-oriented design of their internal control system. Internationally recognised models such as the COSO and CobiT models are risk-oriented. Developing the tax control framework on the basis of business units, types of tax or risks gives structure to the design and implementation phase. Consequently, this approach is often adopted.

41 It is possible, for example, to employ what are referred to as ‘maturity levels’ for this purpose.

42 Risk-oriented design can be initiated using one of two methods. The first method is to select risks that will be addressed by including them in the tax control framework. Businesses can, for example, begin with the five risks that they perceive to be the largest risks and then expand their work from those risks to continually increase their level of in control. The second method is based on the organisation’s willingness to accept risks. The number of risks to be covered the tax control framework decreases with increasing willingness to accept risks and, consequently, the remaining risk that the organisation does not comply with the legislation and regulations will also increase. These two forms of limitation adopted by an organisation do not justify its non-compliance with (all) the rules or its lack of willingness to achieve transparency.
The first two limitations in the scope of the tax control framework referred to above can readily be observed by the NTCA and can be taken into account in the adjustment of its supervision. Both the organisation and the NTCA need to have an insight into:

– the reasons why parts of the organisation or types of tax were excluded from the scope;
– the planning for the inclusion of relevant parts of the organisation and types of tax within the scope (as an element of the enhancement of the tax control framework).

The third limitation is much more complex in terms of the adjustment of supervision. The NTCA states whether it recognises the risks selected by the organisation as risks and, where relevant, supplements these with risks it has observed. However, the organisation and the NTCA are unable to assess whether all relevant risks are covered and, as a result, assess the quality of the risk detection and, ultimately, the acceptability of the tax return in its entirety. When the organisation has opted for a limitation of the scope of the tax control framework of this nature then the NTCA will request the organisation to implement monitoring to absorb the resultant residual risks.

The organisation’s transparency in its intended activities for and investments in the tax control framework offers the NTCA an insight into the progress in the development of the AO/IC. The NTCA gains this insight by holding discussions with the organisation to review issues including the progress and the extent to which the working agreements that were reached during the compliance scan and laid down in the strategic supervision plan have also been included in the action plan. The NTCA also provides input for specific issues on the basis of its past experiences with the organisation or its general knowledge of the industry.

7.4 Expansion and/or improvement of the tax control framework

The tax control framework encompasses all the relevant types of tax and the tax risks concerning all parts of the organisation that need to be addressed if the organisation is to file acceptable tax returns. The organisation works towards this objective in stages as based on the plan of approach.

The NTCA employs a supplementary standard within the horizontal monitoring concept, namely active transparency between taxpayer organisations and the NTCA. This implies that the organisations are transparent about relevant (tax) standpoints they have adopted or intend to adopt and that they submit these to the NTCA in advance.

The NTCA wishes to gain an insight into the scope of and the planning for the implementation of the tax control framework. This process is a cyclical and iterative process, as circumstances can change and many businesses develop and implement their tax control framework in phases. Self-evidently, any differences of opinion on the scope, progress and findings will need to be explicit issues for discussions between the parties. The parties will discuss these differences of opinion and their consequences for the NTCA’s supervision.

The adoption of a phased approach may result in relevant parts of the organisation falling outside the scope of the tax control framework for the time being. When the NTCA does not possess any information about urgent current risks within these relevant parts of the organisation then it will not initiate any audits of those parts during the development process. The organisation schedules the development of the tax control framework in a manner that ensures that an insight into the degree of control of these parts becomes available as soon as is possible. When an organisation commits itself to the horizontal monitoring concept – which is manifested by the preparation of a specific plan of approach that specifies how the tax control framework and horizontal monitoring will be given shape – the account management team will suffice with discussions on the progress.

Self-evidently, the organisation’s tax control framework may already be at a level that no further expansion and/or improvement is necessary. This will then need to be demonstrated by an analysis carried out by the organisation.
During these progress meetings the organisation provides an insight into the manner in which it is working on the tax control framework. Self-evidently, the account management team also deploys other supervisory instruments (such as the assessment procedure and preliminary consultations) and the account management team and organisation assess the effects of changed circumstances (such as amendments of the legislation and regulations or changes in the organisation’s activities).

7.5 Expansion and/or improvement of internal monitoring

**Internal monitoring’s role**

The intention of monitoring is to ensure that the control measures continue to perform as they were intended and to identify any gaps in the internal control. Monitoring also ensures that the measures are adjusted to relevant changes. As a result, internal monitoring ensures that any (material) variances and shortcomings in the internal control are identified and rectified before they could result in the failure to achieve the objectives. From the perspective of taxation these relate to material misstatements in the relevant tax returns.

The assurance that monitoring provides about the internal control measures incorporated in a tax control framework is directly related to the scope of the monitoring. When the scope of the monitoring is identical to the scope of the tax control framework then the NTCA receives sufficient assurance for the effectiveness of all the measures incorporated in the tax control framework. When the scope of the monitoring is restricted to a limited number of measures incorporated in the tax control framework (usually what are referred to as the key controls) then the monitoring provides solely a specific degree of certainty about the effectiveness of those measures. Monitoring solely those measures incorporated in the tax control framework results in the risk of misstatements remaining undetected which arise in areas not covered by the scope of the tax control framework.

The scope of the monitoring can be expanded beyond the scope of the other tax control measures incorporated in the tax control framework. This can be achieved by conducting substantive audit tests, such as data analyses and statistical sampling of a population of transactions and accounting records or risks that fall outside the scope of the tax control framework. These substantive audit tests will then enable the organisation to assess the acceptability of the tax return.

**Internal monitoring in the horizontal monitoring process**

The degree to which organisations have implemented internal monitoring varies considerably in practice. Some organisations have not implemented internal monitoring whilst others have already (partially) implemented a formal internal monitoring process.

Internal monitoring is an important element of an organisation’s internal (tax) control system. The results from internal monitoring serve as input for the modification and improvement of the tax control framework (the learning cycle). Internal monitoring also enables organisations to demonstrate that they are in tax control and, consequently, substantiate the quality of their tax control framework. Within this context the results from internal monitoring serve as an importance basis for the NTCA’s adjustment of its supervision.

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44 See ‘Netherlands Tax and Customs Administration’s Audit Approach - The Audit Approach and its models deployed in supervision’.
Internal monitoring can be based on one of several forms of design (line audits, procedure tests, data analyses, statistical sampling and similar). The organisation decides which form is most compatible with the organisation. The organisation can exercise its discretion in deciding which form it will adopt, although the NTCA has a preference to statistical sampling. This is because a statistical sample offers a simple and effective means of bringing the principles of internal monitoring into line with with the principles of the NTCA’s supervision. The adjustment of the supervision can then be implemented in an optimal manner. If so required, the NTCA shares its sampling expertise with the organisation.

**Communication**

Internal monitoring will result in the evaluation of the control activities with a certain degree of continuity. This is also necessary in view of internal and external developments. The NTCA continues to encourage this process and calls the organisation to account if necessary. This process is shown in the following figure:

*The tax control process – the organisation and the NTCA*

The results from the internal monitoring are discussed with the NTCA. The organisation and the NTCA will, depending on the manner in which this process is carried out, make specific agreements that are laid down in the strategic supervision plan.

Agreements are also reached on the approach in which the organisation deals with any misstatements identified during the monitoring, and whether, and, if so, the extent to which, the organisation may be expected to carry out a further investigation of the misstatements in the accounts for earlier years. This depends on the nature and magnitude of the identified misstatements.

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*For example, the development of new products, reorganisations, changes in staff, amended legislation and similar.*
8 Preliminary consultations

8.1 Introduction
This section reviews the objective of preliminary consultations, the time at which these consultations are held and the way in which they are held. This review also examines the issues requiring attention regarding the preliminary consultations.

8.2 Objective of preliminary consultations
Preliminary consultations are held when the tax qualification of facts and/or interpretation of tax law relating to the facts is not clear. The most important purpose of preliminary consultations is to provide both the organisation and the NTCA more certainty about the tax position. Preliminary consultations constitute one of the reality checks that are of importance to the adjustment of the NTCA’s supervision.

Preliminary consultations are an important element of horizontal monitoring. The organisation submits relevant tax standpoints to the NTCA in real-time whenever possible and at least before the actual filing of the tax return. The account management team states its perception of the legal consequences. Preliminary consultations are often of importance to organisations, as they benefit from rapid certainty about the tax consequences of (intended) transactions before the transactions result in irrevocable consequences. Moreover, many organisations regard differences of opinion with the NTCA about their tax standpoints as undesirable.

Preliminary consultations are also of importance to the horizontal monitoring process and to the NTCA’s supervision. Preliminary consultations improve the client profile:
– Holding preliminary consultations is one of the instruments for the collection of information about the quality of tax returns. Preliminary consultations enable the NTCA to reduce the amount of work it needs to carry out when assessing the return, as the tax standpoints have already been discussed. As a result, preliminary consultations save time. In addition, it is usually easier to reach agreement when opportunities for the modification of the design of a structure are still available and the tax position is not yet definitive.
– Preliminary consultations yield information about the organisation’s tax attitude. Requests for preliminary consultations are often made following changes in the organisation, tax planning and tax risk management. As a result, preliminary consultations yield information about the organisation’s tax strategy and the degree to which the organisation is in control. It is to be expected that the quality of the information furnished during the preliminary consultations (completeness, accuracy and timeliness) will increase with the degree to which the organisation has its affairs in control.

Preliminary consultations contribute to an improved relationship between the organisation and the account management team. This in turn results in increased trust, as preliminary consultations offer both parties an insight into each other’s attitude, behaviour and motives.

8.3 Procedure for preliminary consultations
Preliminary consultations are held in real time whenever possible and in any case before or no later than the time at which the tax return is filed. The standpoints discussed during the preliminary consultations relate to relevant tax issues that could be perceived differently by the organisation and the NTCA, for example as a result of differences in the interpretation of facts or the law. Within this context ‘relevant’ has both a quantitative and qualitative meaning as it refers to both the nature and the financial scope and complexity of the issue.

In certain circumstances preliminary consultations can also be held in isolation from the preparation of tax returns, for example when preliminary consultations are requested in connection with the collection of tax.
Preliminary consultations are initiated by the organisation and or the external specialist called in by the organisation when it is expected that the NTCA could adopt a different standpoint on the issue in question. The organisation and the NTCA view the issue from each other’s perspective in an endeavour to arrive at a joint solution. Self-evidently, the proposed solution will then be compatible with the legislation and regulations and in accordance with the uniformity of policy and implementation.

Transparency is one of the horizontal monitoring principles. In signing the compliance agreement the organisation has committed to seek preliminary consultations when so required. The organisation’s insight into its tax matters ensures that requests for preliminary consultations are submitted in time. The organisation and account management team will have reached, where relevant, working agreements for preliminary consultations (see Section 6). Consequently, the NTCA assumes that the organisation is transparent and that it gives an accurate and complete insight into the facts. On the basis of this principle the account management team holds preliminary consultations with organisations with a compliance agreement (organisations governed by horizontal monitoring). This differs from situations in which less information about an organisation’s attitude, behaviour and tax control is available, as the account management team does not need to continually assess whether organisations governed by horizontal monitoring are presenting the complete body of facts. As a result, the preliminary consultations are limited to a pure (legal) issue and the issue can be settled more rapidly.

Requests the organisation submits for preliminary consultations should comply with the format laid down in the Richtlijn Vooroverleg (‘Preliminary Consultations Guidelines’):

- The request is submitted in writing;
- The request includes an explanation of the case for which a standpoint is requested, together with the facts and circumstances relevant to the case;
- The request includes a clear and unequivocal conclusion on the tax consequences.

The outcome of the preliminary consultations is then laid down in writing. When the preliminary consultations relate to an issue of great importance the outcome is laid down in a separate letter or settlement agreement. The outcome from preliminary consultations on less important tax issues can be laid down in other documents, such as minutes of the consultations. The account management team and the organisation may also reach agreement on the manner in which the outcome from the preliminary consultations can be recognised in the tax return.

8.4 Issues for attention for preliminary consultations

**Processing issues**

Preliminary consultations occupy a very important position in horizontal monitoring. The organisation submits relevant (tax) standpoints it has adopted or plans to adopt to the NTCA as soon as possible in preliminary consultations held with the Administration. The NTCA responds to a standpoint the organisation has adopted or plans to adopt as soon as possible after the receipt of the standpoint by, with the maximum possible degree of consultation with the organisation, stating its perception of the legal consequences. Account is then taken of the relevant deadlines for the organisation. The account management team also raises relevant (tax) issues when it anticipates that there may be a difference of opinion with the organisation. The account management team discusses the processing of the request for

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\[47\] Preliminary consultations can also be held on other grounds, for example based on the APA/ATR practice.

preliminary consultations, when the account management team follows the regular policy for requests of this nature. In principle, the NTCA is willing to conduct preliminary consultations and always states its perception of the legal consequences.

Nevertheless, in some situations providing certainty – ‘approved’ or ‘not approved’ – falls outside the scope of the legislation and regulations and/or is not in accordance with the uniformity of policy and implementation. In some cases the request may relate to an exploration of the limits of the tax legislation. This then refers to situations in which the following conditions are met:

– the sole or most important reason is to save tax;
– the actions do not have any real practical significance other than their significance for tax;
– the objective and spirit of the law (or treaty) would be denied if the application of the law as requested by the taxpayer were to be adopted.49

In some situations it may be decided that the actual qualification or interpretation shall be left open. It should be noted that this is governed by the principle that no distinction shall be made in the treatment of organisations that have or have not concluded a compliance agreement. No certainty will be provided when the account management team establishes that the organisation has employed aggressive structures and/or has endeavoured to seek and stretch the limits of the tax legislation and/or regulations. Management and specialists will then be consulted. These cases will probably result in the need for more ex post supervision.

**Preliminary consultations and individual account management**

The manner in which the account management team conducts the preliminary consultations is determined by the required effect on compliance. The account management team has also taken account of its experiences when updating the strategic supervision plan. The account management team – after consultations with the NTCA’s management and professional specialists – also gives its reflection on the adopted standpoint. The consequences for the account management are also expressed in the strategic supervision plan and are discussed with the organisation’s management during the evaluation of the compliance agreement, where relevant.

**Fair share**

Self-evidently, the outcome of the preliminary consultations must fall within the scope of the legislation and regulations and must be in accordance with the uniformity of policy and its implementation. In practice, ethical tax questions about the role of a fair share arise within the context of preliminary consultations. There is no unequivocal definition of fair share. This touches on the perception of a reasonable contribution to the treasury. The term has a moral aspect and would not always appear to be compatible with the tax debt concept that follows directly from the legislation. These ethical tax dilemmas need to be approached from the role of the NTCA as the implementer of tax legislation. This area is also governed by the principle that no distinction is made between organisations that have or have not concluded a compliance agreement. The NTCA will always give its reflection on an organisation’s use of aggressive tax methods.50 The account management team shall – after consultation with the NTCA’s management and professional specialists – inform the organisation that the NTCA is of the opinion that

49 In practice the ‘fraus legis’ tenet can, broadly speaking, be followed when reviewing whether the objective and spirit of the law would be defeated. The Dutch assessment base serves as the reference framework for the primary review. At an international level legal concepts and structures (may) have an effect on more than one jurisdiction. A variety of effect situations may then arise, ranging from the multiple deduction of a specific cost item to breaking the synchronicity of taxability (interest to dividend, or vice versa) or the artificial utilisation of large differences in tax rates.

50 Such as endeavouring to deduct a cost item several times or artificially breaking the symmetry of taxation in several jurisdictions.
making use of qualification differences ‘from a moral perspective’ is not ‘self-explanatory’. In adopting this approach the account management team assigns the responsibility for the ethical decision to employ the aggressive structure to the organisation’s management and ensures that the selection of the structure is not regarded as having been legitimised by the NTCA’s silence on the issue.

**Rapid processing**

The NTCA undertakes to respond quickly to requests for preliminary consultations and to formulate its standpoint in clear terms. For this reason the account management team, where relevant following consultations within the NTCA, states its perception of the tax consequences of a standpoint of the organisation as soon as possible after the receipt of the request for a standpoint. The account management team’s client coordinator and the relevant tax specialist are responsible for the issue of a rapid substantive response. When the formulation of a substantive answer will require more time they inform the organisation, provide an explanation of the procedure that will be followed and give their expectation of the planning.

**Agree to disagree**

It is conceivable that the NTCA and the organisation will be unable to reach agreement during the preliminary consultations: they will then agree to disagree. This does not have any consequences for horizontal monitoring, but does have consequences for the relevant tax return. This tax return will then need to be recognisable to the NTCA to ensure that it can be transferred to the account management team for the imposing of the tax assessment. The account management team and the organisation reach agreement on the further processing or on the recognisability of the difference of opinion in the tax return.
9 Examination of tax returns

9.1 Introduction
During the horizontal monitoring process the organisation's transparency provides the NTCA an insight into the scope and effectiveness of the tax control framework, the organisation's monitoring and the supplementary services provided by external specialists (see Section 7). This positive preliminary information enables the NTCA to adjust its supervision. This Section discusses the following issues, in the following sequence:
– the objective of supervision and audits of tax returns;
– the manner in which the NTCA collects positive preliminary information;
– the manner in which the NTCA designs and carries out its audits of tax returns filed by organisations governed by horizontal monitoring.

9.2 Objective of examination of tax returns
The NTCA's supervision is focused on improving compliance. This becomes evident in the quality of the filed tax returns and the completeness of the payment of tax. The NTCA bears the responsibility – as part of its supervision – for examining tax returns filed by organisations, including those governed by horizontal monitoring. This is because horizontal monitoring is in part based on well-founded but as yet unvalidated presumptions. This validation is carried out during the actual (adjusted) supervision.

9.3 Positive preliminary information
Positive preliminary information results in a reduction of the work the NTCA needs to carry out in its supervision. Positive preliminary information about the organisation's tax strategy, tax control and transparency (the client profile) is of particular relevance to the reduction of the supervisory work.

The NTCA obtains information about these elements during its account management activities, such as preliminary consultations and company meetings. The horizontal monitoring process is designed in a manner that enables the NTCA to obtain current information about issues including:
– the tone at the top;
– tax planning;
– the degree of transparency;
– the design of the tax control framework and the plan of approach for its construction;
– the activities actually carried out for the tax control framework and the investments in the framework;
– the scope of the tax control framework;
– the scope of the internal monitoring;
– the effectiveness of the tax control framework and the internal monitoring;
– the scope of the work carried out by external specialists.

The positive preliminary information about an organisation during the horizontal monitoring programme is incorporated in the client profile. This supports the presumption that the relevant organisation endorses the horizontal monitoring principles and is giving tangible shape to the principles. Although the account management team has not validated this presumption (as yet) the form and intensity of the supervision (the intended supervisory activities) and the prioritisation of the supervision are determined on the basis of the client profile, client profile analysis and supervision strategy.

51 The objective of Customs' supervision arising from its tasks is broader. More information is enclosed in Section 14.
52 Or the timeliness of tax refunds.
53 When horizontal monitoring is not feasible for an organisation (at present) the supervision is tailored to the reasons for and causes of the inability to implement horizontal monitoring (for the time being).
54 In terms of both the frequency and intensity of the work.
The results from the organisation’s internal monitoring serve as an important source of information as this monitoring enables the organisation to gain an insight into the effectiveness of its tax control framework and to make any improvements that may be necessary (the learning cycle). The organisation governed by horizontal monitoring shares these results with the NTCA.

The most efficient design of the supervision can be achieved when the reliability and accuracy of the organisation’s internal monitoring are of the same level as those attained with the NTCA’s Audit Approach. The services provided by external specialists also yield supplementary information about the degree to which the business is in tax control and, consequently, can also result in an adjustment of the supervision.

The account management team discusses any unfavourable indications and their consequences for supervision with the organisation.

9.4 Prioritisation of supervision
The NTCA bears the responsibility for the supervision of all taxpayers and withholding agents and, consequently, needs to make decisions on the deployment of its scarce supervisory capacity. These decisions need to bring the degree of compliance by all taxpayers to the highest possible level and to maintain compliance at that level. These decisions are based on the available information about the compliance of organisations (or groups of organisations). As businesses governed by horizontal monitoring are transparent and share current information with the NTCA, the Administration can adjust its supervision of these businesses and reduce the work it carries out in their supervision. Within this context the frequency at which tax returns filed by these organisations are reviewed (assessment of returns or audits of the tax returns) is substantially lower than the frequency for businesses that are not governed by horizontal monitoring. The management ensures – in consultation with the client coordinators and account management teams – that the supervision of the various organisations is in balance. They achieve this by making comparisons of the client profiles of the organisations allocated to their team. These comparisons relate to the tax strategy, transparency and internal control issues. The form and intensity of the supervision of taxpayer organisations governed by horizontal monitoring is discussed with the relevant organisation by sharing the individual strategic supervision plan with them.

The design and enhancement of an organisation’s tax control framework can be characterised as a growth process that is scheduled for and carried out during a longer period of time. When the NTCA observes that an organisation is making significant investments in its tax control framework and good progress in its implementation, then this is regarded as preliminary information which is taken into account in the adjustment of the supervision.

9.5 Examination of tax returns
The NTCA obtains certainty about the tax returns with assessment of tax returns (desk reviews) and the audit of the acceptability of the tax return in accordance with the NTCA’s Audit Approach.

Assessment of tax returns (desk reviews)
Desk reviews increase the certainty about the acceptability of (usually a limited number of elements of) the tax returns. Pursuant to horizontal monitoring, all relevant tax issues are discussed in the preliminary consultations held before the tax return is filed. As a result, the tax return may not contain any surprises and will be processed immediately. If any questions about the tax return nevertheless arise then the account management team contacts the organisation to discuss the reasons why the organisation did not submit the relevant tax issue for discussion in the preliminary consultations (see also Subsection 6.6). The background to the organisation’s decision may result, for example, in the organisation being requested to provide substantiation for its tax standpoint.
Auditing the acceptability of tax returns

When the tax return is audited (in accordance with the NTCA’s Audit Approach) then the NTCA bases its assessment on the acceptable tax return standard. The NTCA deems a tax return to be acceptable when it complies with the requirements imposed by the legislation and regulations and is free of material misstatements. In principle, a tax return or set of tax returns is reviewed in terms of its acceptability in its entirety. The NTCA makes use of the layer model for these audits. Pursuant to this model the NTCA takes explicit account of the degree to which the organisation is in (tax) control and of the work that has already been carried out by external specialists. This enables the NTCA to:

- reduce the object for its supervision to a part of the entity, processes or transactions and to
- reduce the work to be carried out on that object.

An audit of a tax return can examine the completeness and/or accuracy, depending on the aspects of the tax return on which the audit is focused.

Completeness test

The emphasis of audit activities focused on the completeness is placed on the irreplaceable internal control measures. The NTCA’s Audit Approach specifies the work that will then need to be carried out. When the organisation makes any work of relevance to the audit transparent then the NTCA can make use of this work. Within this context the work carried out by the external auditor is also of relevance. The work required for the audit can, in particular, be reduced substantially when the external auditor’s report expresses an unqualified opinion.

Accuracy test

The NTCA, pursuant to the NTCA’s Audit Approach, makes use of the positive preliminary information to determine the number of substantive audit tests and to carry out the dual purpose tests needed to determine the acceptability of the tax return. Consequently, the number of substantive tests required to audit the accuracy is reduced when this positive preliminary information is available.

The NTCA employs a reduction table included in the NTCA’s Audit Approach to determine the reduction of the audit tests needed to assess the accurate processing of the transactions of relevance to tax. When the business sets up its internal monitoring with statistical sampling which complies with the NTCA’s approach then the substantive audit of the accuracy can be limited to a review of the work that the business has carried out within its internal monitoring.

Compensatory measures

In some instances, as reviewed in Section 7, (part) objects or transactions that are of relevance to (material for) the NTCA fall outside the scope of the tax control framework, the monitoring or the work carried out by external specialists. The NTCA will then request the organisation to give information about its considerations that gave cause to the selection of the scope and about any compensatory measures that it may have implemented. These compensatory measures may, for example, consist of a special audit by the internal audit department, tax department and/or an external specialist. The account management team takes account of the measures that have been implemented when it determines the quantity and nature of the supervisory work. When, from an impartial overall view, compensatory measures cannot be implemented

The NTCA audits the tax return and then issues an explicit opinion on the acceptability of the return. The NTCA does not issue an explicit opinion on the organisation’s internal control. In the audit the NTCA uses statistical sampling techniques. When an organisation for its monitoring adopts the same parameters as those of the NTCA then the NTCA can make use of the organisation’s findings. This minimises the additional work that needs to be carried out by the NTCA. The NTCA then suffices with a review of the work already carried out by the organisation.

See also the ‘Netherlands Tax and Customs Administration’s Audit Approach - The Audit Approach and its models deployed in supervision’.
for elements of the tax returns, then the NTCA may audit the acceptability of the tax returns. No reduction of the work to be carried out will then be feasible.

**Strategic supervision plan**

The account management team maintains a strategic supervision plan which contains specifications of the form, intensity and prioritisation of the NTCA’s supervisory work. The strategic supervision plan also states and explains the decisions that have been made. These result in a supervision strategy and specific intended supervisory activities. The strategic supervision plan is shared with organisations that have concluded an compliance agreement and is harmonised with the planning and work of the internal control and audit departments, the tax departments and/or the business’ external specialists to ensure that the content and timing of the work by the two parties are as compatible as possible.

**Difference for organisations that are not a party to a compliance agreement**

When horizontal monitoring is not feasible for an organisation (at present) the NTCA will carry out audits autonomously. Organisations governed by horizontal monitoring are actively engaged in internal control and monitoring and are completely transparent about these activities in their relationship with the NTCA. In general, the NTCA will have a less up-to-date and complete insight of the tax strategy and tax control frameworks of organisations for which horizontal monitoring is not feasible (at present) as no agreements have been reached with the organisations on these issues and laid down in a compliance agreement. As a result, the options for adjusting supervision in advance are limited. Self-evidently, organisations that are not a party to a compliance agreement will also need to have their internal control at an appropriate level, as this is a requirement that is applicable to all organisations under the obligation to maintain financial accounts (Article 52, paragraph 1, of the State Taxes Act). Consequently, the NTCA will usually need to carry out more audit work for organisations that are not a partner to a compliance agreement. However, pursuant to the Tax and NTCA’s Audit Approach the NTCA will nevertheless rely on work that has already been carried out by others for as far as is possible.

The following diagram shows that the instruments deployed for partners to a compliance agreement differ in part from those deployed for organisations that are not a partner to a compliance agreement. Nevertheless, the overall supervisory strategy and the way in which the strategy is implemented are identical for both categories. The ultimate validation of the tax return by means of an audit in accordance with the NTCA’s Audit Approach is also identical. However, the work involved in and the intensity of the audits do differ from each other.

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The NTCA shares the strategic processing plan with the partner to the compliance agreement but not, in principle, with other categories of taxpayers as no agreements on active transparency have been reached with the latter entities.
9.6 Specific indications or actions

The possibility remains open that the NTCA’s supervision of a partner to a compliance agreement includes activities which are carried out, for example, as a result of specific indications or within the context of national actions.

Information from third parties (for example, from or as a result of information reports) can give cause to a further investigation of the facts. However, in view of the relationship built up in horizontal monitoring a different approach will be adopted. A distinction can be made between:

– information reports that relate solely to tax issues, for example the question as to whether the correct VAT rate has been charged in sales invoices. The information will then be presented to the organisation at a time to be determined by the account management team. The account management team and the organisation will determine whether action is required and, if so, which action will be taken. When a tax inaccuracy is an issue then the organisation is responsible for making improvements (see also sections 7 and 12).

– information reports that indicate a breach of integrity, such as a situation which impacts the integrity of the organisation or the directors or directors/major shareholders involved. Information reports of this nature must be discussed within the account management team together with the team leader. This information must be treated with care. It is also recommended that, when the nature of the information report so permits, a discussion is held with the organisation’s officers concerned before reaching conclusions. The results from this discussion can reveal the need for a further investigation (of the facts) or give cause to the decision that no further investigation is required.

The manner in which an organisation approaches an information report that the account management team discusses with the organisation yields supplementary preliminary information.

The horizontal monitoring principles are also applicable when an organisation may be held liable for a third-party tax debt (for example, pursuant to the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act). The organisation is approached solely after discussions with and in consultation with the account management team. The organisation is also involved in the next steps to be taken and discussions are held with the organisation on the manner in which a recurrence can be prevented.
10 Tax collection

10.1 Tax collection as an element of individual account management
Tax collection is an essential element of individual account management of large businesses. The collection process monitors and promotes the timely and complete settlement of tax debts that have arisen. This is in part the reason why it is, once again, necessary to act in real time and as proactively as possible to reduce the risk of non-payment. Consequently, the client profile not only encompasses information about assessment and audit aspects, but also about collection. For this reason the client coordinator’s areas for attention also encompass the collection position and the (expected) developments in this position. As the occasion arises the compliance effects and the supervision strategy laid down in the strategic supervision plan also encompass the process relating to the timely and complete settlement of tax debts. For this reason collection staff are (or will be) members of the account management team. When this is not feasible for all teams then collection staff will be available on call. The client coordinator bears the responsibility for the supervision strategy and the decisions made in the supervision.

10.2 Tax collection as an element of the horizontal monitoring process
Tax collection and its issues are addressed in all phases of the horizontal monitoring programme, in the horizontal monitoring meeting, in the implementation and discussions of the tax control framework and in the audits of the tax returns. Within this context the tax control framework provides assurances for the timely and correct payment of the tax specified in the tax return or assessment and for the prevention of liabilities. The transparency expected from the organisation also results in the organisation’s reporting of relevant collection risks. The organisation may then in turn expect the NTCA to act on this information in an adequate and proportionate manner within the existing legislation and regulations. Preliminary consultations may also be held on tax collection. Issues for discussion in these consultations can include, for example, the liability risk (liability of subcontractors and hirer’s liability) and how these risks can be reduced by means of the selection of third parties to be contracted.

10.3 Tailor-made approach
Individual account management also provides opportunities for a constructive tailor/made approach of tax collection. The NTCA, depending on the organisation’s attitude and behaviour and within the opportunities offered by the legislation and regulations, gives consideration to and cooperates in the development of solutions that promote both the settlement of the debts and the continuity of the business. Large Business and Customs hold discussions with the organisation, the tax consultant, shareholder and/or financier to review which approach does justice to the interests of the parties involved.

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58 When issuing and supervising the AEO status Customs not only carry out a solvency test but also reviews the timeliness of payment obligations. This is carried out by consulting the (Customs) collection records and by drawing up an overall client profile (for the entire NTCA).

59 However, this is without prejudice to the mandating difference between staff responsible for levying tax and staff responsible for tax collection.

60 The collection of the own resources of the European Union is an important element of the collection work carried out by Customs. These own resources must, in principle, always be made available to the European Commission (i.e., even when they cannot be collected) unless one of the following is an issue:
(1) force majeure, or;
(2) other reasons that the Member State can not be blamed for.
The organisation can take the initiative for contacts, for example by means of a report of a (foreseen) payment problem. The account management team can also take the initiative when there are clear indications that a timely and complete payment may be put in jeopardy, for example due to changed market conditions, a fall in operating results, the bankruptcy of important debtors or a significant change in the tax position. These changes may be caused by the account management team’s supervision or by the organisation, for example in the event of a merger, demerger or transfer of shares whereby deferred tax liabilities will be formalised in business entities with virtually no means of recovery. For this reason it will be necessary to be alert to potential collection consequences in as early as the tax assessment process and to call in the necessary (collection) expertise in good time in the decision-making process. This is also the case when (temporary) liquidity problems are or could be an issue, where relevant followed by potential insolvency. Timely intervention and a response to the situation can result in a substantial reduction of financial losses.
11 Concurrence of compliance agreements

11.1 Introduction
The NTCA concludes various types of compliance agreements. A large business can simultaneously take part in an industry compliance agreement, tax service provider compliance agreement and/or an individual compliance agreement. The various forms of compliance agreements exist alongside each other and each give specific shape to the horizontal monitoring concept in their field.

11.2 Industry compliance agreement
The forms of cooperation with trade associations are based on mutual trust, understanding and transparency. In some instances the organisation plays a platform role in which issues of relevance to tax can be resolved, in advance, for the entire industry. Organisations can take part in these compliance agreements without an explicit statement of participation. An organisation's intention to apply a industry compliance agreement of this nature yields positive preliminary information. In some instances a compliance agreement is concluded which makes use of the industry's supervisory arrangements, as a result of which the NTCA’s supervision can rely more on the supervision carried out by the industry. The substantive agreements are laid down in an annex to the compliance agreement. The compliance agreement and the annex are published externally on the NTCA’s website. The NTCA’s supervision within Large Business makes use of the added value provided by the industry compliance agreements and adjusts the degree of its supervision accordingly.

11.3 Tax service provider compliance agreement
Tax service providers who have concluded a tax service provider compliance agreement with the NTCA warrant the quality of the tax returns filed by their participating clients. These tax returns are referred to as ‘compliance agreement tax returns’. Tax service provider compliance agreements were primarily developed to give shape to the horizontal monitoring concept in the NTCA/ Small and Medium Enterprises division, although tax service providers with clients that falling under Large Business can also submit applications for clients for participation in their compliance agreement. The procedure for applications from large business and their account management differ from those for businesses falling under Small and Medium Enterprises. The Small and Medium Enterprises relationship manager discusses this procedure with the tax service provider during the compliance agreement consultations. although the procedure is not specified in explicit terms in the compliance agreement. It has been decided that in these situations the procedure to be followed will be discussed after the receipt of each application for a large business with the parties involved, i.e. also with the large business in question. This approach has been adopted as applications of this nature are relatively rare and because the account management team wishes to maintain contacts with the organisation after it has become a participant in a tax service provider compliance agreement.

Participation of large businesses in a tax service provider compliance agreement
Every large business can participate in a tax service provider compliance agreement (for the entire group entity or for one or more parts of the group entity). However, the NTCA endeavours to implement horizontal monitoring for the entire group entity. The organisation can opt to give horizontal monitoring shape by concluding an individual compliance agreement or participating in a tax service provider compliance agreement. The organisation can also request the supplementation of the latter with an individual compliance agreement.

The Netherlands Tax and Customs Administration/Small and Medium Enterprises will be referred to as Small and Medium Enterprises.
One important consideration for organisations deciding on a tax service provider compliance agreement or an individual compliance agreement can relate to their role in the horizontal monitoring process: they may wish to take the initiative in the process or, alternatively, delegate the process to the tax service provider. Knowledge may then be a factor, although costs may also play a role. In some instances a tax service provider can monitor the quality of the tax returns by means of, for example, a single audit or statistical sampling techniques. The organisation’s decision to delegate the monitoring role to the tax service provider and to place less emphasis on proactive control measures will also exert an influence on the costs (but without prejudice to the quality of the tax returns).

The following conditions are applicable to large businesses’ participation in tax service provider compliance agreements:
- The account management team retains the responsibility for the (individual) account management of large businesses that participate in a tax service provider compliance agreement;
- The requirements imposed on an acceptable tax return are not influenced by a large business’ decision to participate in a tax service provider compliance agreement or to conclude an individual compliance agreement.

Application
Pursuant to the standard procedure, the tax service provider completes an application form for organisations wishing to participate in the tax service provider compliance agreement and submits the form to the tax service provider’s relationship manager. The application is processed in the Compliance Agreement Records and passed on to the compliance agreement team at the NTCA’s Small and Medium Enterprises- office for the relevant organisation.

When it transpires that the organisation is a large business then the Small and Medium Enterprises compliance agreement team notifies the Large Business account management team responsible for the organisation. The Large Business account management team then organises a meeting with the organisation and the tax service provider. This meeting will at least discuss the following issues: the client profile, the scope of the tax service provider’s compliance agreement, the expectations relating to the tax service provider and the organisation and the course of the future account management.

Client profile
The Large Business account management team discusses the client profile with the organisation and the tax service provider. It is conceivable that the existing client profile gives the account management team cause for questions about participation in the tax service provider compliance agreement at the time of the application. The account management team may have information about the client that the tax service provider does not possess or has interpreted in a different manner, or may have indications that the organisation’s attitude and behaviour are not compatible with the horizontal monitoring principles. These issues are then discussed with the organisation and the tax service provider. The Large Business account management team will involve the relationship manager for the relevant tax service provider compliance agreement in the discussions.

Scope
During the meeting the Large Business account management team, the organisation and the tax service provider jointly determine which parts of the group entity and which types of tax will be covered by the tax service provider compliance agreement. When part of the group entity is not as yet governed by horizontal monitoring then the Large Business account management team will discuss whether and, if so, how the organisation will give further shape to horizontal monitoring. The organisation has the following options for its future horizontal monitoring:
to bring those parts that are not yet covered by a tax service provider compliance agreement under a tax service provider compliance agreement;

– to initiate the horizontal process towards an individual compliance agreement.

The NTCA endeavours to bring the entire group entity under horizontal monitoring.

**Expectations**

The meeting explicitly determines whether the level of assurances the service provider offers for the tax returns meets the NTCA’s expectations. The work expected from the tax service provider depends on the size and organisation of the business. The tax service provider can offer less certainty for organisations with what are referred to as inherent limitations in their AO/IC. This, in particular in the Small and Medium Enterprises division, will have consequences for the completeness aspect. The NTCA will then expect the tax service provider to carry out at least the work that an accountant would carry out within the scope of a compilation assignment. It is to be expected that inherent limitations will be less of an issue for organisations falling under Large Business. For this reason it is assumed that tax service providers will carry out more work for large businesses than is customary for compilation assignments. When this is not the case then discussions will be held on the manner in which the expected level of certainty can nevertheless be provided. This issue can be resolved with compensatory measures. The NTCA then adjusts its supervision accordingly. Comparable levels of the work carried out by the organisation and external specialists pursuant to either a tax service provider compliance agreement or an individual compliance agreement will ultimately need to result in an identical adjustment of the supervision.

**Explanation of future individual account management**

During the meeting with the client and the tax service provider the Large Business account management team discusses the consequences of participation in the tax service provider compliance agreement (and the individual compliance agreement) for the future tax treatment of the Large Businesses entity. The account management team retains the responsibility for the tax treatment of large businesses, an approach which does not differ fundamentally from the approach to organisations that have concluded an individual compliance agreement. A couple of issues requiring attention are discussed below.

**Preliminary consultations**

The Large Business account management team conducts the preliminary consultations on specific issues relating to the relevant organisation. The tax service provider can also request preliminary consultations to discuss issues of a collective nature. The responsibility for dealing with such requests which also relate to the specific large business participating in the tax service provide compliance agreement remains with the relationship manager for the tax service provider compliance agreement, although the relationship manager will then hold advance discussions on the issue with the Large Business account management team assigned the responsibility for the relevant organisation.

**Supervisory activities**

Small and Medium Enterprises carries out meta-supervision of the small and medium businesses that are governed by horizontal monitoring. This meta-supervision assesses whether the horizontal monitoring system for small and medium businesses as agreed in the compliance agreements results in acceptable tax returns. This meta-supervision consists of six activities in which audits of compliance agreement tax returns (drawn through sampling) serve as a reality check. Large businesses are not included in the Small and

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62 It is assumed that the NTCA is aware of the specific organisations that are represented by the tax service provider during the preliminary consultations. Consequently, the names of the organisations are known.

63 See the Guide to horizontal monitoring within the SME division – tax service providers.
Medium Enterprises sampling and, consequently, do not fall within this element of the Small and Medium Enterprises’ meta-supervision. The Large Business account management team schedules the frequency of the adjusted supervision. In principle, there is no difference between the frequency for comparable organisations that participate in a tax service provider compliance agreement or have concluded an individual compliance agreement. The strategic supervision plan takes account of the positive preliminary information about the compliance agreement tax returns from the participating organisation. The account management team informs the organisation and tax service provider about its strategic supervision plan. Comparable efforts relating to individual compliance agreements and tax service provider compliance agreements have comparable consequences for the supervision. When exercising its supervision the Large Business account management team works in accordance with the agreements laid down in the tax service provider compliance agreement. Consequently, the supervisory activities link up with the work that the tax service provider has already carried out or will carry out.

Contact with the relationship manager during individual account management
Appropriate and timely exchanges of experiences and other information with the relationship manager for the tax service provider compliance agreement are required for the optimum adjustment of the supervision. Consequently, the Large Business account management team will inform the relationship manager on important issues. These issues can relate, for example, to the account management team’s observations during the preliminary consultations or the account management team’s intended supervisory activities and the results from these activities. The relationship manager assesses these findings and reviews which information this yields about the tax service provider’s quality assurance system. Conversely, the relationship manager informs the Large Business account management team about the results from collective preliminary consultations and the generalised results from the meta-supervision so that the account management team can take these into account in its supervision strategy.
12 Adjustments and penalties

12.1 Introduction

The horizontal monitoring process may at some point in the process reveal that tax returns filed by the organisation contain misstatements. This issue can arise during the compliance scan (Section 4), the resolution of pending tax issues (Section 5), as a result of the findings of the organisation or the NTCA during the development of the organisation’s tax control framework (Section 7), during the tax assessment processor as a result of an audit conducted by the NTCA(Section 9). This Section explains the approach to these identified misstatements, reviews whether a penalty will be appropriate and, if so, which penalty will be appropriate.

12.2 Adjustments

The following questions are of importance to the rectification of misstatements:
– What was the cause of the misstatements?
– Are rectifications always necessary?
– Who will make the rectification?
– Do other tax periods also need to be examined?
– Should a penalty be imposed and, if so, which?

Cause of the misstatements

The NTCA assumes that organisations do not make intentional misstatements. Consequently, the NTCA always adopts an open attitude, even when misstatements have been discovered. The NTCA then begins by holding discussions with the organisation to review the cause of the misstatements, whether the organisation was aware of the problem and whether any actions, where relevant, were taken. The next steps and the imposition of a penalty, where relevant, are determined by principles of responsive regulation.

Are rectifications always necessary?

Horizontal monitoring is based on the principle of the organisation’s intention to file acceptable returns. To this end the compliance agreement lays down that the organisation shall provide for a system of internal control, internal audits and external audits, and that the organisation shall submit tax issues about which the NTCA could have a different opinion for discussion. This avoids misstatements for as far as is possible and ensures that any misstatements that nevertheless occur are rapidly identified and rectified. All identified misstatements must be rectified. When the organisation discovers inadmissible variances then the organisation reviews whether modifications to the internal control framework are required to prevent their recurrence. When a known misstatement is a material misstatement which, consequently, has an influence on the overall tax returns then this should not normally result in discussions: the misstatement will simply need to be rectified. However, known misstatements that are not (in their totality) material misstatements must also be rectified. This is the generally prevailing adjustment policy, which is also compatible with the horizontal monitoring principles.

Who makes the rectification?

The organisation is expected to rectify its misstatements. The organisation gains an insight into misstatements by implementing an internal monitoring system (see Section 7). The NTCA expects the organisation to take action to rectify identified misstatements.

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64 This Guide bases the levying of tax on the international and national legislation and regulations. Customs is governed by specific regulations that in some cases require criminal prosecution.

65 Customs employs other sanctions instruments. Customs’ response is governed by criminal law and, consequently, a distinction is made between infringements and criminal offences. As a result, specific questions may be asked only after a caution. Consequently, Customs’ questions about the cause of misstatements always fall under the caution requirement: they may be raised only after the caution.

66 For this reason a Customs penalty will usually be comprised of a tax sanction.
**Do other tax periods need to be examined?**

When a misstatement is discovered the question is then whether the organisation needs to take action to identify and rectify any misstatements in the past. A distinction is made between two situations. In the first situation, the discovery of a misstatement may result in the virtually automatic conclusion that the same misstatement will also, to a greater or lesser extent, have occurred in earlier periods. The misstatement is then, in fact, a known misstatement from the past. The misstatement will then need to be rectified. In cases of this nature a reasonable estimate of the amount of the misstatement will be made. The work required for a more accurate determination of the amount caused by the misstatement that the organisation may be expected to carry out increases with the importance of the misstatement. The NTCA and the organisation may also agree that the findings from a specific period shall be extrapolated to earlier periods.

In the second situation it will not be clear whether earlier tax returns also contain misstatements. The need to examine tax returns for earlier periods depends on the severity (the degree of culpability). When gross negligence or intent is an issue – the penalty specialist within the NTCA issues binding recommendations – then it will be necessary to institute an investigation into misstatements in previous periods. When only a minor adjustment is involved it is not necessary to investigate earlier periods. Material adjustments also give cause to the institution of an investigation of earlier periods. Self-evidently, serious culpability is not assumed with horizontal monitoring (or in the process leading to the conclusion of a compliance agreement): quite the contrary as the organisation takes more initiatives in its endeavours to file correct tax returns. For this reason, an investigation of fault is not instituted unless there are specific indications that this is necessary.

When misstatements are of a relatively limited scope it may, from a practical perspective, be worthwhile to giving consideration to an agreement that misstatements from past years will, pursuant to Article 64 of the State Taxes Act (efficiency provision), be rectified in a recent period. However, this may not result in a lower debt than the debt that would have arisen from the tax legislation in the absence of the application of Article 64 of the State Taxes Act or in a lower penalty than the penalty that would have been imposed in the absence of the application of this Article. Any lost interest on tax, where relevant, will also need to be compensated.

**Note**

A meeting to discuss possible rectifications can test the relationship, certainly when these relate to earlier periods. For this reason it is always recommended that the NTCA clarifies the horizontal monitoring principles and, where relevant, explains them again.

**12.3 Penalties**

Once the rectification actions have been carried out it will be necessary to review whether a penalty should be imposed. The account management team offers the organisation an opportunity to determine the magnitude of the misstatement(s) and to rectify the misstatement(s). This requires open and constructive cooperation between the NTCA and the organisation.

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67 On occasion, Customs may need to carry out an investigation of potential misstatements: OLAF (Office Europeen de Lutte Antifraude) mission reports or AM (Administrative Mutuelle) reports can impose this obligation.

68 This Section relates solely to administrative penalties. Pursuant to specific regulations, Customs and other supervisory bodies will usually need to require criminal prosecution. Consequently, this Subsection is not applicable to Customs.
The amount of the penalty is determined on the basis of the Administrative Fines (Tax and Customs Administration) Decree (BBBB). Pursuant to this Decree it is necessary to make a distinction between the following steps and to discuss them with the organisation:

– the determination of the degree of fault at the time at which the tax return was filed or due to failure to settle the tax debt (in time);
– the determination of the basis for the penalty (over which amount is the penalty to be calculated);
– the circumstances giving cause to a more severe or more lenient penalty.

When determining the degree of fault the NTCA and the organisation always discuss the cause of the misstatement and the reason why the organisation was unable to prevent the misstatement: the design, implementation and performance of the tax control framework will then play a role. It is, for example, possible that an instruction was inadequate, or that an instruction was adequate but was interpreted incorrectly or not observed, either with or without intent, or that inadequate measures have been implemented to monitor compliance with instructions. The penalty specialist reviews the facts and issues binding recommendations on the degree of fault.

Pursuant to the penalty policy, the established degree of fault determines the standard penalty percentage or standard penalty amount (in the event of default penalties). The Administrative Fines (Tax and Customs Administration) Decree (Subsection 6) includes an explicit provision stating that variances from the standard penalties are permitted. Consequently, when determining the ultimate penalty the inspector is not bound by fixed amounts or percentages. These deliberations must always result in a penalty that is appropriate for the specific situation. The account management team, under the supervision of the penalty specialist, takes all extraordinary circumstances into account. The taxpayer organisation’s current behaviour also plays a role in these deliberations: has the organisation, for example, implemented measures to prevent a recurrence of the mistake? Or has the organisation intended to let things carry on as they are?

Pursuant to the Administrative Fines (Tax and Customs Administration) Decree, the determination of the individual punishment can take account of the constructive attitude adopted by the organisation following the discovery of the misstatement. For this reason, all relevant circumstances are taken into account when making the ultimate decision. Active participation in horizontal monitoring and a positive attitude to the rectification and prevention of misstatements are then relevant factors.

When adjustments in excess of the limit laid down in the Richtlijnen aanmelding en afhandeling fiscale delicten, douane- en toeslagendelicten (‘Guidelines for the reporting and settlement of tax offences, customs offences and benefits offences’, Richtlijnen AAFD) are required then it will be necessary to contact the penalty specialist and/or penalty fraud coordinator. Consultations will then be held on the need to impose a penalty (and, if so, the amount) or whether the case will need to be reported for the selection consultations (depending on the degree of fault). Once all issues have been taken into account the account management team, with the assistance of the (binding) recommendations from the penalty specialist/penalty fraud consultant, ultimately decides on the amount of the penalty. When so required, the account management team and the penalty specialist can also consult with the relevant professional procedural law technical coordinator or contact officer.
13 External specialists

13.1 Introduction
Virtually all large businesses use the services of external specialists. They carry out work that relates –
directly or indirectly – to taxation. Examples of external specialists include external auditors who conduct a
(statutory) audit and tax consultants who give advice or prepare a tax return. Organisations engaged in a
horizontal monitoring process often seek assistance from external specialists. Their work and expertise
contribute to the organisation’s ability to assume its responsibility for acceptable tax returns. Pursuant to
the horizontal monitoring principles the NTCA makes optimum use of the results from external audits – in
particular regarding assessments of the internal control measures – for the adjustment of the supervision of
the organisation. This Section reviews cooperation with external specialists and the manner in which the
account management team can rely on their work.

13.2 External specialists and horizontal monitoring
External specialists are active in many fields that are covered by horizontal monitoring. The area of work is
varied and still in full development. A large number of accountants and consultancy organisations have
formed multidisciplinary groups in which external specialists with different expertise work together.
Accountants and tax consultancy organisations have developed products that are of importance to the
design of horizontal monitoring. Examples include baseline measurements, quick scans, maturity models,
monitoring by means of data analysis, the so-called audit of tax and tax assurance.

13.3 Adjustment of supervision on the basis of the external specialists’ work
External specialists carry out a great deal of work that is of relevance to the horizontal monitoring process. The
NTCA continually seeks cooperation with the organisation and external specialists called in by the organisation
and, when feasible, reduces its work when the organisation or its external specialists have carried out or will
carry out comparable work. The account management team and the parties involved discuss how the account
management team can reduce the amount of work it needs to carry out. This is included in the strategic
supervision plan. The account management team endeavours, at as early a stage as possible, to gain an insight
into the optimum manner in which the work carried out by the organisation, external specialists and account
management team can be harmonised with each other. A constructive and transparent relationship with the
external specialists will then be of importance. The NTCA intends to develop the most efficient possible design
of the process for all the parties involved on the basis of this positive attitude.

13.4 Some examples
All the steps included in this Guide examine opportunities for the harmonisation of the work carried out by
the account management team with the work carried out by parties including external specialists. This is
illustrated by a number of examples shown below.

**Horizontal monitoring meeting**
The organisation can opt to invite external specialists to the horizontal monitoring meeting. The meeting
will then discuss how the work carried out by the organisation and its external specialists can be used
during the horizontal monitoring process and the significance of these activities for the work to be carried
out by the NTCA.

**Compliance scan**
The account management team holds discussions with the organisation and the external specialists to
review how work that has already been carried out can be of assistance to the compliance scan. It will be
worthwhile to hold a preliminary meeting with external specialists who are closely involved in the relevant
organisation to discuss their work for the organisation. External specialists have usually adopted a client
acceptance policy in which they devote attention to issues that may be of relevance to the compliance scan.
They may, for example, have already made an inventory of the manner in which the organisation has designed the tax function. The client acceptance process often also devotes attention to the organisation’s tax strategy and integrity. A previous assignment to external specialists in which, for example, they were requested to carry out an analysis of the organisation’s control framework indicates that the organisation has also devoted attention to its control in the past. The external specialists’ experiences with the organisation’s response to recommendations for improvements in their control are also of relevance.

Information of this nature gives cause to a substantial reduction of the work to be carried out during the compliance scan phase. This then relates to the themes for discussion that have already been addressed in the relationship between the external specialists and the organisation. Consultations are held with the organisation and external specialists to reach a joint conclusion on the feasibility of horizontal monitoring.

**Tax control framework**

Organisations that wish to get and retain their tax affairs in control often request support from external specialists. The division of duties will usually be manifested in the form of a plan of approach drawn up jointly by the organisation and the external specialist. When an external specialist has assisted the organisation with the design of its monitoring function or performs this function for the organisation then this will also yield positive preliminary information that the NTCA can use to tailor its supervision to the specific situation.

**Supervisory activities**

The NTCA’s tax supervision is always based on responsive regulation and the NTCA’s Audit Approach (CAB) principles. The NTCA then makes the maximum possible use of information about the work that has already been carried out by the organisation and one or more external specialists. During this phase it may then be appropriate for the account management team to request access to parts of the external auditor’s audit file or other relevant files such as the file of the tax assurance provider or of the officer(s) performing the monitoring duties. However, a request of this nature is applicable solely to the parts of the external auditor’s file or other relevant files that may be of importance to the account management team’s assessment as to the need and, where relevant, the extent to which, the account management team will need to carry out supplementary substantive work to arrive at an opinion on the acceptability of tax returns. The manner in which the organisation and its external specialists have assumed their responsibilities largely determines the extent to which the account management team can reduce the amount of work it needs to carry out.
14 Customs

14.1 Introduction
This Section gives a brief explanation of Customs’ core duties and reviews the opportunities available for cooperation in horizontal monitoring. A distinction is made between 1) the situation in which the initiative for horizontal monitoring and the initiative for cooperation are taken by Large Business and 2) the situation in which both initiatives are taken by Customs. The wishes of the taxpayer will always play a pivotal role.

14.2 Customs’ core tasks
Customs has three core duties, namely its ‘stop’ duty, ‘control’ duty and ‘levy and collect’ duty.

‘Stop’ duty
Some goods are not allowed free entry into the Dutch or European market. For this reason Customs implements measures such as the monitoring of goods movements with scanning equipment or detection gates. Customs devotes specific attention to narcotics, weapons, counterfeit goods and animals suffering from an infectious disease. Customs also counters the export of certain goods, such as weapons and ammunition. Goods of this nature may not be exported, for example, to war zones or to countries subject to international sanctions.

‘Control’ duty
Customs supervises the correct application of European and national customs legislation. Goods from countries outside the European Union for which import duties have yet to be paid may be transported, processed and stored in the Netherlands. This is governed by regulations designed to ensure that the duties are paid before the goods are released into free circulation in the EU.

‘Levy and collect’ duty
Thirdly Customs levies and collects taxes on the import of goods, excise duties and consumer tax, coal tax, VAT on the import of goods and VAT on tobacco products.

The ‘stop’ duty and ‘control’ duty exert a particularly great influence on Customs’s approach to horizontal monitoring. Customs’ horizontal monitoring has, in consultation with the business community, been formulated as follows: ‘Inspections of cross-border goods traffic carried out by Customs and other government bodies are based on the proprietary control mechanisms, certification, quality and safety systems within companies, groups of companies, industries and chains, as a result of which the goods of safe and honourable companies can cross the border without impediments.’

Customs’ core duties have influenced the manner in which the cooperation between Large Business and Customs has been given shape. The characteristic differences are:
– the physical aspect of the movements of goods to be inspected;
– the difference in the discretionary powers granted by national legislation as compared to EU legislation;
– Customs expresses (in contrast to Large Business) (implicit) opinions on the quality and level of (tax) control within the scope of the issue of licences and AEO certification.

The difference between the core duties of Customs and Large Business implies that Customs may have a different focus (on the logistics) during a joint horizontal monitoring process.
14.3 Opportunities for cooperation

The opportunities available for cooperation and the form and the intensity of any such opportunities for cooperation in a horizontal monitoring process depend on a number of factors. The organisation’s need for a joint programme plays a pivotal role. Large Business and Customs begin by examining whether the organisation wishes to initiate a joint process. The feasibility for Customs to reach agreements at group entity level rather than at operating company level are also examined. Large Business and Customs determine –together with the organisation- the form and intensity of their cooperation on the basis of these factors. This cooperation can range from solely the use of each other’s knowledge of the client and the active provision of information about each other’s activities relating to the organisation up to jointly initiating the horizontal monitoring process.

14.4 Initiative by Large Business

Client profile

The Large Business account management team makes an inventory of the entity’s operating companies in which Customs plays a role. It is also necessary to gain an insight into Customs’ knowledge of the client, and for this reason meetings are held to jointly review the information about the organisation. When the client profiles differ an analysis of the differences is carried out jointly and discussed with the organisation during thehorizontal monitoring meeting.

Horizontal monitoring meeting, compliance scan, resolution of pending tax issues and compliance agreement

When the organisation, Large Business and Customs all regard cooperation as being valuable from their perspective, then the advantages and disadvantages of a joint process are discussed during the horizontal monitoring meeting with the organisation. The following principles are adopted:

– When the parties decide on a joint process then the Large Business and Customs version of the compliance agreement is adopted;
– An organisation that has not yet been awarded AEO status does not constitute an impediment to Customs’ cooperation or to Customs jointly signing the compliance agreement. However, it is desirable that the organisation’s internal control and compliance with the regulations is at or is brought to a level comparable with AEO (‘worthy of AEO status’);
– The organisation is completely transparent. The tax control framework can be optimised in phases for both Large Business and Customs. Both have an understanding of the relationships and of the work that the organisation will need to carry out;
– It may decided that the cooperation between Large Business and Customs will be restricted to mutual exchanges of information. When solely Large Business is involved in the horizontal process then the Large Business version of the compliance agreement is concluded with the organisation.

14.5 Initiative by Customs

Customs, in analogy with the process involved in the Large Business individual account management, has gained an insight into the largest businesses it deals with and increasingly processes them as group entities. This coherence is manifested in the form of the client profile and Customs’ (strategic) supervision plan. The information in the client profile contains indications such as whether the group entity as recognised by Customs is part of the group entity as recognised byLarge Business.

69 The ultimate form of cooperation – the complete integration of the processing teams, as is the case with the Rotterdam Oil and Gas Team and the Amsterdam Trade team – falls outside the scope of this Guide.

70 More information about AEO is available at www.douane.nl.
The certification and AEO status of an organisation is an appropriate point in time for Customs’ assessment of the feasibility of proceeding to further horizontal monitoring of the group entity. The exploration of the client constitutes an initial exploration of the scope of the cooperation with Large Business. When cooperation would appear to be worthwhile from the perspective of Large Business and Customs then the horizontal monitoring meeting with the organisation also is about the need for a joint process. The AEO status is an important indicator for Large Business and is always incorporated in the client profile.

When the organisation is part of an group entity that is treated by Large Business then Customs will not, preferably, initiate a separate horizontal monitoring process. When it is decided to work on a joint process and compliance agreement then the the Large Business and Customs version of the compliance agreement is adopted. When the organisation is treated Small and Medium Enterprises, the NTCA cannot initiate an individual horizontal monitoring process. The organisation’s attention can be drawn to the feasibility of participating in a tax service provider compliance agreement.

14.6 Cooperation after the conclusion of a compliance agreement

Large Business and Customs each retain the responsibility for the supervision of their specific types of tax and duty and their specific processes. This is also applicable to the manner in which the supervision is adjusted to the quality of the internal control framework. The account management teams harmonise the form and intensity of their supervision as far as is possible and make use of each other’s results from their supervisory activities. The planning of the supervisory activities is drawn up in consultation (when feasible). The progress and evaluation meetings are held jointly whenever possible.

14.7 Issues for attention for joint horizontal monitoring programmes

Customs and Large Business are parts of the same organisation and employ the same horizontal monitoring principles. Their working areas and approach do, self-evidently, exhibit differences: a brief explanation of these is appropriate since they will play a role in joint horizontal monitoring processes.

AEO and horizontal monitoring

As noted above in the ‘Opportunities for cooperation’ subsection, the majority of Customs’ horizontal monitoring programmes begin when organisations are awarded AEO status. The AEO status is a statutory status. Every organisation can apply for AEO status, provided that it complies with specific requirements such as:

– full compliance with customs obligations;
– appropriate trade and transport records;
– financially healthy;
– appropriate security and safety measures (solely applicable when AEO Safety and Security is involved).

The applicant determines whether the organisation meets these requirements. This promotes the applicant’s assumption of his personal responsibility and self-sufficiency.

The issue of an AEO certificate results in fewer inspections (in particular, fewer physical inspections). The knowledge acquired during the process resulting in the issue of an AEO certificate (alongside the information collected during the assessment of applications for licences) offers Large Business supplementary information for its compliance scan that is of value when assessing the feasibility of horizontal monitoring.
**Penalty policy**

The national and community legislation exhibit large differences in the areas of penalties and criminal prosecution. It should also be noted that the legislation prescribes the suspension or withdrawal of an AEO certificate when the holder no longer complies with the statutory requirements.

**Minimum enforcement**

Customs, in contrast to Large Business, cannot always exercise its discretionary powers in decisions on its enforcement levels and reduction of supervision. The Community Customs Code and the regulations of the various ministries for which Customs enforces the relevant legislation and regulations prescribe minimum enforcement levels. As a result, the provisions for Customs’ discretionary powers differ from those for Large Business.

14.8 **Cooperation with other enforcement agencies**

Horizontal monitoring is a development which is taking place throughout the government organisation and is not restricted solely to Large Business and Customs. Other enforcement agencies are also examining whether – and if so, how – the government can enter into different forms of cooperation with businesses. Studies are also being carried out to review how other enforcement and supervisory agencies can cooperate in the manner in which Large Business and Customs cooperate in joint horizontal monitoring programmes. Account management teams that are approached by organisations, enforcement agencies or inspectorates with the request to conclude a joint ‘government-wide’ compliance agreement should consult on the request with their management and professional specialists.