

Local taxation in the Netherlands: an introduction¹

A.P. (Anneke) Monsma LLM, PhD student²

1. Constitutional system

The constitutional system of the Kingdom of the Netherlands has been referred to as a decentralized, unitary state. The Netherlands are regarded as one, indivisible country, as a result of which local policies have to fit in the policies of the country as a whole. In this concept, the central government has a certain authority over the 12 provinces and the 408³ municipalities. The isles of Bonaire, Sint Eustatius and Saba ('BES-isles') have the legal status of public body⁴ (special municipality), and maintain a tax system of their own.⁵ The idea of decentralization entails that some of the responsibilities of the central government are left to other public bodies and their agencies, which are more or less independent from the central government. *Territorial* decentralization entails that the public bodies of provinces and municipalities have general legislative and administrative powers. *Functional* decentralization means that one or more branches of central-government issues (so-called functions) are left to other public bodies. The water boards are an example.⁶

Provinces are hierarchically situated between the central government and the municipalities. They fulfil tasks which the central government finds hard to fulfil because it is too big, and municipalities find hard to fulfil because they are too small. In the Netherlands, provinces have many competencies regarding environmental planning.

Both the central government, municipalities and the water boards have their own independent competences to levy taxes. Each single tax imposed by the central government is based on a separate tax act. The taxes levied by provinces, municipalities and water boards, are incorporated in coordinating acts: The Provinces Act (*Provinciewet*), Communities Act (*Gemeentewet*) and the Water Boards Act (*Waterschapswet*), respectively. These acts contain both tax and non-tax provisions.

2. Tax income of Dutch municipalities

In the figures below data about the tax income of Dutch municipalities are shown. They date from 2013. For more recent data, www.cbs.nl can be consulted.

¹ This paper is partly based on the paper 'Open versus closed tax-competence. A comparative legal study of municipal taxes in Belgium and the Netherlands' of M.J.M. de Jonckheere, A.W. Schep and A. P. Monsma, yet to be published.

² Researcher at the Erasmus Study Centre of Local Taxes (ESBL). This paper fits in the research program 'Fiscal autonomy and its boundaries' of the tax law department of the Erasmus School of Law and in the PhD research A.P. Monsma, 'Comparative Study on the Principle of Abuse of Competence Restricting the Local Fiscal Autonomy'.

³ As of januari 1, 2013.

⁴ Sect. 134 of the Constitution of the Netherlands.

⁵ Based on the Act regarding finances of the public bodies Bonaire, Sint Eustatius and Saba (*Wet financiën openbare lichamen Bonaire, Sint Eustatius en Saba* or *FinBES*). It concerns i.a. the tax on lands and surtaxes on the real estate tax (Sections 43-52); the taxes applying for tourists (Section 53); the tax imposed on rental cars (Section 54); a road tax (Section 55); parking fees (Section 56); an advertising tax (Section 59) and a sufferance tax (Section 60). We shall pay no further attention to the levies imposed by the BES-isles in this article.

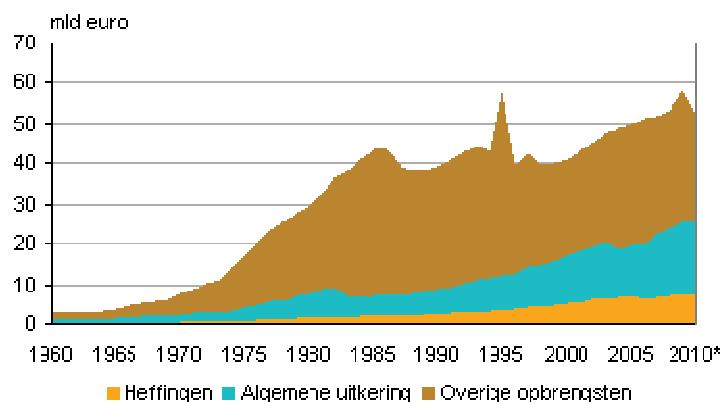
⁶ Dutch water boards (Dutch: *waterschappen* or *hoogheemraadschappen*) are regional governmental bodies charged with managing water barriers, waterways, water levels, water quality and sewage treatment in their respective regions.

Figure 2.1⁷

	The Netherlands
Inhabitants (mln.)	16,7
Number of municipalities	408
Total proceeds municipal taxes	8 bln.
As % of GDP	1,3%
Proceeds per resident	€ 498,-
% own levies as part of total income	16%

In The Netherlands, municipalities receive 16-17% of their income from taxes. 'Own taxes' on property taxes account for 39% of the income, other taxes (e.g. 'parking taxes') account for 12%; fees and destination taxes account for the remaining 49%. More important are the State transfers; about 62% of the municipalities' income come from these transfers. 2/3 of the transfers are general transfers, which means that this money can be spent freely (on self-chosen purposes) by the municipality. 1/3 of the transfers are specific transfers, which means that this money has to be spent on purposes set by the State.

Figure 2.2⁸



Bron: CBS

The figure above shows the income of municipalities, divided in sources. The yellow part is tax income, the blue part is the general transfer and the brown part is other income.

⁷ A.P. Monsma, 'Het lokale belastinggebied in internationaal perspectief', ('The local taxation area in international perspective'), LRB, 2011, nr. 4, 3-9 and Periodiek Onderhouds Rapport Gemeentefonds 2013, Bijlage 1 bij Rijksbegroting 2013 (Periodical Maintenance Report Municipal Fund 2013, Attachment 1 State Budget 2013).

⁸ Source: www.cbs.nl.

Figure 2.3⁹

Tabel: Begrote opbrengsten van lokale heffingen

	2013	2014	Mutatie t.o.v. 2013
	mln euro		%
Totaal	12536	12797	260
<i>Gemeenten</i>	8552	8671	119
Onroerendezaakbelasting	3408	3523	115
Toeristenbelasting	162	170	7
Parkeerbelasting	645	660	14
Precariobelasting	115	133	17
Reinigingsheffingen ¹	1766	1742	-24
Rioolheffingen	1463	1496	33
Bouwvergunningen	436	390	-46
Secretarieleges	292	291	0
Overige heffingen	265	266	1
<i>Provincies</i>	1480	1550	70
Opcenten motorrijtuigenbelastingen	1451	1519	68
Overige heffingen	29	31	2
<i>Waterschappen</i>	2504	2575	71
Watersysteemheffing	1223	1279	55
Zuiveringsheffing	1221	1241	20
Overige heffingen	59	55	-4

¹ Excl. door gemeenschappelijke regelingen geïnde reinigingsheffingen (circa 23 mln euro).

Bron: CBS

In the figure above the tax income of both the municipalities ('gemeenten'), provinces ('provincies') and water boards ('waterschappen') is shown for the years 2013 and 2014. In the last two columns the alteration between the two years is mentioned. It figures out that the local property tax ('onroerendezaakbelasting'), the waste cleaning fees ('reinigingsheffingen') and the sewer taxes ('rioolheffingen') are most important for municipalities in terms of income. Also the car parking taxes are more and more important.

3. Closed system of local taxation

The Dutch system of municipal taxation can be described as (semi-)closed. Municipalities can only levy taxes if and to the extent that the legislator (defined in the Constitution as the Cabinet and

⁹ Source: www.cbs.nl.

Parliament acting in concert) has attributed the powers to do as such to them.¹⁰ This means that municipalities may only introduce those taxes that have been stipulated in an Act of Parliament and that they are bound by the restrictions set therein. Some of these restrictions will be discussed later. Twelve Dutch municipal levies are based on the Dutch Municipalities Act (*Gemeentewet*).¹¹ Furthermore, the competency regarding two municipal taxes has been laid down special laws.¹²

Municipalities violate the principle of legality if they exceed their legally attributed competencies. In that case, the contested part of the tax regulation will be declared void (see next paragraph). The legal provisions are usually brief in their description. Therefore, municipalities have some degree of freedom to regulate taxes according to local needs/choices made by the city council. Furthermore, Dutch municipalities may introduce fees or charges for services they provide. In that respect they've a fair degree of freedom to do so and to set tax base and tariffs. Because of this, Dutch municipalities often have more freedom in drawing up their tax regulations than one might think at first sight.

4. Restrictions on fiscal autonomy

Within the Dutch (semi-)closed system of local taxation, there are several restrictions on fiscal autonomy of municipalities. In short, local tax regulations have to correspond with higher norms (judicial higher ranked rules, such as Acts of Parliament, the Constitution and treaties) and general principles of proper legislation (such as the principle of equality). In addition, local taxation may not be made dependent on income, profit or capital of the tax payer. For some taxes and/or charges municipalities are given a higher degree of autonomy than for others, but this local fiscal freedom is always tied.

Overarching Acts of Parliament

In The Netherlands, there are a number of overarching Acts of Parliament for imposing and collecting tax assessments and the forms of legal protection against them.¹³ Therefore, the same rules apply regarding these matters, regardless whether it concerns taxes imposed by the central government or local authorities. Only regarding some subjects local authorities are given some freedom, such as choosing the judicial way of levying (for example by assessment or by tax return) and terms of payment.

Principle of legality

One important difference between taxes imposed by the central government and those imposed by local authorities, is that regarding the former, the material tax liability arises directly from the tax act, while regarding the latter, the material tax liability can arise only when laid down in local regulation, adopted by the legislative body of the local government (in case of municipalities, this is

¹⁰ Section 132 of the Constitution of the Netherlands in conjunction with Section 219 of the Netherlands Municipalities Act (*Gemeentewet*). These are the General Act of State Taxes (*Algemene wet inzake Rijksbelastingen*; AWR), the General act on administrative law (*algemene wet bestuursrecht*; Awb) and the Tax Recovery Act (*Invorderingswet*).

¹¹ These are taxes on immovable property (Sections 220-220h); taxes on movable property (Section 221); taxes on commuting (Section 223); a tax levied from tourists (Section 224); parking taxes (Section 225); dog license taxes (Section 226); advertising taxes (Section 227); sufferance taxes (Section 228); sewing charges (Section 228a) and fees on utility, pleasure- and amusement rights (Section 229).

¹² These are the waste tax in respect of the disposal of household waste, which is levied based on the Environmental Protection Act (*Wet milieubeheer*), Section 15.33, and the BIZ-Contribution in BIZ-Zones (Business Investment Zones), based on the Experimental BI-Zones Act (*Experimentenwet BI-Zones*).

¹³ Those are the General Administrative Law Act (*Algemene wet bestuursrecht* or Awb), the State Taxes Act (*Algemene Wet inzake Rijksbelastingen* or AWR) en and the Collection of State Taxes Act (*de Invorderingswet 1990*).

the democratically elected city council). To be able to effectively levy taxes, a local regulation (usually one decree for each tax levied) has to be adopted, containing the so-called *essentialia*: a description of the taxable person, the subject of taxation, the taxable act, the levying criterion, the tariff, the moment of commencement and termination of taxation and other relevant aspects concerning levying and collecting the proposed tax.¹⁴ So concerning local taxes, there's graduated regulation: the Act of Parliament grants the authority to the city council to levy a tax (1) and the city council enforces a by-law (regulation, decree) to implement the given authority.

As mentioned before, the Netherlands applies a 'closed' system of tax competencies. Municipalities may only introduce levies if and to the extent that they fall within the powers attributed to them by the legislature (in the Netherlands, this means the Ministers and Parliament acting jointly). Municipalities should, first and foremost, remain within the boundaries set by the Act of Parliament concerned. If they exceed their powers, the principle of legality has been breached and the provision of the tax local regulation concerned shall be void. One example is expanding the dog license fee so as to include cats as well, but there are countless other examples.¹⁵

Newly found freedom

In the latest *grand révision* of the substantive tax law provisions included in the Dutch Municipalities Act, the legislator explicitly expressed that a more instrumental approach of municipal taxes is not only permitted, but even shall be stimulated.¹⁶ This 'newly found freedom' has been laid down in the Dutch Municipalities Act as well, by stipulating that, save for explicit legal prohibitions, municipal taxes may be levied in according to tax bases in the local tax regulation.¹⁷

Furthermore, discussion in Parliament indicates that this municipal 'new freedom' is limited by general principles of law, such as the principle of equality and the principle of proportionality. A second constraint on this 'new freedom' concerns the legal prohibition that municipal tax (regarding their levying criterion and/or tariff) may not depend on income, profit or capital.¹⁸ Income policy is the exclusive reserve of the Central Government.

General principles

Case law shows that Courts review decisions made by municipalities in light of the Constitutionally guaranteed right of free speech¹⁹, in light of the principles of equality and proportionality²⁰, and in light of various treaties²¹ and human rights²².

¹⁴ Section 217 of the Dutch Municipalities Act (*Gemeentewet*).

¹⁵ Like the illegal extension of advertisement tax to objects on which the advertisement are placed, profit tax (baatbelasting) on facilities not meant as facilities by the State Legislator, precario tax on bigger surfaces than the taxable objects themselves, fees for services that aren't services as defined in the Dutch Municipalities Act, etcetera.

¹⁶ Explanatory Memorandum, Documents of the Dutch Lower House 1989/1990, subject number 21 591, document number 3, pages 32-33, 65-67 and 77-78.

¹⁷ Section 219 (2) of the Dutch Municipalities Act (*Gemeentewet*).

¹⁸ Section 219 (2) of the Dutch Municipalities Act (*Gemeentewet*).

¹⁹ Appeal Court of Amsterdam 21-11-2000, number 98/3076, *Belastingblad* 2001, p. 308, *L/N*: AA9105.

²⁰ For example Court of Cassation 10-12-2004, numbers 36 776, 36 804, 37 041, 38 291, 38 292 and 39 178, *Belastingblad* 2005, p. 66, 70, 74, 78 and 80, *L/N*: AF7505, AF7508, AF7514, AR7336 en AF7523, Court of Cassation 13-05-2005, nr. 38 402, *Belastingblad* 2005, p. 647, *L/N*: AF7525 and Court of Cassation 02-12-2005, numbers 39 273 and 39 275, *Belastingblad* 2006, p. 33 and 67, *L/N*: AU7345.

²¹ For example Court of Zutphen 12-08-2009, number 07/1879, *Belastingblad* 2009, p. 1275, *L/N*: BJ5438 (Treaty Switzerland-the Netherlands on preventing double taxation), Court of Cassation 10-07-2009, number 42 475, *Belastingblad* 2009, p. 1136, *L/N*: BG5918 (section 49 EU-Treaty and 2 European Directives) and Court of Cassation 06-06-2008, number 41 769, *Belastingblad* 2008, p. 902, *L/N*: BD3159 (NATO-Status Treaty, diplomatic exemptions).

5. Taxes, destination based taxes and fees

Another consequence of the closed system of tax competences of local authorities being operated in the Netherlands is that in principle, the legislator has decided whether a charge can be characterized as a general tax or as a fee. Municipalities cannot design a tax as a fee or a fee as a tax. Except fees and taxes, Dutch legal scholars have distinguished an intermediate category of charges: destination based taxes.

General taxes can be characterized as forced payments to the municipality, while the municipality does not offer any direct, individual performance in return. Revenues go to the general funds of the municipality and can be spent by the municipality as it sees fit.²³

Fees (duties) can be distinguished from general taxes because they are levied regarding a specific, individual service rendered by the government, acting in her governmental capacity. There are no fees due when the government has not rendered any services. Furthermore, it is required by law that the tariffs are established in such a way that the projected benefits do not exceed the projected costs.²⁴ The term of fees covers many levies, based on enjoying municipal services or the use of municipal property.²⁵

A destination-based tax can be distinguished from a general tax because the former entails a form of cost recovery. The costs of certain municipal facilities are allocated towards a group of benefiting taxable persons. Regarding destination-based taxes, the service provided by the government does not, unlike fees, have to render any individual profit, but it does have to render a profit for the group as a whole.²⁶

In the Netherlands, the legislator defines by law what the nature of a tax is. Because of this, the nature of a tax as defined by law changes sometimes as well. This recently occurred regarding sewerage; previously, sewerage fees were due; now, a sewerage tax is levied, because municipal sewage is experienced rather as a collective than as an individual service. Moreover, as a result of the amendment, the municipality can recover more costs than before: not only costs of collecting and disposing of sewage, but also costs regarding the water system (ground- and rainwater), and replacement- and expansion investments can be recovered because of the conversion. Another example is the introduction of the waste tax, which is a destination-based tax as well, and which may be levied in respect of collecting and treating household waste. Previously, the costs were recovered in the form of a fee. The disadvantage was that, because it concerned individual services, no charge was due if no garbage was offered. Regarding the current charge, there is a link with the duty of care of the municipality to collect household waste. If the plot of an interested party is on or near a route

²² For example Appeal Court of Leeuwarden 04-07-2008, number BK-80/07, *Belastingblad* 2008, p. 1099, *LJN*: BD6626 (principle of equality in section 14 ECHR) and Court of Cassation 29-10-2010, number 09/02654, *Belastingblad* 2010/1666, *LJN*: BM9232 (European property right, section 1 First Protocol ECHR) after ECHR 22-02-2005 and 19-06-2006 (Large Chamber), number 35014/97, *EHRC* 2005, 44 and *EHRC* 2006, 105 (Hutten-Czapska/Poland).

²³ Dutch municipalities can levy the following general taxes: taxes on immovable property, taxes on movable residential- and business-locations, commuter taxes, tourist taxes, parking taxes, dog licenses, advertising taxes and sufferance taxes.

²⁴ Section 229b of the Dutch Municipalities Act (*Gemeentewet*).

²⁵ The following fees are i.a. levied in the Netherlands: cleaning fees, funeral services fees, burial fees, harbor fees and market fees.

²⁶ Dutch destination-based taxes are the profit tax (baatbelasting), the sewerage tax and the waste tax.

for collecting household waste, one is in principle liable to tax. For non-household waste, the waste tax is not applicable. In that case, municipalities levy (business) cleaning duties (in the form of a fee).

6. Legal protection

As mentioned before, legal protection against local taxes is regulated by central law.²⁷ The system of legal protection against taxes is also a closed one. One can only start legal proceedings to predefined (in the State Taxes Act) decisions, such as assessments. Other decisions, which are not mentioned in the act, cannot be objected.

The first proceeding against the local tax assessment will be treated by the municipality itself. The local tax inspector reconsiders the tax assessment and notifies his written decision. The taxpayer can appeal against this decision at the Court (court of administrative law). Against the decision of the Court second appeal is possible at the Appeal Court. Finally, review can be requested at the Court of Cassation, but only on legal grounds (not on facts).

7. More information and references

More information on the subject can be found in law, case law, literature, parliamentary documents and websites. Hereafter we mention sources and references which can be helpful.

7.1. Law and other regulations

On the website www.wetten.overheid.nl Acts of Parliament, by-laws and local regulations can be found. Some municipalities only publish their regulations on their own website. In that case, most common website name is the name of the municipality followed by .nl (for example: www.barendrecht.nl).

On the website www.wetten.overheid.nl you can search by (words in) title and kind of regulation. Local regulations can be searched by zip code or municipalities' name. It's also possible to fill in another date of application, to check previous versions of the regulation.

For publications in the State Official Journals (Staatscourant and Staatsblad, publication of new laws and by-laws), see: zoek.officielebekendmakingen.nl

7.2. Parliamentary documents

See zoek.officielebekendmakingen.nl for publications of laws and by-laws in the State Official Journals (Staatsblad and Staatscourant) and also for parliamentary documents of the Dutch Lower House and the Dutch Upper House after January 1st 1995. You can for instance search by number of document, subject and date.

See www.tweede kamer.nl for information about legislative proposals under examination by the Dutch Lower House.

See www.eerste kamer.nl for information about legislative proposals under examination by the Dutch Upper House.

See www.raadvanstate.nl for information about their judicial reviews on legislative proposals after 2000.

²⁷ State Taxes Act (*Algemene Wet inzake Rijksbelastingen* or AWR) and General Administrative Law Act (*Algemene wet bestuursrecht* or Awb).

See www.statengeneraaldigitaal.nl for parliamentary information before 1995.

7.3. Case law

See zoeken.rechtspraak.nl for most Dutch case law after 1999. You can search by decision-number (ECLI or LJN) or by case number, court's name, date and free entry.

In the Netherlands there are also several journals which publish case law. For local taxes, *Belastingblad* (publisher is Kluwer) is extensive. Besides, case law of the Court of Cassation is published in *BNB* (Kluwer), *Vakstudie Nieuws* (Kluwer) and *FED* (Kluwer). Case law on local taxes after 2000 is also published in *NTFR* (publisher is SDU).

The mentioned journals are (after subscription) to be consulted via:

<http://www.kluwer.nl/png/UKB/index.jsp> en www.ntfr.nl.

7.4. Literature

Besides the journals mentioned above (*Belastingblad*, *FED*) several papers are published in the tax law journals *Weekblad Fiscaal Recht* (*WFR*), *Maandblad Belasting Beschouwingen* (*MBB*) en *NTFR Beschouwingen*. *WFR* and *MBB* are published by Kluwer and can be read after subscription at <http://www.kluwer.nl/png/UKB/index.jsp>. *NTFR* is published by Sdu and can be read after subscription at www.ntfr.nl.

In addition, local tax related papers are published in journals about other fields of law, such as *Bouwrecht*, *Nederlands Juristenblad* en *De Gemeentestem*:

<http://www.kluwer.nl/png/UKB/index.jsp>. See also *Rechtsgeleerd Magazijn Themis*, *Vastgoedrecht* and *Tijdschrift voor Europees en economisch recht*: www.uitgeverijparis.nl/tijdschriften_online. And *RegelMaat*, *Markt&Mededinging* and *Nederlands tijdschrift voor Europees recht*: www.bjutijdschriften.nl.

Publishers Kluwer and Sdu have both a fiscal encyclopedia, namely *Vakstudie* and *NDFR*. The local taxation system in the Netherlands is described and explained in accordance to the law, parliamentary documents and case law. *Vakstudie* is exhaustive and comprehensive, *NDFR* is more dense and shorter. Both can be consulted after subscription:

<http://www.kluwer.nl/png/UKB/index.jsp> en www.ndfr.nl.

7.5. Other information

In addition to the websites mentioned above, there's also a (paid) service for searching law, parliamentary documents, case law and literature: *Opmaat* (publisher is Sdu). It can be consulted (after subscription) via opmaatnieuw.sdu.nl/opmaat.

Other interesting websites on local taxes and related subjects are:

www.vng.nl

www.lvib.nl

www.wozinformatie.nl

www.uvv.nl

www.binnenlandsbestuur.nl

www.gemeente.nu

www.rijksoverheid.nl

www.waarderingskamer.nl

www.kennisbankwoz.nl

www.eigenhuis.nl
www.celio.nl
www.europadecentraal.nl
www.esbl.nl

8. Contact information

Erasmus Studiecentrum Belastingen Lokale overheden (Erasmus Study Centre for Local taxes)

- Affiliate Professor (Chair) Local Taxes and Director of ESBL: prof. dr. M. (Miguel) de Jonckheere
- Researchers: dr. A.W. (Arjen) Schep and mr. A.P. (Anneke) Monsma
- *Visitors address*: Burg. Oudlaan 50, Sanders ('L') Building, room L4-012, Rotterdam
- *Postal address*: Postbus 1738, 3000 DR Rotterdam
- *Phone*: +3110-4081543 or +3110-4082355
- *Internet*: <http://www.esbl.nl>
- *E-mail*: info@esbl.nl

