

## The judicial system of the Netherlands in tax matters

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August 23, 2010

### The instances

Judicial review in tax matters is attributed to the ordinary courts. There are no specialized administrative or tax courts. The hierarchy of courts is as follows:

- Supreme Court : Hoge Raad 1
  - Court of Appeals : Gerechtshof 5
  - District Court : Arrondissementsrechtbank 19
- [There is no constitutional court]

Each court has several tax chambers. The number of chambers depends on the number of cases the court has to deal with.

Each tax chamber of the District Court and the Court of Appeals counts three professional judges, two judges (raadsheer) and a president (vice president) the latter being the presiding judge.

Tax chambers are competent in cases of taxes and social security levies imposed

- (i) by the central government such as the individual and corporate income tax, inheritance tax, VAT and custom duties, and
- (ii) by provinces, local communities and water authorities.

### The judges

There are no lay judges in tax matters. The tax chambers of the three instances are composed of professional full time career judges specialized in taxation. The judges of the District Courts sit alone or in threes, the Courts of Appeals in threes and the Supreme Court in threes or fives depending on the importance of the case.

### Admission and number of cases

Parties do not need to be represented by a professional. Apart from a small filing fee, the admission is in all instances free of charge.

Generally, the District Courts receive 12,000 cases, the Courts of Appeals 4,000 and the Supreme Court 100 tax cases per year.

### The procedures of the factual instances

Hypothetical cases cannot be presented. A taxpayer can only appeal to a District Court on the basis of a written decision by the administrative body responsible for the assessment. The decision has to be preceded by a hearing by a qualified Inspector of Taxes who has not been involved in the primary assessment.

Appeal on the District Court or a Court of Appeals requires no prior permission.

Both courts decide on points of fact as well as on points of law. All cases can, again without prior permission, then be brought before the Supreme Court, but only for legal review and (non)compliance with formalities.

Tax cases start with the exchange of written statements of the facts and arguments of law,

The court puts these in 'the file'. The file is the responsibility of the court.

The final decision is in writing and must be based on 'the file'.

The parties have the right to be heard. The judges of the courts of the two factual instances play an active role at these hearings. They must explore the relevant facts and, to the extent necessary, take evidence. If necessary there are more sessions. The facts include foreign legal provisions where relevant.

The courts may request parties to express their opinion on certain issues. The courts may also address factual and legal matters not referred to by the parties, as long as it stay within the boundaries of the conflict between the parties.

The tax authorities must submit all the relevant files to the court. They are represented by a civil servant. The taxpayer may, but does not have to be, represented by a lawyer or tax consultant or by anyone else that he deems fit.

A normal session in a tax case is not open to the public.

### **The decisions**

Only the final decision (dictum) is made public on a separate session. The decisions are then placed on a website ([www. rechtspraak.nl](http://www.rechtspraak.nl)) and are then sent to commercial publishers

The decision is collegiate, dissenting and/or concurring opinions are not shown. Decisions tend to be rather short. There is no fixed format for court decisions. They may be rendered in either written or oral form, except for the Supreme Court decisions, which must be in written form.

### **Supreme Court**

There are approximately 20 advocate-generals (not being public prosecutors) providing the Supreme Court with impartial and independent opinions if the importance of the case requires so. This happens in 10-15% of the cases. If the appeal is upheld, the Supreme Court may itself take the final decision or refer the case to another Court of Appeal for the final decision, for example, if further investigations on the facts, including foreign law, is necessary, but the Court of Appeal is then bound by the opinion expressed by the Supreme Court.

### **The length of procedures**

Objection against an assessment has to be raised within six weeks. The administration has 13 months to decide. Each step in court should take no more than one year.

The tax administration and the courts reasonably succeed in their effort to avoid delays.