

"DUTCH COLLECTION"

Some aspects of taxenforcement and the accompanying rights and obligations of taxpayers; and the taxauthorities in the Netherlands.

1. INTRODUCTION

This essay comprehends some aspects of tax enforcement and collection in the Netherlands and the rights and obligations therewith of taxpayers and the Dutch tax authorities. Chapter one gives a short view of how the taxpayers are registered by the tax authorities. Chapter three reviews the rights and obligations of taxpayers and of the Dutch taxauthorities. In chapter four the relevant Dutch and European legislation is described and finally chapter 5 and 6 give a view of several specific rights of the Dutch collection authorities.

I note that Dutch collection comprehends not only corporate tax, income tax, turnover tax and tax on wages but the Dutch collector is also obliged to collect custom and excise duties and social security contributions.

2. REGISTRATION OF TAXPAYERS

The computerisation of the Tax and Customs Administration

1. The use of identification numbers

For a proper understanding of how taxes are collected it is important to know that the collection - and hence the levy too - of taxes in the Netherlands is fully automated. To ensure that taxes can be levied and collected without difficulty, the Dutch Tax and Customs Administration has a computer data base containing the particulars of all natural persons whose names are listed in a population register in the Netherlands. This data base is created as follows. As soon as a person settles or is born in the Netherlands, notice of this must be given in the municipality where the person in question settles or is born. The populations department of the relevant municipality then passes on these particulars to the Tax and Customs Administration. The name of the person concerned is entered in the data base of the Tax and Customs Administration and he or she is given a unique identification number known as the national social security and tax registration (SoFi) number. The entire records of the Tax and Customs Administration are based on these numbers. The taxpayer retains this number for life. Nor is the number used again after the death of the relevant taxpayer. This also applies to people who have at some point have been registered in a population register in the Netherlands and have later left the country. It follows that if people leave the Netherlands they do not lose their SoFi number. I will return shortly to the use of the SoFi number in connection with the levy and collection of tax.

2. Other databases

In addition to the data base to which I have just referred, the Tax and Customs Administration also has a number of computerised supplementary data bases which are used in the process of levying and collecting tax. For example, there are separate data bases for : businesses which employ staff and are required to deduct wages and salaries tax from the pay of such staff and to remit this to the Tax and Customs Administration; businesses which have to charge their customers turnover tax and then remit it to the Tax and Customs Administration. Businesses which have been included in these data bases have a second unique number, in addition to their SoFi number. This may be a wages and salaries tax number if they are required to make deductions at source for wages and salaries tax or a turnover tax number if they are required to charge turnover tax. A large number of businesses have both a wages and salaries tax number and a turnover tax number. If the business is carried on by a natural person, in other words the business is not run in the form of a legal entity, its wages and salaries tax number and/or turnover tax number consists of a SoFi number, with the addition of a particular code. Legal entities are given their own separate tax number. A more personal approach by the collector is

desirable or in case that extra attention must be paid to the collection of the sum due under the assessment.

3. RIGHTS AND OBLIGATIONS OF TAX AUTHORITIES

Ways of objections and appeals of tax Payers (obligations of the tax authorities)

The legal protection in the case of tax collection is a patchwork quilt.

There are no uniform rules. Besides the fact that the provisions are spread over several acts like law, instructions and so on, also the procedures are different. The question who to address, more specifically which procedure must be followed, depends on what kind of decision of the tax collector the party concerned wants to protest against. In that way it is not simple for the taxpayer to distinguish which provisions he can invoke against a decision of the tax collector.

For instance in interest matters one has to address at first the tax collector and ask him to re-examine his decision. When one does not agree with his decision one can address the tax court of appeal. In matters of forgiveness and postponement of payment one can only address the director of the tax and customs administration.

An important provision is the provision in the tax Collection Act 1990 against the execution of a tax assessment. To protest against the execution of a tax assessment the taxpayer has to address to the court of the district in which he resides or in which he has his registered office.

This protest starts with a summons issued by the taxpayer as claimant served on the tax collector who issued the distress warrant as defendant. The protest shall suspend the execution of the distress warrant insofar as it is contested by the protest.

The protest may not be based on the allegation that the assessment notice or the reminder was not received. In addition, the protest may not be based on the allegation that the tax assessment was established wrongly or that it was too high. The same protest the taxpayer has in the case of a simplified garnishment. The third party has not that possibility. The third party can not protest against a simplified garnishment. When the third party wants to protest and there is a simplified garnishment he must at first do nothing. By doing so the tax collector is obliged to prosecute the third party who fails to satisfy the claim by seizure under a writ of attachment in accordance with the regulations of the Code of Civil Procedures. From that moment on the third party can protest against that seizure on the basis of the Code of civil procedure. In the case of seizure of the land the third party who is of the opinion that he has a full or partial right to movable goods which have been attached with regard to a tax liability, may direct a letter of appeal to the director of the tax and customs administration, provided they do so prior to the sale and within 7 days at the latest, counting from the date of attachment. The director shall decide as soon as possible. The sale may not take place but after 8 days of that decision. By lodging a letter of appeal the third party shall not forfeit the right to take his objections to the civil court. That right cannot be invoked by a third party whose movable goods are falling under the definition in the tax Collection Act 1990 concerning the seizure of land. The Collection Act 1990 contains a lot of provisions concerning liability of a third party for the tax due of the taxpayer. The person declared liable may contest the liability within 6 weeks of the date of notification by which the decision has been made known that he is liable. This must be done by means of a reasoned written notice to the collector. The collector must in that case summon the person involved to appear before the civil court, in accordance with the relevant legal provisions. So far an overview of the possibilities of the tax payer and third parties to protest against some decisions of the tax collector. I want to say that this overview is not exhaustive. There are more possibilities but these are the most important. There are also some international treaties and judges that can be addressed in tax collection matters. I mention the Court of Justice in Luxemburg, which court has to observe that the treaty of Rome is performed well. On the basis of this treaty the Netherlands has rights and obligations, also concerning tax matters. Citizens can also directly invoke the provisions of the treaty. A decision of the Courts binds the national judge. In the case of seizure of land the Court of Justice in Luxemburg was addressed. The question in this case regarded whether by the provision of seizure of land the treaty was

violated, because the treaty has a provision which says that no rules can be enacted that hinder the import and export between countries of the European Community. In the case that was brought before

court there was a German manufacturer who had delivered a good to a Dutch client. On the basis of the provision of the seizure of land the tax collector had seized that good. The German manufacturer now said that if he had known that provision he would not deliver that good to his Dutch client and that would mean that the provision hinders the import and export. Luckily the complaint failed. Another international court that can be addressed by a citizen, is the court in Straatsburg. That court observes that the European Convention for the Protection of Human Rights and Fundamental Freedoms is performed well. In some matters of seizure of the land the court was addressed. In every case that came before that court the complaint failed. There is also the possibility to address the Parliamentary Commissioner. He has the possibility to make inquiries into a complaint. The result of the inquiries is laid down in a

report that is published and in that way attaches the attention of the public and press. He is only competent in tax collection matters where there is no possibility for objection or appeal. For instance a complaint of the taxpayer saying that the tax collector has insulted him. At last I will mention the right of petition. It is laid down in our Constitution. There are special parliamentary committees to which the taxpayer or a third party can address. The committee reports his inquiries to the parliament. The parliament advises the minister now and then to meet the complaints of the taxpayer or the third party. The right of petition also includes a complaint addressed to our queen.

So far the ways of objections and appeals. I remark that this overview is not exhaustive. There are more possibilities. But these are the most important.

Obligations and rights of tax authorities with regard to information

1. General

If the collector wishes to collect tax arrears from the assets of the taxpayer or from claims which the taxpayer has against third parties, it is important for him to know against what and whom he should proceed. The collector should therefore be able to obtain information about the financial position of the taxpayer. In the Netherlands the collector can obtain this information at both national and international level. Information can in fact be gathered even before the debt collection stage is reached. This is because information is also gathered when tax is assessed, namely at the moment that the taxpayer files his return with the inspector. The collector is allowed to use for collection purposes the information which the inspector has gathered in order to make a correct assessment. The State Taxes Act - which contains formal provisions - governing the assessment of tax - includes a section providing that officials of the Tax and Customs Administration have a duty of secrecy concerning information that comes to their attention, except in so far as disclosure of such information by them is necessary for the assessment or collection of taxes. I will deal later on with the gathering of information for the assessment and collection of tax at national and international level. I would observe in this connection that the legislation governing the gathering of information is concerned not only with the taxpayer himself but also with persons held liable for the payment of the tax debt of another person.

2. Gathering of information for assessment purposes (national)

The inspector compiles a file on every taxpayer who receives an annual tax return form. The file is used to collect the tax returns of the taxpayer over a number of years in succession. It also includes information which the inspector receives from third parties. The information which the inspector obtains from the taxpayer himself includes:

the wage or salary received from his employer;

the profit from carrying on a business;

the income which the taxpayer receives from other sources, e. g.

* commutation payments

- * maintenance (alimony)
- * annuities
- * rent from the letting of movables and immovables
- * shares
- * interest from bank accounts

The inspector may use this information not only to levy tax but also to gain an impression of the financial position of the taxpayer. If, for example, the taxpayer has indicated in the return that he receives income from the letting of movable and immovable property, it is in any event clear that he has assets in the form of movable and/or immovable property. This information may also be important to the collector if he wishes to recover a tax debt from the movables or immovables of the taxpayer. In addition to the particulars which the inspector obtains from the taxpayer himself, he also receives information from third parties. For example, if the taxpayer is in employment the inspector receives from the employer an annual statement of the wages and salary paid to the taxpayer. In the Netherlands the banks are also obliged to supply the Tax and Customs Administration with a statement of the annual interest received by a taxpayer as income in any year. Besides gathering information, the inspector can in this way also check the veracity or correctness of the information supplied by the taxpayer in his return.

3. Gathering of information for collection purposes (national)

Not only can the collector use the information available to the inspector but he can also gather information himself under the provisions of the Collection Act 1990. This right is included in the Collection Act 1990 because the collector needs up-to-date information, and the information available to the inspector often concerns the situation in the past. The Collection Act 1990 contains a separate chapters relating to the supply of information to the collector for the purpose of tax collection. The rules governing the provision of information can be put in the following order:

first of all, the taxpayer himself is obliged at the request of the collector to supply the particulars and information needed for the collection of his own tax debt;

in addition, the taxpayer is obliged to supply books, papers and other data carriers (e.g. computer files) to the collector;

if the taxpayer has given these books, papers and other data carriers to a third party (e.g. his bookkeeper), the third party concerned is also obliged to supply them to the collector;

the requested particulars must be supplied to the collector clearly, definitely and without reservation within such reasonable period as he may prescribe;

taxpayers may not evade their obligation to supply information by invoking a legal duty of confidentiality or privilege;

certain third parties are also under the same duty as the taxpayer to supply information concerning the taxpayer to the collector;

where third parties are required to supply information about a taxpayer to the collector, a limited number of them may invoke their legal duty of confidentiality or privilege;

the desired information may be gathered not only by the collector but also by every official of the Tax and Customs Administration.

For the purposes of seizure of movables (ships) and immovables the collector himself can obtain or gather information from the Ship Register or from the Land Register.

These registers are open to the public. Information about registered companies can be obtained from the Chamber of Commerce which also gives a public service.

3.1 Supply of information by the taxpayer himself

The taxpayer himself is under a duty to supply particulars and information and to allow books, papers and other data carriers to be inspected. The particulars and information to be supplied include those that will enable the collector to recover effectively against goods of the taxpayer that are located elsewhere. When the desired information is requested, the collector should in fact exercise a certain

amount of restraint. The policy of the Dutch Tax and Customs Administration is that information should be obtained only when payments are in arrear. No request is made for particulars which should already be available to the collector or for information that is not relevant to collection. A few other points should be made about the gathering of information from the taxpayer himself:

- the collector is not permitted to invoke the duty to supply information in order to collect particulars that he requires in order to discharge a burden of proof in court proceedings with the relevant taxpayer;
- if the taxpayer is asked to supply information about himself to the collector, he may not refuse to do so on the ground of a legal duty of confidentiality or privilege;
- the taxpayer may not himself decide whether the information requested by the collector is relevant to the collection process. If the taxpayer considers that the collector is wrong in requesting particular information or is requesting too much information, he may apply to the civil courts.

The books, papers and data carriers which the taxpayer may be obliged to supply consist primarily of books of account, ledgers, invoices, receipts, deeds, letters and minutes of meetings. Data carriers are microfilms, magnetic tapes and computer diskettes containing stored data.

3.2 Failure to supply information

If a taxpayer fails to fulfill his obligation to supply information and too little tax is collected as a result, this constitutes a criminal offence for which a term of imprisonment or a fine may be imposed. Not only may a failure to supply information result in a criminal sanction but it may also affect the collection of the tax debt. For example, the collector will refuse a request for postponement of payment or for remission of debt if he does not receive the requested information or any part of it.

3.3 Supply of information in the possession of third parties

If a taxpayer has arranged for a third party to keep his records and books of account, for example a trust office, accountant or bookkeeper, this third party is also obliged to supply these records to the collector for inspection. In this way, it is possible to avoid a situation in which the gathering of information from a third party could be made more difficult. A situation could arise in which a third party - for example a trust office - refuses to make the records available because the taxpayer has not paid its bill for keeping the records and accounts. As regards the duty of confidentiality, the same applies to third party as to the taxpayer himself. The third party too cannot claim that this is privileged information. If the collector wishes to obtain information from documents in the possession of a third party, the taxpayer is informed about this by the collector.

3.4. Requests to third parties for information

For the sake of clarity, I would point out that there is a difference between -requesting information that belongs to the taxpayer but is in the possession of third parties (e.g. a bookkeeper, accountant or trust office) and requesting information possessed by a third party about a taxpayer. What I am now going - to discuss is the gathering of information possessed by third parties. The Collection Act 1990 imposes the obligation on certain third parties to supply particulars and information and hand over data carriers to the collector where they may be of importance to the collection of tax debts from other persons. Third parties who are subject to such an obligation are: organisations (e.g. banks) natural persons who carry on a business or practise a profession independently (e.g. accountants) natural persons who have a duty to make deductions at source (i.e. to deduct wages and salaries tax from the pay of their employees).

Third parties other than those I have already mentioned - i.e. for the most part private individuals - cannot be compelled to divulge information about other taxpayers. Private individuals may only be asked to supply information relevant to the collection of their own tax debt. As in the case of information obtained from the taxpayer himself, information is obtained from a third party only when the taxpayer

about whom information is to be gathered is in default. Moreover, a third party is approached only if the information is of sufficient importance to the collection of the debt. This is because such an approach means that the third party becomes aware that the collector is searching for means of recovery from a particular taxpayer. Regarding requests to banks for information I should mention that banks are among the third parties who can be compelled to supply information about a taxpayer. The Dutch Ministry of Finance has made arrangements with the banking sector concerning the provision of information which the banks are obliged to supply under the Collection Act 1990. The arrangements are recorded in a Code of Conduct, which specifies among other things what information the collector may request from a bank. Examples are: full information about the financial relationship existing between the bank and the taxpayer; this includes information pertaining to:

- * consumer and mortgage loans
 - * financing of commercial transactions
 - * leasing
 - * transfers of funds
 - * issue and management of instruments of payment (credit cards, traveller's cheques etc.)
 - * issue of guarantees and suretyship agreements
 - * transactions involving foreign currencies and securities
 - * participation in share issues
 - * custody and management of securities
 - * capital management
 - * renting out of safe-deposit boxes
- supply of information about interest received on bank accounts, bonds, mortgage bonds, savings certificates and other securities on which a fee is paid that is deemed for tax purposes to be interest.

The Code of Conduct between the Tax and Customs Administration and the banks also in fact applies to the gathering of information for the purpose of tax collection by foreign tax authorities. They too can obtain the information which I have just listed from the banks through the intermediary of the Dutch Tax and Customs Administration.

3.5 Possibility of refusing to supply requested information

Under a provision of the Collection Act 1990, a number of third parties may decline to supply the collector with certain information by citing client confidentiality or privilege. In other words, they claim that the information is privileged, having come to their attention in the course of their profession. The professions concerned are clergymen, notaries, attorneys-at-law, procurators (solicitors), physicians and dispensing chemists.

I would mention at the outset that people in these categories may cite privilege only in so far as the information relates to other taxpayers. If the collector requests information in connection with the collection of their own tax debt, they cannot claim immunity.

Under Dutch law, the persons I have mentioned are regarded as practitioners of professions who have a confidential relationship with their clients and patients. In other words, they are members of professions which provide help and assistance to individuals. It is of importance in this connection that information entrusted to the members of these professions or gathered by them in the course of their work should be kept strictly secret. If the collector asks them for information, they may refuse to provide it on the grounds of client's privilege. The relevant third party may himself decide in this connection whether or not certain information constitutes a confidential communication. If he himself - and not the collector - considers that information is not privileged, he may decide to supply the information after all. The Dutch courts regularly hear cases about whether a refusal to provide information is justified on the grounds of

client's privilege.

3.6 Officials to whom the information must be supplied

The collector is not the only official empowered to compel a person to supply information. He may delegate the power to other officials of the Tax and Customs Administration. For example, he may delegate his power to tax bailiffs or compliance/surveillance officials. The Dutch Tax and Customs Administration has some 4,000 compliance/surveillance officials. By virtue of his power of delegation, the collector can in principle use the compliance/surveillance officials to carry out investigations designed to uncover assets from which tax debts can be recovered.

4. Gathering information for assessment purposes (*international*)

The topics dealt with today concern the collection of tax arrears. It may therefore seem rather strange that we should be considering the means of obtaining and providing information at the international level for the assessment of tax. However, a large number of international treaties concluded between the Netherlands and other countries provide for the possibility of using for collection purposes information originally obtained for the assessment of tax. Treaties have for example been concluded with Finland, Hungary, Latvia, Poland, Rumania and the Czech Republic/Slovakia. It is perhaps useful to consider here how the information for the assessment of tax is exchanged.

4.1 Legal framework for the exchange of information

Information is exchanged on the basis of:

- bilateral treaties concerning income, profits and capital;
- multilateral agreements such as:
 - * the EC assistance directive
 - * the Benelux agreement
 - * a multilateral assistance convention.

4.2 General aspects of the exchange of information

All the international agreements show that the contracting States have wished to oblige one another to provide information, but not to an unlimited extent. Limitations have for example been made to safeguard:

- * the legal rights of the persons concerned; provisions have been included regarding confidentiality in general, business and professional confidentiality and the purposes for which the information may be used;
- * the interests of the contracting States - for example a State need not supply information if:
 - * the supply of that information would be contrary to its own laws;
 - * the State requesting the information would not reciprocate in a similar situation; States must cooperate on a basis of equality;
 - * the State making the request has not first exhausted all national remedies available to it;
 - * the supply of information would be contrary to the public policy of the requested State.

4.3 Methods of exchanging information

information can be exchanged by various methods:

- supply of information on request: specific information is supplied about a specific case;
- spontaneous supply of information: information may be supplied by a State of its own volition if it suspects that a reduction, exemption, rebate or other relief may be wrongly granted in another State;
- automatic supply of information: the automatic supply of information may be agreed beforehand between the States concerned and may concern certain categories of cases. For example, State A and State B may agree that State A will be automatically informed of the interest which residents of State A receive from State B;

- an official of one State may be present at an investigation carried out in another State (this is possible at present only between the Member States of the European Union);
- investigations may be carried out simultaneously in different countries.

4.4 Bilateral treaties relating to income, profits and capital

The Netherlands has concluded treaties for the avoidance of double taxation with a large number of countries. Almost all these treaties include a provision for the exchange of information. Most taxation treaties concluded by the Netherlands are based in part on the OECD Model Convention. The standard article on the exchange of information included in Dutch treaties corresponds to the equivalent provision in the OECD Model Convention. The text of the Model Convention provides that "Any information reserved by a contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes." It clearly follows from what I have said that information obtained initially for the purpose of assessment may also be used for collection.

Some additional limitations on the collection of information are included in the bilateral treaties. A number of treaties provide that:

- the information need be supplied only if it is already available; there is therefore no obligation to carry out a special investigation;
- the particulars need be supplied only for the prevention of fraud or tax evasion;
- no information in the possession of banks or insurance companies need be provided.

4.5 Multilateral agreements

In addition to the bilateral treaties, there are a number of multilateral agreements under which information may be exchanged internationally for assessment purposes. One such agreement is an EC Directive under which information may be exchanged between the Member States of the European Union. Under this Directive, the officials of one Member State may be present at an investigation carried out in the territory of another Member State. An agreement has also been concluded between Belgium, the Netherlands and Luxembourg (the 1969 Benelux Agreement). This regulates among others the presence of officials of these countries at investigations in one another's territory and the possibility of specific action by such officials on one another's territory. One other treaty of importance on the exchange of information between countries is the Convention on Mutual Administrative Assistance in Tax Matters. The Convention was concluded in 1988 on the initiative of the Council of the European Communities and the OECD. The Convention has also been signed by the Netherlands. The Dutch government has now proposed to parliament that the convention should be ratified. The contents of the Convention differ in a number of respects from the bilateral and multilateral agreement to which I have already referred. For example, it also applies to other taxes and levies:

- municipal taxes;
- indirect taxes;
- succession duties and gift taxes;
- compulsory social security contributions.

In addition, the Convention covers other forms of assistance besides the gathering of information for assessment purposes. Examples are:

- assistance with collection;
- assistance with the delivery of documents;
- the possibility of carrying out simultaneous investigations.

This information is intended primarily for assessment purposes, but may also be used in connection

with tax collection. However, such information may never be exchanged directly for collection purposes.

5. Gathering of information for collection purposes (international)

In addition to the international agreements providing for the exchange of information for assessment purposes, there are also some agreements dealing with the collection of tax debts. These agreements provide for mutual assistance in the form of:

- exchange of information;
- assistance with collection;
- assistance with provisional seizure (securing orders);
- notification (the service or issue of court documents and decisions on actions to recover debts).

5.1 Legal framework for the exchange of information for collection purposes

The international arrangements that are of importance to the exchange of information for collection purposes are:

- EC regulations
- EC directives
- tax treaties

Regulations and directives are both statutory instruments of the European Union. Under regulations and directives, information may be exchanged for collection purposes between the different Member States of the European Union. Tax treaties are the bilateral treaties to which I have referred in connection with assessment. If the collector knows or suspects that a taxpayer living abroad has failed to provide information or has provided incorrect or incomplete information. The collector may also need information from abroad as a basis for a given decision on a taxpayer. This would be the case, for example, where he is intending to commit a taxpayer to prison. Before doing so, he may need to obtain information about the financial position of the taxpayer abroad.

5.2 Exchange of information on request

As a rule, information for collection purposes is usually obtained on request. This means that the collector requests specific information in a particular case about a named taxpayer. Most questions addressed by the collector of taxes in the Netherlands to foreign tax authorities concern:

- income and/or capital that may be present abroad;
- verification of information provided by the taxpayer himself, for example in connection with a request for an extension of the period for payment or for remission of debt;
- the extent to which the taxpayer has complied with the tax laws of the other State;
- confirmation of the particulars of name and address;
- location of assets that can be seized;
- whether a request for actual collection in the other State will be successful.

5.3 Spontaneous and automatic exchange of information

It is also possible that information is supplied spontaneously. It may, for example, be of benefit to a foreign tax authority if the collector of taxes in the Netherlands informs it that a taxpayer who has just settled in the country concerned had in the past tried to evade tax in the Netherlands. The foreign tax authority can then immediately adopt the appropriate collection measures and thus prevent or minimise any collection losses. Information is never exchanged automatically for collection purposes.

5.4 Request for information from abroad

If another State supplies information to the Netherlands, the Netherlands is in turn obliged to comply with a request for information from that State. The collector is, where necessary, under a duty to institute an investigation in order to be able to answer the questions of the foreign tax authority. For this purpose, he may exercise his rights under the Collection Act 1990 to compel the provision of information. This is because the obligation to supply information under the Act is not confined to the collection of a Dutch tax debt in the Netherlands but also extends to information requested by foreign

tax authorities. When information is requested from a bank for the benefit of a foreign tax authority, the Code of Conduct between the Dutch Tax and Customs Administration and the banks is applicable.

A number of limitations apply in respect of the nature of the information to be supplied:

- no measures that are contrary to the law or administrative practice of the requested State and/or requesting State may be taken to obtain information;
- information is not supplied if it would mean divulging a commercial, industrial or professional secret;
- the provision of the information may not be contrary to public policy. No specific rules governing legal protection exist for the supply of information to another State for collection purposes. However, the taxpayer concerned may well apply to the civil courts if he has objections to the exchange of information.

5.5 Exchange of information under the EC Directive

A directive is in force in the European Union under which the Member States are obliged to assist one another with the collection of debts arising from a failure to pay agricultural levies, customs duties, turnover tax, excise duties on tobacco products, alcohol, alcoholic beverages and mineral oils. Under this directive, it is also possible to exchange information for collection purposes. Information is exchanged only on request.

6. Use of foreign officials to investigate

There is a possibility to use foreign officials to carry out investigations designed to gather information. International assistance has constantly evolved: whereas it was initially confined to the straight exchange of information already available it has gradually developed to the point where States feel that it should be possible for them to make inquiries on one another's behalf and for officials of the requesting State to be present. Under the provisions of the EC Assistance Directive, the Member States of the European Union are obliged on request to make inquiries exclusively on behalf of another Member State. The Netherlands has incorporated this obligation in national legislation. A provision has also been introduced in the Directive under which a Member State of the European Union which has requested information may arrange for one of its officials to be present when the investigation is carried out in the requested State. It should be stressed that the official of the Member State is only entitled to be present at the investigation, and may not carry out an investigation himself. The basic principle is that the sovereign jurisdiction of the States should be respected. The power to admit foreign officials does not therefore extend to allowing them to investigate the affairs of Dutch taxpayers independently. Naturally, foreign officials are allowed to be present only if this right is granted on a reciprocal basis by the other Member State. The Netherlands and other Member States are cautious in admitting officials from other States and have made only sparing use of this possibility. Rightly or wrongly, there are evidently misgivings about the interference and intervention of the authorities of another country. The possibility of allowing foreign officials to be present at investigations will in future not be restricted to the Member States of the European Union. When the multilateral assistance convention initiated partly by the OECD has come into force in the Netherlands too, officials from States outside the European Union will be able to attend investigations in the Netherlands.

4. LEGISLATION

Structures for managing the tax collection process

1. General

In this chapter I shall start by telling you something about the tax collection process in the Netherlands. Afterwards, I will make a comparison with the process of other countries. At the same time, I will touch on the collection of claims of the Dutch Tax and Customs Administration in other countries and of the claims of foreign tax authorities in the Netherlands.

2. Legal framework

The rules governing the collection of sums due under tax assessments in the Netherlands are contained in various statutes. The basis for tax collection is laid down in the Civil Code, which provides that each debtor is liable for the payment of his debts up to the full amount of his assets. The procedure by which a creditor can collect a sum owed by a debtor is regulated in the Code of Civil Procedure. The Code of Civil Procedure is divided into a number of books. Of particular relevance to the collection of taxes is Book II of the Code of Civil Procedure, which contains the provisions governing seizure and execution. Book 11 also sets out, as it were, the route by which a creditor can recover sums (due) owed to him. As the State must be sure that it can recover as much as possible of the sums owed under tax assessments issued to its citizens, and in view of the large number of claims that the Tax and Customs Administration must collect each year (e.g. over 12 million in 1994), a special statute -the Collection Act 1990- has been passed to ensure that taxes can be collected as easily as possible. This act gives the collector of taxes extra collection powers. The same act also contains a number of provisions governing legal certainty and the legal protection of the taxpayer.

In addition to the statutes that are laws 1 have mentioned, there are various statutes important to the collector of taxes in discharging his duties. The main statute is the State Taxes Act. This contains the formal provisions governing the levying of taxes, but some of its provisions are also important to the collection of tax.

3. Assessment of the tax owed

The amount of tax owed can be assessed in two ways in the Netherlands:

1) the inspector calculates the tax on the basis of the information supplied by the taxpayer in his tax return and particulars supplied by third parties. The amount of tax owed is communicated to the taxpayer by means of a tax assessment. The issue of a tax assessment results in an obligation on the part of the taxpayer to make payment. Taxes for which an assessment is sent to the taxpayer include income tax, wealth tax and corporation tax. These types of tax are also known as "assessment taxes".

2) the taxpayers themselves calculate how much tax they owe over a given period (usually a month or a quarter), send a return to the inspector and then pay the amount shown to be owed in the tax return. I will explain shortly how the inspector can check whether someone must pay taxes by tax return. Taxes which must be paid by tax return include wages and salaries tax and turnover tax. These types of tax are known as "return taxes" . If the tax return is not filed in time or if the amount payable in the return is not paid in time, the inspector issues an assessment after all. This is known as a back tax assessment. The amount of the tax payable may also include a penalty for the fact that the taxpayer has not filed a return in time or has not paid in time.

The collector taxes is involved in the collection of taxes owed un'der an assessment. He becomes involved in the collection of taxes owed under a return only where there has been a failure to file a return or to pay the tax owed and a back tax assessment has been issued as a result.

5. SPECIAL RIGHT OF SEIZURE BY THE TAX AUTHORITIES

One of the principles of Dutch law is that a creditor may recover his claim against a debtor only from the assets of that debtor and not from the goods of third parties. An exception to this principle is made in the Collection Act for the collector of taxes. The collector is permitted to recover unpaid tax debts from certain movables of third parties which are on the "land" of the taxpayer (i.e. in his home or business premisses) at the time of the seizure. The goods which may be seized under this special right are limited to harvested or unharvested fruits and movables which serve as furnishing of a home or farm or for the cultivation or use of the land. These conditions seem to suggest that this special right of seizure can be exercised only in the agricultural sector. However, numerous court judgments show that it can

be applied in other sectors too. The collector may exercise this special right of seizure if a number of conditions are satisfied at namely:

- (a) the tax debts must relate to non-personal taxes, e.g. wages and salaries tax and turnover tax;
- (b) the seizure must be of movables, e.g.
 - harvested or unharvested fruits of the land, such as potatoes and grain that is stored in a barn or
 - that has been harvested but is still on the land;
 - movables for cultivating or using the land, for example agricultural machinery;
 - movables for furnishing a home or farm; these are the goods most commonly seized under this right; (for this purpose a home is deemed to include an office, shop or factory);
- (c) the movables must serve as furnishing; for this purpose furnishing includes:
 - furniture;
 - free-standing cupboards and showcases in a shop;
 - movable machines in a factory;
 - office furniture;
 - implements and tools in a factory;
 - the equipment and furnishings of a cafe. (furnishing does not include, for example, the stock in trade of a business, the stocks of wine in a hotel, clothing and cars);
- (d) the goods must have been seized on the "land" (property) of the taxpayer. For this purpose, the term includes the parcel of land or part of the parcel (dwelling, office, factory with site or farm with land) which is actually used by the taxpayer. The identity of the owner or tenant is not important for this purpose. The condition is that the land is actually used by the taxpayer and that he can use it independently of third parties.

If the collector has seized movables that belong to a third party and are on the land of the taxpayer, the third party has two forms of redress:

- (a) if the third party believes that the collector has wrongly designated certain movables as goods subject to the special right of seizure, he may file a notice of objection with the Tax and Customs Administration or lodge a notice of 'opposition' to the seizure with the civil courts;
- (b) if the third party recognises that the seized goods come within the definition of movables liable to seizure under this special right, his only redress is to file a notice of objection with the Tax and Customs Administration. He may not lodge a notice of opposition with the civil courts.

The collector does not always exercise the right to seize movables on the soil of the taxpayer. He does so only if:

- there is a conspiracy between the taxpayer and the third party-owner to make it difficult to recover the debt from the seized goods;
- the third party's legal ownership of the movables is intended merely as security for payment -of the third party's claims against the taxpayer;
- the legal owner of the movables has such influence over the business of the taxpayer that he can be held partly liable for the payment of, among other things, the tax debts connected with the operation of the business.

An argument that is quite often used to challenge the validity of the special right of seizure by the tax authorities is that it is contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6 provides that in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. A third party-owner whose - movables have been seized by the collector on another person's property cannot, however, apply to the civil courts for redress. The highest appellate court in the Netherlands has held, however, that a third party-owner has such before an independent and impartial

right of seizure is not contrary to opportunities for defence tribunal that the special article 6 of the European Convention on Human Rights. This is because the third party-owner can appeal to the civil courts on the grounds of tort against the decision of the Tax and Customs Administration decision of the Tax and Customs Administration courts for review. Another argument used against the special right of seizure is that it is contrary to article 1 of Protocol no. 1 to the European Convention on Human Rights. This article provides among other things that every natural or legal person is entitled to the peaceful enjoyment of his possessions. However, this provision in no way undermines the right of a State to apply such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. This argument has been successively referred for review to the European Commission of Human Rights and the European Court of Human Rights. In keeping with the decision of the Commission, the European Court of Human Rights has now held that the exercise of the special right of seizure does not constitute a violation of article 1 of Protocol no. 1 to the European Convention. Although the right does infringe the principle that everyone should be entitled to the peaceful enjoyment of his possessions, this infringement is legitimated by the principle - also included in article 1 - that the State has the right to enforce such laws as it deems necessary to secure the payment of taxes. One of the principles of tax collection is that the interests of taxpayers may not be prejudiced more than strictly necessary and that a solution must be sought which does the least possible harm to these interests. I would describe this as the principle of minimum prejudice. This principle is also reflected in the collection costs and the question of expediency. Concerning the immovable property of a tax debtor I notice that it should not be seized for the collection of a relatively small sum, and movables such as household effects should not be seized if the debt can be collected by means of an attachment of earnings order or other simplified garnishee proceedings.

6. COLLECTION COSTS

Factors that affect the costs of the collection

Naturally, costs are incurred in collecting arrears of tax. These include:

- the salary and other costs of the employee responsible for collecting the debt (e.g. the tax bailiff);
- costs of equipment and materials (paper and use of computers and telephone);
- costs of drafting a reminder and distress warrant, sending the reminder and serving the warrant;
- Costs of seizure of the tax debtor' s property (e.g. writs of execution in the public registers);
- costs of court proceedings instituted to collect the debt.

The Dutch Tax and Customs Administration takes the position that the person who causes the costs should also pay them. It follows that a charge is made for the issue of a reminder, service of a distress warrant and levying of distress. The amount of these costs is regulated in a separate statute (the Collection of State Taxes, (Costs) Act). The charge made to tax debtors is fixed in such a way as to cover the costs which the Tax and Customs Administration itself incurs in collecting tax debts. The costs of serving a distress warrant can be high as they are linked to the amount of the assessment. In addition, a distress warrant is served for each assessment separately. If a tax debtor pays an assessment after the Tax and Customs Administration has incurred costs in sending a warning or serving a distress warrant, the costs first deducted. Any sum then remaining is set off against the amount of the debt. The Collection Act 1990 also contains a provision that all remedies available to the Tax and Customs Administration under the Act may also be used for the collection of costs. The costs connected with the judicial proceedings are collected under the court judgment, provided of course that the judge orders the tax debtor to bear the costs of the proceedings.

In addition to the costs incurred in collecting unpaid assessments, the State also suffers loss of interest on tax debts that remain unpaid after the last date for payment. At the same time, a tax debtor who does not pay an assessment receives interest on the amount owed as he continues to have control of it. To make up for the loss suffered by the State and cancel out the gain made by the tax debtor, the latter is charged interest on every payment made after the last date for payment.