TOPIC 1

THE COLLECTION POWERS OF THE TAX ADMINISTRATIONS: ADMINISTRATIVE COLLECTION PROCESS VS. ENFORCEMENT FOR COLLECTION

Lecture

Topic 1

THE COLLECTION POWERS OF THE TAX ADMINISTRATIONS: ADMINISTRATIVE COLLECTION PROCESS VS. STATUTORY ENFORCEMENT FOR COLLECTION

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1. INTRODUCTION

This contribution to the CIAT Technical Conference 2011 in Lisbon describes the collection process in the Netherlands. Paragraph 2 is about the organisation of the Tax and Customs Administration of the Netherlands and the policy objective used by the Tax and Customs Administration. Paragraph 3 deals with compliance strategy and paragraph 4 with management of the outstanding assessments and its automated support. The legal possibilities of the Tax and Customs Administration for the collection of outstanding tax debts are discussed in paragraph 5. Paragraph 5 also deals with various facilities for tax debtors. Paragraph 6 focuses on the powers of the Tax and Customs Administration towards third parties. It mainly concerns the possibilities for holding third parties liable for the tax obligations of tax debtors. Paragraph 7 discusses the measures taken in connection with the financial and economic crisis. Finally, the 8th paragraph deals with international cooperation in collection.

2. THE ORGANISATION OF THE COLLECTION OF TAXES IN THE NETHERLANDS

2.1 General policy objective

The general policy objective of the Tax and Customs Administration is:

Individuals and businesses are prepared to meet their statutory obligations with regard to the Tax and Customs Administration (compliance).

According to international standards, there is compliance in case of:

1. Registration
2. filing a tax return (in time)
3. filing a correct/complete tax return
4. paying the tax stated in the tax return (in time)

The Tax and Customs Administration promotes compliance first of all by adopting a service-oriented attitude to ensure proper communication with individuals and businesses. Moreover, the Tax and Customs Administration adequately supervises the fulfillment of the statutory obligations, enforcing these with criminal sanctions where necessary.

The over 30,000 employees of the Tax and Customs Administration are responsible for a large number of various tasks. The most commonly known task is the levy and collection of taxes and contributions. Every year, the Tax and Customs Administration processes the tax returns of over 8 million private individuals and 1.2 million entrepreneurs.

The Tax and Customs Administration does not only collect, but also pays out. For instance, the Tax and Customs Administration ensures the payment of provisional refunds and of benefits that households may be entitled to for the costs of childcare, rent or care.

Other important work processes are:

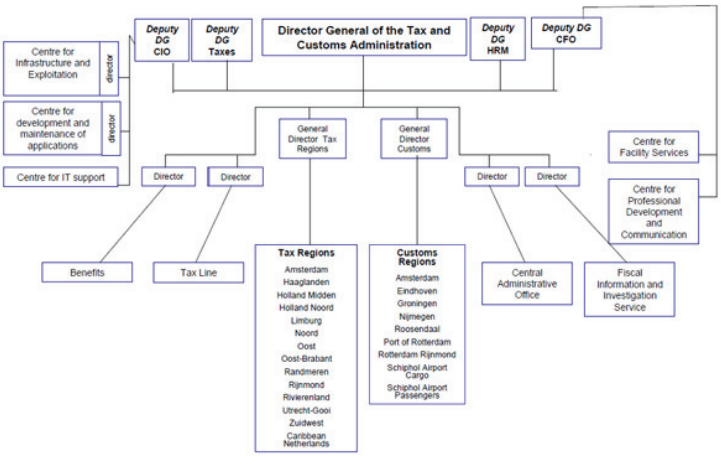
- detecting fraud
- supervising the import, export and transit of goods
- supervising compliance with tax laws and regulations.

2.2 Organisation of the Tax and Customs Administration

The Tax and Customs Administration is part of the Ministry of Finance and is led by the Director-General and his Management Team.

The organisation has the following structure:

Tax and Customs Administration of The Netherlands



The collection of taxes consists of mass and monitoring processes. The mass processes fall under the responsibility of the Tax and Customs Administration/ Central Administrative Office and the individual monitoring processes are applied by the Tax Regions.

2.3 The tax collector

The Tax Regions (the offices) are responsible for the collection of taxes at the expense of individual tax debtors. Within the Tax Regions, there is a separation of duties between employees who are charged with the levy of taxes (the tax inspectors) and employees who are charged with the collection of taxes (the tax collectors)[1]. This separation of duties was created for various reasons:

- Legal/substantive: the levy and collection of taxes are based on very different and various laws and regulations and each have their own process of legal protection
- Internal inspection: the tax inspector imposes the assessment and, in doing so, should be guided by law and not by payment capacity

Once the tax inspector has imposed the assessment (and any objection and appeal procedures have been completed), his work is finished. The assessment is the start of the collection process: this is the basis for the payment obligation of the tax debtor.

1 *Therefore, this contribution will mostly be about the tax collector from now on*

2.4 The tax bailiff

Under the responsibility of the tax collector, bailiffs are also active within the tax regions. It concerns special bailiffs[2] who are referred to by law as “tax bailiffs”. They only come into action if the fully automated system of payment reminder, demand and writ of execution sent by post have not lead to payment of the taxes due. The tax bailiffs are only authorised to perform activities for the collection of taxes and other amounts that must be collected through the collector of the Tax and Customs Administration. They are the ones who actually take measures to enforce collection. They are therefore engaged in attachment (or seizure) and execution law. The advantage of the Tax and Customs Administration’s own bailiff system is that the tax bailiffs:

- fall directly under the authority of the tax collector, allowing the tax collector to deploy them immediately at places where they are needed the most, and therefore
- are able to work highly flexible hours, and, furthermore,
- have knowledge of all processes of tax levy and collection, and, moreover,
- have a lot of expertise in the field of enforced collection (attachment and execution) because they spend all their working hours on taking measures to enforce collection.

3. COMPLIANCE STRATEGY

The Tax and Customs Administration works according to a fixed compliance strategy. This means that the Tax and Customs Administration structurally and systematically selects an instrument or combination of instruments that fits in best with the intended influence on the behavior of groups of taxpayers, on the basis of the effect the Tax and Customs Administration wants to achieve and the available capacity. Influencing behavior means that the Tax and Customs Administration not only assesses the underlying causes of non-compliance, but is also aware of its own behavior and its effects on taxpayers’ compliance behavior.

The set of enforcement instruments is broad and varies from tools that are aimed at prevention of non-compliance to the criminal prosecution thereof; for example:

- preventative measures (“right from the start”)
- enforcement communication

2. *These tax bailiffs have, on the one hand, a more limited and, on the other hand, a broader assignment and authority than the court bailiffs who act on behalf of other collection agencies and the courts. More limited: because they collect tax debts only for the tax collector and broader: because they can be deployed throughout the country (no regional limitations) and have additional powers.*

- incentives in case of good payment history
- working in the present (responsive)
- horizontalisation
- cooperation with other governments
- repressive measures

One of the instruments is Horizontal Monitoring; over the past few years, this instrument has continually developed and is a prime focus of the compliance strategy of the Tax and Customs Administration. The relationship between authorities and businesses has changed dramatically over the past few years. It is on a more equal footing now, and more focused on cooperation and making agreements. Furthermore, businesses - sometimes of their own accord, sometimes forced by laws and regulations - have become increasingly transparent in their operational management. The Tax and Customs Administration responds to these developments by sharing responsibility for compliance with laws and regulations with businesses and sector organisations, where possible. This shared responsibility is laid down in voluntary agreements. Businesses that make an agreement with the Tax and Customs Administration have the obligation to report significant tax risks and will no longer get intensive audits; in most cases inspection remains limited to a random check and/or thematic checks.

Only trustworthy businesses are eligible for this. This new form of supervision enables the Tax and Customs Administration to devote more time to investigate businesses that comply less scrupulously with the regulations. The payment history of partners to an agreement forms an important part of this cooperation.

The approach to the collection also takes place along the above lines. As far as horizontal monitoring is concerned, this can also mean that entrepreneurs do not wait until a writ of execution is served on them or - even worse - a tax bailiff is at their door, but that, as soon as they discover that there are or there is a risk of liquidity or solvency problems within the company, they inform the tax collector of this. This gives the tax collector the opportunity to form a sound opinion on the nature of the problems and to look for solutions in close consultation with the entrepreneur.

4. MANAGEMENT OF THE COLLECTION

4.1 Objective

The Tax and Customs Administration has defined the percentage of the backlog in collection for the year 2010 as a performance indicator; the objective is that the backlog may amount to 2.5-3% of the total. With a backlog in collection amounting to 2.5%, this objective was met for 2010; this means that 97.5% of the total tax amount to be collected was actually received. This percentage also

includes “old”, still unpaid assessments, but not the assessments for which a postponement of payment was allowed due to an objection or appeal. Managing backlogs prevents the occurrence of collection losses. For experience shows that as assessments are outstanding for a longer period of time, the chance that they can still be collected in full with the passing of time decreases inversely proportionally.

The Ministry of Finance (the central level) does not prescribe any more objectives. However, a tax region may make an internal agreement about certain objectives. For instance, the local management may agree with the collection department of this unit that a certain number of liability claims must be realised per period. Moreover, agreements can be made in order to take certain actions for certain sectors. Furthermore, it may happen that the local management agrees with its collection employees that only a certain (limited) part of the payment arrears may be older than one year.

4.2 Management of the collection process

4.2.1 Organisation of the collection process of the Tax and Customs Administration

The collection process of the Tax and Customs Administration distinguishes between (I) mass collection and (II) special collection. Below, the mass and special work processes are discussed in more detail.

(I) Mass collection (fully automated)

Mass collection is understood to be the complete collection process from sending the assessment notice to the attachment order based on the writ of execution. The mass processes fall under the responsibility of the Tax and Customs Administration/Central Administrative Office (B/CA). So the tax collectors that are established within the tax regions do not have a lot to do with these mass processes. This is the core business of B/CA. Among other things, B/CA ensures that the following is sent:

- Assessments
- Free payment reminders
- Demands (for which costs are charged) and
- Writs of execution (for which costs are charged as well)
- The attachment orders for the regional office[3]

3. *The attachment orders are sent to the regional office while the four documents listed above that (assessments, demands, payment reminders and writs of execution) are sent to the tax debtor him/herself.*

It concerns mass processes which are fully automated and which, in principle, do not require any manpower. In this phase of the process, a personal approach is only required if the tax debtor him/herself applies to the tax collector following an assessment, payment reminder, demand or writ of execution he/she received.

(II) Special collection (is almost fully managed by personal attention)

Special collection is understood to be the phase of the collection process in which automated support only takes place to a slight extent, because after the writ of execution is served (which, as it were, marks the phase of the enforced collection or - in legal terms - the enforcement of the writ of execution), a choice has to be made as to whether and, if so, how the collection should be enforced. These individual monitoring processes of which the special collection forms part are only applied by the Tax Regions. Depending on the question whether the tax debtor is an business or a private individual, choices are made as to how the enforced collection can be implemented. In doing so, it is first assessed whether or not the debt can be set off against refunds. The basic principle in this matter is that collection is enforced first and foremost at the expense of tax debtors and that as soon as it is clear as to whether or not this will have sufficient success, it will be assessed whether third parties can be held liable[4]. As indicated above, the collection method depends on whether it concerns a business or a private individual. The Collection of State Taxes Act 1990 [Invorderingswet 1990] was designed in such a way that it should first be assessed whether simple methods of enforced collection can be applied and, as they prove to be less successful, more serious collection options may be used.

Above, the more or less general principle was put forward that collection should be enforced as much as possible at the expense of the tax debtors. This principle is not used with regard to private individuals, because if it is more efficient for the tax collector to include third parties in the collection, this should be opted for. For this reason, the tax is almost fully collected at the expense of private individuals along the lines of government demands and wage demands[5]. The focus is now mostly on efficiency, more than it used to be, in case the tax debtor is a private individual. The collection method that is the quickest and easiest and/or cheapest for the Tax and Customs Administration is selected. For the “old” adage (first try to collect taxes without troubling third parties) still applies to businesses. It is therefore necessary when using the process-based approach to tax debtors to make a proper distinction as to which tax debtor is an entrepreneur and which tax debtor should be regarded as a private individual.

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4. See paragraph 6.1 for this.

5. See the text below the schedule of paragraph 4.3 and under the heading “measures” in paragraph 5.2 next to bullets nine and ten for a discussion of the terms “government demand” and “wage demand”.

4.2.2 Support by ETM (Enterprise Tax Management)

Currently, a new automation system is being created, in which even more information about tax debtors is gathered than is done today. The new system does not only bring together all kinds of technical gadgets but also stores full client profiles, providing the tax collectors with knowledge about what kind of tax debtor they are dealing with. The new system must ensure that the tax collector is supported by automation more and that he will be informed sooner and better about all ins and outs about the tax debtor. It is expected that the introduction of ETM will lead to smaller arrears in payment and a better service to tax debtors. The introduction of ETM extends the mass process as it were. A lot more work will be performed on a pro-active basis. After the introduction of ETM, the collection at the expense of private individuals will almost fully be automated. This means specifically that after the writ of execution is served, a government and/or wage demand[6] will be made and if, as a result, the tax debt cannot be paid off in full, this debt will be declared uncollectable. However, it should be noted that these uncollectable assessments may still be collected afterwards by means of a set-off or by means of certain collection proceedings.

4.2.3 Cooperation with other government bodies

The Tax and Customs Administration is not only responsible for the levy and collection of taxes, but also levies and collects national and social insurance contributions. Moreover, the Tax and Customs Administration also pays out rent benefits (allowances), healthcare benefits, means-tested child benefits and childcare benefits while any amounts owed by the person receiving these benefits due to overpaid amounts or amounts otherwise received in error are reclaimed by the Tax and Customs Administration. Amounts are also recovered or reclaimed for a few other government agencies. Furthermore, there is a lot of cooperation in the field of information exchange between other government and some non-government agencies. These other government agencies are other ministries, but also municipalities, the employee insurance agency, Customs services and furthermore - in the opposite direction - non-government agencies such as banks, insurance companies and many other institutions that provide data and information whether or not automatically.

6. *See the text below the schedule of paragraph 4.3 and under the heading "measures" in paragraph 5.2 next to bullets nine and ten for a discussion of the terms "government demand" and "wage demand".*

4.2.4 Risk profiles (payment history)

At present, tax debtors are subdivided into two categories. Generally speaking, a distinction can be made between those who cannot pay and those who can but do not want to or, in other words, “the good guys and the bad guys”. Still, these two categories are not the only ones. For instance, as regards attention, a distinction is also made between tax debtors with and without a large financial interest. Furthermore, large and very large enterprises on the one hand and small and medium enterprises on the other hand are treated differently in practice. For large and very large enterprises, banks often also use a form of financing that is more based on trust and continuity while for small and medium enterprises, a form of finance is used that is mostly based on securities. This, of course, also has consequences for the collection policy of the tax collector. A reasonably good rule of thumb used in the Netherlands is that as long as the bank(s) still believe in the continued existence of an enterprise, the tax collector does not have any real cause for (great) concern. Apart from said distinction between certain types of tax debtors, more distinctions can be named. However, this paragraph does not serve to be complete.

The Tax and Customs Administration has so-called client profiles. This is a collection of data which contributes to the forming of a picture of the tax debtor. The data collected makes it clear whether it concerns a compliant or non-compliant tax debtor. In short, it concerns information that shows whether the tax debtor can be trusted or not. The information available can determine the collection strategy to be used. Providing services where possible, being harsh when necessary. It was stated above that client profiles consist of large amounts of information about the tax debtors’ attitude. This information is obtained through previous experiences with the tax debtor; information from third parties such as other parts of the Tax and Customs Administration or investigative authorities or other third parties obliged to provide the Tax and Customs Administration with information. The information obtained is summarised and stored in a file. If information is required about the attitude of a certain tax debtor towards the Tax and Customs Administration or other government agencies, this information can be consulted.

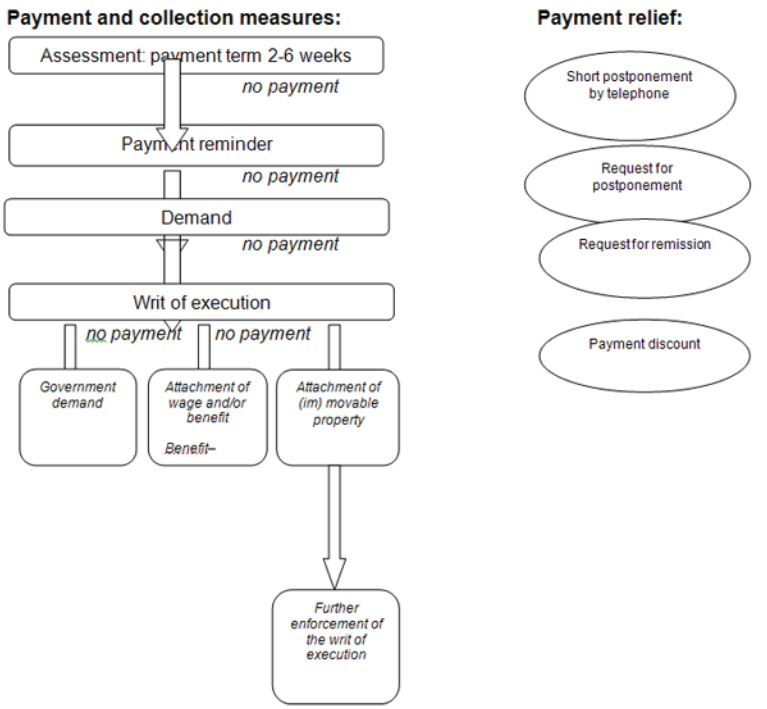
After the new computer system ETM (see above) has been put into use, the various client profiles and things worth knowing about certain tax debtors will have been stored in databases. The tax collectors will be provided with enormous amounts of information (much more information than currently available). The tax collector will automatically be provided with this information if the tax debtor enters (a next phase of) the process of enforced collection. In ETM, the information will be better categorised and more accessible. It is then stored in a clear system which can be accessed by each interested official. ETM will also include a kind of bonus-malus system which determines whether the tax debtor is known as a good or bad payer, depending on his payment history. This knowledge will induce the tax collector to respond to and act more quickly towards a certain tax debtor.

4.2.5 Distinction between personal/business debts

The taxes to be collected can be distinguished between private and business taxes. Business tax debts are, among other things, turnover tax and wage tax and also a few other types of tax connected with business. Personal taxes are taxes that do not need to have a direct link to entrepreneurship. Such a personal tax is income tax. In general, the collection of business taxes has a considerably stricter collection policy than the collection of personal taxes. Moreover, a deferment of payment and remission are more generously granted for personal taxes than for business taxes.

4.3 Diagram

The below diagram outlines the process of enforced collection. The left-hand side of the diagram under the heading “Payment and collection measures” shows the steps and measures that are part of the process of (enforced) collection within the meaning of actions to recover a debt. The right-hand side under the heading “Payment relief” shows the facilities available if one is unable or temporarily unable to pay the full tax debt.



4.3.1 Private individuals

The above diagram applies to private individuals who do not carry on a business. However, what has been stated about the "Further enforcement of the writ of execution" generally does not apply to private individuals. After a government demand on bank balances has been made and, if necessary, wage has been attached, any residual tax debts will be declared uncollectable. This means that, although no new initiatives for (enforced) collection will be started (as they generally have no effect anyway), set-offs against any future refunds may be made for a period of five years. The tax collector also has the possibility to extend this five-year period. In that case, he only has to take measures to prevent the tax assessment from becoming barred. The tax collector also has the possibility to take collection measures again if he suspects that the income of the tax debtor will improve in the (near) future. For example, if, in the second or third year after the tax debt has been declared uncollectable, the tax collector discovers that the tax debtor has received a large inheritance or has started a profitable business, he may still proceed to enforced collection. In case of ANPR[7] actions and other collection proceedings in which the tax collector finds recoverable property, he will also include the uncollectable assessments as well as the assessments for which an "obligation alert" has been added to the vehicle registration system.

It has been stated above that collection at the expense of private individuals is, in principle, limited to the government demand, the wage demand and any set-offs against later tax refunds. This does, of course, not apply to the tax debtor who cannot considered to be an entrepreneur but who has assets (whether or not acquired by criminal activities) and would be able to pay but is unwilling to do so. In short: those who can but do not want to pay are, even if they are private individuals, also dealt with severely - more or less comparable to the approach to entrepreneurs.

4.3.2 Businesses

Broadly speaking, the above diagram also applies to entrepreneurs, on the understanding, however, that entrepreneurs never receive a payment reminder (free of charge) for their business taxes, but instantly a demand (not free of charge). The payment reminder is left out because, in case of non-payment, entrepreneurs

(I) usually know that they are in arrears with the payment of their tax debt, and, at the expense of these entrepreneurs
(II) measures to enforce collection should be taken as quickly as possible because the chance that the full tax debt will still be paid decreases digressively over time.

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7. See paragraph 5.2 directly below the list of "measures" for a description of ANPR actions.

Furthermore, no government demand or wage demand is made at the expense of an entrepreneur. It is also important that, as far as the payment obligation is concerned, a short postponement by telephone is not possible and debts can be remitted far less easily than with private individuals. In short, the collection policy with regard to entrepreneurs is considerably stricter and there is less room to facilitate them. The Dutch view is that, in principle, banks and other providers of debt capital (or possibly the shareholders) should finance companies and not the Tax and Customs Administration.

5. COLLECTION AT THE EXPENSE OF THE TAX DEBTOR HIMSELF

5.1 Statutory framework

The Netherlands has a special collection act (the "Collection of State Taxes Act 1990"). Although there is also legislation for the Central Government which lays down more general rules for administrative money debts (which includes tax debts), this general legislation (the "General Administrative Law Act") also provides, apart from the general rules, that these rules may be departed from in case of special legislation. This is the case in the Collection of State Taxes Act 1990.

Apart from the Collection of State Taxes Act 1990, there is also "subordinate legislation" in the field of tax collection law. For instance, there is an implementation decree, there are implementation regulations and there is a policy document (the so-called "2008 Collection Guidelines"), which combines all policy rules in the field of tax collection law. The 2008 Collection Guidelines are very important to the tax collectors. In these guidelines, the State Secretary for Finance states his opinion on how the law should be applied. In doing so, he guarantees unity of policy and implementation within the Tax and Customs Administration.

An important feature of tax collection law is that it is based on civil law more than on other tax law.

5.2 Measures

The most striking feature of the Collection of State Taxes Act 1990 is that this act lays down additional rules and powers for the tax collectors. "Additional rules and powers" means that, apart from all legal means, possibilities and powers which each creditor has under civil law, he is also given additional possibilities, means and powers under the Collection of State Taxes Act 1990. So the tax collector has more options available to collect tax assessments as quickly and efficiently as possible than other creditors have when collecting debts from their debtors. Below is a general - incomplete - list of the "extras" the tax collector has compared to other creditors:

- the tax collector has his own tax bailiff system which can therefore be used in the best possible way
- the powers of the tax collector are not limited to a particular region but he (and the same goes for his tax bailiffs) is authorised throughout the country
- taxes can only be paid by automatic transfer and therefore not in cash
- the tax collector may, under certain circumstances, ignore the statutory possibility of payment in instalments so that the assessment will become immediately due and payable in full
- the collector has the right to summary execution, so he does not require the permission or approval from the court to take certain collection measures (attachment and forced sale of the property attached)
- the tax collector may serve a writ of execution by sending it by post
- in some situations, the tax collector may completely disregard the prohibition of taking measures to enforce collection at night or the weekend
- in case of proceedings which are instituted against the tax collector to have a default judgment set aside (before the civil court) and the purpose of which is to have the tax collector cease or suspend his collection measures, the tax debtor may, in principle, not rely on him having never received the assessment, demand or writ of execution.
- the tax collector has the possibility to have a simplified (extrajudicial) garnishment levied on the wage and/or pension benefits of private individuals. The procedure is as follows: the tax collector sends a letter to the employer or to the agency paying the pension. For each wage or pension payment, the employer or agency pays an amount to the tax collector that is so “large” that the tax debtor is only left with an amount of 10% below the social minimum (this simplified garnishment is called a “wage demand”)
- the tax collector has the possibility to have a very simplified (extrajudicial) garnishment levied on the bank account (this is the current account, not the savings account) of the tax debtor who is a private individual. This garnishment even includes any credit margin agreed upon with the bank (this form of garnishment is referred to as a “government demand”). The methodology of this instrument is that the tax collector provides its own bank with a file containing tax debtors/outstanding debts (of private individuals), after which any surplus money is removed fully automatically from the tax debtor’s bank account (without deploying any manpower)
- the tax collector may rely on a comparable very simplified garnishment with respect to third parties who are in possession of monies belonging to the tax debtor. At the request of the tax collector, they must immediately pay the monies they have in their custody
- tax debtors who are able but do not want to pay (the hardliners within the group of won’t pays) may be remanded in custody for no more than one year
- tax collection has high priority in the Netherlands (only pledge and mortgage have higher priority than the tax authorities)
- the tax collector is even authorised to seize and then sell certain property belonging to third parties but located at the premises of the tax debtor for

the purpose of the tax debt of the tax debtor (the tax collector may therefore completely disregard situations of retention of title, hire-purchase and certain lease contracts)

- the tax collector may completely disregard rights of pledge (and therefore ranks in priority) if the pledged property is located at the premises of the tax debtor (rights of pledge which are established on this property - which is located at the premises of the tax debtor - are therefore an uncertain security for the pledgee)
- the tax collector may recover the tax debtor's motor vehicle tax debts from the cars which have been registered in the name of this tax debtor, even if the actual owner is not the tax debtor. It therefore concerns a collection instrument for motor vehicle tax irrespective of who the actual owner of the car is. The tax collector may also recover other motor vehicle tax assessments which are in the name of the person in whose name the relevant car is registered from the seized car irrespective of who the (actual) owners of those cars are (for which motor vehicle tax assessments were imposed as well). The investigation into the actual owner of these cars is therefore irrelevant
- in the Netherlands, income realised by trusts are allocated to the settlor (who lives in the Netherlands). The trust itself is generally established in a tax haven the Netherlands has not concluded a (collection) treaty with. If the settlor does not or does not fully pay the taxes relating to the tax advantages obtained from the trust, the tax collector may seek recovery from the assets belonging to the trust and located in the Netherlands. It turns out that many assets of trusts which have been set up by Dutch citizens are located in the Netherlands, whether or not indirectly. These assets of the trust may be recovered for the settlor's tax debt
- the tax collector also has a right of setoff which strongly differs from civil law if the tax debtor is also entitled to certain refunds (quicker, easier and simpler). In addition, the tax collector may set off all tax types between participants who are part of a tax entity for corporation tax purposes
- there is a system of interest on overdue tax which applies if the tax debtor does not pay his taxes within the applicable period
- the tax debtor is obliged to immediately provide the Tax and Customs Administration with all information and documents asked from him by the tax collector. Moreover, he must also allow inspection of books and documents as soon as this is requested
- the tax collector also has far-reaching powers in the area of asking third parties for information as soon as the tax debtor does not meet his obligations in time. The tax collector may also inspect books and documents and documents must be submitted to him
- if the third party does not meet his obligation to provide information, a separate, rather strict regime of imposing punishments and fines applies
- finally, the tax debtor has a very broad range of liability provisions (it concerns more than 30 liability provisions). It concerns, for example, the liability of the managing director for the tax debts of the legal person managed by him;

liability of contractors for the tax debts of their subcontractors; the same goes for the temporary hiring of staff; liability of disposers of large blocks of shares (< 33%) for the corporation tax debts of the company in which they held shares; liability of civil-law notaries for transfer tax if the tax debtor did not pay the transfer tax, etc. etc.

Apart from these collection options based on the law, other novelties not provided for in the Collection of State Taxes Act 1990 are used as well. For instance, the Tax and Customs Administration often undertakes ANPR actions (ANPR means: Automatic Number Plate Recognition) whereby as regards owners of cars that get flashed, it is examined through data telecommunication whether these owners (in whose name the registration number is registered) have any outstanding assessments. If this is the case, the motorcycle policemen who are parked further down the road receive a sign to stop the relevant car/driver and to give him/her the choice: either pay tax or walk home! These actions do not only generate a lot of money, but also have a highly preventative effect.

Another option is to deprive tax debtors with over 5 outstanding motor vehicle tax assessments of the possibility to have new registration numbers registered in their name. For this purpose, a blockade is included in the vehicle registration system. This possibility is called the obligation alert. This option and the option before that have been reasonably successful in tackling behaviour resulting in the non-payment of motor vehicle tax.

A final possibility that should not go unmentioned is the authority of the tax collector to issue an alert regarding the passport of tax debtors. A tax debtor in respect of whom a passport alert has been issued can no longer obtain a new passport unless he still pays his tax debts. Moreover, the passport alert - in combination with the possibility to commit a tax debtor to prison - is a good tool to remand Dutch citizens who live abroad and in respect of whom a passport alert has been issued. This combination (passport alert plus being committed to prison) also has a highly preventative effect.

5.3 Postponement of payment due to payment difficulties

5.3.1 Private individuals

The Netherlands has a relatively flexible postponement policy as far as private individuals' requests for postponement are concerned. For instance, in the Netherlands, a private individual (who does not have a negative tax history) may be allowed to postpone payment of his income tax assessment for no more than 3 months without any form of security and without further information being required if this tax debt does not exceed € 20,000. However, if a postponement for a longer period or for an amount over € 20,000 is required, detailed information as well as security must be provided.

5.3.2 Businesses

Businesses who have payment difficulties may be allowed to postpone payment of tax debts related to their business for no more than one year if they provide 100% security. This means that the Dutch tax collector is extremely cautious when it comes to allowing postponement of payment to entrepreneurs due to payment difficulties. The reasoning behind this very cautious policy is that banks and other external financers in particular (for example shareholders and private equity parties) should provide risk-bearing capital to the market and not the Tax and Customs Administration. This policy is strictly enforced and if entrepreneurs are unable to provide security and pay the tax due, there are only two options:

1) Attachment of the assets of the business
2) Winding-up petition

Re 1) In case of attachment, the seized property should, in principle, be sold within 4 months. This means specifically that there should be a forced sale. The attachment and forced sale actually lead to business cessation. An advantage of business cessation is that the tax debts related to the business will not increase any further.

Re 2) If nothing or not much can be expected of an attachment followed by a forced sale or if a receiver is believed to have more means and possibilities to trace the tax debtor's assets and converting them into cash, a winding-up petition will be filed with the court. The ministry will check beforehand whether this serious means is justified. An advantage of a winding-up petition is that as soon as the liquidation is ordered, the tax debts related to the business (wage tax and turnover tax in particular) will not increase any further.

5.4 Bankruptcy

5.4.1 Private individuals (non-entrepreneurs)

Only rarely will the tax collector institute bankruptcy proceedings against a private individual. Bankruptcy proceedings will only be instituted against a private individual in situations in which a bankruptcy petition has clear and demonstrable added value. Private tax debtors who are in a hopeless debt position have various options:

1) remission of tax debts
2) out-of-court debt management
3) statutory debt management

In the Netherlands, benevolent private tax debtors are treated rather favourably. The purpose of the options to come to an extra-statutory (therefore amicable)

agreement with the tax authorities and the statutory options is to allow the debtors the possibility to make a new start. This means specifically that after a certain amount has been paid and/or a certain period has lapsed, the Tax and Customs Administration will no longer make any attempts to collect the taxes. This is also the major difference with bankruptcy. If a private individual is declared bankrupt and the bankruptcy is closed in due time while not all creditors have been paid in full, all individual creditors may again (after the end of the bankruptcy) try to recover their claims against the debtor. In fact, a creditor is there "for life"! Apart from private tax debts with a (more or less) criminal background or tax debtors who are otherwise not in good faith, the Tax and Customs Administration assumes that (debt management) arrangements should come to an end. In principle, the Tax and Customs Administration never institutes bankruptcy proceedings against a private individual.

The following explanation can be given to the above three options:

Re 1) in short, each private tax debtor has the right to have his debts remitted if he does not have any assets and his income does not enable him to pay the tax debt in full. For one year, the tax authorities will cream off his income in such a way that the tax debtor is left with only 90% of the social minimum. All income earned by the tax debtor and exceeding the 90% mentioned, will be creamed off for the benefit of the tax authorities. After this year, the tax authorities will not try to collect the outstanding part of the tax debt, because it is remitted. If the tax debtor does have any assets, these assets should be converted into cash for the benefit of the tax collector.

Re 2) If a debt management request is made for a tax debtor by a recognised debt assistance organisation, the Tax and Customs Administration will usually grant this request unless there are serious doubts about the good faith of the tax debtor. The basic rules agreed upon with the sector organisation of debt assistance organisations mean that, for three years, the tax debtor's income will be creamed off by the debt assistance organisation to about 105% of the social minimum income. That which the debt assistance organisation "saves up" this way for three years will be divided among the creditors (including the Tax and Customs Administration). The money will be divided in such a way that the amount to be divided/paid to preferential and ordinary[8] creditors will be paid in a ratio of 2 : 1.

8. *In the Netherlands, the Tax and Customs Administration is a preferential creditor and therefore has priority over ordinary creditors. Normally, the preferential creditors are paid first and once they have been paid in full, it will be the ordinary creditors' turn. In case of amicable debt management but also in case of statutory debt management (but not in case of a bankruptcy!), this system is abandoned and the money present is divided in the sense that preferential creditors receive twice as much as ordinary creditors.*

Example:

During the amicable debt management of X, an amount of € 60,000 was "saved up[9]" by the debt assistance organisation during the three-year period. X's total debt amounts to € 300,000. An amount of € 200,000 relates to ordinary debts while the remaining € 100,000 relates to preferential debts. Preferential creditors are entitled to double the percentage of the revenue when compared to ordinary creditors.

Division:		
Preferential creditors:	€ 100,000 x 30 % =	€ 30,000
Ordinary creditors:	€ 200,000 x 15 % =	€ 30,000
Total:		€ 60,000

So the result is that preferential creditors do not have complete priority over ordinary creditors but that they have "priority" in terms of percentage because, comparatively speaking, they are paid more for their claim against X.

Re 3) Apart from the amicable debt management scheme discussed above at "Re 2", there is also a statutory debt management scheme in the Netherlands. The statutory debt management scheme offers the possibility to force creditors who do not want to cooperate in an amicable debt management scheme to participate in a statutory debt management scheme. There is little difference between both schemes as regards content and outcome. The statutory debt management scheme is effected before the court and a statutory administrator is appointed over the debtor. The statutory debt management scheme forces creditors as it were to cooperate in an amicable solution.

5.4.2 Businesses

As already mentioned briefly above, a winding-up petition for businesses is filed with the court if this company's financial situation is hopeless. This means that the entity with tax debts:

- cannot continue to make payments
- leaves more than one creditor unpaid
- cannot survive by means of a debt rescheduling operation in which all creditors participate.

In short: the business cannot be saved. The liquidator appointed by the court when ordering the liquidation can often (not always) investigate (foreign) assets better and often also has a better knowledge of the various markets that could be of importance in case of a possible sale of (parts of) the

9. *The amount of the estate is the result of the monthly deductions from the tax debtor's wage, pension or benefit and the result of the sale of the tax debtor's assets by the debt counsellor.*

insolvent business. The law also grants more powers to the liquidator. In the Netherlands, the winding-up petition is the last resort. Practice shows that the Tax and Customs Administration does not file a winding-up petition without previous notice, nor does it hardly do so. However, a tendency can be observed in the Netherlands which shows that many creditors use (abuse?) a winding-up petition as a crude collection instrument. The question is whether this is desirable.

However, apart from the winding-up petition, Dutch regulations also offer the possibility to agree on debt rescheduling with all creditors. This can be done amicably, but it is also possible to request the court to impose a compulsory composition if one or more creditors do not want to cooperate in an agreement (= amicable settlement). In case of such debt rescheduling operations, the tax authorities demand that they receive twice as much for their claim than ordinary creditors do. For the elaboration of such a scheme, see the example at “Re 2) out-of-court debt management” which, in essence, discusses a similar solution. Remission in the sense that the Tax and Customs Administration is the only creditor who drops part of its claim is not possible. The basic principle is that all creditors participate. It is also important that certain creditors have not first considerably improved their own position right before the company ran into financial problems. However, the tax authorities demand from the entrepreneur who is in financial problems that the percentage of his tax debts to be offered to the tax collector is substantial in both an absolute and relative sense.

As already indicated above, the policy of the tax authorities for businesses is – apart from the willingness of the Tax and Customs Administration to reschedule debts – rather tough. Postponement due to payment problems without providing 100% security is not negotiable, nor is remission. Moreover, the willingness of the tax collector to not recover a previous attachment of movable and immovable property levied by the tax bailiff but to let it rest for a while (as security) is, in principle, not negotiable either. After four months, the attachment must have been recovered in full. The question may arise as to why the Tax and Customs Administration conducts a rather rigid policy when it comes to remission and postponement of payment for businesses. Is it not detrimental to the business climate? The Dutch government does not want to come into collision with European state aid regulations, but wants to propagate that it finds equal treatment and fair competition very important. One should also consider that if the Tax and Customs Administration would facilitate businesses who are not so strict when it comes to their tax obligations, this may result in distortion of competition or unfair competition in the sense that businesses who do meet their obligations in time and in full experience more difficulties that those who do not always meet their tax obligations in time.

5.5 Possibilities/conditions for payment relief

5.5.1 Postponement of payment

The tax collector is entitled to allow the tax debtor postponement of payment if requested. For postponement of payment due to payment difficulties, see paragraph 5.3.1 for private individuals and paragraph 5.3.2 for entrepreneurs. There are more generous postponement options for both private individuals and businesses if they have objected to the tax assessment or if they are awaiting a tax refund against which the tax assessment can be set off. See paragraph 7 for a special postponement of payment[10] in connection with the financial and economic crisis.

5.5.2 Remission of tax

See paragraph 5.4.1 for remission and debt management possibilities for private individuals and paragraph 5.4.2 for remission and debt management (im)possibilities. In summary, it can be stated that there is a rather favourable policy for private individuals while the policy for businesses is downright rigid. A partial remission of tax debts is only possible in the context of a rescheduling in which all creditors participate.

5.5.3 Payment discount

The Collection of State Taxes Act 1990 gives the tax debtor who receives a provisional assessment imposed in the year to which this tax assessment relates the possibility to receive a discount on the tax due if the assessment is paid in full immediately after it has been imposed, without the tax debtor using the statutory possibility to pay in instalments. The payment discount amounts to a certain percentage[11] of the payable tax.

5.6 Interest on overdue tax, costs and possibilities and conditions for payment relief

5.6.1 Interest on overdue tax

The tax debtor who does not pay his tax debts or fails to pay them in time owes interest on overdue tax for the period in which he is in default. The interest on overdue tax is not the statutory interest as provided for in Dutch civil law, but an interest-rate measure that is specifically tailored to the collection of tax

10. Only for businesses.

11. During the fourth quarter of 2011, the percentage of the payment discount amounts to 3% on an annual basis. The percentage is equal to that of the interest on overdue tax. See paragraph 5.5.1.

debts. The tax debtor owes (simple) interest as from the only or last due date of the tax assessment. The interest obligation will run from this only or final due date until the date of payment. The interest on overdue tax currently amounts to[12] 3%. If a tax debtor has paid a tax assessment while this assessment is subsequently decreased or even cancelled, the tax debtor is entitled to a refund of the interest already paid but also to a reimbursement of interest on the amount of the decrease as from the only or final due date of the assessment or from the date of (earlier) payment. This percentage is equal to the payable rate of interest on overdue tax. The rate of the interest on overdue tax is linked to a certain ECB interest rate using a complicated formula.

A disadvantage of the regulation on interest on overdue tax is that if the interest on overdue tax is lower than the interest calculated by the bank, taxpayers tend to pay the tax authorities last as they can “borrow” money cheaply here. During period in which the interest on overdue tax was higher than the interest banks were willing to pay on savings accounts and deposits, it often happened that taxpayers made rather high preliminary estimates of their income and immediately paid the resulting provisional assessment because when they would receive the final tax assessment, the overpaid amount would be refunded anyway plus an interest on this amount that is higher than the interest that could be received from a bank. It is rather difficult to tackle these forms of improper use. It is about finding an interest-rate level that does not incite taxpayers to use the tax authorities as an alternative source of income or as a financier.

It is currently assessed whether the system of interest on overdue tax can be improved.

5.6.2 Costs

It has already been discussed above that the collection process in the Netherlands consists of various phases. These phases are accompanied by specific measures or actions. It is the opinion of the Tax and Customs Administration of the Netherlands that those who are responsible for the costs incidental to the collection process (the defaulters) also have to pay these costs themselves (and no-one else!). In the Netherlands, it is considered to be unacceptable that the compliant taxpayer who always meets his payment obligations in time should indirectly share in the costs of the maintenance of the collection system. The costs incurred with respect to the maintenance of the collection system must be borne by the persons who are responsible for these costs: the defaulters. The Netherlands has thought up a system which ensures that the costs of the collection system are (more than) fully paid by

12. As from the fourth quarter of 2011

tax debtors who do not meet their tax obligations in time. It works as follows. Everyone who does not immediately pay his taxes after receipt of a free payment reminder will enter a procedure in which costs are charged for each step of the further collection process.

5.6.3 Cost calculation

Costs are charged by the tax collector (actually B/CA) for sending a demand. For a demand with a tax debt up to € 454, an amount of € 7 is charged. For tax amounts of € 454 and higher, an amount of € 15 is charged. If, after that, payment is still not made, a writ of execution is sent (usually by post).

For serving a writ of execution, an amount of € 38 is charged plus € 3 of each whole amount of € 45 that exceeds a claimed sum of € 45, on the understanding that the amount due does not exceed € 11,246. The "most expensive" writ of execution therefore amounts to € 11,246.

Example:

A tax debtor has to pay tax amounting to € 200. After he did not respond to the demand, he receives a writ of execution. The costs charged to him for this are:

The basic costs to be paid for a writ of execution are:	€ 38
For each whole amount of € 45 exceeding the first € 45, an amount of € 3 is charged; this means that an additional amount of three times € 3 must be paid	€ 9
Total:	€ 47

Apart from the costs for the demand and the writ of execution, the tax bailiff also charges other (smaller) costs. This work relates to the preparations for a forced sale and the sale of the attached property itself.

5.6.4 Result

The result of the approach described above is that the group of defaulters pay the collection costs themselves. It was recently calculated that the State of the Netherlands gains some tens of millions of Euros per year in the costs charged to the defaulters. The collection costs (both material and staffing costs) are fully offset by the cost calculation system. By opting for good rates, the government may therefore acquire additional income. The outcome of the system is also very sympathetic: compliant taxpayers do not have to contribute towards enforced collection procedures caused by large groups of defaulters.

6. POSSIBILITIES FOR COLLECTION AT THE EXPENSE OF THIRD PARTIES

6.1 Liability provisions

As already stated above, Dutch collection legislation includes quite many provisions which ensure that if tax debtors cannot pay the tax themselves, third parties who should be deemed more or less responsible for this will be held liable for the tax debtors' tax assessments. Below is a random list of the situations in which third parties can be held liable in the Netherlands:

Collection legislation includes the following liability provisions:

1. Liability of directors, permanent representatives and liquidators for state taxes owed by unincorporated entities, entities not established in the Netherlands and dissolved entities
2. Businesses that hire temporary staff are liable for the wage tax and turnover tax owed by the supplying company
3. Contractors are liable for the wage tax owed by their subcontractors
4. Clients in the apparel industry are liable for wage tax debts of those who manufactured the clothing
5. Under certain conditions, even the buyers of the clothing referred to under 4) can be liable for wage tax debts of the manufacturer of the clothing
6. Directors of incorporated entities are liable for, among other things, wage tax, turnover tax and excise duties owed by the company they manage
7. Directors are responsible for the corporation tax owed by their pension company if they do not keep to the rules for pension bodies with respect to this company's net assets
8. Directors are also liable for the liability debts of the business they manage
9. Directors are also liable for the turnover tax owed by a tax entity for turnover tax purposes of which the body they manage forms part
10. Foreign athletes, artists and businesses and other non-residents are liable for the wage tax and turnover tax owed in the Netherlands with respect to their performance
11. Furthermore, employees, foreign athletes, artists and companies are liable for any wage tax which has erroneously not been withheld
12. Prize-winners are liable for betting tax which has erroneously not been withheld
13. Bodies participating in a tax entity for corporation tax purposes are liable for the corporation tax owed by this tax entity
14. Disposers of large blocks of shares are liable for the corporation tax owed by the body in which they held shares for the past five years, the year of sale and the three coming years
15. Those transferring the registered office are liable for the corporation and dividend tax debts of the body they transferred abroad

16. Furthermore, civil-law notaries or disposers of beneficial ownership are liable for transfer tax
17. There are also various liability rules for turnover tax
18. Moreover, traders forming part of a chain within which carousel fraud has been committed are liable for the turnover tax
19. Participants in a tax entity for turnover tax purposes are liable for the turnover tax owed by this entity
20. Liability exists for packaging tax
21. Liability exists for income tax in case of income components allocated to a third party
22. Insurers are liable for income tax with respect to regular payments

Apart from this list, there are also other tax liability provisions. The most important ones have been briefly listed. The purpose of many of these provisions is highly preventative. It deters certain parties from fiddling and makes them more alert to take the interests of the tax authorities into account.

Apart from the above list of liability provisions included in collection legislation, the tax collector may also use all liability rules provided for in civil law under the so-called “open system”.

It is also possible for the tax collector to call a third party to account based on an unlawful act committed by this third party, as a result of which the tax collector received fewer taxes.

6.2 Procedure

The tax collector holds the tax debtor liable by means of a decision to which an objection can be lodged. The tax debtor is only held liable after he has been in default in the payment of his tax debt. The tax debtor is in default as soon as the period applying to the payment of an assessment has expired without the assessment having been paid in full.

7. MEASURES WITHIN THE CONTEXT OF THE FINANCIAL AND ECONOMIC CRISIS

After the fall of Lehman Brothers on 15 September 2008, which in fact marked the beginning of the financial crisis which lead to an economic crisis, a period started which resulted in uncertainty for many businesses regarding the continuity of their businesses. For the economic crisis lead to a drop in demand which, in turn, led to stagnating sales while, on the other hand, suppliers of, for example, raw materials pressed for earlier or faster payment than before or even for cash or prompt payment. In short, many entrepreneurs who in themselves were running healthy and viable businesses ran into liquidity and solvency

problems during the course of 2009. In order to prevent essentially healthy businesses from running into (major) problems or even going bankrupt based on the aforementioned rather rigid postponement policy - see paragraph 5.3.2 under the heading “Postponement of payment due to payment difficulties” - the choice was made to formulate specific policy which ensures that

(I) basically viable businesses which, as a result of the
(II) economic crisis, ran into
(II) liquidity problems and of which it can be assumed that they
(IV) will, in time, be able to proceed to full payment of their tax debts may be allowed postponement of payment of the assessments imposed on these businesses and even postponement of payment of current obligations for a period that is essential to this business.

This customised solution turned out to be a huge success. Initially, various employees of the Tax and Customs Administration were very sceptical about the measure, especially because in the policy decision on this, it was communicated with the Tax and Customs Administration that the question whether a business is viable had to be assessed by the external advisor or accountant of the business. The reason for this point of view lies in the fact that the employees of the Tax and Customs Administration do not have the expertise required in order to assess the viability of all businesses within the various sectors. For this requires a lot of knowledge of the relevant sector, the competitive position, the extent to which the drop in demand may occur and other information and expertise. The Tax and Customs Administration of the Netherlands did not want to leave the assessment of the viability of businesses to the entrepreneurs themselves. For entrepreneurs are generally known as optimists when it comes to their own businesses. For said reasons, the choice was made to have the external advisor or accountant make an assessment. However, the fear that these external advisers would tend to oblige the entrepreneurs and, for this reason, paint a more favourable picture of the viability than would actually be the case, was not so great. Advisers who would try to do so would quickly become known to the Tax and Customs Administration as unreliable intermediaries and would call their own reliability into question as a result of such ill advice. Practice shows that the arrangement has almost never been abused. Most payments for which a postponement was allowed have now been made and the Tax and Customs Administration of the Netherlands trusts that the outstanding payments will be made for the most part. “For the most part” because, in a number of cases, further setbacks will have occurred and liquidations may also be or have been ordered. It should be expressly noted that the Tax and Customs Administration of the Netherlands acknowledged beforehand that things would turn out badly for businesses in a number of cases. However, these cases cannot necessarily be regarded as failed arrangements. For these businesses continued to offer work to their staff during the period of postponement (which saves unemployment benefits) and also paid taxes and contributions during the period in which the

business continued its activities. In short, the arrangement worked very well during the economic crisis and also prevented a lot of destruction of capital (which always occurs to a greater or lesser degree in case of bankruptcies).
The experiences which have been gained and which are currently being evaluated in more detail justify the impression that in case of temporary economic setbacks, it could be prevented, perhaps by adjusting tax policy instruments, that businesses go bankrupt, with all the associated negative consequences for the Tax and Customs Administration, employees, banks, social insurance institutions and other parties. So the crisis has taught that, in an economic downturn for businesses, rough general policy should be abandoned, changing over to more tailor-made work. A customised solution will only come within reach more if sector-specific problems in case of a crisis can be taken into account more when drawing up policy.

8. INTERNATIONAL COOPERATION IN COLLECTION

The Netherlands deems it desirable to promote cooperation with other countries in the area of assistance in the collection of taxes. The Netherlands therefore aims at incorporating provisions with respect to mutual assistance in the collection of taxes into bilateral and multilateral treaties. This attitude has, of course, to do with:

(I) the absence of the authority to collect taxes outside the Netherlands and with
(II) the fact that a relatively large number of Dutch citizens move abroad for some time or emigrate permanently without paying their taxes before they leave the Netherlands and, furthermore, with
(III) the fact that the Tax and Customs Administration of the Netherlands expressly does not want to facilitate tax debtors who do not pay their tax debts in time and/or in full in the sense that tax debtors are actually “relieved” of their tax debts simply by emigrating.

Mutual cooperation is therefore essential. European cooperation clearly shows that mutual assistance in the collection of taxes is a welcome addition to the range of means available in order to force tax debtors residing abroad to pay. In this connection, some issues should be better arranged in Europe, but one can be reasonably satisfied at the moment. The new European directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (2010/24/EU), which will be introduced on 1 January 2012, aims to contribute towards the necessary improvements. A number of points for attention are: electronic communication between member states (requests for assistance in digital form), broader information exchange, wider research possibilities abroad and the use of inspectors abroad.

Also when it comes to the OECD, there are currently a lot of developments contributing to a better cross-border collection instrument. The Netherlands has concluded treaties with a relatively large number of countries which also include paragraphs on collection. During treaty negotiations, the Netherlands therefore tries to have a collection provision included which is based on Article 27 of the OECD model convention. In doing so, it is the wish of the Netherlands to include threshold amounts in new treaties which are used within Europe and, furthermore, the Netherlands wishes to make an effort to focus somewhat more on the legal protection with regard to non-residents. Although a lot of work still needs to be done, the Netherlands is on the right track.

Last year, the Netherlands signed the protocol amending the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The Netherlands wants as many countries as possible (non-OECD countries in particular) to become a party to this convention so that, through this way too, the possibility for assistance in the collection of taxes is created.

Furthermore, the Netherlands actively concludes TIEAs (Tax Information Exchange Agreements). The Netherlands has already signed almost 30 TIEAs. The information that is exchanged through TIEAs can also be used for the collection of taxes.