ROTTERDAM CONGRESS NATIONAL REPORTS

TAXATION OF CHARITIES

THE NETHERLANDS

prof. dr. Sigrid J.C. Hemels
Erasmus Universiteit Rotterdam, Allen & Overy Amsterdam

I General

In the Netherlands, special tax incentives apply for so called 'public benefit pursuing entities'(*algemeen nut beogende instellingen* hereafter public benefit entities or PBEs). Currently, the Dutch tax authorities have registered 50.000 PBEs. The main criterion is not whether the activities or the entities are not for profit, but whether these activities or entities meet the public benefit criterion. The Dutch tax legislation on PBEs has changed considerably during the past 10 years. The latest changes were included in the Act on giving (*Geefwet*),[1] which entered into force on 1 January 2012.

The definition of a PBE and the rules and the requirements for PBEs are the same for the personal income tax, corporate income tax, gift and inheritance tax, real estate transfer tax and energy tax. The only tax for which this definition and these rules and requirements have no meaning is the VAT.

Up and until 2011, this definition was and these rules and requirements were included in the Personal income tax Act (*Wet inkomstenbelasting 2001* hereinafter IB),[2] but applied to other taxes as well. As of 1 January 2012 these are included in the General tax Act (*Algemene wet inzake Rijksbelastingen*, hereinafter AWR).[3] As the definition, rules and requirements are the same for all taxes except VAT, these will be discussed below and not in the chapters on the different taxes.

I.1 Quantitative public benefit requirement

In order to obtain the PBE-status, an entity must pursue the public benefit for at least 90%. For a long time, it was unclear how this should be measured. According to the Supreme Court this should not be based on a purely arithmetic measure such as hours spent on public benefit activities and other activities.[4] The Supreme Court is of the opinion that different activities and the time spent on those activities might well be weighted differently in order to decide on the amount of public benefit activities.

In 2011, the Ministry of Finance stated that the 90% criterion is not an income criterion.[5] The proportion of the income from commercial activities in relation to the total income is not of relevance. The basis on which it can be decided whether the 90% public benefit criterion is met, depends on the specific object of the entity.

1 The legislative porposal was filed under number 33 006.
2 Article 6.33 IB.
3 Article 5b AWR.
4 Hoge Raad, 8 January 1997 no. 31.591, FED 1997/106.
5 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 9.

As of 2012, the expenditure of the entity will be most important. At least 90% of all expenditures must be aimed at the public benefit. According to the Ministry of Finance, the assessment whether the 90% criterion is met, has to be made on a case by case basis and depends on the facts and circumstances. [6]

I. 2 Qualitative public benefit criterion

Until 2012, Dutch tax legislation did not include a statutory definition of public benefit activities. Whether certain activities or a specific entity were regarded as pursuing the public benefit was determined by the tax authorities and eventually in case law. Up and until 2010 Dutch legislation provided for the requirement that the entity should be a religious, philosophical, charitable, cultural, scientific or the public benefit pursuing entity. However, the Dutch Supreme Court decided that these were merely examples of PBEs and that this was not an exhaustive list.[7] In order to 'simplify' the legislation,[8] these examples were deleted as of 2010 and the legislation as of that date only stated that the entity should be a public benefit pursuing entity. However, on 1 January 2012 the legislation changed again. As of that date, the General tax Act provides (in article 5b AWR) for an exhaustive list of activities which the government regards a public benefit. This list is as follows:

a) welfare;
b) culture;
c) education, science and research;
d) protection of the environment, which includes promoting sustainability;
e) health care;
f) youth care and elderly care;
g) development cooperation;
h) animal welfare;
i) religion, philosophy and spirituality;
j) promoting the democratic legal order;
k) a combination of these objects; and
l) financially or otherwise supporting a public benefit entity.

It is remarkable that this list does not include a 'miscellaneous' category. The Dutch government is convinced that this list covers all public benefits.[9] Furthermore, sports, amateur art (such as choirs, theatre groups and brass bands), community centres and social housing are not considered to be a public benefit in the Netherlands. These are only regarded as a social benefit, for which reason the exemption of gift and inheritance tax applies, but the gift deduction does not apply. Political parties are considered to be a public benefit, but labour associations are not regarded as such.

A problem with Dutch tax legislation on PBEs is that the Dutch government and Parliament do not take the time to think this through. For example, the 2012 changes were sent to parliament on 20 September 2011, were approved by the second Chamber of Parliament on 17 November 2011 and by the First Chamber of Parliament on 20 December 2011. There was no

---

6 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 10.
7 Hoge Raad 13 July 1994, no. 29.936, BNB 1994/280, HR 9 July 1999, no. 33.741, BNB 1999/361, and HR 7 November 2003, no. 38.049, NTFR 2003/1886.
8 Tweede Kamer, 2009-2010, 31 930, no. 3, p. 58.
9 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 18.

preliminary public consultation on these changes. Because of the limited time frame, there was hardly any room for a fundamental parliamentary or public debate. This probably explains for the fact that since 2006 the tax legislation for PBEs was changed every two years. Members of the First Chamber of Parliament complained that the legislation on PBEs has become too complicated. [10]If the Dutch government and Parliament would take more time to have a fundamental debate on PBEs, the legislation could probably last longer and would not lead to so many court cases and discussions with the tax authorities.

I.2.1 Cultural PBEs

As of 2012, PBEs that are focussed on culture for at least 90%, can request a registration as 'cultural PBE' (article 5b AWR). Such PBEs are entitled to more tax incentives than other PBEs. This was seen as a sort of compensation for the harsh cuts on direct subsidies for cultural institutions and the abolishment of the reduced VAT rate for performing arts. It is not yet clear what 'culture' means in this respect. According to the Ministry of Finance, this should be interpreted as high-quality culture which is accessible for as many people as possible.[11] A cultural entity is, according to the Ministry of Finance an entity which activities, based on its regulations and actual activities, for at least 90% aim to realize public accessible cultural facilities, to spread culture or to maintain culture. The tax authorities are supposed to develop a framework to assess whether a PBE is a cultural entity with the help of the Ministry of Culture. A membership of a professional association and receiving direct subsidies seem to be an indication, or - the ministry is not clear in this respect - a condition.[12] It is expected that there will be many disputes about this definition. Furthermore, there was a serious debate in both the Second and the First Chamber on why cultural PBEs should be treated more favorably than other PBEs. However, the Ministry of Finance was of the opinion that the focus on cultural PBEs was justified.

I.3 Integrity requirement

An entity cannot become or remain a PBE if a Dutch court has convicted the entity, a board member, a person who in fact manages the entity or a person who is vital to the image of the entity of inciting to hatred, violence, or the use of violence (article 5b AWR). If more than four calendar years have passed since the conviction, registration as PBE is possible again.

I.4 Formal requirement: registration

An entity has to be registered by the Dutch tax authorities in order to qualify as a PBE (article 5b AWR). Therefore, even if an entity meets all material conditions but the tax authorities did not register the entity as a PBE, it is not a PBE for Dutch tax purposes. Entities have to apply for registration through a simple administrative procedure. The tax authorities decide on the request by a formal decision against which an objection may be lodged. If the tax authorities decide negatively on the objection, the entity can go to court. Whether an entity is a registered PBE can be checked on a public website of the tax authorities.[13]

Once an entity has been registered, it only has to provide information to the tax authorities on request. There is no yearly obligation to spontaneously send information, such as accounts, to the tax authorities. Renewal of the registration is not necessary. As long as the tax authorities

10 Stenographic report First Chamber, 12 and 13 December 2012.
11 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 21-22.
12 Tweede Kamer, 2011-2012, 33006, no. G, p. 10.
13 http://www.belastingdienst.nl/giften/anbi_zoeken/.

do not decide to deregister the PBE because it no longer meets the requirements, the entity keeps its registration. There is no fixed time limit. The tax authorities decide on deregistration of an entity by a formal decision as well. The entity has the right to lodge an objection to this decision and can go to court.

The Ministry of Safety and Justice is currently drafting legislation which would oblige PBEs to deposit their yearly accounts at the Chamber of Commerce. This information should then be freely available. Furthermore, the Ministry of Finance has announced it will introduce new requirements for the PBE-status relating to transparency and public accessibility of information such as the object of the PBE, whether this object is met and how the PBE manages and spends its funds. [14] Furthermore, the PBE should make it clear how much it spends on housing, wages and other costs. All this information should be included in the register of the Chamber of Commerce. It was announced that a bill will be sent to Parliament in 2012.[15]

I.5 Legal form

Up and until 2011 there were no formal requirements regarding the legal form of a public benefit entity. However, the tax authorities were reluctant to accept entities which did not have the legal form of a foundation (*stichting*), association (*vereniging*) or church (*kerkgenootschap*). In general, the Ministry of Finance is of the opinion that a foundation is the most suitable legal form for a PBE.[16]

As of 1 January 2012 the General tax Act (article 5b AWR) explicitly requires that a public benefit entity is not a corporation (*vennootschap)* with a capital divided in shares, a cooperative (*coöperatie*), a mutual insurance association (*onderlinge waarborgmaatschappij*) or any other entity which can issue certificates of participation (*bewijzen van deelgerechtigdheid*). Under the pre-2012 legislation 7 public limited companies (*naamloze vennootschappen*) and 9 private limited companies (*besloten vennootschappen*) had the PBE-status. Because of a grandfathering rule, these corporations with a capital divided in shares will keep their PBE-status under the new legislation.

As of 1 January 2012, bodies governed by public law are a PBE by law.[17] This means that these entities do not have to file a request for registration as PBE.

I.6 Additional requirements in ministerial regulation

In order to become and to remain a PBE, an entity must meet several additional requirements which are not included in the legislation, but which are laid down by ministerial regulation (*Uitvoeringsregeling*).[18] These requirements are:

a) It should follow from the regulations and the actual activities of the entity that it does not pursue to make a profit;
b) It should follow from the regulations and the actual activities of the entity that it pursues the public benefit for at least 90% ;

---

14 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 32.
15 Tweede Kamer, 2011–2012, 33 006, no. 6, p. 32.
16 Handelingen Tweede Kamer, 29 October 2009 (noten), p. 18-1496
17 Article 5b AWR.
18 Up and until 2011: article 41a-41d Uitvoeringsregeling inkomstenbelasting 2001, as of 2012 Uitvoeringsregeling AWR (not yet published).

c) It should follow from the regulations and the actual activities of the entity that no natural person or legal entity can have control over the assets of the entity as if it were their own capital;
d) The entity is not allowed to have more assets than reasonably necessary for the continuity of the activities of the entity. Endowments should be dealt with in accordance with the wishes of the donor;
e) The members of the ultimate policymaking body are only entitled to receive an allowance for expenses and a reasonable fee for attendance;
f) The entity must have a current policy plan which gives an insight into the foundation's activities, the way it raises and administers its funds and the way it spends its funds;
g) Costs of fundraising and administration should be in reasonable proportion to the charitable expenditures ('reasonable' is not defined);
h) It should follow from the regulations that when the entity is dissolved all proceeds from liquidation must be paid to a PBE or must be spent in a way which serves the public benefit;
i) The books and records of the charitable institution must clearly state the allowances of each member of the policy making board, the fundraising and administrative costs, the nature and the amount of income and the possessions of the entity.

I.6.1 Commercial activities

The question whether a PBE is allowed to undertake commercial activities, has lead to many discussions in the Netherlands. The legislation does not prohibit commercial activities as such. However, the tax authorities were of the opinion that a PBE with commercial activities was not pursuing the public benefit. In 2011 it was announced that the policy regarding PBEs with commercial activities would be eased. However, the first draft of the new requirements, was rather rigid. PBEs were allowed to have commercial activities, but the net proceeds of these activities would have to be spent for the public benefit within two years after the year in which these proceeds were realised. Furthermore, investment activities would be regarded as being commercial activities as well. Investment income, therefore, had to be spent within two years as well. Because of this new requirement, PBEs would not be able to make reservations for big investments during more than two years. This draft requirement was heavily debated as not being realistic. Finally, the Ministry of Finance decided it would not introduce a quantitative 2 year requirement. Furthermore, the new requirements, if any, will not regard investment income. The existing requirement that the entity is not allowed to have more assets than reasonably necessary for the continuity of the activities of the entity might be sufficient for commercial activities as well, but this is currently under review of the ministry of Finance.

I.7 Non-resident and international PBEs

As of 2008, the requirements for most non-resident entities are the same as for resident entities. Entities that meet all requirements can be registered as a public benefit entity without any additional requirements if these are resident in the Kingdom of the Netherlands (i.e. the Netherlands and the Caribbean Islands, Aruba, Curaçao and the Dutch part of Saint-Martin) another EU member state or a state designated by the Ministry of Finance.[19] Designated states are all states with which the Netherlands has concluded some kind of agreement or agreements (e.g. a bilateral tax treaty, the Convention on Mutual Administrative Assistance in Tax Matters, or a Tax Information Exchange Agreement) to exchange documents, information and data carriers concerning the personal income tax, corporate income tax and the gift and inheritance tax.

[19] Article 5b AWR.

Entities which are not resident in the Kingdom of the Netherlands, another EU member state or a designated state can still obtain the PBE-status if these meet additional requirements.[20] Such entities must, on a yearly basis, provide the Dutch tax authorities with information based on which the tax authorities can decide whether the PBE-requirements are met. The entity must prove that the information provided gives a true and fair view of the actual situation, for example by an auditors' report.

Notwithstanding the fact that most entities which are not resident in the Netherlands can obtain the PBE-status without any difference in requirements, the European Commission was of the opinion that the Netherlands did not meet its obligations. The Commission considers that the requirement for foreign charities to register is discriminatory, disproportionate and incompatible with the EU rules on the free movement of capital guaranteed by Article 63 of the Treaty on the Functioning of the European Union and Article 40 of the European Economic Agreement. This is a remarkable statement, as charities resident in the Netherlands have to register as well and under the same conditions. Resident and non-resident charities are, therefore, treated the same. Notwithstanding this fact, the European Commission announced on 6 April 2011 that it had decided to refer the Netherlands to the EU's Court of Justice.[21]

II Income tax

II.1 Corporate income tax treatment: limited tax liability of foundations and associations in general

In the Netherlands, foundations and associations are only liable to corporate income tax (*vennootschapsbelasting*, hereinafter VPB) insofar as they run a business or are in competition with taxable businesses.[22] In this respect, there is no difference between foundations and associations with or without the PBE-status. For example, investment income of foundations and associations will usually not be liable to tax. Gifts will usually not be regarded as business income, either.

If an association or foundation (PBE or not a PBE) runs a business, only the profit attributable to that business is liable to corporate income tax. All other income is not liable to corporate income tax. As of 2012, cultural PBEs have the option to be liable to tax over their whole income, including their non-business income. [23] The idea is that if the non-business income is negative, the option for full tax liability enables the entity to reduce its business income. The full tax liability will apply for at least 10 years and can only be terminated every 10 years.

II.1.1 Exemptions

Certain business activities, such as maintaining a designated country estate, pension funds, hospitals, care for old people and libraries are exempt. [24] Next to these specific exemptions a

20 Article 5b AWR.
21 Press release of 6 April 2011, reference IP/11/429.
22 Article 2(1)(e) Vpb.
23 Article 2(9) Vpb.
24 Article 5 Vpb.

general exemption applies. [25] Up and until 2011 this exemption only applied to social benefit entities with volunteers and PBEs. The exemption applied if the profit in a year was less than € 7500 or the profit in the year and the 4 preceding years was less than € 37,500 and the profit could only be used for a public benefit, a PBE or a social benefit entity with volunteers.

As of 2012 the exemption applies to all associations and foundations (including similar foreign entities which are liable to tax as non-residents). As of 2012 the PBE-status is therefore no longer necessary for this exemption. Furthermore, the exemption applies if the profit in a year was less than € 15,000 or the profit in the year and the 4 preceding years was less than € 75,000. As of 2012 it is not relevant any more whether the exempt profit is used to support public benefit activities. A foundation or association may request the tax authorities not to apply for the exemption. However, this means that the exemption will not apply for at least 5 years. The entity can only terminate this every 5 years.

II.1.2 Investment reserve

Up and until 2011 PBEs and social benefit entities could make a tax deductible reservation for future expenses, the so called investment reserve.[26] As of 2012, only social entities with volunteers and cultural PBEs can make use of this reserve. Because of this reservation, an entity which receives a lump sum amount which it will spend during the coming years, will not be taxed upon receiving the lump sum. The reserve has to be used within five years. After five years it has to be added to the profit.

II.1.3 Deduction for volunteers

PBEs and certain social benefit entities may deduct a notional amount of cost regarding these volunteers.[27] In principle, the minimum wage which should otherwise have been paid had the persons not been volunteers, is deductible. This can be used to reduce the taxable profit of PBEs that are liable to corporate income tax.

II.1.4 Deduction for fundraising activities

PBEs which are liable to corporate income tax may deduct income from fundraising activities.[28] Such activities are activities with volunteers such as the sale of goods or providing services at a higher price than the market price or at the market price but at lower costs because of volunteers and collecting goods if it is made known that the proceeds will be used for the public benefit.

Fundraisers which are not PBEs and only conduct fundraising activities as mentioned above and which are obliged to transfer all income to a PBE, may deduct this payment to the PBE from their profit.

II.2 Wage tax: exemption for volunteers

25 Article 6 Vpb.
26 Article 12 Vpb.
27 Article 9 Vpb.
28 Article 9a Vpb.

Employees of PBEs are liable to wage tax in the same way as employees of other organisations. However, volunteers may receive a maximum amount of € 4.50 per hour, or € 150 per month or € 1500 per year free of wage tax (hereinafter: volunteer remuneration).

If a PBE does not pay this volunteer remuneration to its volunteers, the volunteers may deduct this amount as gift in their income tax return, provided the following requirements are met:[29]

a) the PBE has given a statement that the person has been working as a volunteer;
b) the volunteer has a right to the volunteer remuneration;
c) the PBE is willing and able to pay the remuneration;
d) the remuneration is at the disposal of the volunteer.

II.3 Gift deduction in the personal income tax and the corporate income tax

II.3.1 Personal income tax

The personal income tax distinguishes between periodic gifts and other gifts. Periodic gifts are gifts which the donor is, by notarial gift deed, obliged to pay annually during at least five years while he is alive.[30] These gifts are fully deductible without a threshold and up to 100% of the income of a certain year. If the periodic gift exceeds the income of a certain year, the remainder can be deducted in a following year. Other gifts are deductible up to 10% of the gross income.[31] No deduction is possible for donations below 1% of the gross income or € 60.

From 2012-2016 gifts to cultural entities can be taken into account for 125%.[32] For example, if a person gives € 1000 to a cultural entity, he can deduct € 1250. If he is in the top tax bracket of 52% (which is already reached at an income of over € 56,000), the tax benefit is € 650. The person only pays 35% of the gift. The maximum additional deduction is € 1250. This means that the maximum effect of the multiplier is reached if the total amount of gifts to cultural PBEs is € 5000 per year, resulting in a deduction of € 6250. This temporal multiplier was introduced to help cultural PBEs. In the original legislative proposal, the multiplier was set at 150%, which meant that donors in the top bracket only had to pay 22% of the gift themselves. Furthermore, there was no maximum in the original proposal. This was heavily criticised and parliament adopted an amendment setting the multiplier at 125% with a maximum of € 1250.

II.3.2 Corporate income tax

Expenditures with a business reason are, as a basic principle, fully deductible in the Netherlands. In general, sponsoring and corporate patronage should be deductible as regular business costs. Companies will almost always have a business reason for supporting PBEs, it can just be improving the corporate image both internally and externally.

However, the Dutch corporate income tax does provide for a possibility to deduct gifts. As of 2012 gifts are deductible up to a maximum of 50% of the profit with a maximum of € 100,000.[33]

---

29 Article 6.36 IB.
30 Article 6.34 and 6.38 IB.
31 Article 6.35 and 6.39 IB.
32 Article 6.39a IB.
33 Article 16 Vpb.

From 2012-2016 gifts to cultural entities can be taken into account for 150%. However, the maximum additional deduction is € 5000.[34]

III VAT

III.1 Out of scope activities

Based on article 9 of the VAT Directive, charities that do not carry out an economic activity are not liable to VAT. The ECJ has decided that charities that only supply goods or services free of charge[35] or raise funds by collecting donations from the public[36] are outside the scope of VAT, even if, in the framework of managing those funds, they are engaged in making substantial investments.[37] In line with this case law and article 2 of the VAT Directive, article 1 of the Dutch Turnover Tax Act 1968 (*Wet op de Omzetbelasting 1968*, hereinafter 'OB') stipulates that VAT is levied from entrepreneurs that supply goods or services for consideration.

III.2 Exemptions for the public benefit

The VAT Directive distinguishes exemptions for certain activities in the public interest (Title IX, chapter II) from exemptions for other activities (Title IX, chapter III). The Netherlands does not make such a distinction. All exemptions are included in one article, article 11 OB. There is no reference in this article to the Dutch equivalent of 'public benefit', *algemeen nut*. The various exemptions for certain activities in the public interest in article 132 of the VAT Directive do not explicitly refer to charities. Similarly, the Dutch exemptions which are included in article 11 OB do not refer to the Dutch equivalent of charities, *algemeen nut beogende instellingen*r (PBEs). Below, the Dutch exemptions which can be linked to charities will be discussed briefly and will be compared to the equivalent exemption in the VAT Directive. To facilitate an international comparison, the order of the VAT Directive is used to discuss these exemptions.

III.2.1 Public postal services (article 132(1)(a) VAT Directive)

Article 132(1)(a) VAT Directive obliges member states to exempt the supply by the public postal services of services other than passenger transport and telecommunications services, and the supply of goods incidental thereto. A similar exemption is included in article11(1)(m) OB. I will not discuss this exemption as providers of postal services are not regarded charitable in the Netherlands (and, I assume, also not in most other member states).

---

[34] Article 16 Vpb.

[35] In its judgment of 1 April 1982 in *Staatssecretaris van Financiën v. Hong-Kong Trade Development Council*, Case 89/81, [1982] ECR 1277, the ECJ declared that persons providing services free of charge can under no circumstance be regarded a taxable person.

[36] In its judgment of 3 March 1994 in *R.J. Tolsma v. Inspecteur der Omzetbelasting Leeuwarden*, Case C-16/93, [1994] ECR 743, the ECJ decided that there has to be a legal relationship between the provider of a service and the recipient, pursuant to which there is reciprocal performance: the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.

[37] ECJ judgment of 20 June 1996 in *Wellcome Trust Ltd v. Commissioners of Customs and Excise*, Case C-155/94, [1996] ECR I-3013.

III.2.2 Hospital and medical care and closely related activities (article 132(1)(b) VAT Directive)

Article 132(1)(b) VAT Directive obliges member states to exempt hospital and medical care and closely related activities undertaken by bodies governed by public law or, under social conditions comparable with those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature Under article 11(1)(c) OB caring for and nursing of persons in institutions and closely related activities are exempt. Unlike article 132(1)(b) VAT Directive, this exemption is not limited to hospitals and centres for medical treatment or diagnosis, but also applies to other institutions which take care of and nurse persons. Furthermore, there is no explicit limitation to bodies governed by public law or comparable bodies.

Hospitals, mental institutions, institutions for maternal care and for nursing and several other organisations which cannot be brought under the exemption of article 11(1)(c) OB are exempt under the exemption for designated institutions of a social nature.[38]

Furthermore, medical care by medics and professional paramedics is exempt under article 11(1)(g) under 1a OB.

The VAT Directive exemption for hospital and medical care is, therefore, not included in one single Dutch exemption, but spread across several exemptions with a wording which deviates from the wording of the VAT Directive.

III.2.3 Supply of human organs, blood and milk (article 132(1)(d) VAT Directive)

Article 132(1)(d) VAT Directive obliges member states to exempt the supply of human organs, blood and milk. The same exemption is included in article 11(1)(s) OB.

III.2.4 Dental supplies (article 132(1)(e) VAT Directive)

Article 132(1)(e) VAT Directive obliges the member states to exempt the supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians. Article 11(1)(g) under 1b OB exempts these services and supplies using the same wording as the VAT Directive.

III.2.5 Supplies to members by independent groups with exempt or out of scope activities (article 132(1)(f) VAT Directive)

Article 132(1)(f) VAT Directive obliges the member states to exempt the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition.

Article 11(1)(u) OB exempts the supply of services, designated by a Decree, by independent groups of persons or bodies, who are carrying on an activity which is exempt from VAT or in

[38] Article 11(1)(f) OB combined with article 7(1) and annex B of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*.

relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses and no serious distortion of competition arises.

There are a few differences between the wording in the Dutch OB and that of the VAT Directive. The Netherlands includes independent groups of bodies as well as independent groups of persons. The requirement regarding not causing distortion of competition seems to be stricter in the VAT Directive. According to the VAT Directive the exemption does not apply if it is *likely* to cause distortion of competition, whereas in the Netherlands it does not apply when *serious* competition *arises*. Furthermore, not all services, but only the supply of services designated by a Decree are exempt in the Netherlands. However, this designation is very broad. The providers of these services are designated in article 9 of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) and include services by social housing bodies insofar as these activities are directly necessary for the exploitation or maintenance of social housing, exempt institutions for nursing and care (services such as washing, wages administration, financial administration are explicitly excluded), exempt home nursing services and all other groups of persons or bodies, which are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, insofar as the supply of services is directly necessary for the exercise of that activity, except for carrying out the wages administration and the financial administration. These exemptions only apply if the independent groups merely claim from their members exact reimbursement of their share of the joint expenses. This addition in the Decree seems superfluous as it is already included in article 11(1)(u) OB. Furthermore, based on the Decree, the exemption does not apply to the provision of employees and other services designated in an Order in order to prevent serious distortion of competition. The services designated in article 9a of the Implementation Order Turnover Tax 1968 (*Uitvoeringsbeschikking omzetbelasting 1968*) are the development of communication and information systems; developing and making available software for such systems; supervision of the use of such systems; making available computer hardware; counselling, support, research and other services regarding maintenance of houses and other buildings; expert assessments, research, inspections, taxations, arbitrations and counselling regarding insurances or insurance claims for damages; and providing support regarding working conditions.

III.2.6 Welfare and social security work (article 132(1)(g) VAT Directive)

Article 132(1)(g) VAT Directive obliges member states to exempt the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing.

Article 11(1)(f) OB exempts supplies of services and goods of a social or cultural nature which are designated as such in a general administrative measure. The exemption only applies if the entrepreneur does not aim for a profit and there is no serious distortion of competition with entrepreneurs that do aim for a profit. In article 7(2)(a) of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) the supplies of goods and services closely related to welfare work, social security, the protection of children and young persons are designated as supplies of services and goods with a social nature if the organisation providing these supplies has, upon request, been registered as an organisation of a social nature. If the organisation does not file a request, the exemption does not apply.

Furthermore, annex B of the Implementation Decree Turnover Tax 1968 mentions 26 categories of organisations for which the exemption applies as well based on article 7(1) Implementation Decree Turnover Tax 1968. These include several organisations fighting against diseases such as tuberculosis, rheumatism, and heart diseases. Other organisations are organisations which assist in adoptions, schools for children with a long lasting illnesses, playground societies, day care for disabled persons, organisations which take care of sailors, soldiers or elderly people (including the provision of food and drinks), bureaus for drugs, alcohol, parental, sexual, marriage, debt or job counselling, organisations which combat fires in woods and heath land, community centres and natural ice rinks (only insofar as these facilitate the practice of sports). Interestingly, for direct tax purposes, several of these activities, such as play ground societies and community centres are not regarded as a public benefit but as a social benefit for which the gift deduction does not always apply.

Article 11(1)(g) under 2 OB exempts social welfare work and homecare. Article 11(1)(g) under 3 OB exempts day care or occupational therapy provided by farmers. It is questionable whether the VAT Directive allows the exemption of these services provided by farmers. A farmer is primarily a farmer and not a body devoted to social wellbeing.

Article 11(1)(w) exempts child care. An equivalent of this exemption is not included in the VAT Directive, but it is argued that this exemption is based on Article 132(1)(g) VAT Directive.

III.2.7 Protection of children and young persons (article 132(1)(h) VAT Directive)

Article 132(1)(h) VAT Directive obliges member states to exempt the supply of services and of goods closely linked to the protection of children and young persons by bodies governed by public law or by other organisations recognised by the Member State concerned as being devoted to social wellbeing.

In article 11(1)(d) OB the Netherlands has included an exemption for the supply of services to young people and youth leaders by organisations for general youth work which are designated as such by the government. This exemption is based on the similar exemption in the Turnover Tax Act 1954 which was aimed at youth camps and training courses. It does not seem to be in line with the exemption in the VAT Directive which is aimed at the protection of the youth and not on youth work in general and holiday camps for young people.

The supply of goods and services closely related to the protection of children and young persons is, however, explicitly mentioned in article 7(2) of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*), which was discussed in paragraph II.2.6 and which is based on the exemption in article 11(1)(f) OB for supplies of services and goods of a social nature. This exemption only applies if the entrepreneur does not aim for a profit and there is no serious distortion of competition with entrepreneurs that do aim for a profit. Not aiming for a profit includes not systematically aiming to make a profit. Any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied. The conditions regarding not aiming for a profit and not distorting competition are based on article 133(a) and (d) VAT Directive. Furthermore, this exemption only applies to public bodies and other bodies which have, upon their own request, been registered as bodies of a social nature. Even though the wording differs from the wording of the VAT Directive, this seems to be in line with the requirement in article 132(1)(h) VAT Directive which limits the exemption to bodies governed by public

law and to other organisations recognised by the Member State concerned as being devoted to social wellbeing.

III.2.8 Education (article 132(1)(i) and (j) VAT Directive)

Article 132(1)(i) VAT Directive obliges member states to exempt the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects. Article 132(1)(j) VAT Directive obliges member states to exempt tuition given privately by teachers and covering school or university education.

Article 11(1)(o) OB exempts the provision of education, including the supply of closely related services and goods, by designated institutions as described by the laws on education. Furthermore, this provision exempts education designated in a general administrative measure. This measure is article 8 of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) which exempts vocational training provided by listed institutions, general education (excluding education with a leisure character or aimed at obtaining personal skills), education in drama, dance, music and visual arts and tutoring and training for exams in relation to education which is exempt based on article 11(1)(o) OB.

III.2.9 Supplies to members by certain non-profit-making organisations (article 132(1)(l) VAT Directive)

Article 132(1)(l) VAT Directive obliges member states to exempt the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit- making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition.

Article 11(1)(t) OB provides for an exemption of services and the supply of goods closely linked thereto by employers' and employees' organisations and political, religious, patriotic, philosophical or philanthropic nature to their members in return for a subscription fixed in accordance with their rules. By a governmental decree the exemption can be refused when it would lead to a serious distortion of competition. Such a decree has not been published. This means that, opposed to the VAT Directive, the Netherlands does not require that the exemption is not likely to cause distortion of competition. The requirement that the organisation has to be non-profit-making isn't included in the Dutch exemption either. The Netherlands has also omitted the requirement that the supplies have to be made to the members in their common interest. Furthermore, the Netherlands has not included organisations of a civic nature.

III.2.10 Sports (article 132(1)(m) VAT Directive)

Article 132(1)(m) VAT Directive obliges member states to exempt the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education. Article 11(1)(e) OB exempts services to their members by organisations which have as their objective the practice or the promotion of sport, except for the admittance to games and demonstrations and services of water sport organisations which make use of employees insofar as the services entail activities making

use of these employees regarding boats or providing for moorings or storage for boats. The latter exception was included to avoid unfair competition. There are several differences between the Dutch exemption and the exemption in the VAT Directive. It is not clear whether the exemption in the Directive also applies to the promotion of sport: can this be regarded as a service closely linked to sport? Furthermore, the Dutch exemption only applies to services provided to members, whereas the Directive does not make a distinction between services supplied to members and non-members.

Article 11(1)(f) OB combined with article 7(1) and annex B, point 31 of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) exempts natural ice rinks insofar as these facilitate the practice of sports. This exemption is categorised under the exemption for organisations of a social nature, but it would be more appropriate to categorise this exemption under article 11(1)(e) OB. However, in that case only services to members would be exempt. This is caused by the wording of the Dutch exemption: the VAT Directive does not limit the exemption for sports to supplies to members.

III.2.11 Culture (article 132(1)(n) VAT Directive)

Article 132(1)(n) VAT Directive obliges member states to exempt the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the member state concerned.

Article 11(1)(f) OB exempts supplies of services and goods of a social or cultural nature which are designated as such in a general administrative measure. The exemption only applies if the entrepreneur does not aim for a profit and there is no serious distortion of competition with entrepreneurs that do aim for a profit. In article 7(2)(b) of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) services of a cultural nature and closely related supplies of goods other than those cultural services for which the reduced VAT rate applies, are designated as supplies of a cultural nature if the organisation providing these supplies has, upon request, been registered as an organisation of a cultural nature. The Dutch exemption depends on a request of the cultural organisation. If the organisation does not file such a request, the exemption does not apply.

Article 11(1)(f) OB exempts lectures and similar services performed for a payment of expenses. Article 8 of the Implementation Order Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) requires that the lectures are performed for or because of organisations regulated by public law, foundations or associations and promote science or general knowledge. The VAT Directive does not provide for a similar exemption, but the Netherlands is of the opinion that the exemption can be based on article 132(1)(n) VAT Directive. One can doubt whether article 132(1)(n) VAT Directive (even in connection with article 132(1)(i) which exempts education) covers all activities brought under the Dutch exemption. Furthermore, the VAT Directive does not provide for an equivalent of the requirement that only a payment of expenses is allowed. In the Netherlands it is argued that the basis for this requirement can be found in article 133(a) VAT Directive: the bodies in question must not systematically aim to make a profit. It is questionable whether this is the same.

III.2.12 Fundraising (article 132(1)(o) VAT Directive)

Article 132(1)(o) VAT Directive obliges member states to exempt the supply of services and goods, by organisations whose activities are exempt pursuant to points (b), (g), (h), (i), (l), (m)

and (n), in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition.

Article 11(1)(v) OB exempts the supply of services and goods of an auxiliary nature, by organisations whose activities are exempt pursuant to points (c) – based on point (b) of the VAT Directive – ; (d) – based on point (h) of the VAT Directive – ; (e) – based on point (f) and (m) of the VAT Directive –; (f) – based on point (g) and (n) of the VAT Directive –, o(1)– based on point (i) of the VAT Directive – and t – based on point (l) of the VAT Directive – insofar as these supplies result from activities to obtain financial support for these organisations, provided that the receipts from the supplies do not amount to more than € 68 067 per year for goods and € 22 689 per year for services (the latter amount is set at € 31 765 for sports organisations). Supplies designated in a Decree are not exempt in order to prevent serious distortion of competition. However, such Decree has not been published.

Several differences between the provision in de VAT Directive and the OB catch the eye. First of all, the OB limits the exemption to supplies of auxiliary nature, a restriction which is not included in the VAT Directive. Furthermore, instead of a general exclusion of cases in which the exemption is likely to cause distortion of competition, the Netherlands applies maximum receipts. If the receipts do not exceed these amounts the exemption applies, if the receipts exceed these amounts, the exemption does not apply. These amounts are supposed to represent the border between distortion of competition and no distortion of competition. However, it is questionable whether such a general rule is in line with the provision of the VAT Directive. It might very well be that in a case in which these amounts are exceeded, the exemption is not likely to cause distortion of competition. In that case, based on the VAT Directive, the exemption should apply. Similarly, in certain cases the exemption might be likely to cause distortion of competition even if the amounts are not exceeded, for which reason it should not apply.

III.2.13 Ambulances (article 132(1)(p) VAT Directive)

Article 132(1)(p) VAT Directive obliges member states to exempt the supply of transport services for sick or injured persons in vehicles specially designed for the purpose, by duly authorised bodies. Article 11(1)(g) under (1)(b) OB exempts transport of sick or injured persons in ambulances. The Dutch exemption is not limited to duly authorised bodies.

III.2.14 Radio and television (article 132(1)(q) VAT Directive)

Article 132(1)(p) VAT Directive obliges member states to exempt the activities, other than those of a commercial nature, carried out by public radio and television bodies. An exemption with similar wording is included in article 11(1)(n) OB.

III.3 Optional requirements article 133 VAT Directive

Article 133 VAT Directive allows member states to make the granting of several exemptions to bodies other than those governed by public law conditional to one or more of the following requirements:

(a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied;

(b) those bodies must be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;
(c) those bodies must charge prices which are approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to VAT; and/or
(d) the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

These conditions may be imposed on the following exemptions of article 132 VAT Directive:

(b) hospital and medical care;
(g) welfare and social security work;
(h) protection of children and young persons;
(i) the provision of children's or young people's education;
(l) the supplies of non-profit- making organisations to their members in their common interest in return for a subscription fixed in accordance with their rules;
(m) sport or physical education; and
(n) cultural services

The Netherlands only imposes the first and the last requirement.

III.3.1 Not aiming to make a profit

Article 133(a) VAT Directive allows Member States to make the granting of several exemptions conditional to the requirement that the bodies must not systematically aim to make a profit, and that any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied.

The Dutch exemptions for medical care, sports and supplies of non-profit-making organisations only apply if with these supplies it is not aimed to make a profit. Article 11(2) OB provides that 'aiming for a profit' includes achieving surpluses, unless these are not distributed but used for the supplies. The wording is not exactly the same as the wording of the VAT Directive. As soon as the general Dutch profit making prohibition for hospitals no longer applies, this condition will no longer apply for the Dutch VAT exemption for medical care.

The exemption of supplies of services and goods of a social or cultural nature, sports, cultural services, the supply of services to young people and youth leaders by organisations for general youth work only apply if the entrepreneur does not aim for a profit. The wording of the condition under which the exemptions for the supply of goods and services closely related to welfare work, social security, the protection of children and young persons and the exemption for services of a cultural nature apply,[39] is in line with article 133(a) VAT Directive. These exemptions only apply if the entrepreneur does not aim for a profit Not aiming for a profit includes not systematically aiming to make a profit, and that any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied.

[39] Article 11(1)(f) OB combined with article 7(2) of the Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*.

Therefore, the Netherlands imposes the not-aiming-for-a-profit-condition on all exemptions for which this is allowed in article 133(a) of the VAT Directive, except for the exemption for the provision of children's or young people's education. However, the Netherlands uses two different versions of this condition, with only one version being fully in line with the wording of article 133(a) of the VAT Directive.

III.3.2 No distortion of competition

Article 133(d) of the VAT Directive allows to require that the exemptions must not be likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT.

The exemptions for supplies of services and goods of a social or cultural nature, for supplies to members by independent groups with exempt or out of scope activities and for certain non-profit-making organisations only apply if there is no *serious* distortion of competition with entrepreneurs that do aim for a profit. The wording of the Dutch condition differs from the wording of the VAT Directive. It seems to be less strict than the condition of the VAT Directive. The Netherlands requires serious distortion of competition, whereas the condition of the VAT Directive already applies if distortion of competition is likely, without the use of the adjective 'serious'. The ECJ decided in the Taksatorringen case (20 November 2003, case C-8/01, paras 63 and 64) that although the expression 'provided that such exemption is not likely to produce distortion of competition' is not directed solely at distortions of competition which the exemption is likely to produce immediately but also at those to which it may give rise in the future, the risk that the exemption will by itself give rise to distortions of competition must none the less be real. The grant of VAT exemption must, therefore, be refused if there is a genuine risk that the exemption may by itself, immediately or in the future, give rise to distortions of competition.

III.4 Formal requirement regarding bookkeeping

Article 6 Implementation Decree Turnover Tax 1968 (*Uitvoeringsbesluit omzetbelasting 1968*) provides for the formal requirement that in order for the exemptions of article 11 OB to apply, the entrepreneur should keep his books in such a way that the information necessary for the application of those exemptions is stated in a clear and orderly way.

III.5 Conclusion regarding VAT

The ECJ stated many times the exemptions for the public benefit must be interpreted strictly since these constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. [40] The concepts and terms used in articles 132-134 VAT Directive should be interpreted in the same way in each and every Member State. The exemptions are independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to

[40] For example, ECJ, 23 February 1988, 353/85, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* (paragraphs 26 and 35); ECJ, 15 June 1989, 348/87, *Stichting Uitvoering Financiële Acties v Staatssecretaris van Financiën* (paragraph 13); and ECJ, 12 November 1998, C-149/97, *The Institute of the Motor Industry v Commissioners of Customs and Excise* (paragraph 17) and ECJ, 7 September 1999, Case C-216/97, *Jennifer Gregg and Mervyn Gregg and Commissioners of Customs & Excise* (paragraph 12).

another and which must be placed in the general context of the common system of VAT.[41] The interpretation of the terms must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT.[42] The requirement of strict interpretation does not mean that the terms used to specify the exemptions should be construed in such a way as to deprive the exemptions of their intended effect.[43] This calls for an interpretation which is not too narrow, but which is restricted by the objective of the exemption. Furthermore, the Court pointed out many times that the aim of article 132 VAT Directive is to exempt from VAT certain activities which are in the public interest, and that this provision does not provide for an exemption for every activity performed in the public interest, but only for those which are listed and described in great detail.[44]

The Dutch VAT exemptions for the public benefit are spread over various provisions which are part of article 11 OB. It is not always easy to find the link between these provisions and the VAT Directive. Furthermore, in many cases the wording of the Dutch provisions deviates from the wording of the VAT Directive. In several cases the Netherlands seems to have preserved old national exemptions instead of fully implementing the exemptions in the Directive. One wonders whether it would not be better if the Netherlands would replace the current exemptions with the exemptions in the VAT Directive. In my opinion the Netherlands should then also make a division between exemptions for the public benefit and other exemptions by including these exemptions in two separate articles.

It can also be derived from the above that there is no link between the tax breaks for the public benefit in other Dutch tax legislation and the VAT exemptions for the public benefit. For example, sport and community centres are not regarded as being for the public benefit in other Dutch tax laws.

IV Inheritance, estate and gift taxes:

IV.1 Definitions and conditions (both specific and formal)

In the Netherlands, the definitions, rules and conditions of public benefit activities and public benefit entities which apply for Income tax (gift deduction) apply for the inheritance and gift tax as well, as these are general definitions and conditions. For a description of these definitions, rules and conditions and the definition of listed public benefit entities, please refer to paragraph I.

IV.2 Specific tax rules: exemptions of gift and inheritance tax

---

41 For example ECJ, 20 June 2002, C-287/00, *Commission of the European Communities v Federal Republic of Germany*, paragraph 44 and ECJ, 14 June 2007, Case C-434/05, *Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College) v Staatssecretaris van Financiën*, paragraph 15.

42 ECJ, 6 November 2003, Case C-45/01, *Christoph-Dornier-Stiftung für Klinische Psychologie and Finanzamt Gießen*.

43 ECJ, 14 June 2007, Case C-434/05, *Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College) v Staatssecretaris van Financiën*, paragraph 16.

44 See, for example, ECJ, 11 July 1985, 107/84, *Commission of the European Communities v Federal Republic of Germany*. (paragraph 17); ECJ, 15 June 1989, 348/87, *Stichting Uitvoering Financiële Acties v Staatssecretaris van Financiën* (paragraph 13); and ECJ, 12 November 1998, C-149/97, *The Institute of the Motor Industry v Commissioners of Customs and Excise* (paragraph 18).

Dutch gift and inheritance tax is levied if the donor or deceased is resident of the Netherlands. The nationality or residence of the beneficiary is irrelevant for Dutch gift and inheritance tax purposes. In case of unrelated parties the applicable rate is 30% for amounts up to € 118,708 and 40% for any amount above.[45] A general exemption of € 2,000 applies for every donation. Listed public benefit entities (which, as was discussed in paragraph I, can be resident of the Netherlands or of another country) are exempt from gift and inheritance tax and can receive donations and inheritances free of tax.[46] Social benefit entities are exempt from gift and inheritance tax as well. Furthermore, gifts received from a listed public benefit entity are exempt from gift and inheritance tax. Gifts received from social benefit entities are not exempt.

Furthermore, it is possible to ´pay´ inheritance tax with works of art.[47] This tax incentive is similar to the UK ´acceptance in lieu of tax´ and the French ´dation´. However, an important difference is that instead of 100%, 120% of the value of the work of art is taken into account in the Netherlands. This means that with a work of art with a value of € 100.000 an inheritance tax assessment of € 120.000 can be paid. Only moveable works of art are eligible for this incentive. Furthermore, only works of art which are on the list of protected objects, which are deemed indispensable or irreplaceable or which are of great national cultural-historical or art -historical value can qualify. The Minister of Finance decides whether a work of art is accepted in lieu of inheritance tax. A small committee consisting of an art historian, a civil servant of the Ministry of Finance and a former Minister of Finance advises the Minister. If a work of art is accepted, the State becomes the owner of the work of art. The State may decide to give the work of art on loan to a museum. Unlike the UK and France, the Dutch government does not disclose which (or even how many) works of art have been obtained through this incentive.

The Netherlands does not levy an annual wealth tax or other tax in replacement of the inheritance, or gift tax.

V Other taxes

V.1 Partial refund of energy tax

One of the Dutch environmental taxes is the energy tax. This tax is levied on the use of electricity and gas through the bill of the electricity company. Public benefit and social benefit organizations can apply for a refund of 50% of the energy tax if certain requirements are met.[48] Clearly, the organization must have a connection to the gas and/or electricity network. An important requirement is that the organization must not be an organization in the field of sports, education or health or a public law company) as these entities are compensated for the energy tax through a direct subsidy. The activities of social benefit organizations must be performed by volunteers in order to qualify for the exemption.

V.2 Exemption of real estate transfer tax in case of merger or transfer of tasks

45 Article 24 Gift and Inheritance tax Act (*Successiewet*, hereinafter SW).
46 Article 32 and 33 SW.
47 Article 67 SW.
48 Article 69 Act on environmental taxes (*Wet belastingen op milieugrondslag*).

Dutch real estate transfer tax is levied from the acquirer of real estate at a rate of 6%. An exemption applies in case of a merger or transfer of tasks between listed public benefit entities and/or associations with at least 25 members and which are not liable to (including being exempt from) corporate income tax.[49] Commercial factors may not play a part in the merger or transfer. Furthermore, not only real estate must be acquired and the acquired real estate must be used for the public benefit activities. The tax exemption is withdrawn if the acquiring entity ceases to exist within three years after the merger or transfer or is, within that period, no longer a listed public benefit entity or association with at least 25 members which is not liable to corporate income tax unless this is caused by a subsequent merger or transfer of tasks.

[49] Article 15(1)(h) real Estate transfer tax Act(*Wet op belastingen van rechtsverkeer*) together with article 5d Inmplementing decree real estate transfer tax (*Uitvoeringsbesluit belastingen van rechtsverkeer*).